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Unit: I Constitution, Human Rights and Duties In this unit, you will learn about, ?

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Indian Constitution ? Development of Indian Constitution ? Sources of Indian Constitution ? Features of Indian Constitution ?

Fundamental Rights and Fundamental Duties ? Directive Principles of State Policy ? Balance between Rigidity and Flexibility ? International Human Rights and the Indian Constitution ? Universal Declaration of Human Rights ? Development of Human Rights and Fundamental Rights ? International Law and Position of India Framing Of Indian Constitution Introduction Modern constitution making began in the late eighteenth century. Between 1780 and 1791, constitutions were written for the various American states, the United States, Poland, and France. The next wave occurred in the wake of the 1848 revolutions in Europe. Counting all the small German and Italian states, revolutions took place in more than fifty countries. Many of these also adopted new constitutions often replaced within a short period by constitutions imposed by the victorious counter-revolutionary forces. A third wave broke out after the First World War. The newly created or recreated states of Poland and Czechoslovakia wrote their constitutions. The defeated German state adopted the Weimar Constitution. Next, the fourth wave occurred after the Second World War. The defeated nations- Japan, Germany and Italy adopted new constitutions under the more or less strict tutelage of the Allied Powers. A fifth wave was connected with the break-up of the French and British colonial empires. It began in India and Pakistan in the 1940s, but the process did not really gain momentum until the 1960s. In many cases, the new constitutions were modelled closely on those of the former colonial powers. To name only a few examples, the constitution of the Ivory Coast was modelled on that of the Fifth French Republic, whereas those of Ghana and Nigeria followed the British "Westminster model." The next wave is linked to the fall of the dictatorships in Southern Europe in the mid 1970s. Between 1974 and 1978, Portugal, Greece, and Spain adopted new democratic constitutions. Finally, a number of former Communist countries in Eastern and Central Europe adopted new constitutions after the fall of communism in 1989. Although we do not have an exact count, there must be a couple of dozen new constitutions in the region. 1

CONSTITUTION A constitution is a set of rules that are foundational to the country, institution or organisation to which they relate. Example: You can have a constitution for a soccer club or a professional association, such as a press council. Such constitutions set out the rules by which members of the organisation agree to operate. However, constitutions can also govern much larger entities, indeed, entire nations.

A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed.

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These rules together make up, i.e. constitute, what the entity is.

When these principles are written down into a single document or set of legal documents, those documents may be said to embody a written constitution; if they are written down in a single comprehensive document, it is said to embody a codified constitution.

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Constitutions concern different levels of organizations, from sovereign states to companies and unincorporated associations. A treaty which establishes an international organization is also its constitution, in that it would define how that organization is constituted. Within states, a constitution defines the principles upon which the state is based, the procedure in which laws are made and by whom. Some constitutions, especially codified constitutions, also act as limiters of state power, by establishing lines which a state's rulers cannot cross, such as fundamental rights.

Importance of Constitution ? The primary function of a constitution is to lay out the basic structure of the government according to which the people are to be governed. It is the constitution of a country, which establishes the three main organs of the government, namely, the legislature, executive and judiciary. ? The constitution of a country not only defines the powers allotted to each of the three main organs, but it also significantly makes a clear demarcation of the responsibilities assigned to each of them. It effectively regulates the relationship between these organs as well as the relationship between the government and its people. ? Since the country's constitution stands superior to all the laws framed within the territorial precincts of the country, any law enacted by the ruling government has to be in conformity with the concerned constitution. As such, the citizens would, in turn, be abiding by not just the law, but also working in sync with the demarcations of the constitution laid by the country. ? The constitution does not simply provide a recipe for an efficient government, but also deals with limitations on power. Since power corrupts and absolute power corrupts absolutely, a constitution is established to restrict the abuse of power by those who conduct governmental functions. ? The constitution of a particular country lays down the national goals which form the basic edifice on which the nation rests upon. For instance, the constitution of India has inscribed in it the primary facets of the nation which are democracy, socialism, secularism and national integration. ? A constitution, besides thrusting on the rights of the citizens of the concerned nation, also has embedded in it the duties that the citizens require to adhere to as well. INDIAN

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CONSTITUTION The Constitution of India is the supreme law of India.

It lays down the framework defining fundamental political principles, establishes the structure,

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procedures, powers, and duties of government institutions, and sets out fundamental rights, directive principles, and the duties of citizens.

The Constitution follows parliamentary system of government and the executive is directly accountable to the legislature. Article 74 provides that there shall be a Prime Minister of India as the head of government. It also states that there shall be a President of India and a Vice-President of India under Articles 52 and 63. Unlike the Prime Minister, the President largely performs ceremonial roles. 2 The Constitution of India is federal in nature. Each state and each Union territory of India has its own government. Analogues to President and Prime Minister, each has a Governor (in case of states) or Lieutenant Governor (in the case of Union territories) and a Chief Minister. The 73rd and 74th Amendment Act also introduced the system of Panchayati Raj in rural areas and Municipality in urban areas. Also, Article 370 of the Constitution gives special status to the State of Jammu and Kashmir. India, also known as Bharat, is a Union of States. It is a Sovereign Socialist Secular Democratic Republic with a parliamentary system of government. The Republic is governed

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in terms of the Constitution of India which was adopted by the Constituent Assembly on 26th November 1949 and came into force on 26th January, 1950. The Constitution

provides for a Parliamentary form of government which is federal in structure with certain unitary features. The constitutional head of the Executive of the Union is the President. As per Article 79 of the Constitution of India, the council

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of the Parliament of the Union consists of the President and two Houses known as the Council of States (Rajya Sabha) and the House of

the People (Lok Sabha). Article 74(1) of the Constitution provides

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that there shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President, who shall exercise his/her, functions in accordance

to the advice.

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The real executive power is thus vested in the Council of Ministers with the Prime Minister

as its head. Development of Indian Constitution Present day India is a federal state with 29 federated entities divided among seven unions. Its system of government is parliamentary and based on the Westminster model. India first came into contact with the west in the early 18th century when it was annexed by the British East India Company. In the mid 19th century, it fell under British colonial rule. The colonial administration in British India or British Raj as it was also called - was headed by a Viceroy who also cumulated the title of Governor General until 1947 when a struggle for independence, marked by a widespread non-violent resistance movement resulted in independence from the British Colonial Empire. Prior to the constituent assembly that convened in 1948 to draft the Indian constitution adopted in 1950 and still in force to date, the fundamental law of India was mostly embodied in a series of statutes enacted by the British Parliament. The history of the Constitutional development in India can be traced back to the Regulating Act of 1773, which for the first time made the provision for the post of Governor General in India. Since then a number of constitutional experiments were introduced aiming at streamlining the Indian Administration. However, the year 1858 serves as watershed when the Indian Administration came under the direct rule of the British Crown and the centralization of the administration was at its pinnacle. Thus, the period of British constitutional development experiment in India can be divided in: Regulating Act, 1773 ? Subjected the Company's actions to the supervision of the British Govt ? End of Dual Government ? Governor of Bengal to be the Governor-General of British territories of India ? Establishment of Supreme Court in Calcutta ? The servants of the Company were forbidden to engage in private trade, accept presents or bribes, etc. Pitt's Act of 1784 ? The commercial and political activities of the Company were now separated. Board of Control of six members (including two cabinet ministers) set-up to guide and supervise the affairs of the Company in India ? Three members will be there in Governor-General's Executive Council. ? Secret Committee of three Directors was to look into political and military affairs. [Governor General and the council were forbidden to declare war and make treaties without the sanction of secret committee]. 3

? Madras and Bombay Presidencies were subordinated to the Governor-General-in-Council of Bengal in all matters. ? This act gave the British Government a measure of control over the Company's affairs. In fact, the Company became a subordinate department of the State. Act of 1786 ? Governor General given the power to over-ride the council and was made Commander-in-Chief also. Charter Act of 1793 ? Company given monopoly of trade for 20 more years ? Expenses and salaries of the Board of Control to be charged on Indian revenue ? The Governor General and the Governors could now over-ride the decisions of their respective Councils ? All laws were to be translated in Indian languages ? It laid the foundation of Govt. by written laws, interpreted by courts Charter Act of 1813 ? Company deprived of its trade monopoly in India except in t. and trade with China. ? This made the Company more of an administrative body. ? All Englishmen could trade with India subject to few restrictions. ? A sum of Rs. 1 Lakh earmarked annually for education of Indians. ? Further, Christian missionaries were also permitted to come to India and preach their religion. Charter Act of 1833 ? End of Company's monopoly even in tea and trade with China. Company was asked to close its commercial business at the earliest. ? All restrictions on European immigration into India and acquisition land and property in India by them were removed, legalizing European colonization of India. ? Governor General of Bengal to be Governor General of India; all powers, administrative and financial, were centralized in the hands of the Governor-General-in-Council. ? President of Board of Control became the minister for Indian affairs. A law member (without power to vote) was added to the Executive Council of the Governor General. ? Macaulay was the first Law member. This increased the Council, strength to four. With it began the Indian Legislature. A law commission was constituted for codification of laws. ? The Act threw open to all, irrespective of religion, place of birth, descent and colour, services under the Company. Charter Act of 1853 ? The Act renewed the powers of the Company and allowed it to retain the possession of Indian territories in trust for the British Crown but not for any specified period. ? The number of members of the Court of Directors was reduced from 24 to 18 of which 6 were to be nominated by the Crown. ? The Law member was made a full member of the Governor General, Executive Council ? Legislation was treated for the first time as separate from executive functions. ? Questions could be asked and the policy of the Executive Council could be discussed, though the Executive Council could veto a bill of the Legislative Council. ? Recruitment to Civil Services was based on annual competition examination (excluding Indians).

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SOURCES OF INDIAN CONSTITUTION 4 The Constitution framers adopted from several sources, features which are present in the Indian Constitution. Sources Government of India Act, 1935 Federal Scheme,

Office of Governor, Judiciary, Public Service Commissions, Emergency provisions, Administrative details British Constitution Parliamentary government, Rule of Law, Legislative procedure, Single citizenship, Cabinet System, Prerogative Writs US Constitution Fundamental Rights, Independence of Judiciary, Judicial Review, Impeachment of the President, Removal of Supreme Court and High Court judges and post of Vice-President Irish Constitution Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of President, Federation with a strong centre, Vesting of residuary powers in the Centre,

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appointment of State Governors by the Centre and advisory jurisdiction of

the Supreme Court. Canadian Constitution Federation with a strong centre, residuary powers with the centre,

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appointment of state governors by the centre and advisory jurisdiction of the Supreme Court Australian Constitution Concurrent List, Freedom of trade, commerce and intercourse joint sitting of the two Houses of Parliament. Weimar Constitution

Suspension of Fundamental Rights during Emergency Soviet Constitution Fundamental duties, the ideal of justice (social, economic and political) in the Preamble French Constitution Republic and

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the ideals of liberty equality and fraternity in the Preamble South African Constitution Procedure

for amendment, the Constitution and election of the members of Rajya Sabha Japanese Constitution Procedure established by law. The drafted Constitution was finally adopted on November 26, 1949. Features of Indian Constitution 5 The Constitution of India has some distinct and unique features as compared to other constitutions to the world. As

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Dr. B.R. Ambedkar, the Chairman of the Drafting Committee

puts it; the framers had tried to accumulate and accommodate the best features of other constitutions, keeping in view the peculiar problems and needs of our country. The following are the salient features of the Constitution of India: Longest Written Constitution Indian Constitution can be called the largest written constitution in the world because of its contents. In its original form, it consisted of 395 Articles and 8 Schedules to which additions have been made through subsequent amendments. At present it contains 395 Articles and 12 Schedules, and more than 80 amendments. There are various factors responsible for the long size of the constitution. One major factor was that the framers of the constitution- borrowed provisions from several sources and several other constitutions of the world. Partly Rigid and Partly Flexible The Constitution of India is neither purely rigid nor purely flexible. There is a harmonious blend of rigidity and flexibility. Some parts of the Constitution can be amended by the ordinary law-making process by Parliament. Certain provisions can be amended, only when a Bill for that purpose is passed in

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each house of Parliament by a majority of the total membership of that house and. by a majority of not less than two-third of the members of that house present and voting.

Then there are certain other provisions which can be amended by the second method described above and are ratified by the legislatures of not less than one-half of the states before being presented to the President for his assent. It must also be noted that the power to initiate bills for amendment lies in Parliament alone, and not in the state legislatures. A Democratic Republic India is a democratic republic. It means that sovereignty rests with the people of India. They govern themselves through their representatives elected on the basis of universal adult franchise. The President of India, the highest official of the state is elected for a fixed term. Although, India is a sovereign republic, yet it continues to be a member of the Commonwealth of Nations with the British Monarch as its head. Her membership of the Commonwealth does not compromise her position as a sovereign republic. The commonwealth is an association of free and independent nations. The British Monarch is only a symbolic head of that association. Parliamentary System of Government India has adopted the Parliamentary system as found in Britain. In this system, the executive is responsible to the legislature, and remains in power only as long and it enjoys the confidence of the legislature. The president of India, who remains in office for five years, is the nominal, titular or constitutional head. The Union Council of Ministers with the Prime Minister as its head is drawn from the legislature. It is collectively responsible to the House of People (Lok Sabha), and has to resign as soon as it loses the confidence of that house. The President, the nominal executive shall exercise his powers according to the advice of the Union Council of Ministers, the real executive. In the states also, the government is Parliamentary in nature. A Federation Article 1 of the Constitution of India says: - "

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India that is Bharat shall be a Union of States." Though the word 'Federation' is not used, the

government is federal. A state is federal when (a) there are two sets of governments and there is distribution

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of powers between the two, (b) there is a written constitution, which is the supreme law of the land

and (c) 6

there is an independent judiciary to interpret the constitution and settle disputes between the centre and the states. All these features are present in India. There are two sets of government, one at the centre, the other at state level and the distribution of powers between them is quite detailed in our Constitution. The Constitution of India is written and the supreme law of the land. At the apex of single integrated judicial system, stands the Supreme Court which is independent from the control of the executive and the legislature. Fundamental Rights The constitution of India affirms the basic principle that every individual is entitled to enjoy certain basic rights and part III of the Constitution deals with those rights which are known as fundamental rights. Originally there were seven categories of rights, but now they are six in number. They are (i)

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Right to equality, (ii) Right to freedom, (iii) Right against exploitation, (iv) Right to freedom of Religion, v) Cultural and Educational rights and vi) Right to constitutional remedies. Right to property (Article-31) originally a fundamental right has been omitted by the 44th Amendment Act. 1978. It is now a legal right.

These fundamental rights are justifiable and the individual can move the higher judiciary that is the Supreme Court or the High Courts, if there is an encroachment on any of these rights. The right to move to the Supreme Court straight for the enforcement of fundamental rights has been guaranteed under Article 32 (Right to Constitutional Remedies). However, fundamental rights in India are not absolute. Reasonable restrictions can be imposed keeping in view the security-requirements of the state. Directive Principles of State Policy A novel feature of the Constitution is that it contains a chapter in the Directive Principles of State Policy. These principles are in the nature of directives to the government to implement them for establishing social and economic democracy in the country. It embodies important principles like adequate means to livelihood, equal pay for both men and women, distribution of wealth so as to sub-serve the common good, free and compulsory primary education,

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right to work, public assistance in case of old age, unemployment, sickness and disablement,

the organisation of village Panchayats, special care to the economically back ward sections of the people etc. Most of these principles could help in making India welfare state. These principles have been stated as; "fundamental in the governance of the country". Fundamental Duties A new part IV (A) after the Directive Principles of State Policy was incorporated in the constitution by the 42nd Amendment, 1976 for fundaments duties. These duties are: ?

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To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem; ? To cherish and follow the noble ideals, which inspired our national struggle for freedom; ? To uphold and protect the sovereignty, unity and integrity of India; ? To defend the country and render national service when called upon to do so; ? To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities, to renounce practices derogatory to the dignity of woman; ? To value and preserve the rich heritage of our composite culture; ? To protect and improve the natural environments including forests, lakes, rivers and wild life and to have compassion for living creatures; ? To develop scientific temper, humanism and the spirit of inquiry and reform; ? To safeguard public property and to abjure violence; 7 ? To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of Endeavour and achievement ?

The

purpose of incorporating these duties in the Constitution is just to remind the people that while enjoying their right as citizens, should also perform their duties for rights and duties are correlative. Secular State A secular state is neither religious nor irreligious, or anti-religious. Rather it is quite neutral in matters of religion. India being a land of many religions, the founding fathers of the Constitution thought it proper to make it a secular state. India is a secular state, because it makes no discrimination between individuals on the basis of religion. It neither encourages nor discourages any religion. On the contrary, right to freedom of religion is ensured in the Constitution and people belonging to any religious group have the right to profess, practice or propagate any religion they like. An Independent Judiciary The judiciary occupies an important place in our Constitution and it is also made independent of the legislature and the executive. The Supreme Court of India stands at the apex of single integrated judicial system. It acts as protector of fundamental rights of Indian citizens and guardian of the Constitution. If any law passed by the legislature or action taken by the executive contravenes

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the provisions of the Constitution, they can be declared as null and void by the

Supreme Court. Thus, it has the power of judicial review. But judicial review in India constitutes a middle path between the American judicial supremacy in one hand and British Parliamentary supremacy in the other. Single Citizenship The Constitution of India recognises only single citizenship. In the United States, there is provision of dual citizenship. In India, we are citizens of India only, not of the respective states to which we belong. This provision would help in promoting unity and integrity of the nation. **FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES** Fundamental Rights Fundamental Rights are a charter of rights contained in the Constitution of India. It guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as habeas corpus. Violation of these rights result in punishments as prescribed in the Indian Penal Code or other special laws, subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste or gender. Indian Constitution defines Fundamental Rights

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<p>as – "In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."</p> <p>The seven fundamental rights recognised by the Indian constitution are:</p>		
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<p>Right to Equality 8 This includes equality before law, prohibition of discrimination on grounds of religion, race, caste, gender or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles.</p> <p>Right to Freedom Which includes speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation (some of these rights are subject to</p>		
89%	MATCHING BLOCK 27/385	SA sudhir kumar pal.docx (D158491393)
<p>security of the State, friendly relations with foreign countries, public order, decency or morality),</p>		
41%	MATCHING BLOCK 28/385	SA sudhir kumar pal.docx (D158491393)
<p>right to life and liberty, right to education, protection in respect to conviction in offences and protection against arrest and detention in certain cases.</p> <p>Right against Exploitation This prohibits all forms of forced labour, child labour and traffic in human beings.</p> <p>Right to Freedom of Religion This includes</p>		
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<p>freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from</p> <p>certain taxes and freedom from religious instructions in certain educational institutes. Cultural and Educational Rights Preserve the right of any section of citizens to conserve their culture, language or script, and</p>		
78%	MATCHING BLOCK 25/385	W
<p>right of minorities to establish and administer educational institutions of their choice. Right to</p> <p>Constitutional Remedies This is present for enforcement of Fundamental Rights. Right to Elementary Education This implies that any child between the ages of 6 to 14 should and can be educated. Fundamental Duties Indian Constitution stated that;</p>		
95%	MATCHING BLOCK 26/385	W
<p>It shall be the duty of every citizen of India ? To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem; ? To cherish and follow the noble ideals which inspired our national struggle for freedom; ? To uphold and protect the sovereignty, unity and integrity of India; ? To defend the country and render national service when called upon to do so; ? To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; ? To value and preserve the rich heritage of our composite culture; ? To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; ? To develop the scientific temper, humanism and the spirit of inquiry and reform; ? To safeguard public property and to abjure violence; ? To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; ? Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years. 9</p>		

100%	MATCHING BLOCK 29/385	W
<p>DIRECTIVE PRINCIPLES OF STATE POLICY Directive Principles of State Policy:</p> <p>Application of the principles contained in this Part.</p>		
96%	MATCHING BLOCK 30/385	SA sudhir kumar pal.docx (D158491393)
<p>State to secure a social order for the promotion of welfare of the people</p> <p>and certain principles of policy to be followed by the State. ? In</p>		
97%	MATCHING BLOCK 31/385	SA sudhir kumar pal.docx (D158491393)
<p>this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III. ?</p>		
81%	MATCHING BLOCK 32/385	SA sudhir kumar pal.docx (D158491393)
<p>The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. ? The State shall</p> <p>strive</p>		
94%	MATCHING BLOCK 34/385	SA sudhir kumar pal.docx (D158491393)
<p>to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all</p> <p>the institutions of the national life. ?</p>		
94%	MATCHING BLOCK 33/385	W
<p>The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. ? The State shall,</p> <p>in particular, direct its policy towards securing – ? That</p>		
89%	MATCHING BLOCK 35/385	W
<p>the citizens, men and women equally, have the right to an adequate means of livelihood; ?</p> <p>That the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good; ? That the operation of the economic system does not result in the</p>		
73%	MATCHING BLOCK 36/385	W
<p>concentration of wealth and means of production to the common detriment; ? That there is equal pay for equal work for both men and women; ?</p>		
86%	MATCHING BLOCK 37/385	SA sudhir kumar pal.docx (D158491393)
<p>That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; ? Those children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. ?</p>		

100% **MATCHING BLOCK 39/385** **SA** dissertation completing.docx (D26696797)

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

or other disabilities. ?

The State shall take steps to organize village Panchayats and endow them

92% **MATCHING BLOCK 38/385** **W**

with such powers and authority as may be necessary to enable them to function as units of self-government. ?

98% **MATCHING BLOCK 40/385** **SA** sudhir kumar pal.docx (D158491393)

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness

and

disablement, and in other cases of undeserved want. ?

76% **MATCHING BLOCK 41/385** **SA** sudhir kumar pal.docx (D158491393)

The State shall make provision for securing just and humane conditions of work and for maternity relief. ? The State shall endeavour to secure,

by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, and conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas. ? The State shall take steps, by suitable legislation or in any other way,

100% **MATCHING BLOCK 42/385** **SA** sudhir kumar pal.docx (D158491393)

to secure the participation of workers in the management of

undertakings, establishments or other organizations engaged in any industry. ?

83% **MATCHING BLOCK 45/385** **SA** sudhir kumar pal.docx (D158491393)

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. 10 ?

The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory

87% **MATCHING BLOCK 43/385** **W**

education for all children until they complete the age of fourteen years. ?

The State shall

90% **MATCHING BLOCK 44/385** **W**

promote with special care the educational and economic interests of the weaker sections of the people,

and,

in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. ? The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. ? The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle. ? The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. ? It shall be the obligation of

70%

MATCHING BLOCK 46/385

SA sudhir kumar pal.docx (D158491393)

the State to protect every monument or place or object of artistic or historic interest,

to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be. ? The State shall take steps to separate the

56%

MATCHING BLOCK 49/385

SA sudhir kumar pal.docx (D158491393)

judiciary from the executive in the public services of the State. ? The State shall endeavour to – ? Promote international peace and security; ? Maintain just and honourable relations between nations; ? Foster respect for international law and treaty obligations

in the dealings of organized peoples with one another;
and ? Encourage settlement of international disputes by arbitration
Balance between Rigidity and Flexibility Indian Constitution is a balanced Constitution. The framers of the Constitution desired to secure balance and moderation in incorporating various provisions in our Constitution. As far as the amendment of the Constitution is concerned, a balance is struck in making the Constitution partly rigid and partly flexible. A flexible Constitution is one, which can be easily amended like ordinary law of the land. On the contrary, a rigid Constitution is one whose amendment is very difficult and where there is a distinction between the amendment of constitutional law and ordinary law. Both the types of Constitutions had their merits and demerits. But the framers of the Indian Constitution did not go to the extreme. They incorporated a unique procedure of amendment which combines both rigidity and flexibility (Article 368 of Constitution deals with procedure of amendment of the Constitution). The Constitution can be amended in three different ways: ? Some categories of amendment like creation of new States, creation or abolition of second chamber of the States, changes in the citizenship, etc., require only a simple majority in both the Houses of the Union Parliament. In this case amendment of the Constitution is made in a flexible manner. ? Certain other provisions of the Constitution in order to be amended require

51%

MATCHING BLOCK 47/385

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a majority of the total membership in each House of Parliament and a majority of not less than two-thirds of the members present and voting

in each House of parliament. The bulk of the Constitution can be amended in this way. ? Certain categories of amendment like the Presidential powers and mode of election, the extent of the Executive and Legislative Powers of the Union or the States, the provision regarding the Supreme Court and the High Court, the representation of States in Parliament etc. require:- 11
?

50%

MATCHING BLOCK 48/385

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A majority of the total membership in each House of Parliament. ? A majority of not less than two-thirds of all the members present and voting

in each House of Parliament, and ? Ratification by the legislatures of at least one half of the States. The analysis of the above three procedures of the Indian Constitution reveals that the amendment procedures strike a wise balance between rigidity and flexibility: - K. C. Where, eulogizing the procedure of amendment of Indian Constitution, observes. "This variety in the amending process is wise but is rarely found" The process of amendment is a dynamic one. It does not stop the growth of a nation. In this connection, it is worthwhile to quote Pandit Nehru who clearly stated, "While one wants this Constitution to be as solid and permanent as we can make it, there is no permanence in the Constitution. There should be certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of a living vital organic people. While the world is in turmoil and we are passing through a swept period of transition, what we may do today may not be wholly applicable tomorrow". Thus, our Constitution strikes a balance between the extreme flexibility of the British Constitution and the extreme rigidity of the American Constitution. Dr. B. R. Ambedkar rightly said that "....this Assembly has not only refrained from putting a seal of finality and infallibility upon the Constitution by denying the people the right to amend the Constitution as in Canada, or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or Australia, but has provided a most facile procedure". Parliamentary Democracy with an Elected Principle Representative democracy (also indirect democracy) is a variety of democracy founded on the principle of elected officials representing a group of people, as opposed to direct democracy. Representatives are elected by the public, as in national elections for the national legislature. Elected representatives may hold the power to select other representatives, presidents, or other officers of government or of the legislature, as the Prime Minister in the latter case. ? The power of representatives is usually curtailed by a constitution (as in a constitutional democracy or a constitutional monarchy) or other measures to balance representative power: ? An independent judiciary, which may have the power to declare legislative, acts unconstitutional (e.g. Constitutional Court, Supreme Court) ? It may also provide for some deliberative democracy or direct popular measures (e.g., initiative, referendum, recall elections). However, these are not always binding and usually require some legislative action legal power usually remains firmly with representatives. ? In some cases, a bicameral legislature may have an "upper house" that is not directly elected. Parliamentary democracy is a representative democracy where government is appointed by, or can be dismissed by, a representative as opposed to a "presidential rule" wherein the president is both head of state and the head of government and is elected by the voters. Under a parliamentary democracy, government is exercised by delegation to an executive ministry and subject to ongoing review, checks and balances by the legislative parliament elected by the people. Parliamentary systems have the right to dismiss a Prime Minister at any point in time that they feel he or she is not doing their job to the expectations of the legislature. This is done through a Vote of No Confidence where the legislature decides whether or not to remove the Prime Minister from office by a majority support for his or her dismissal. In some countries, the Prime Minister can also call an election whenever he or she so chooses, and typically 12 the Prime Minister will hold an election when he or she knows that they are in good favour with the public as to get re- elected. In other parliamentary democracies extra elections are virtually never held, a minority government being preferred until the next ordinary elections. An important feature of the parliamentary democracy is the concept of the "loyal opposition". The essence of the concept is that the second largest political party (or coalition) opposes the governing party (or coalition), while still remaining loyal to the state and its democratic principles. International Human Rights and the Indian Constitution HUMAN RIGHTS Human: Noun A member of the Homo sapiens species; a man, woman or child; a person Rights: Noun Things to which you are entitled or allowed; freedoms that are guaranteed Human Rights: Noun The rights you have simply because you are human. If you were to ask people in the street, "What are human rights?" you would get many different answers. They would tell you the rights they know about, but very few people know all their rights. As covered in the definitions above, a right is a freedom of some kind. It is something to which you are entitled by virtue of being human. Human rights are based on the principle of respect for the individual. Their fundamental assumption is that each person is a moral and rational being who deserves to be treated with dignity. They are called human rights because they are universal. Whereas nations or specialized groups enjoy specific rights that apply only to them, human rights are the rights to which everyone is entitled no matter who they are or where they live simply because they are alive. Yet many people, when asked to name their rights, will list only freedom of speech and belief and perhaps one or two others. There is no question these are important rights, but the full scope of human rights is very broad. They mean choice and opportunity. They mean the freedom to obtain a job, adopt a career, select a partner of one's choice and raise children. They include the right to travel widely and the right to work gainfully without harassment, abuse and threat of arbitrary dismissal. They even embrace the right to leisure. In ages past, there were no human rights. Then the idea emerged that people should have certain freedoms. And that idea, in the wake of World War II, resulted finally in the document called the Universal Declaration of Human Rights and the thirty rights to which all people are entitled. Meaning and Importance Meaning or definition of human rights The basic rights and freedoms, to which all humans are entitled, often held to include the right to life and liberty, freedom of thought and expression, and equality before the law. Human rights are moral principles or norms that describe certain standards of human behaviour, and are regularly protected as legal rights in national and international law.

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MATCHING BLOCK 50/385

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Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. 13

Universal

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MATCHING BLOCK 55/385

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human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. Universal and Inalienable

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The principle of universality of human rights is the cornerstone of international human rights law.

This principle,

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as first emphasized in the Universal Declaration on Human Rights in 1948,

has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that

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MATCHING BLOCK 53/385

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it is the duty of States to promote and protect all human rights and fundamental freedoms,

regardless of their political, economic and cultural systems.

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MATCHING BLOCK 54/385

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Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law. Interdependent and Indivisible All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others. Equal and Non-discriminatory Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights." Both Rights and Obligations Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others. Importance of Human Rights Human Rights

are important for all human being. Some of the importance of human rights is discussed below: Human Rights as Inspiration and Empowerment 14

Human rights are both inspirational and practical. Human rights principles hold up the vision of a free, just, and peaceful world and set minimum standards for how individuals and institutions everywhere should treat people. Human rights also empower people with a framework for action when those minimum standards are not met, for people still have human rights even if the laws or those in power do not recognize or protect them. Common Roots of Democracy The greatest protection of human rights emanates from a democratic framework grounded in the rule of law. A functional democracy that accommodates diversity is increasingly becoming the planet's best bet against the concentration of power in the hands of a few and the abuse that inevitably results from it. Democracy is premised on the recognition and protection of people's right to have a say in all decision making processes which is itself based on the central principle of equality of all human beings. Good Governance The goals of human rights are sometimes summed up as freedom from fear and want and to be able to develop one's potential. These are also the aims of governance. Governance is much more than the business of running the State machinery to keep one's borders safe and the law and order situation under control. States also have the mandate to eliminate inequalities and inequities entrenched in society those results in the exploitation and the marginalization of certain groups, depriving them of basic rights to a life of dignity. Reducing Poverty The rights based approach is by definition pro-poor in nature as it requires developmental planning to target the weakest and the most vulnerable first and foremost. Human rights standards provide the benchmarks against which success of development policies must be measured. Setting targets based on human rights allows policymakers to create realistic frameworks for achieving rights and making informed evaluations of the effectiveness of their policies and programmes.

Universal Declaration of Human Rights

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MATCHING BLOCK 56/385

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A Socio-legal Study of Judicial Contribution f ... (D28680544)

In 1948, the United Nations General Assembly proclaimed the Universal Declaration of Human Rights (UDHR) for all people and all nations. In the UDHR, the United Nations stated in clear and simple terms rights that belong equally to every person. These rights belong to you. Familiarize yourself with them. Help to promote and defend them.

Adopted by UN

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MATCHING BLOCK 58/385

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General Assembly Resolution 217A (III) of 10 December 1948. WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, WHEREAS it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, WHEREAS it is essential to promote the development of friendly relations between nations, WHEREAS the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, WHEREAS Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, WHEREAS a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, Now, therefore, the General Assembly Proclaims 15 THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. ? All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. ? Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. ? Everyone has the right to life, liberty and security of person. ? No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. ? No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment ? Everyone has the right to recognition everywhere as a person before the law. ? All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of

the Declaration and against

any incitement to such discrimination. ?

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. ? No one shall be subjected to arbitrary arrest, detention or exile. ? Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. ? Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. ? No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed. ? No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks. ? Everyone has the right to freedom of movement and residence within the borders of each state. ? Everyone has the right to leave any country, including his own, and to return to his country. ? Everyone has the right to seek and to enjoy in other countries asylum from persecution. ? This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. ? Everyone has the right to a nationality. ? No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. ? Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. ? Marriage shall be entered into only with the free and full consent of the intending spouses. 16 ? The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. ? Everyone has the right to own property alone as well as in association with others. ? No one shall be arbitrarily deprived of his property. ? Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance ? Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. ? Everyone has the right to freedom of peaceful assembly and association. ? No one may be compelled to belong to an association. ? Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. ? Everyone has the right of equal access to public service in his country. ? The will of the people shall be the basis of the authority of government; this will be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. ? Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. ? Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. ? Everyone, without any discrimination, has the right to equal pay for equal work. ? Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. ? Everyone has the right to form and to join trade unions for the protection of his interests. ? Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. ? Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. ? Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. ● Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. ? Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. 17 ? Parents have a prior right to choose the kind of education that shall be given to their children. ● Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. ? Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. ● Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. ● Everyone has duties to the community in which alone the free and full development of his personality is possible. ? In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. ? These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. ● Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Development of Human Rights

and Fundamental Rights "Human development and human rights are close enough in motivation and concern to be compatible and congruous, and they are different enough in strategy and design to supplement each other fruitfully," according to the Human Development Report 2000. Human rights and development both aim to promote well-being and freedom, based on the inherent dignity and equality of all people. The concern of human development is the realization by all of basic freedoms, such as having the choice to meet bodily requirements or to escape preventable disease. It also includes enabling opportunities, such as those given by schooling, equality guarantees and a functioning justice system. The human rights framework shares these concerns. Human rights and human development share a preoccupation with necessary outcomes for improving people's lives, but also with better processes. Being people-centered, they reflect a fundamental concern with institutions, policies and processes as participatory and comprehensive in coverage as possible, respecting the agency of all individuals. For instance, in the human rights and human development frameworks, the development of new technologies for effective malaria prevention is a legitimate and even desirable outcome. But in rolling out these technologies development actors should clearly assess and explain the possible negative effects of the testing, as well as ensure that the technologies are accessible and affordable and that vulnerable groups are not excluded. Human rights contribute to human development by guaranteeing a protected space where the elite cannot monopolize development processes, policies and programmes. The human rights framework also introduces the important idea that certain actors have duties to facilitate and foster development. For people to be enabled to assert a legally binding claim that specific duty-bearer provide free and compulsory primary education is more empowering than it is to rely on "needs" alone or to observe the high economic returns on investments in education, for example. When human rights go unfulfilled, the responsibilities of different actors must be analyzed. This focus on locating accountability for failures within a social system significantly broadens the scope of claims usually associated with human development analysis. In the other direction, human development analysis helps to inform the policy choices necessary for the realization

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of human rights in particular situations. Fundamental Rights and Human Rights 18 The judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural

and

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educational rights and the right to Constitutional remedies. Fundamental rights differ from ordinary rights in the sense that the former are inviolable. No law, ordinance, custom, usage, or administrative order can abridge or take them away. Any law, which is violative of

any of the fundamental right, is void.

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The Supreme Court of India recognizes these fundamental rights as 'Natural Rights' or 'Human Rights'.

International Law and Position of India International Human Rights Law The international human rights movement was strengthened when the United Nations General Assembly adopted of the

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A Socio-legal Study of Judicial Contribution f ... (D28680544)

Universal Declaration of Human Rights (UDHR) on 10 December 1948. Drafted as 'a common standard of achievement for all peoples and nations', the

Declaration for the first time in human history spell out basic civil, political, economic, social and cultural rights that all human beings should enjoy. It has over time been widely accepted as the fundamental norms of human rights that everyone should respect and protect. The UDHR, together with

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A Socio-legal Study of Judicial Contribution f ... (D28680544)

the International Covenant on Civil and Political Rights and its two Optional Protocols, and the

International Covenant on Economic, Social and Cultural Rights, form the

so – called International Bill of Human Rights. A series of international human rights treaties and other instruments adopted since 1945 have conferred legal form on inherent human rights and developed the body of international human rights. Other instruments have been adopted at the regional level reflecting the particular human rights concerns of the region and providing for specific mechanisms of protection. Most States have also adopted constitutions and other laws which formally protect basic human rights. While international treaties and customary law form the backbone of international human rights law other instruments, such as declarations, guidelines and principles adopted at the international level contribute to its understanding, implementation and development. Respect for human rights requires the establishment of

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the rule of law at the national and international levels.		

International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties,

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States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.		

Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual complaints or communications are available at the regional and international levels to help

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ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.		

Position of India The National Report seeks to identify various steps taken by India in the ongoing effort of making fundamental human rights real and meaningful. A summary of some important judicial pronouncements which have enabled this progressive evolution of the fundamental rights incorporated in the Constitution is at Annexure II. 19

In recent years, India has taken several important initiatives aimed at securing human rights, including the following: ? In 2010, in a unique development and to ensure citizens their right to live with dignity in a healthy environment, the National Green Tribunal Act was enacted providing for effective legal protection for environment, forests and other natural resources. ? In the same year, the Government introduced in Parliament

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the Protection of Women against Sexual Harassment at Workplace Bill		

covering both organized and unorganized sectors. ? In 2009, the Right to Education Act was enacted, which introduced a new fundamental right for free and compulsory education of children in a neighbourhood school. ? In 2008, a Constitutional amendment bill was introduced in Parliament to reserve for women nearly one-third of seats in the Lok Sabha (Lower House of Parliament) and the state legislative assemblies for a period of 15 years. The Rajya Sabha (Upper House of Parliament) passed this bill in 2010. It is currently in the Lok Sabha. ? In 2007, the National Commission for the Protection of Child Rights (NCPCR) was established to ensure that all legislative and administrative measures are in consonance with the Child Rights perspective as enshrined in the Constitution of India and the Convention on the Rights of the Child. ? The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 rests forest rights and occupation with forest dwelling tribal and other forest dwellers. ? In 2005, the landmark Mahatma Gandhi National Rural Employment Guarantee Act was passed and the programme launched in 2006 to confer livelihood right on the poor. ? The Protection of Women from Domestic Violence Act 2005 came into force in 2006. ? During 2005, the historic Right to Information Act (RTI) was enacted. 20

Unit: II Human Rights and Judiciary In this unit, you will learn about, ? Judiciary ? Enforcing Rights through Writs ? Enforcement Proceedings ? Supreme Court ? Constitution of Supreme Court ? Appointment, Qualifications and Tenure of Judges ? Impeachment of Judges ? Types of Jurisdiction ? High Court ? Constitution of High Court ? Appointment, Qualifications of Judges of High Court ? Jurisdiction of High Court ? Subordinate Courts or District Courts ? Judicial Activism and Public Interest Litigation in India ? Relation between PIL and Judicial Activism and the Emergence of PIL in India ? Phases of PIL ? Problems Regarding the Exercise of Judicial Activism through PIL ? Judicial Interpretations: Landmark Judgments ?

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Delhi Domestic Working Women's Forum V Union of India (1995) ? People's Union for Civil Liberties (PUCL) V Union of India (1997) ?

Sheela Barse vs State Of Maharashtra on 15 February, 1983 Judiciary Unlike the other two organs of the State there is no federal distribution of judicial powers. Under the Indian Constitution there is one single integrated system of courts for the Union as well as the States which administers both union and State laws. The Supreme Court of India stands at the head of the entire judicial system.

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The judiciary' (also known as the judicial system or 'court system) is the system of courts that interprets and applies the law in the name of the state. The judiciary also provides a mechanism for the resolution of disputes.

Under the doctrine of the separation of powers, the judiciary generally does not make law (that is, in a plenary fashion, which is the responsibility of the legislature) or enforce law (which is the responsibility of the executive), but rather interprets law and applies it to the facts of each case. This branch of the state is often tasked with ensuring equal justice under law. It usually consists of a court of final appeal (called the "Supreme court" or "Constitutional court"), together with lower courts. Independence of Judiciary Most constitutional theories require that the judiciary is separate from and independent of the government, in order to ensure the rule of law - that is, to ensure that the law is enforced impartially and consistently no matter who is in power, and without undue influence from any other source. 21

- The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
- The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
- The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
- There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
- Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
- The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
- It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.
- In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
- Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.
- Persons selected for judicial office shall

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be individuals of integrity and ability with appropriate training or qualifications in law.

Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of

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race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status,

except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

- The term of office of judges, their independence, security, adequate remuneration, and conditions of service, pensions and the age of retirement shall be adequately secured by law.
- Judges, whether appointed or elected, shall have guaranteed tenure until

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a mandatory retirement age or the expiry of their term of office,

where such exists. • Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience. • The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration. • The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters. • Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions. 22

• A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge. • Judges shall be subject to suspension or removal only

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for reasons of incapacity or behaviour that renders them unfit to discharge their duties. •

All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct. • Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings. Enforcing Rights through Writs In common law, a writ is a formal written order issued by a body with administrative or judicial jurisdiction; in modern usage, this body is generally a court. Warrants, prerogative writs and subpoenas are common types of writs but there are many others. The Indian Constitution empowers the Supreme Court to issue writs

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for enforcement of any of the fundamental rights conferred by Part III of Indian Constitution

under Article 32. Thus the power to issue writs is primarily a provision made to make available the Right to Constitutional Remedies to every citizen.

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The Right to Constitutional Remedies, as we know, is a guarantor of all other fundamental rights available to the people of India. In addition to

the above, the Constitution also provides for the Parliament to confer on the Supreme Court power to issue writs, for purposes other than those mentioned above. Similarly, High Courts in India are also empowered to issue writs

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for the enforcement of any of the rights conferred by Part III and for any other purpose.

Enforcement Proceedings Whether or not a writ of habeas corpus may be used to establish custody, it may be used to enforce custody orders or to challenge an existing custody order. Where a state agency has taken custody of a child, usually under a child-in-need-of- assistance proceeding, a parent or other interested person may file for a writ of habeas corpus to contest the right of the agency to keep the child. In circumstances where one parent obtains a custody order in one state, and the other parent obtains a custody order in a different state, a petition for a writ of habeas corpus is sometimes used to challenge the jurisdiction of the second state to grant an award of custody. Where parents cannot care for a child, relatives who compete for custody may also use a writ of habeas corpus to challenge custody. The writ of prohibition

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is issued by a higher court to a lower court

prohibiting it from taking up a case because it falls outside the jurisdiction of the lower court. Thus, the higher court transfers the case to itself. The writ of habeas corpus is issued to a detaining authority, ordering the detainer to produce the detained person in the issuing court, along with the cause of his or her detention. If the detention is found to be illegal, the court issues an order to set the person free. The writ of certiorari is issued to a lower court directing that the record of a case be sent up for review, together with all supporting files, evidence and documents, usually with the intention of overruling the judgement of the lower court. It is one of the mechanisms by which the fundamental rights of the citizens are upheld. The writ of mandamus is issued to a subordinate court, an officer of government, or a corporation or other institution commanding the performance of certain acts or duties. 23

The writ of quowarranto is issued against a person who claims or usurps a public office. Through a writ the court inquires 'by what authority' the person supports his or her claim. The Supreme Court The Supreme Court of India which is also called as the guardian

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of the constitution. Since the language of the constitution is not free from ambiguities and its meaning is likely to be interpreted differently by different authorities.

Hence there might be a controversy in this regard. In order to resolve this controversy their, has to be an independent and impartial authority. And this function can be performed efficiently by none other than the judicial body. Hence the Supreme Court of India

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is conferred the responsibility of the final interpreter and the guardian of the constitution. Simultaneously it is also the guardian of the fundamental rights of

the people. Constitution of the Supreme Court It is the power of the Parliament to make laws regulating the constitution organization, jurisdiction and powers of the Supreme Court.

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The Supreme Court of India consists of Chief Justice of India and not more than 25 other judges. Appointment, Qualifications and Tenure of Judges Appointment of Judges Every Judge of Supreme Court is appointed by the President

of India. He shall consult other persons besides taking the advice of his ministers. In case of appointment of Chief Justice he shall consult such

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judges of the Supreme Court and of the High Court as he may deem necessary.

It is a conventional practice that

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the senior most judge of the Supreme Court to hold the office of the Chief Justice.

It was also laid down in the case of Supreme Court advocates V. Union of India. In case of

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appointment of other judges of Supreme Court the President appoints them in consultation with the Chief Justice of India. The

said provision hence modifies the appointment of judges by the executive by providing that the executive should consult members of the judiciary itself who are well qualified to give their opinion in this matter. Qualification for a Judge A person shall not be qualified for the

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appointment as a judge of the Supreme Court unless he is • A citizen of India and •

Either • A distinguished jurist • Has been a High Court Judge for 5 years • Has been an advocate for at least 10 years. Tenure of Judges No minimum age is prescribed for appointment as neither a judge of the Supreme Court nor, any fixed period of office. Once appointed a judge of the Supreme Court may cease to be so on happening of any of the following contingencies. • On attaining the age of 65 years. • On resigning his office by writing addressed to the President • On being removed by the President upon an address to that effect being passed by a special majority of each house of Parliament. 24

The only grounds upon which such removal may take place are proved misbehaviour. Impeachment of Judges Article 124 (4) combined with Judges (Inquiry) Act 1968 lays down the following procedure of impeachment the President. • A motion addressed to the President signed by at least 100 members of the Lok Sabha or 50 members of the Rajya Sabha is delivered to the speaker or the Chairman. • The motion is to be investigated by a committee of three (2 judges of Supreme Court and a distinguish jurist) • If the committee finds the judge guilty of misbehaviour or that he suffers from incapacity the motion together with the report of the committee is taken up for consideration in the House where the motion is pending. • If the motion is passed in each House of two-thirds of that House present and voting the address is presented to the President. • The Judge will be removed after the President gives his order for removal on the said address. The procedure of impeachment is the same for judges of Supreme Court and High Courts. Types of Jurisdiction Original Jurisdiction The function of the Supreme Court under the original jurisdiction is purely of a federal character is confined to the disputes

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between the Government of India and any of the States of the Union, the Government of India and any State or states on one side and any other state or states on the other side, or between two or more states. The

original jurisdiction of Supreme Court is exclusive which means that no other court in India shall have the power to entertain any such suit. On the other hand, the Supreme Court in its original jurisdiction will not be entitled to entertain any suit where both the parties are not units of the federation. If any suit is brought either against the State of the Government of India by a private citizen, that will not lie within the original jurisdiction of the Supreme Court but will be brought in the ordinary courts under the ordinary law. Writ Jurisdiction The Writ Jurisdiction of the Supreme Court is conferred under Article 32 of the constitution which is used for enforcement of fundamental rights. This jurisdiction is also considered sometimes as original jurisdiction. However, it can be treated as a separate jurisdiction since the dispute in such cases is not in between the units of the union but an aggrieved individual and the Government or any of its agencies. Appellate Jurisdiction

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The Supreme Court of India is the highest court of

appeal for all the courts in the territory of India. However, the appellate jurisdiction of Supreme Court may be divided under three heads. • Cases involving interpretation of constitution – Civil, Criminal or otherwise. • Civil cases irrespective of any constitutional question • Criminal cases irrespective of any constitutional question 25

Advisory Jurisdiction The Supreme Court shall have an advisory jurisdiction i.e. it can give its opinion any question of law or fact of public importance as may be referred to it for consideration by the President. Miscellaneous Jurisdiction Article 317 (1) of the constitution confers the power of reference to the Supreme Court of India under various other provisions like s. 257 of Income Tax Act 1961, s.7 (2) of the Monopolies and Restrictive Trade Practices Act 1969, s.130 (A) of the Customs Act 1962. Appeals also lie to the Supreme Court under the Representation of the People Act, Advocates Act, Contempt of Courts Act, Customs Act, Terrorists and Disruptive Activities Act etc. The High Court

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There shall be a High Court in each State; however,

a Parliament has the power to establish

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a common High Court for two or more States as stated above. The High Court at the head of the judiciary in the State. Constitution of High Court Every High Court shall consist of a Chief Justice and some other judges.

President has the power to appoint. • Additional judges for a temporary period not exceeding two years for the clearance of arrears of work in a High Court • An acting Judge, when a permanent Judge of High Court (other than a Chief Justice) is temporarily absent or

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unable to perform his duties or is appointed to act temporarily as Chief Justice.

Appointment and Qualification

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of Judges of High Court Appointment of Judges of High Court Every Judge of High Court is appointed by a President. In making the appointment the President shall consult the Chief Justice of India, Governor of the State also the Chief Justice of that High Court in the matter of appointment of a Judge other than Chief Justice.

Hence it is a participatory consultative process. Qualifications of High Court Judge The Indian constitution lays down the qualifications for the Judge of the High Court which are as follows. • He must be a citizen of India, not being over 62 years and must

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have • Held for at least 10 years of judicial office in the territory of India or has been for at least 10 years

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an advocate of a High Court or of two or more such courts in succession.

Jurisdiction of High Court Territorial Jurisdiction Except where Parliament establishes

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a common High Court for two or more states or

extends the jurisdiction of a High Court to a union territory, the jurisdiction of the High Court of the state is a co-terminus with the territorial limits of that state. Ordinary Jurisdiction 26

The Constitution does not make any provision relating to the general jurisdiction of the High Courts but maintains their jurisdiction as it existed at the commencement of the Constitution with this improvement that any restrictions upon their jurisdiction as to revenue matters that existed prior to the Constitution shall no longer exist. Original Jurisdiction The High Courts at the three Presidency towns at Calcutta, Bombay and Madras had an original jurisdiction, both civil and criminal, over cases arising within the respective Presidency towns. The original criminal jurisdiction of the High Court has however been taken away by the criminal procedure code of 1973.

Though City Civil Courts have also been set up to try civil cases within the same area, the original jurisdiction of these High Court is not altogether been abolished but retained in the respect of action of higher value. Appellate Jurisdiction The Appellate Jurisdiction can be categorized in two categories i.e. civil and criminal. • Civil: On the civil side, an appeal to the High Court is either a first or second appeal; firstly from the decisions of District Judges and from those of subordinate judges in cases of higher value lie direct to the High Court on questions of fact as well as law secondly when any Court subordinate to High Court decides an appeal from the decision of an inferior, a second appeal lies to the High Court from the decision of the lower appellate court, but only on question on law and procedure, as distinguished from question of fact. Thirdly there is provision for appeal under the letters patent of Allahabad, Bombay, Calcutta Madras and Patna High Courts. These appeals lie to the appellate side of the High Court from the decision of a single of the High Court itself, whether made by such judge in exercise of the original or appellate jurisdiction of the High Court. • Criminal: The criminal appellate jurisdiction of the High Court consists of appeal from the decision of firstly a Session Judge or an Additional Session Judge where the sentences is of imprisonment exceeding seven years. Secondly Assistant Session's Judge, Metropolitan Magistrate or other Judicial Magistrates in certain specified cases other than petty cases. Jurisdiction of Superintendence Every High Court has a power of

superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction, excepting military tribunals. This power of superintendence is a very wide power in as much as it extends to all courts as well as tribunals within the states, whether such court or tribunal is subject to the appellate jurisdiction of the High Court or not. Writ Jurisdiction Article 226 confers upon the High Court the powers to issue writs jurisdiction according to which

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superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction,

excepting military tribunals. This power of superintendence is a very wide power in as much as it extends to all courts as well as tribunals within the states, whether such court or tribunal is subject to the appellate jurisdiction of the High Court or not. Writ Jurisdiction Article 226 confers upon the High Court the powers to issue writs jurisdiction according to which

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every High Court shall have power throughout the territorial limits in relation to which it exercises jurisdiction to any person or authority including the appropriate cases, any Government within those territories,

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writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari or any of them.

Subordinate Courts or District Courts Under the High Court, there is a hierarchy of courts which are referred to in the Indian constitution as subordinate courts. Since these courts have come into existence because of enactments by the state government, their nomenclature and designation differs from state to state. However, broadly in terms of organisational structure there is 27 uniformity. The state is divided into districts and each district has a district court which has an appellate jurisdiction in the district. Under the district courts, there are the lower courts such as the Additional District Court, Sub-Court, Munsiff Magistrate Court, Court of Special Judicial Magistrate of the II Class, Court of Special Judicial Magistrate of I Class, Court of Special Munsiff Magistrate for Factories Act and Labour Laws, etc. At the bottom of the hierarchy of Subordinate Courts are the Panchayat Courts (Nyaya Panchayat, Panchayat Adalat etc). These are, however, not considered as courts under the purview of the criminal court's jurisdiction. The principle function of the District Court is to hear appeals from the subordinate courts. However, the courts can also take cognisance of original matters under special status for instance, the Indian Succession Act, the Guardian Act and Wards Act and Land Acquisition Act. The Constitution ensures independence of subordinate judiciary. Appointments to the District Courts are made by the Governor in consultation with the High Court. A person to be eligible for appointment should be either an advocate or a pleader of seven years standing, or an officer in the service of the Union or the State. Appointment of persons other than the District Judges to the judicial service of a State is made by the Governor in accordance with the rules made by him in that behalf after consultation with the High Court and the State Public Service Commission. The High Court exercises control over the District Courts and the courts subordinate to them, in matters as posting, promotions and granting of leave to all persons belonging to the State judicial service. In each district of India there are various types of subordinate or lower courts. They are civil courts, criminal courts and revenue courts. These Courts hear civil cases, criminal cases and revenue cases, respectively. Civil cases pertain to disputes between two or more persons regarding property, breach of agreement or contract, divorce or property owner – tenant disputes. Civil Courts settle these disputes. They do not award any punishment as violation of law is not involved in civil cases. Criminal cases relate to violation of laws. These cases involve theft, dacoity, rape, pick-pocketing, physical assault, murder, etc. These cases are filed in the lower court by the police, on behalf of the state, against the accused. In such cases the accused, if found guilty, is awarded punishment like fine, imprisonment or even death sentence. Revenue cases relate to land revenue on agriculture land in the district. Qualification and Appointment of Judges The judges of subordinate courts are appointed by the Governor in

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consultation with the Chief Justice of the High Court of the concerned State.

These days, in most of the States judicial service officers including the magistrates are selected through competitive examinations held by the State Public Service Commission. They are finally appointed by the Governor. Any person who has been an advocate for at least seven years or one who is in the Structure of Government service of the State or the Central Government is eligible to be a judge of the District Court provided he/she possess the required legal qualifications. Civil Courts The Court of the District Judge is the highest civil court in a district to deal with civil cases. Very often the same court is called the Court of District and Sessions Judge, when it deals with both civil and criminal cases at the district level. The judge of this court is appointed by the Governor of the State. Below the Court of District Judge, there may be one or more courts of sub judges in the district. Separate family courts, which are equal to courts of sub judge, have been established in districts to exclusively hear cases of family disputes, like divorce, custody of children, etc. Below them there are courts of Munsifs and small cause's courts which 28

decide cases involving petty amounts. No appeal can be made against the decisions of the small cause's courts. All these courts hear and settle civil disputes. Civil Courts deal with cases pertaining to disputes between two or more persons regarding property, divorce, contract, and breach of agreement or property owner – tenant disputes. Criminal Courts The Court of the Sessions Judge (known as Sessions Courts) is the highest court for criminal cases in a district. Below this court, there are courts of magistrates of First, Second and Third class. In metropolitan cities like Delhi, Calcutta, Mumbai and Chennai, First Class Magistrates are called Metropolitan Magistrates. All these criminal courts are competent to try the accused and to award punishment, as sanctioned by law, to those who are found guilty of violation of law. Criminal Courts hear criminal cases which are related to violation of laws. These cases involve theft, dacoity, rape, arson, pickpocketing, physical assault, murder etc. In such cases the guilty person is awarded punishment. It may be fine, imprisonment or even death sentence. Normally every accused is presented by the police before a magistrate. The magistrate can finally dispose of cases of minor crime. But when a magistrate finds prima facie case of serious crime he/she may commit the accused to the sessions court. Thus, sessions courts try the accused that are sent up to them by the magistrate concerned. As mentioned above, an accused who is awarded death sentence by the sessions court can be hanged to death only after his sentence is confirmed by the High Court. Revenue Courts Revenue courts deal with cases of land revenue in the State. The highest revenue court in the district is the Board of Revenue. Under it are the Courts of Commissioners, Collectors, Tehsildars and Assistant Tehsildars. The Board of Revenue hears the final appeals against all the lower revenue courts under it. Judicial Activism and Public Interest Litigation in India Introduction Public Interest Litigation: The term "Public Interest" means the larger interests of the public, general welfare and interest of the masses ((Oxford English Dictionary 2nd Edn.) Vol.XII) and the word "Litigation" means "a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy." Thus, the expression 'Public Interest Litigation' means "any litigation conducted for the benefit of public or for removal of some public grievance." In simple words, public interest litigation means.

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any public-spirited citizen can move/approach the court for the public cause (

or public interest or

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public welfare) by filing a petition in the Supreme Court under Art.32 of the Constitution or in the High Court under Art.226 of the Constitution or before the Court of Magistrate under Sec. 133 of the Code of Criminal Procedure, 1973.

The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in Mumbai Kamgar Sabha vs. Abdul Thai (AIR 1976 SC 1455) and was initiated in Akhil Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India (AIR 1981 SC 298), wherein an unregistered association of workers was permitted to institute a writ petition under Art.32 of the Constitution for the redressal of common grievances. Krishna Iyer J., enunciated the reasons for liberalization of the rule of Locus Standi

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in Fertilizer Corporation Kamgar Union v. Union of India (AIR 1981 SC 344)

and the idea of 'Public Interest Litigation' blossomed in S.P. Gupta and others vs. Union of India, (AIR 1982 SC 149). Judicial Activism: 29

The expression 'Judicial Activism' signifies the anxiety of courts to find out appropriate remedy to the aggrieved by formulating a new rule to settle the conflicting questions in the event of lawlessness or uncertain laws. The Judicial Activism in India can be witnessed with reference to the review power of the Supreme Court under Article 32 and 1 (b) (b) Courts under Article 226 of the Constitution particularly in Public Interest Litigation. Earlier, in England there were two kinds of courts namely, Equity Courts (Court of Chancery) and Common Law Courts. Equity Courts used to decide cases applying the principles of equity i.e. Justice, Equity and good conscience. Whereas the common law courts used to decide cases basing on common law i.e. the principles' rules evolved by the Judge; during judicial pronouncements. Hence the common law is also known as the 'Judge-made-law.' The courts of Equity and Chancery played significant role in formulating the new rules of tort. The common law originated in England and was spread in British Colonies including India. In India, almost all laws have originated from the English Common law. In the absence of existing rules for relief in certain cases and predictive procedure, the courts of equity or chancery took the initiative to draw up new rules. 'The formulation of those new rules by the then courts to settle the conflicting positions that had arisen in certain cases was denoted as 'Judicial Activism'. The equity court and common law courts were merged with the passing of the Judicature Act, 1875. Judicial Activism in India: The doctrine of separation of powers was propounded by the French Jurist Montesquieu. It has been adopted in India as well since the executive powers are vested in the President, Legislative powers in the Parliament and State Legislative Assemblies and the judicial powers in the Supreme Court and subordinate courts. However, the adoption of this principle in India is partial and not total. It is because even though Legislature and the Judiciary are independent, yet Judiciary is entrusted with implementation of the laws made by the legislature. On the other hand, in case of absence of laws on a particular issue, judiciary issues guidelines and directions for the Legislature to follow. The executive also encroaches upon judicial power, while appointing the judges of Supreme Court and High Courts. Similarly, the Judiciary, by its review power examines the law passed by legislature and the legislature on the other hand intervenes in respect of impeachment of the President of India, who is a part of the Union Executive. As stated earlier, the Judicial Activism in India can be witnessed with reference to the review power of the Supreme Court under Art. 226 of the Constitution particularly in public interest litigation cases. The Supreme Court played crucial role in formulating several principles in public interest litigation cases. For instance, the principle of "ABSOLUTE LIABILITY" was propounded in Oleum Gas Leak case², "PUBLIC TRUST DOCTRINE" in Kamalnath Case etc. Further, the Supreme Court gave variety of guidelines in various cases of public interest litigation. E.g. Ratlam Municipality Case, Taj Trapezium Case, Ganga Pollution Case etc. Relation between Public Interest Litigation and Judicial Activism and the Emergence of PIL in India Public interest litigation or social interest litigation today has great significance and drew the attention of all concerned. The traditional rule of "Locus Standi" that a person, whose right is infringed alone can file a petition, has been considerably relaxed by the

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Supreme Court in its recent decisions. Now, the court permits public interest litigation at the instance of the so-called "PUBLIC-SPIRITED CITIZENS" 4 for the enforcement of Constitutional and Legal

rights. Now, any

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public spirited citizen can move/approach the court for the public cause (in the interests of the

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public welfare) by filing a petition: • In the Supreme Court under Article 32 of the Constitution of India; • In the High Court under Article 226 of the Indian Constitution • In the Court of Magistrate under Section 133 of the Code of Criminal procedure 30

Justice Krishna Iyer in the Fertilizer Corporation Kamgar Union case enumerated the following reasons for liberalization of the rule of Locus Stand: - • Exercise of State power to eradicate corruption may result in unrelated interference with individuals' rights. • Social justice wants liberal judicial review administrative action. • Restrictive rules of standing are antithesis to a healthy system of administrative action. • Activism is essential for participative public justice. Therefore, a public minded citizen must be given an opportunity to move the court in the interests of the public. Further, Bhagwati J., known as one of the pro-poor and activist judges

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of the Supreme Court in S.P. Gupta vs. Union of India. (AIR 1982 SC 149) popularly known as "JUDGES TRANSFER CASE",

firmly established the validity of the public interest litigation. Since then, a good number of public interest litigation petitions were filed. It should be noted at outset that PIL, at least as it had developed in India, is different from class action or group litigation. Whereas the latter is driven primarily by efficiency considerations, the PIL is concerned at providing access to justice to all societal constituents. PIL in India has been a part of the constitutional litigation and not civil litigation. Therefore, in order to appreciate the evolution of PIL in India, it is desirable to have a basic understanding of the constitutional framework and the Indian judiciary. After gaining independence from the British rule on August 15, 1947, the People of India adopted a Constitution in November 1949 with the hope to establish a "sovereign socialist secular democratic republic". Among others, the Constitution aims

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to secure to all its citizens justice (social, economic and political), liberty (of thought, expression, belief, faith and worship) and equality (of status and

of opportunity). These aims were not merely aspirational because the founding fathers wanted to achieve a social revolution through the Constitution. The main tools employed to achieve such social change were the provisions on fundamental rights (FRs) and the directive principles of state policy (DPs), which Austin described as the "conscience of the Constitution". In order to ensure that FRs did not remain empty declarations, the founding fathers made various provisions in the Constitution to establish an independent judiciary. As we will see below, provisions related to FRs, DPs and independent judiciary together provided a firm constitutional foundation to the evolution of PIL in India. Part III of the Constitution lays down various FRs and also specifies grounds for limiting these rights. "As a right without a remedy does not have much substance", the remedy to approach the Supreme Court directly for the enforcement of any of the Pt III rights has also been made a FR. The holder of the FRs cannot waive them. Nor can the FRs be curtailed by an amendment of the Constitution if such curtailment is against the basic structure

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of the Constitution. Some of the FRs are available only to citizens while others are available to

citizens as well as non-citizens, including juristic persons. Notably, some of the FRs are expressly conferred on groups of people or community. Not all FRs are guaranteed specifically against the state and some of them are expressly guaranteed against non-state bodies. Even the "state" is liberally defined in art.12 of the Constitution to include, "

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the Government and Parliament of India and the Government and the legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India".

The expression "other authorities" has been expansively interpreted, and any agency or instrumentality of the state will fall within its ambit. The DPs find a place in Pt IV of the Constitution. Although the DPs are not justiciable, they

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are, "nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws".

After initial deviation, the Supreme Court accepted that FRs are not superior to DPs on account of the latter being non-justiciable: rather FRs and DPs are complementary, and the former are a means to achieve the goals indicated in the latter. The issue was put beyond any controversy in *Minerva Mills Ltd v Union of India* where the Court held that the, "harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution". Since then the judiciary has employed DPs to derive the contents of various FRs. 31

The founding fathers envisaged "the judiciary as a bastion of rights and justice". An independent judiciary armed with the power of judicial review was the constitutional device chosen to achieve this objective. The power to enforce the FRs was conferred on both the Supreme Court and the High Courts—the courts that have entertained all the PIL cases. The judiciary can test not only the validity of laws and executive actions but also of constitutional amendments. It has the final say on the interpretation of the Constitution and its orders, supported with the power to punish for contempt, can reach everyone throughout the territory of the country. Since its inception, the Supreme Court has delivered judgments of far-reaching importance involving not only adjudication of disputes but also determination of public policies and establishment of rule of law and constitutionalism. Judicial Moulding of Standing, Procedure, Substance, Relief Two judges of the Indian Supreme Court (Bhagwati and Iyer JJ.) prepared the groundwork from mid-1970s to early 1980s, for the birth of PIL in India.

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This included modifying the traditional requirements of locus standi, liberalizing the procedure to file writ petitions, creating or expanding FRs, overcoming evidentiary problems,

and evolving innovative remedies. Modification of the traditional requirement of standing was sine qua non for the evolution of PIL and any public participation in justice administration. The need was more pressing in a country like India where a great majority of people were either ignorant of their rights or were too poor to approach the court. Realizing this need, the Court held that any member of public acting bona fide and having sufficient interest has a right to approach the court for redressal of a legal wrong, especially when the actual plaintiff suffers from some disability or the violation of collective diffused rights is at stake. Later on, merging representative standing and citizen standing, the Supreme Court in Judges Transfer case held: “

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Where a legal wrong or a legal injury is caused to

a person

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or to a determinate class of persons by reason of violation of any constitutional or legal right . . .

and such person or determinate class of persons is by reasons of poverty, helplessness, or disability or

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socially or economically disadvantaged position, unable to approach the Court for any relief, any member of the public

can maintain an application for an appropriate direction, order or writ.” The court justified such extension of standing in order to enforce rule of law and provide justice to disadvantaged sections of society. Furthermore, the Supreme Court observed that the term “appropriate proceedings” in Art.32 of the Constitution does not refer to the form but to the purpose of proceeding: so long as the purpose of the proceeding is to enforce a FR, any form will do. This interpretation allowed the Court to develop epistolary jurisdiction by which even letters or telegrams were accepted as writ petitions. Once the hurdles posed by locus standi and the procedure to file writ petitions were removed, the judiciary focused its attention to providing a robust basis to pursue a range of issues under PIL. This was achieved by both interpreting existing FRs widely and by creating new Firs’

Article 21 –“

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no person shall be deprived of his life or personal liberty except according to the procedure established by law”–

proved to be the most fertile provision to mean more than mere physical existence ;

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it “includes right to live with human dignity and all that goes along with it”.

Ever-widening horizon of Art.21 is illustrated by the fact that the Court has read into it, inter alia, the right to health, livelihood, free and compulsory education up to the age of 14 years, unpolluted environment, shelter, clean drinking water, privacy, legal aid, speedy trial, and various rights of under-trials, convicts and prisoners. It is important to note that in a majority of cases the judiciary relied upon DPs for such extension. The judiciary has also invoked Art.21 to give directions to government on matters affecting lives of general public, or to invalidate state actions, or to grant compensation for violation of Firs’ The final challenge before the Indian judiciary was to overcome evidentiary problems and find suitable remedies for the PIL plaintiffs. The Supreme Court responded by appointing fact-finding commissioners and amicus curiae. As in most of the PIL cases there were no immediate or quick solutions, the Court developed “creeping” jurisdiction thereby issuing appropriate interim orders and directions. The judiciary also emphasized that PIL is not an adversarial but a collaborative and cooperative project in which all concerned parties should work together to realize the human rights of disadvantaged sections of society. 32

The Three Phases of PIL At the risk of over-simplification and overlap, the PIL discourse in India could be divided, in my view, into three broad phases. One will notice that these three phases differ from each other in terms of at least the following four variables: who initiated PIL cases; what was the subject matter/focus of PIL; against whom the relief was sought; and how judiciary responded to PIL cases. The First Phase: In the first phase—which began in the late 1970s and continued through the 1980

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s—the PIL cases were generally filed by public-spirited persons (lawyers, journalists, social activists or academics). Most of the cases related to the rights of disadvantaged sections of society

such as child labourers, bonded labourers, prisoners, mentally challenged, pavement dwellers, and women. The relief was sought against the action or non-action on the part of executive agencies resulting in violations of FRs under the Constitution. During this phase, the judiciary responded by recognizing the rights of these people and giving directions to the government to redress the alleged violations. In short, it is arguable that in the first phase, the PIL truly became an instrument of the type of social transformation/revolution that the founding fathers had expected to achieve through the Constitution. The Second Phase: The second phase of the PIL was in the 1990s during which several significant changes in the chemistry of PIL took place. In comparison to the first phase, the filing of PIL cases became more institutionalized in that several specialized NGOs and lawyers started bringing matters of public interest to the courts on a much regular basis.

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The breadth of issues which were raised in PIL also expanded

tremendously—from the protection of environment to corruption-free administration, right to education, sexual harassment at the workplace, relocation of industries, rule of law, good governance, and the general accountability of the Government. It is to be noted that in this phase, the petitioners sought relief not only against the action/non-action of the executive but also against private individuals, in relation to policy matters and regarding something that would clearly fall within the domain of the legislature. The response of the judiciary during the second phase was by and large much bolder and unconventional than the first phase. For instance, the courts did not hesitate to come up with detailed guidelines where there were legislative gaps. The courts enforced FRs against private individuals and granted relief to the petitioner without going into the question of whether the violator of the FR was the state. The courts also took non-compliance with its orders more seriously and in some cases, went to the extent of monitoring government investigative agencies and/or punishing civil servants for contempt for failing to abide by their directions. The second phase was also the period when the misuse of PIL not only began but also reached to a disturbing level, which occasionally compelled the courts to impose fine on plaintiffs for misusing PIL for private purposes. It is thus apparent that in the second phase the PIL discourse broke new grounds and chartered on previously unknown paths in that it moved much beyond the declared objective for which PIL was meant. The courts, for instance, took resort to judicial legislation when needed, did not hesitate to reach centres of government power, tried to extend the protection of FRs against non-state actors, moved to protect the interests of the middle class rather than poor populace, and sought means to control the misuse of PIL for ulterior purposes. The Third Phase: On the other hand, the third phase—the current phase, which began with the 21st century—is a period in which anyone could file a PIL for almost anything. It seems that there is a further expansion of issues that could be raised as PIL, e.g. calling back the Indian cricket team from the Australia tour and preventing an alleged marriage of an actress with trees for astrological reasons. From the judiciary's point of view, one could argue that it is time for judicial introspection and 33

for reviewing what courts tried to achieve through PIL. As compared to the second phase, the judiciary has seemingly shown more restraint in issuing directions to the government. Although the judiciary is unlikely to roll back the expansive scope of PIL, it is possible that it might make more measured interventions in the future. One aspect that stands out in the third phase deserves a special mention. In continuation of its approval of the government's policies of liberalization in Delhi Science Forum, the judiciary has shown a general support to disinvestment and development policies of the Government. What is more troublesome for students of the PIL project in India is, however, the fact that this judicial attitude might be at the cost of the sympathetic response that the rights and interests of impoverished and vulnerable sections of society (such as slum dwellers and people displaced by the construction of dams) received in the first phase. The Supreme Court's observations such as the following also fuel these concerns: "Socialism might have been a catchword from our history. It may be present in the Preamble of our Constitution. However, due to the liberalization policy adopted by the Central Government from the early nineties, this view that the Indian society is essentially wedded to socialism is definitely withering away." It seems that the judicial attitude towards PIL in these three phases is a response, at least in part, to how it perceived to be the "issues in vogue". If rights of prisoners, pavement dwellers, child/bonded labourers and women were in focus in the first phase, issues such as environment, AIDS, corruption and good governance were at the forefront in second phase, and development and free market considerations might dominate the third phase. So, the way courts have reacted to PIL in India is merely a reflection of what people expected from the judiciary at any given point of time. Problems Regarding the Exercise of Judicial Activism through Public Interest Litigation It seems that the misuse of PIL in India, which started in the 1990s,

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has reached to such a stage where it has started undermining the very purpose for which PIL was introduced.

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In other words, the dark side is slowly moving to overshadow the bright side of the PIL project. (1)

Ulterior purpose: Public in PIL stands substituted by private or publicity. One major rationale why the courts supported PIL was its usefulness in serving the public interest. It is doubtful, however, if PIL is still wedded to that goal. As we have seen above, almost any issue is presented to the courts in the guise of public interest because of the allurements that the PIL jurisprudence offers (e.g. inexpensive, quick response, and high impact). Of course, it is not always easy to differentiate “public” interest from “private” interest, but it is arguable that courts have not rigorously enforced the requirement of PILs being aimed at espousing some public interest. Desai and Muralidhar confirm the perception that: “PIL is being misused by people agitating for private grievances in the grab of public interest and seeking publicity rather than espousing public causes.” It is critical that courts do not allow “public” in PIL to be substituted by “private” or “publicity” by doing more vigilant gate-keeping (2) Inefficient use of limited judicial resources: If properly managed, the PIL has the potential to contribute to an efficient disposal of people’s grievances. But considering that

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the number of per capita judges in India is much lower than many other countries

and given that the

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Indian Supreme Court as well as High Courts is facing a huge backlog of cases, it is puzzling why the courts have not done enough to stop non-genuine PIL cases.

In fact,

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by allowing frivolous PIL plaintiffs to waste the time and energy of the courts, the judiciary might be violating the right to speedy trial

of those who are waiting for the vindication of their private interests through conventional adversarial litigation. A related problem is that the courts are taking unduly long time in finally disposing of even PIL cases. This might render “many leading judgments merely of an academic value”. The fact that courts need years to settle cases might also suggest that probably courts were not the most appropriate forum to deal with the issues in hand as PIL. 34

(3) Judicial populism: Judges are human beings, but it would be unfortunate if

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they admit PIL cases on account of raising an issue that is (

or might become)

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popular in the society. Conversely, the desire to become people’s judges in a democracy should not hinder admitting PIL cases which involve an important public interest but are potentially unpopular.

The fear of judicial populism is not merely academic, and this is clear from the observation of Dwivedi J. in Kesavananda Bharati v State of Kerala: “

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The court is not chosen by the people and is not responsible to them in the sense in which the House of People is. However, it will win for itself a permanent place in the hearts of the people and augment its moral authority if it can shift the focus of judicial review from the numerical concept of minority protection to the humanitarian concept of the protection of the weaker section of the people."

It is submitted that courts should refrain from perceiving themselves as crusaders constitutionally obliged to redress all failures of democracy. Neither they have this authority nor could they achieve this goal. (4) Symbolic justice: Another major problem with the PIL project in India has been of PIL cases often doing only symbolic justice. Two facets of this problem could be noted here. First,

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judiciary is often unable to ensure that its guidelines or directions in PIL cases are complied with, for instance, regarding sexual harassment at workplace (Vishaka case) or the procedure of arrest by police (D.K.

Basucase). No doubt, more empirical research is needed to investigate the extent of compliance and the difference made by the Supreme Court's guidelines. But it seems that the judicial intervention in these cases have made little progress in combating sexual harassment of women and in limiting police atrocities in matters of arrest and detention. The second instance of symbolic justice is provided by the futility of over conversion of DPSPs into FRs and thus making them justiciable. Not much is gained by recognizing rights which cannot be enforced or fulfilled. It is arguable that creating rights which cannot be enforced devalues the very notion of rights as trump. Singh aptly notes that, "a judge may talk of right to life as including right to food, education, health, shelter and a horde of social rights without exactly determining who has the duty and how such duty to provide positive social benefits could be enforced". So, the PIL project might dupe disadvantaged sections of society in believing that justice has been done to them, but without making a real difference to their situation. (5)

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Disturbing the constitutional balance of power: Although the Indian Constitution does not follow any strict separation of powers, it still embodies the doctrine of checks and balances, which even the judiciary should respect. However, the judiciary on several occasions did not exercise self-restraint and moved on to legislate, settle policy questions, take over governance, or monitor executive agencies.

Prof. M. P. Jain cautions against such tendency: "PIL is a weapon which must be used with great care and circumspection; the courts need to keep in view that under the guise of redressing a public grievance PIL does not encroach upon the sphere reserved by the Constitution to the executive and the legislature." Moreover, there has been a lack of consistency as well in that in some cases, the Supreme Court did not hesitate to intrude on policy questions but in other cases it hid behind the shield of policy questions. Just to illustrate, the judiciary intervened to tackle sexual harassment as well as custodial torture and to regulate the adoption of children by foreigners, but it did not intervene to introduce a uniform civil code, to combat ragging in educational institutions, to adjust the height of the Narmada dam and to provide a humane face to liberalization-disinvestment policies. No clear or sound theoretical basis for such selective intervention is discernable from judicial decisions. It is also suspect if the judiciary has been (or would be) able to enhance the accountability of the other two wings of the government through PIL. In fact, the reverse might be true: the judicial usurpation of executive and legislative functions might make these institutions more unaccountable, for they know that judiciary is always there to step in should they fail to act. 35

(6) Overuse-induced non-seriousness: PIL should not be the first step in redressing all kinds of grievances even if they involve public interest. In order to remain effective, PIL should not be allowed to become a routine affair which is not taken seriously by the Bench, the Bar, and most importantly by the masses: "The overuse of PIL for every conceivable public interest

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might dilute the original commitment to use this remedy only for enforcing human rights of the victimized and the disadvantaged groups."

If civil society and disadvantaged groups lose faith in the efficacy of PIL, that would sound a death knell for it. Based on the above problems, certain solutions need to be devised and implemented by the Judiciary to ensure that the sanctity of Judicial Activism in the country is kept intact and at the same time interests of all classes of stakeholders are addressed in a proper and judicious manner. Suggestions to Correct an "Over-Activist" Judiciary Major steps need to be taken in order to prevent an "over-activist" judiciary from transgressing its limits. Some of these can be explained as follows: Public interest litigation, or PIL as it is conveniently called, has become a major and prominent segment of the jurisdiction of the Supreme Court and 21 High Courts in India. Whilst its necessity and utility in upholding the rule of law is undoubted, its extravagant and unprincipled use at times by courts has brought PIL into controversy. (1) Relaxation must be procedural Much of the misapplication of the PIL jurisdiction can be avoided, if it is remembered that PIL is basically the application of the well settled principles of judicial review by courts of actions of government and public authorities, with the modification of courts allowing the petitioner(s) applicant to approach the court on behalf of other persons, who themselves are unable to come to the court because of ignorance of their rights or the difficulty and cost of litigation. In such cases, the courts relaxes the strict rule of locus standi of the applicant and also relaxes procedural formalities. It may even entertain a letter addressed to the court by a complainant. PIL was devised as a means for redressing the basic rights of generally the poor and marginalized sections of the society, who were unable to get judicial help on their own. It must also be borne in mind that public interest litigation is not something unique to India. Other jurisdictions such as South Africa, Canada and USA also have public interest litigation, though it is not described as such. It is, therefore, important to note that except for procedural relaxations, the PIL jurisdiction should not exceed the permissible limits and parameters of judicial review by the court over the actions or omissions of government, legislatures or public bodies, or transcend the basic separation of powers underlying the Constitution. Judicial review in a democratic constitution must also not supplant the normal processes of representative self-government, in which the representatives of the people make choices and policies which may not be ideal or correct, but which can be set right by the people themselves. What is not within the bounds of judicial review by courts cannot be within their reach because it comes under the description of public interest litigation before it. PIL jurisdiction is, therefore, not a unique jurisdiction by which courts can transcend their limitations to act as a body to set right actions of the government, which are believed to be wrong or could be improved. Once this basic foundation of PIL is kept in mind, the parameters of intervention in PIL are easily grasped and its misapplication can be seen and avoided. (2) Judicial Activism not PIL Another misconception is equating PIL with judicial activism in India. Judicial activism is not PIL. A court can be judicially active or inactive irrespective of PIL. Judicial activism is a word of many shades. No person today subscribes to Bacon's view that judges must only declare the law and do not make law. Such a view was rightly described as a fairy tale by a distinguished English judge Lord Reid. Judges do and must make law but not in the manner of legislatures. There is much scope for creative judicial activism in the interpretative functions of judges, on the choices inherent in their function and 36 in the gaps in legal rules, as has been done by superior courts in several countries for many years. The Indian Supreme Court's own creative jurisprudence of the inviolability of the basic structure of the Constitution in 1973 and the importation of non-arbitrariness in the fundamental Right of Equality, and of due process of law in the right to personal liberty in Maneka Gandhi's case in 1978, are stellar examples of how judicial function can be creative. Regrettably, this kind of creative judicial activism in Indian courts seems to have become dormant and displaced by a poor substitute of routine judicial correction and monitoring of governmental functions by courts in PIL. Judicial activism is equated with PIL mainly because it is a

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most convenient vehicle for bringing public grievances before courts and because the courts' orders in

PIL are far-reaching and sometimes sensational. Once these fundamentals of judicial review are borne in mind by courts in exercising PIL jurisdiction, it can be a useful judicial process for the benefit of the public, particularly of the poor, the indigent and marginalized sections of society, whose fundamental rights are to be protected by court orders. It is the historic and constitutional duty of courts to safeguard and enforce the basic liberties and rights of individuals. A court is strongest and least vulnerable, when it grounds its interventions in enforcing the basic rights of individuals against authority. No question of the court breaching the separation of powers can arise, as it carries out its constitutional function of protecting the basic rights of individual in such cases. (3) Judicial Activism not Judicial Adventurism The origins of PIL were in such unexceptional interventions in 1970, as when the court ordered the release of bonded labourers and stopped inhuman working conditions in stone quarries and in mental asylums etc. Correctly, this jurisdiction should have been named SAL or SOCIAL ACTION LITIGATION to gather its true import. It is also the court's legitimate function to enforce the law, not of each and every infraction, but in those cases where its disregard has grave consequences to the public. No question of the court overreaching its powers can arise in such cases. In matters relating to environment, where irreversible damage may be done unless the actions of the authorities are immediately corrected, the court may take prompt corrective measures, but not take over the administration itself or supplant the law. However, over the years, the true objective of PIL as originally conceived has been lost sight of, and it believed to be general jurisdiction for correcting government action or inaction, regardless of constraints of established principles of judicial review. As the court cannot disregard the law in judicial review or disregard the fundamental separation of powers underlying the Constitution to appropriate executive or legislative powers, PIL orders cannot disregard law; take over the administration by government or by public authorities, in the name of improving governance or preventing misuse of power. It is this aspect of misplaced judicial activism, which a bench of two judges of the Supreme Court in Aravalli Golf Club case recently criticized in rather strong words of reprimand. The judgment was timely and has brought misplaced judicial activism into focus, but in the process it did not advert to the permissible scope of judicial intervention. (4) Displacing Government Administration It is true that there is a misconception not only in the public but also in courts about the function of judiciary under the Constitution, particularly when PIL is employed. It appears that the public has developed a syndrome of routine recourse to the courts for every perceived failure of government and the courts on their part have come to believe that it is their judicial duty to intervene in such failures by making orders for correcting or improving the government. There is a vast catalogue of such micro-managing orders made by the Supreme Court itself, which cannot be justified by any principle of judicial review. They include orders for making roads in hilly areas, wearing of helmets and seat belts to avoid accidents in cities, cleanliness in housing colonies, disposal of garbage, control of traffic, control of unmanned railway crossings, prevention of pollution of rivers, action plans to control and prevent menace of monkeys in cities, control of breeding of animals in zoos, measures to prevent ragging of students, collection and storage of blood in blood banks, control of noise and banning of fire crackers. At times, committees set up and empowered by courts have effectively displaced 37 government's administration in those areas. Such PIL petitions are filed in the Supreme Court in its original jurisdiction under the Article 32 of the Constitution. Article 32 is for enforcing fundamental rights. It is hard to find any genuine enforcement of any fundamental right in such PIL petitions. The petitions make a formal invocation of Article 14 in its liberal interpretation of non-arbitrariness or of Article 21 in its vast expanse of a right to life. Article 32 seems to have lost its meaning for all practical purposes. At times, matters beyond the judicial sphere and competence of the court have been entertained. In 1993, the Supreme Court even ordered that provision of food of 1200 calorific value should be supplied to hostages in an ongoing military operation in Kashmir. The court has professed to monitor a highly technical engineering scheme of interlinking of rivers in India and of genetic modified foods. In the field of higher education, the court's interventions have created a maze of complex regulations by successive cases, familiar only to lawyers, and baffling to educationists, parents and students. The court's scheme for admissions in private medical colleges in the Unnikrishnan case in 1993, which was indistinguishable from legislation, prevailed for nine years before it suffered an inglorious end, when the court itself struck it down as "unconstitutional" in T.M.A. Pai's case in 2002, causing considerable confusion in admissions in professional colleges. Following upon the Aravalli Golf Club case, a larger Bench of the Supreme Court is shortly to consider the parameters of PIL. This is not new. Way back in 1983, a Bench of the court had made reference to a larger Bench, but nothing came of it. If the fundamental premise of public interest litigation (or more appropriately, social action litigation), coupled with the premise that PIL cannot go beyond the limitations of judicial review and must give due recognition to the separation of powers under the Constitution, is borne in mind, a formulation of the instances where PIL may or may not be used, seems unnecessary. It may even be counterproductive, as it is never good to distill judicial power by enumeration. For such matters, Justice Oliver Wendell Holmes once said, "We need to have education in the obvious".. Judicial Interpretations: Landmark Judgments 1.

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Delhi Domestic Working Women's Forum V Union of India (1995)

Equivalent citations: 1995 SCC (1) 14, JT 1994 (7) 183 Author: S Mohan Bench: Mohan, S. (J) PETITIONER: DELHI DOMESTIC WORKING WOMEN'S FORUM Vs. RESPONDENT: UNION OF INDIA AND OTHERS DATE OF JUDGMENT 19/10/1994 BENCH: MOHAN, S. (J) 38

BENCH: MOHAN, S. (J) VENKATACHALLIAH, M.N.(CJ) MAJUMDAR S.B. (J) CITATION: 1995 SCC (1) 14 JT 1994 (7) 183 1994 SCALE (4)608 ACT: HEADNOTE: JUDGMENT: The Judgment of the Court was delivered by S.MOHAN, J.- This public interest litigation invokes the benign provision of Article 32 of the Constitution of India, at the instance of the petitioner Delhi Domestic Working Women's Forum to espouse the pathetic plight of four domestic servants who were subject to indecent sexual assault by seven army personnel. 2. The incident, with a filmy background, has outclassed even the movies. On 10-2-1993, six women, by name, Usha Minz, Shanti, Josphine Kerketta, Rosy Kerketta, Nilli and Lili, domestic servants, were travelling by the Muri Express. The journey was from Ranchi to Delhi. One of the victims Miss Lili described the incidence graphically as follows: "I was coming from my home town to Delhi by the Muri Express. On 10-2-1993 at about 11.00 p.m., the Muri Express was at Khurja Railway Station. At that time, I along with my village girls (1) Usha Minz D/o John Minz (2) Shanti D/o Siri Anuas Minz (3) Josphine Kerketta D/o Junus Kerketta (4) Rosy Kerketta D/o Remis Kerketta (5) Nilli Ross D/o Boas Minz, was travelling in SHI Coach. I slept on Berth No. 50. Our friend, Shanti, woke up and told that some persons were teasing her. When, I and my remaining friends got up, we saw that about 7/8 army 'jawans' had come near us. Then we all friends got up and sat on our respective seats. Then all those army men began to molest us. First they two Sikhs and 6 clean-shaved men made me and my five friends sit on lower seats and then kissed and hugged us and lured on our body and breasts. On our objection they caught us from our hair and began to beat us. When we tried to cry, they shut our mouths. Then they threatened me and my friends that in case we will make any hue and cry they will throw us out of the running train and will kill us. On this we got frightened and sat there. From these 8 army men two Sikhs and 6 clean- shaved, one Sardar and one clean-shaved man forcibly made me to lie down on the lower berth and on the other adjacent lower berth another Sardar took another girl and one clean-shaved fauji took Rosy to bathroom. Two other army men made Shanti to lie down on the nearby seat. Another two men tried to take Usha and Nilli but both sat under the seat to hide themselves. Thereafter, first Sardar fauji (whose name has been disclosed in the court as Dhir Singh S/o Puran Singh, PO: Dostpur, PS : Kalanaur, District Gurdaspur, Punjab) forcibly put off my clothes and removed underwear, raped me. After him, another clean-shaved fauji, whose face is round and height is about 5'8" raped me. My friends, Shanti and Rosy were also forcibly raped by remaining army men. Thereafter, we tried to lodge a report with the police on the way, but nobody listened to us. When the train stopped at New Delhi Railway Station, then I and my friends attempted to catch these persons. They all got down and ran here and there. However, I and my friends could catch hold of aforesaid Sardar Dhir Singh, who had raped me. We all caught him. In the meanwhile, some persons gathered there. Some army officers and policemen overpowered him and took him to MCO office. Then after a while they came in 39 Station and handed over Sardar Dhir Singh to you. Sardar Dhir Singh has raped me and his colleagues have raped my friends." 3. This formed the basis of the first information report for offences under section 376-B read with Section 341 IPC which was registered at the Police Station, New Delhi Railway Station (Crime & Railways) as No. 049 of 1993 at 6.35 a.m. on 11- 2-1993. It appears after registering the FIR the six rape victims were sent for medical check-up. 4. The members of the petitioner-forum went in groups to all the addresses given by the police to meet the victims. In none of the places they were allowed to meet the victims though the employers admitted gaining knowledge about the rape and the victims were with them. The petitioner forum is very much concerned as the victims are its members, to get the needed social, cultural and legal protection. Further, the victims are helpless tribal women belonging to the State of Bihar at the mercy of the employers and the police. They are vulnerable to intimidation. Notwithstanding the occurrence of such barbaric assault on the person and dignity of women neither the Central Government nor the State Government has bestowed any serious attention as to the need for provision of rehabilitatory and compensatory justice for women. In such matters this Court has been affording relief. It is in this context the writ petition under Article 32 of the constitution of India is moved. The grounds urged in support of the writ petition are as follows: 5.

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Speedy trial is one of the essential requisites of law.

In a case of this character such a trial cannot be frustrated by prolongation of investigation. Therefore, this Court has to spell out the parameters of expeditious conduct and investigation of trial; otherwise the rights guaranteed under Articles 14 and 21 of the Constitution will be meaningless. 6. This Court ordered notice to respondents on 18-11-1993. 7. A counter-affidavit was filed on behalf of Respondents 2 and 4 stating, on the statement of Kumari Lili, FIR No. 042/93 under Sections 376-B read with Section 34, Indian Penal Code, was registered. Accused Dhir Singh was arrested and sent to judicial custody. The case-report under Section 173 CrPC had been filed in the Court of the Chief Judicial Magistrate, Aligarh on 13-8-1993 against the accused persons, namely Dhir Singh and Mikhail Heranj. The case is pending trial before the District and Sessions Court, Aligarh. 8. It appears, apart from these two accused, others could not be identified. Two other accused, Pharsem Singh and B. Kajor were Discharged. Three other police personnel, namely, Head Constable Ranjeet, constable Naresh Singh and constable Shiv Sarup Singh were arrested as they were on guard duty in the Muri Express train at the time of incident and failed to provide necessary protection to the tribal women/victims. The prosecution is in progress and it is stated that the case is likely to be committed. 9. At one stage of the case, the Court was informed that the victims could not be traced. This statement caused dismay in us. Therefore, a direction was issued to the State of Uttar Pradesh to trace the victims. This Court doubted whether the police were at all serious in this case. On our part, we could not tolerate this nonchalant attitude. Fortunately, the victims have been traced. As such we think the prosecution will go on with due diligence and the law be allowed to take its course. 10. While the matter stands thus, as to the prayer of the petitioner that Respondents 1 to 3 will have to engage themselves in framing an appropriate scheme to provide interalia compensation and rehabilitation to the victims of such crimes of violence, the submissions are as under: 40

11. The National Commission for Women is rightly engaged in the evaluation and suggestion of changes in various legislations pertaining to women. Yet steps are to be taken as regards framing of scheme for compensation and rehabilitation to ensure justice to victims of such crimes of violence. Victims of such violence, by and large belong to weaker sections of the society. They are not in a position to secure justice through civil courts. No doubt, the Indian Penal Code and the Indian Evidence Act have been amended. In spite of it, victims of such violence are not able to get adequate remedy in securing justice. Therefore, the first (sic third) respondent National Commission for Women must be called upon to engage itself in the exercise of drafting such a scheme and impress upon the Union of India to frame a scheme as early as possible. 12. This stand is opposed by the third respondent. It is stated that the National Commission for Women was constituted by the National Commission for Women Act, 1990 (hereinafter referred to as 'the Act'). This Act came into force on 31-1-1992, as per Notification No. SO 99(E) dated 31-1-1992. The functions of the Commission are set out in Chapter III of the Act. The prayer that the Commission must engage itself in framing appropriate schemes and measures is beyond the mandate given to the National Commission for Women. 13. We have given our careful consideration to the above. It is rather unfortunate that in recent times, there has been an increase in violence against women causing serious concern. Rape does indeed pose a series of problems for the criminal justice system. There are cries for harshest penalties, but often times such cries eclipse the real plight of the victim. Rape is an experience which shakes the foundations of the lives of the victims. For many, its effect is a long-term one, impairing their capacity for personal relationships, altering

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their behaviour and values and generating endless fear. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings. 14.

We will only point out the defects of the existing system. Firstly, complaints are handled roughly and are not given such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the court proceedings added to and prolonged the psychological stress they had had to suffer as a result of the rape itself. As stated in Modern Legal Studies Rape and the Legal Process by Jennifer Temkin, 1987 Edition, page 7: "It would appear that a radical change in the attitude of defence counsel and judges to sexual assault is also required. Continuing education programmes for judges should include re-education about sexual assault. Changes in the substantive law might also be helpful in producing new ways of thinking about this type of crime." Kelly writes: "The most common cries were for more compensation and personal treatment from police officers. Victims remarked that, while they recognised officers had many cases to handle, they felt the officers did not seem sufficiently concerned with their particular case and trauma,". Shapland concludes: "The changes in the criminal justice system necessary to approximate more closely to the present expectations of victims are not major or structural. They are primarily attitudinal. They involve training the professional participants in the criminal justice system that the victim is to be treated courteously, kept informed and consulted about all the stages of the process. They involve treating the victim as a more equal partner.... This might include a shift in working practices of the professional participants that might initially appear to involve more work, more difficulty and more effort, but paradoxically may result in easier detection, a higher standard of prosecution evidence and fewer cases thrown out at court." O'Reilly stresses the attitudinal training thus: "We are now victim-oriented and have taken an active role in getting the entire helping network lawyers, doctors, nurses, social workers, rape crises centre workers to talk and to interact together We are then in a position to concentrate fully on the primary goal that unites us all helping victims of sexual assault to get their lives back together." 41

15. In this background, we think it necessary to indicate

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the broad parameters in assisting the victims of rape. 1. The complainants of sexual assault cases should be provided with legal representation. It

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well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It

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important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case. 2. Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her. 3. The police

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a duty to inform the victim of her right to representation before any questions were asked of her and

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the police report should state that the victim was so informed. 4. A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable. 5.

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advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained. 6.

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In all rape trials anonymity of the victim must be maintained,

as far as necessary. 7. It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment. 8.

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Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place.

The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape. 16. On this aspect of the matter we can usefully refer to the following passage from The Oxford Handbook of Criminology (1994 Edn.) at pages 1237-38 as to the position in England: "Compensation payable by the offender was introduced in the Criminal Justice Act, 1972 which gave the Courts powers to make an ancillary order for compensation in addition to the main penalty in cases where 'injury, loss, or damage' had resulted. The Criminal Justice Act, 1982 made it possible for the first time to make a compensation order as the sole penalty. It also required that in cases where fines and compensation orders were given together, the payment of compensation should take priority over the fine. These developments signified a major shift in penological thinking, reflecting the growing importance attached to restitution and reparation over the more narrowly retributive aims of conventional punishment. The Criminal Justice Act, 1988 furthered this shift. It required courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, impose a duty on the court to give reasons for not doing so. it also extended the range of injuries eligible for compensation. These new requirements mean that if the court fails to make a compensation order it must furnish reasons. Where reasons are given, the victim may apply for these to be subject to judicial review The 1991 Criminal Justice Act contains a number of provisions which directly or indirectly encourage an even greater role for compensation." 42

17. Section 10 of the Act states that the National

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Commission for men shall perform all or any of the following functions, namely:.

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Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.

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Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal. 18.

Having regard to the above provisions, the third respondent will have to evolve such scheme as to wipe out the tears of such unfortunate victims. such a scheme shall be prepared within six months from the date of this judgment. Thereupon, the Union of India, will examine the same and shall necessary steps for the implementation of the scheme at the earliest. 19. The writ petition is disposed of subject to above directions. 2.

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SA Special Laws on Security in India An Analysis ... (D163704875)

People's Union for Civil Liberties (PUCL) V Union of India (1997) Equivalent citations: AIR 1997 SC 568,

JT 1997 (1) SC 288, 1996 (9) SCALE 318, (1997) 1 SCC 301, 1996 Supp 10 SCR 321, 1997 (1) UJ 187 SC Author: K Singh Bench: K Singh, S S Ahmad ORDER Kuldip Singh, J. 1.

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Telephone-Tapping is a serious invasion of an individual's privacy. With the growth of highly sophisticated communication technology, the right to hold telephone conversation, in the privacy of one's home or office without interference, is increasingly susceptible to abuse. It is no doubt correct that every Government, howsoever democratic, exercises some degree of subrosa operation as a part of its intelligence out-fit but at the same time citizen's right to privacy has to be protected from being abused by the authorities of the day. 2.

This petition-public interest-under Article 32 of the Constitution of India has been filed by the people's Union of Civil Liberties, a voluntary organisation, high lighting the incidents of telephone tapping in the recent past. The petitioner has challenged the constitutional validity of Section 5(2) of the Indian Telegraph Act, 1885 (the Act), in the alternative it is contended that the said provisions be suitably read-down to include procedural safeguards to rule out arbitrariness and to prevent the indiscriminate telephone-tapping. 3. The writ petition was filed in the wake of the

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report on "Tapping of politicians phones" by the Central Bureau of Investigation (CBI).

Copy of the report as published in the "Mainstream" volume XXIX dated March 26, 1991 has been placed on record along with the rejoinder filed by the petitioner. The authenticity of the report has not been questioned by the learned Counsel for the Union of India before us. Para 21 and 22 of the report are as under: Para 21. Investigation has revealed the following lapses on the part of MTNL 43

i. In respect of 4 telephone numbers through they were shown to be under interception in the statement supplied by MTNL, the authorization for putting the number under interception could not be provided. This shows that records have not been maintained properly. ii. In respect of 279 telephone numbers, although authority letters from various authorized agencies were available, these numbers have not been shown in list, supplied by MTNL showing interception of telephones to the corresponding period. This shows that lists supplied were incomplete. iii. In respect of 133 cases, interception of the phones was done beyond the authorized part. The GM (O), MTNL in is explanation has said that this was done in good faith on oral requests of the representatives of the competent authorities and that instructions have now been issued that interception beyond authorized periods will be done only on receipt of written requests. iv. In respect of 111 cases, interception of telephones has exceeded 180 days period and no permission of Government for keeping the telephone under interception beyond 180 days was taken. v. The files pertaining to interception have not been maintained properly. Para 22. Investigation has also revealed that various authorized agencies are not maintaining the files regarding interception of telephones properly. One agency is not maintaining even the log books of interception. The reasons for keeping a telephone number on watch have also not been maintained properly. The effectiveness of the results of observation have to be reported to the Government in quarterly returns which is also not being sent in time and does not contain all the relevant information. In the case of agencies other than I.B., the returns are submitted to the MHA. The periodicity of maintenance of the records is not uniform. It has been found that whereas DRI keeps record for the last 5 years, in case of I.B., as soon as the new quarterly statement is prepared, the old returns are destroyed for reasons of secrecy. The desirability of maintenance of unireturn and periodicity of these documents needs to be examined. 4 Section 5(2) of the Act is as under: 5(2)-

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On the occurrence of any public emergency, or in the interest of public safety,

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the Central Government or a State Government or any Officer

specially authorised in this behalf by the Central Govt. or a State Government may, if satisfied that it is necessary or expedient so to do

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in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or

for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order: Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section. 5. The above provisions clearly indicate that in the event of

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the occurrence of a public emergency or in the interest of public safety

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the Central Government or the State Government or any officer

specially authorised in this behalf, can intercept messages if satisfied that it is necessary or expedient so to do

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in the interest of: (i) The sovereignty and integrity of India. (ii) The security of the State. (iii) Friendly relations with foreign states. (iv) Public order. (v)

For preventing incitement to the commission of an offence. 44

6. The CBI report indicates that under the above provisions of law Director Intelligence Bureau, Director General Narcotics Control Bureau, Revenue Intelligence and Central Economic Intelligence Bureau and the Director Enforcement Directorate have been authorised by the Central Government to do interception for the purposes indicated above. In addition, the State Governments generally give authorisation to the Police/Intelligence agencies to exercise the powers under the Act. 7. The Assistant Director General, Department of Telecom has filed counter affidavit on behalf of the Union of India. The stand taken by the Union of India is as under: The allegation that the party in power at the center/State or officer authorised to tap the telephone by the Central/State Government could misuse this power is not correct. Tapping of telephone could be done only by the Central/State Government order by the Officer specifically authorised by the Central/State Government on their behalf and it could be done only under certain conditions such as National Emergency in the interest of public safety, security of State, public order etc. It is also necessary to record the reasons for tapping before tapping is resorted to. If the party, whose telephone is to be tapped is to be informed about this and also the reasons for tapping, it will defeat the very purpose of tapping of telephone. By the very sensitive nature of the work, it is absolutely necessary to maintain secrecy in the matter. In spite of safeguards, if there is alleged misuse of the powers regarding tapping of telephones by any authorised officer, the aggrieved part could represent to the State Government/Central Government and suitable action could be taken as may be necessary. Striking down the provision Sections 5(2) of the Indian Telegraph Act, is not desirable as it will jeopardise public interest and security of the State. 8. Section 7(2)(b) of the Act which gives rule making power to the Central Government is as under: 7. Power to make rules for the conduct of telegraphs- (1) The Central Government may, from time to time, by notification in the Official Gazette, make rules consistent with this Act for the conduct of all or any telegraphs, established, maintained or worked by the Government or by persons licensed under this Act. (2) Rules under this section may provide for all or any of the following, among other matters, that is to say: (a) xxx xxx xxx (b) the precautions to be taken for preventing the improper interception or disclosure of messages. No rules have been framed by the Central Government under the provisions quoted above. 9. Mr. Rajinder Sachar, Sr. Advocate assisted by Mr. Sanjay Parikh vehemently contended that right to privacy is a fundamental right guaranteed under Article 19(1) and Article 21 of the Constitution of India. According to Mr. Sachar to save Section 5(2) of the Act from being declared unconstitutional it is necessary to read-down the said provision to provide adequate machinery to safeguard the right to privacy. Prior judicial sanction - ex-parte in nature-according to Mr. Sachar, is the only safeguard, which can eliminate the element of arbitrariness or unreasonableness. Mr. Sachar contended that not only the substantive law but also the procedure provided therein has to be just, fair and reasonable. 10. While hearing the arguments on September 26, 1995, this Court passed the following order: Mr. Parikh is on his legs. He has assisted us in this matter for about half an hour. At this stage, Mr. Kapil Sibal & Dr. Dhawan, who are present in Court, stated that according to them the matter is important and they being responsible members of the Bar, are duty bound to assist this Court in a matter like this. We appreciate the gesture. We permit them to intervene in this matter. They need a short adjournment to assist us. 45

The matter is adjourned to October 11, 1995. 11. While assisting this Court Mr. Kapil Sibal at the out set stated that in the interest of the security and sovereignty of India and to deal with any other emergency situation for the protection of national interest, messages may indeed be intercepted. According to him the core question for determination is whether there are sufficient procedural safeguards to rule out arbitrary exercise of power under the Act. Mr. Sibal contended that Section 5(2) of the Act clearly lays down the conditions/situations which are sine qua non for the exercise of the power but the manner in which the said power can be exercised has not been provided. According to him procedural safeguards-short of prior judicial scrutiny-shall have to be read in Section 5(2) of the Act to save it from the vice of arbitrariness. 12. Both sides have relied upon the seven-Judge Bench judgment of this Court in Kharak Singh v. The State of U.P. and Ors. . The question for consideration before this Court was whether "

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surveillance" under Chapter XX of the U.P. Police Regulations constituted an infringement of any of the fundamental rights guaranteed by Part III of the Constitution. Regulation 236(b) which permitted surveillance by "domiciliary visits at night" was held to

be violative of Article 21 on the ground that there was no "law" under which the said regulation could be justified. 13. The word "life" and the expression "

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personal liberty" in Article 21 were elaborately considered by this Court in Kharak Singh's case. The majority

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right to privacy" as part of the right to life under Article 21 of the Constitution on the

following reasoning: We have already extracted a passage from the judgment of Field, J. in Munn v. Illinois (1877) 94 U.S. 113, 142, where the learned Judge Pointed out

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that "life" in the 5th and 14th Amendments of the U.S. Constitution corresponding to Article 21, means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs-his arms and legs etc.

We do not entertain any doubt that the word "life" in Article 21 bears the same signification. Is then the word "personal liberty" to be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence even as an animal? It might not be inappropriate to refer here to the words of the preamble to the Constitution that it is designed to "assure the dignity of the individual" and therefore of those cherished human value as the means of ensuring his full development and evolution. We are referring to these objectives of the trainers merely to draw attention to the concepts underlying the Constitution which would point to such vital words as "personal liberty" having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any preconceived notions or doctrinaire constitutional theories. Frankfurter, J. observed in *Wolfs. Colorado* (1949) 338 US 25: The

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security of one's privacy against arbitrary intrusion by the police is basic to a free society. It is therefore implicit in 'the concept of ordered liberty'

and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples We have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the fourteenth Amendment. Murphy, J. considered that such invasion was against "the very essence of a scheme of ordered liberty. It is true that in the decision of the U.S. Supreme Court from which we have made these extracts, the Court had to consider also the impact of a violation of

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the Fourth Amendment which reads. 46 The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,

shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. and that our Constitution does not in terms confer any like constitutional guarantee. Nevertheless, these extracts would show

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that an unauthorised intrusion into a person's home and the disturbance caused to him thereby, is as it were the violation of a common law right of a man-an ultimate essential of ordered liberty, if not of the very concept of

civilisation. An

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English Common Law maxim asserts that "every man's house is his castle"

and in *Semayne's case* (1604) 5 Coke 91, where this was applied, it was stated that "the house of everyone is to him as his castle and fortress as well as for his defence against injury and violence as for his repose". We are not unmindful of the fact that *Semayne's case* was concerned with the law relating to executions in England, but the passage extracted has a validity quite apart from the context of the particular decision. It embodies an abiding principle which transcends mere protection of property rights and expounds a concept of "personal liberty" which does not rest on any element of feudalism or on any theory of freedom which has ceased to be of value. In our view Clause (b) of Regulation 236 is plainly violative of Article 21 and as there is no "law" on which the same could be justified it must be struck down as unconstitutional. 14. Subba Rao J. (as the learned Judge then was) in his minority opinion also came to the conclusion that right to privacy was a part of Article 21 of the Constitution but went a step further and struck down Regulation 236 as a whole on the following reasoning: Further,

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the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person's house, where he lives with his family, is his "castle": it is his rampart against encroachment on his personal liberty.

The pregnant words of that famous Judge, Frankfurter J., in Wolfv. Colorado, (1949) 338 US 25, pointing out the importance of the security of one's privacy against arbitrary intrusion by the police, could have no less application to an Indian home as to an American one. If physical restraints on a person's movements affect his personal liberty, physical encroachments on his private life would affect it in a larger degree. Indeed,

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nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy.

We would, therefore, define

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the right of personal liberty in Article 21 as a right of an individual to be free from restriction or encroachments on his person, whether

those restriction or

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encroachments are directly imposed or indirectly brought about by calculated measures.

If so understood, all the acts of surveillance under Regulation 236 infringe the fundamental right of the petitioner under Article 21 of the Constitution. 15. Article 21 of the Constitution has, therefore, been interpreted by all the seven learned Judges in Kharak Singh's case (majority and the minority opinions) to include that "

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right to privacy" is a part of the right to "

protection of life and personal liberty" guaranteed under the said Article. 16. In Govind v. State of Madhya Pradesh , a three-Judge Bench of this Court considered the constitutional validity of Regulations 855 and 856 of the Madhya Pradesh Police Regulations which provided surveillance by way of several measures indicated in the said regulations. This Court upheld the validity of the regulations by holding that Article 21 was not violated because the impugned regulations were "procedure established by law" in terms of the said article. 17. In R. Rajagopal alias R.R. Gopal and another v. State of Tamil Nadu , Jeevan Reddy, J. speaking for the Court observed that in recent times right to privacy has acquired constitutional status. The learned Judge referred to Kharak's case, 47 Govind's case and considered a large number of American and English cases and finally came to the conclusion

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that "the right to privacy is implicit in the right to life

and liberty guaranteed to the citizens of this country by Article 21. It is a "

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right to be let alone". A citizen has a right "to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters". 18.

We have, therefore, no hesitation in holding that

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right to privacy is a part of the right to "life" and "personal liberty" enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right to privacy, Article 21 is attracted. The said right cannot be curtailed "except according to procedure established by law". 19. The

right to

privacy-by itself-has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But

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the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy".

Conversations on the telephone are often of an intimate and confidential character. Telephone-conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets.

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Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone-conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law. 20.

Right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution. This freedom

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means the right to express one's convictions and opinions freely by word of mouth, writing, printing, picture, or

in any other manner.

When a person is talking on telephone, he is exercising his right to freedom of speech and expression. Telephone-tapping unless it comes within the grounds of restrictions under Article 19(2) would infract Article 19(1)(a) of

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SA Special Laws on Security in India An Analysis ... (D163704875)

the Constitution. 21. India is a signatory to the International Covenant on Civil and Political Rights, 1966.

Article 17 of the

said covenant is as under: Article 17 1.

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No one shall be subject to arbitrary or unlawful interference with his privacy, family,

human

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or correspondence, nor to lawful attacks on his honour and reputation. 2. Every one has the right to the protection of the law against such interference or attacks. Article 12 of the

Universal Declaration of Human Rights, 1948 is almost in similar terms. 22. International law today is not confined to regulating the relations between the States. Scope continues to extend. Today matters of social concern, such as health, education and economics apart from human rights fall within the ambit of International Regulations. International law is more than ever aimed at individuals. 23. It is almost an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law. 48

24. Article 51 of

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the Constitution directs that the State shall endeavour to inter alia, foster respect for international law and treaty obligations in the dealings of organised peoples with one another.

Relying upon the said Article, Sikri, C.J in *Kesavananda Bharathi v. State of Kerala* [1973] Supp. SCR 1, observed as under: It seems to me that, in view of Article 51 of the directive principles, this Court must interpret language of the Constitution, if not intractable, which is after all a municipal law, in the right of the United Nations Charter and the solemn declaration subscribed to by India. In *A.D.M. Jabalpur v. 5. Shukla, Khanna J.* in his minority opinion observed as under: Equally well established is the rule of construction that if there be a conflict between the municipal law on one side and the international law or the provisions of any treaty obligation on the other, the Courts would give effect to municipal law. If, however, two constructions of the municipal law are possible, the Courts should lean in favour of adopting such construction as would make the provisions of the municipal law to be in harmony with the international law. on treaty obligations. Every statute, according to this rule is interpreted, so far as its language permits, so as not to be inconsistent with the comity of nations on the established rules of international law, and the Court will avoid a construction which would give rise to such inconsistency unless compelled to adopt it by plain and unambiguous language. In *Jolly George Varghese v. Bank of Cochin*, Krishna Iyer, J. posed the following question: From the perspective of international law the question posed is whether it is right to enforce a contractual liability by imprisoning a debtor in the teeth of

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Article 11 of the International Covenant on Civil and Political Rights. The

Article reads:

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

The learned Judge interpreted Section 51 of the CPC consistently with Article 11 of the International Covenant. 25. Article 17 of the International Covenant-quoted above - does not go contrary to any part of our Municipal law. Article 21 of the Constitution has, therefore, been interpreted in conformity with the international law. 26. Learned Counsel assisting us in this case have not seriously challenged the constitutional vires of Section 5(2) of the Act. In this respect it would be useful to refer to the observations of this Court in *Hukam Chand Shyam Lai v. Union of India and Ors.* : Section 5(1) if properly construed, does not confer unguided and unbridled power on the Central Government/State Government specially authorised officer to take possession of any telegraph. Firstly, the occurrence of a "public emergency" is the sine qua non for the exercise of power under this section. As a preliminary step to the exercise of further jurisdiction under this section the Government or the authority concerned must record its satisfaction as to existence of such an emergency. Further, the existence of the emergency which is a pre-requisite for the exercise of power under this section, must be a 'public emergency and not any other kind of emergency. The expression 'public emergency has not been defined in the statute, but contours broadly delineating its scope and features are discernible from the section which as to be read as a whole. In Sub-section (1) the phrase 'occurrence of any public emergency is connected with and is immediately followed by the phrase "or in the interests of the public safety". These two phrases appear to take colour from each other. In the first part of Sub-section (2) those two phrases again occur in association with each other, and the context further clarifies with amplification that a 'public emergency within the contemplation of this section is one which raises problems concerning the interest of the public safety,

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the sovereignty and integrity of India, the security of the State, friendly relations with foreign States of public order or

the prevention of incitement to the commission of an offence. It is in the context of these matters that the appropriate authority has to form an opinion with regard to the occurrence of a 'public emergency" with a view to taking further action under this section.

Economic 49

emergency is not one of those matters expressly mentioned in the statute. Mere 'economic emergency'-as the High Court calls it - may not necessarily amount to a 'public emergency' and justify action under this section unless it raises problems relating to the matters indicated in the section. 27. As mentioned above, the primary contention raised by the learned Counsel is to lay-down necessary safeguards to rule-out the arbitrary exercise of power under the Act. 28. Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the said Section. "

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Occurrence of any public emergency" or "in the interest of public safety"

are the sine qua non. for the application of the provisions of Section 5(2) of the Apt. Unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the powers under the said Section.

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Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action. The expression "public safety" means the state or condition of freedom from danger

or risk for the people at large. When either of these two conditions are not in existence, the Central Government or a State Government or the authorised officer cannot resort to telephone tapping even though there is satisfaction that it is necessary or expedient so to do in the interests of sovereignty and integrity of India etc. In other words, even if the Central Government is satisfied that it is necessary or expedient so to do

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in the interest of the sovereignty and integrity of India or the security of the State or friendly relations with sovereign States or public order or

for preventing incitement to the commission of an offence, it cannot intercept the messages or resort to telephone tapping unless a public emergency has occurred or the interest of public safety or the existence of the interest of public safety requires. Neither the occurrence of public emergency nor the interest of public safety are secretive conditions or situations. Either of the situations would be apparent to a reasonable person. 29. The first step under Section 5(2) of the Act, therefore, is the occurrence of any public emergency of the existence of a public-safety interest. Thereafter the competent authority under Section 5(2) of the Act is empowered to pass an order of interception after recording its satisfaction that it is necessary or expedient so to do

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in the interest of (i) sovereignty and integrity of India, (ii) the security of the State, (iii) friendly relations with foreign States, (iv) public order

or (v) for preventing incitement to the commission of an offence. When any of the five situations mentioned above to the satisfaction of the competent authority require then the said authority may pass the order for interception of messages by recording reasons in writing for doing so. 30. The above analysis of Section 5(2) of the Act shows that so far the power to intercept messages/conversations is concerned the Section clearly lays-down the situations/conditions under which it can be exercised. But the substantive law as laid down in Section 5(2) of the Act must have procedural backing so that the exercise of power is fair and reasonable. The said procedure itself must be just, fair and reasonable. It has been settled by this Court in Maneka Gandhi v. Union of India , that "

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procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself". Thus, understood, "procedure" must rule out anything arbitrary, freakish or bizarre.

A valuable constitutional right can be canalised only by civilised processes". 31. We are of the view that there is considerable force in the contention of Mr. Rajinder Sachar, Mr. Kapil Sibal and Dr. Rajiv Dhawan that no procedure has been prescribed for the exercise of the power under Section 5(2) of the Act. It is not disputed that no rules have been framed under Section 7(2)(b) of the Act for providing the precautions to be taken for preventing the improper interception or disclosure of messages. In the absence of just and fair procedure for regulating the exercise of power under Section 5(2) of the Act, it is not possible to safeguard

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the rights of the citizens guaranteed 50 under Articles 19(1)(a) and 21 of the Constitution of India.

The CBI investigation has revealed several lapses in the execution of the orders passed under Section 5(2) of the Act. Paras 21 and 22 of the report have already been quoted in the earlier part of this judgment. 32. The Second Press Commission in paras 164,165 and 166 of its report has commented on the "tapping of telephones" as under: Tapping of Telephones 1. It is felt in some quarters, not without reason, that not infrequently the Press in general and its editorial echelons in particular have to suffer tapping of telephones. 2. Tapping of telephones is a serious invasion of privacy. It is a variety of technological eavesdropping. Conversations on the telephone are often of an intimate and confidential character. The relevant statute, i.e., Indian Telegraph Act, 1885, a piece of ancient legislation, does not concern itself with tapping. Tapping cannot be regarded as a tort because the law as it stands today does not know of any general right to privacy. 03. This is a hardly satisfactory situation. There are instances where apprehensions of disclosure of sources of information as well as the character of information may result in constraints on freedom of information and consequential drying up of its source. We, therefore, recommend that telephones may not be tapped except in the interest of national security, public order, investigation of crime and similar objectives, under orders made in writing by the Minister concerned or an officer of rank to whom the power in that behalf is delegated. The order should disclose reasons. An order for tapping of telephones should expire after three months from the date of the order. Moreover, within a period of six weeks the order should come up for review before a Board constituted on the lines prescribed in statutes providing for preventive detention. It should be for the Board to decide whether tapping should continue any longer. The decision of the Board should be binding on the Government. It may be added that the Minister or his delegates will be competent to issue a fresh order for tapping of the telephone if circumstances call for it. The Telegraph Act should contain a clause to give effect to this recommendation. 33. While dealing with Section 5(2) of the Act, the Second Press Commission gave following suggestions regarding "public emergency" and "interest of public safety": 1. It may be noticed that the public emergency mentioned in the sub-section is not an objective fact. Some public functionary must determine its existence and it is on the basis of the existence of a public emergency that an authorised official should exercise the power of withholding transmission of telegrams. We think that the appropriate government should declare the existence of the public emergency by a notification warranting the exercise of this power and it is only after the issue of such a notification that the power of withholding telegraphic messages should be exercised by the delegated authority. When such a notification is issued, the principal officer of the telegraph office can be required to submit to the District Magistrate, whom we consider to be the proper person to be the delegate for exercising this power, such telegrams brought for transmission which are likely to be prejudicial to the interest sought to be protected by the prejudicial to the interest sought to be protected by the sub-section. Thereupon the District Magistrate should pass an order in writing withholding or allowing the transmission of the telegram. We are suggesting the safeguard of a prior notification declaring the existence of a public emergency because the power of the interception is a drastic power and we are loath to leave the determination of the existence of a public emergency in the hands of a delegate. We are of the view that whenever the power is exercised in the interest of public safety, it should, as far as possible, be exercised by the concerned Minister of the appropriate government for one month at a time extendible by Government if the emergency continues. However, in exceptional circumstances the power can be delegated to the District Magistrate. 51

02. We also think that as soon as an order is passed by the District Magistrate withholding the transmission of a telegraphic message, it should be communicated to

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the Central or State Government, as the case may be, and also to the sender and the addressee of the

telegram. The text of the order should be placed on the table of the respective State legislatures after three months. We recommend that, as suggested by the Press Council of India in its annual report covering 1969, the officer in charge of a telegraph office should maintain a register giving particulars of the time of receipt, the sender and addressee of every telegram which he refers to the District Magistrate with recommendation of its withholding. Similarly, the District Magistrate should maintain a register of the time receipt, contend and addressee of each telegram and record his decision thereon, together with the time of the decision. Data of this nature will help courts, if called upon, to determine the presence or absence of malafide in the withholding of telegrams. According to Mr. Sachar the only way to safeguard the right of privacy of an individual is that there should be prior judicial scrutiny before any order for telephone-tapping is passed under Section 5(2) of the Act. He states that such judicial scrutiny may be ex-parte. Mr. Sachar contended that the judicial scrutiny alone would take away the apprehension of arbitrariness or unreasonableness of the action. Mr. Kapil Sibal, on the other hand, has suggested various other safeguards-short of prior judicial scrutiny-based on the law on the subject in England as enacted by the Interception of the Communications Act, 1985. 34. We agree with Mr. Sibal that in the absence of any provision in the statute, it is not possible to provide for prior judicial scrutiny as a procedural safeguard. It is for the Central Government to make rules under Section 7 of the Act. Rule 7(2)(b) specifically provides that the Central Government may make rules laying down the precautions to be taken for preventing the improper interception or disclosure of messages. The Act was enacted in the year 1885. The power to make rules under Section 7 of the Act has been there for over a century but the Central Government has not thought it proper to frame the necessary rules despite severe criticism of the manner in which the power under Section 5(2) has been exercised. It is entirely for the Central Government to make rules on the subject but till the time it is done the right to privacy of an individual has to be safeguarded. In order to rule-out arbitrariness in the exercise of power under Section 5(2) of the Act and till the time the Central Government lays down just, fair and reasonable procedure under Section 7(2)(b) of the Act, it is necessary to lay down procedural safeguards for the exercise of power under Section 5(2) of the Act so that the right to privacy of a person is protected. 35. We, therefore, order and direct as under: 1. An order for telephone-tapping in terms of Section 5(2) of the Act shall not be issued except by the Home Secretary, Government of India (Central Government) and Home Secretaries of the State Governments. In an urgent case the power may be delegated to an officer of the Home Department of the Government of India and the State Governments not below the rank of Joint Secretary. Copy of the order shall be sent to the Review Committee concerned within one week of the passing of the order. 2. The order shall require the person to whom it is addressed to intercept in the course of their transmission by means a public telecommunication system, such communications as are described in the order. The order may also require the person to whom it is addressed to disclose the intercepted material to such persons and in such manner as are described in the order. 3. The matters to be taken into account in considering whether an order is necessary under Section 5(2) of the Act shall include whether the information which is considered necessary to acquire could reasonably be acquired by other means. 4. The interception required under Section 5(2) of the Act shall be the interception of such communications as are sent to or from one or more addresses, specified in the order, being an address or addresses likely to be used for the transmission of communications to or from, from one particular person specified or described in the order or one particular set of premises specified or described in the order. 52 5. The order under Section 5(2) of the Act shall, unless renewed, cease to have effect at the end of the period of two months from the date of issue. The authority which issued the order may, at any time before the end of two month period renew the order if it considers that it is necessary to continue the order in terms of Section 5(2) of the Act. The total period for the operation of the order shall not exceed six months. 6. The authority which issued the order shall maintain the following records: (a) the intercepted communications, (b) the extent to which the material is disclosed, (c) the number of persons and their identity to whom any of the material is disclosed. (d) the extent to which the material is copied and (e) the number of copies made of any of the material. 7. The use of the intercepted material shall be limited to the minimum that is necessary in terms of Section 5(2) of the Act. 8. Each copy made of any

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of the intercepted material shall be destroyed as soon as its retention is

no longer necessary in terms of Section 5(2) of the Act. 9. There shall be a Review Committee consisting of Cabinet Secretary, the Law Secretary and the Secretary, Telecommunication at the level of the Central Government. The Review Committee at the State level shall consist of Chief Secretary, Law Secretary and another member, other than the Home Secretary, appointed by the State Government. (a) The Committee shall on its own, within two months of the passing of the order by the authority concerned, investigate whether there is or has been a relevant order under Section 5(2) of the Act. Where there is or has been an order whether there has been any contravention of the provisions of Section 5(2) of the Act. (b) If on an investigation the Committee concludes that there has been a contravention of the provisions of Section 5(2) of the Act, it shall set aside the order under scrutiny of the Committee. It shall further direct the destruction of the copies of the intercepted material. (c) If on investigation, the Committee comes to the conclusion that there has been no contravention of the provisions of Section 5(2) of the Act, it shall record the finding to that effect. 36. The writ petition is disposed of. No costs. 3. Sheela Barse vs State Of Maharashtra on 15 February, 1983 Equivalent citations: 1983 AIR 378, 1983 SCR (2) 337 Author: P Bhagwati Bench: Bhagwati, P.N. PETITIONER: SHEELA BARSE Vs. RESPONDENT: STATE OF MAHARASHTRA DATE OF JUDGMENT15/02/1983 BENCH: 53 BHAGWATI, P.N. BENCH: BHAGWATI, P.N. PATHAK, R.S. SEN, AMARENDRA NATH (J) CITATION: 1983 AIR 378 1983 SCR (2) 337 1983 SCC (2) 96 1983 SCALE (1)140 ACT: Legal Aid to the poor-Importance of legal aid to the poor explained-Directions given to Prison authorities and police on providing Legal aid to the poor prisoners. HEADNOTE: The petitioner, a journalist,

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in her letter addressed to this Court stated that Five out of fifteen women prisoners interviewed

by her

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in the Bombay Central Jail alleged that they had been assaulted by the police in the police lock up and two of them

in particular alleged

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that they had been assaulted and tortured in the lock up. Treating the letter as a writ petition the Court

issued notices to all concerned to show cause why the writ petition should not be allowed. In

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the meanwhile, the Director of the College of Social Work, Nirmala Niketan, Bombay was directed to interview the women

prisoners without anyone else being present and ascertain whether the allegations made to the petitioner were correct. The Director, in her report, stated among other things that there was

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no adequate arrangement for providing legal assistance to women prisoners

and that two prisoners who were foreign nationals complained that a lawyer duped and defrauded them and misappropriated almost half of their belongings and jewellery on the plea that he was retaining them for payment of his fees. Disposing of the petition the court gave the following directions: F

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Legal assistance to a poor or indigent accused, arrested and put in jeopardy of his life or personal liberty, is a constitutional imperative mandated not only by Art. 39A but also by Articles 14 and 21 of the Constitution. It is a Necessary sine qua non of justice and where it is not provided, injustice is likely to result and every act of injustice corrodes the foundations of democracy and rule of law.

It is possible that a prisoner lodged in a jail does not know to whom he can turn for help to indicate his innocence or defend his constitutional G or legal rights or to protect himself against torture and ill-treatment, oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated. it may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is therefore essential that legal assistance must be made available to prisoners in jails whether they be under-trials or convicted prisoners.

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The Inspector General of Prisons in Maharashtra should issue a circular to all Superintendents of

Jails in Maharashtra requiring them to send to the Legal Aid Committee of each district in which the jail is situated: • a list of all under-trial prisoners giving the date of entry, the nature of the offence showing separately male and female prisoners and 54 • a list giving the particulars of persons arrested on suspicion under s. 41 of the Code of Criminal Procedure

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who have been in jail beyond a period of 15 days.

The Circular should also contain directions: i.

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to provide facilities to lawyers nominated by the concerned district Legal Aid Committee to enter the jail and to interview the prisoners who have expressed their desire to have their assistance; ii. to furnish to

the lawyers nominated by the Legal Aid Committee whatever

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information is required by them in regard to the prisoners in jail; iii. to put up notices

at prominent places in the jail that lawyers nominated by the concerned District Legal Aid Committee would be visiting the jail on particular days and that prisoners who wanted their assistance could avail of their counselling services; iv.

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to allow any prisoner to meet such lawyers. Such interview should be within, sight but out of hearing of any jail official. [343

D-E, G-H, 344 A-D] The Maharashtra State Board of Legal Aid should advise and instruct the District Legal Aid Committees to nominate a few selected lawyers to visit the jail or jails in the district once in a fortnight to ascertain whether the law laid down by this Court and the High Court in this respect is being properly and effectively implemented and to interview the prisoners who express their desire to obtain legal assistance. The State Board should call for periodic reports from the district legal aid committees to ensure that these directions are being properly carried out. [344 E-H]

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The Court has given the following further directions: i. Four or five police lock ups should be selected in reasonably good localities where only female suspects should be kept and

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should be guarded. by female constables. Female suspects should not be kept in

a police lock up in which male suspects are detained. [345 E-F]

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ii. Interrogation of females should be carried out only in the presence of female police officers/constables. [345 G] iii. A person arrested must be immediately informed of the grounds of his arrest. It must immediately be made known to the arrested person that he is entitled to apply for bail.

The Maharashtra State Board of Legal Aid and Advice should forthwith get a pamphlet prepared setting out the legal rights of an arrested person. The pamphlets should be in Marathi Hindi and English. Printed copies of the pamphlets in all these languages should

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be affixed in each cell in every police lock up.

As soon as the arrested person is brought to the police station, the pamphlet should be read out to him in any of the languages which he understands. [345 H, 346 A C]

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iv. Whenever a person is arrested by the police and taken to the police lock up, the police should immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee

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should take immediate steps to 339 provide

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legal assistance to him at State cost provided he is willing to accept such

A legal assistance. [346 D-E] v. In the city of Bombay, a City Sessions Judge, nominated by the principal Judge of the City Civil Court, preferably a lady Judge if there is one, shall make surprise visits to police lock ups in the city periodically

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with a view to providing the arrested persons an opportunity to air their grievances and for ascertaining the conditions in the police lock up, whether the requisite facilities are being provided,

whether the provisions of law are being observed and that these directions are being carried out. If it is found that there are any lapses on the part of the police authorities, the City Sessions Judge shall bring them to the notice of the Commissioner of Police and if necessary to the notice of the Home Department. If even this approach fails, then the City Sessions Judge may draw the attention of the Chief Justice of the High Court of Maharashtra to such lapses. This direction in regard to police lock up at the district headquarters shall be carried out by the Sessions Judge of the district concerned. [346 F-H, 347 A] 55
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As soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest. [347 B-C] vii. The magistrate before whom an arrested person is produced shall enquire from him whether he has any complaint of torture or maltreatment in police custody and inform him that he has

a right under section 54 of the Code of Criminal Procedure 1973 to be medically examined. [347 C-D] The Court made the following observations: The profession of law is a noble profession. A lawyer owes a duty to the society to help people in distress more so when those in distress are women 2nd in jail. Lawyers must positively reach upto those sections of humanity who are poor, illiterate and ignorant and who, when they are placed in a crisis such as an accusation of crime or arrest or imprisonment, do not know what to do or where to go or to whom to turn. If lawyers, instead of coming to the rescue of persons in distress, exploit and prey upon them, the legal profession will come into disrepute and The large masses of people in the country would lose faith in lawyers and that would be destructive of democracy and the rule of law. [342 F- H, 343 A-B] JUDGEMENT: ORIGINAL JURISDICTION; Writ Petition (Crl.) Nos. 1053- 1054 of 1982. (Under Article 32 of the Constitution of India. Khursheed Ahmed for the Petitioner. K.G. Bhagat Addl. Sol. General, V.B. Joshi and M.N. Shroff for the Respondent. The Judgment of the Court was delivered by BHAGWATI, J. This writ petition is based on

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a letter addressed by Sheela Barse, a journalist, complaining of custodial violence

to

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women prisoners whilst confined in the police lock up in the city of Bombay. The

petitioner stated in her letter that she interviewed fifteen women prisoners in the Bombay Central Jail with the permission of the Inspector General of Prisons between 11 and 17th May, 1982 and five out of them told her

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that they had been assaulted by the police in the police lock up.

Of these five who complained of having been assaulted by the police, the petitioner particularly mentioned the cases of two, namely,

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Devamma and Pushpa Paen who were allegedly assaulted and tortured whilst they were in the police lock up.

It is not necessary for the purpose of this writ petition to go into the various allegations in regard to the ill-treatment meted out to the women prisoners in the police lock up and particularly the torture and beating to which Devamma and Pushpa Paeen were said to have been subjected because we do not propose to investigate into the correctness of these allegations which have been disputed on behalf of the State of Maharashtra. But, since these allegations were made by the women prisoners interviewed by the petitioner and particularly by Devamma and Pushpa Paeen and there was no reason to believe that a journalist like the petitioner would invent or fabricate such allegations if they were not made to her by the women prisoners, this Court treated the letter of the petitioner as a writ petition and issued notice to the State of Maharashtra, Inspector General of Prisons, Maharashtra, Superintendent, Bombay Central Jail and the Inspector General of Police, Maharashtra calling upon them to show cause why the writ petition should not be allowed. It appears that on the returnable date of the show cause notice no affidavit was filed on behalf of any of the parties to whom show cause notice was issued and this Court therefore adjourned the hearing of the writ petition to enable the State of Maharashtra and other parties to file an affidavit in reply to the averments made in the letter of the petitioner. This Court also directed that in the meanwhile

Dr. (Miss) A.R. Desai,

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Director of College of Social Work, Nirmala Niketan, Bombay will visit the Bombay Central Jail and

interview women prisoners lodged there including Devamma and Pushpa Paeen without any one else being present at the time of interview v and ascertain whether they had been subjected to any torture or ill- treatment and submit a report to this Court on or before 30th August, 1982. The State Government and the Inspector General of Prisons were directed to provide all facilities to Dr. Miss A.R. Desai to carry out this assignment entrusted to her. The object of 56 assigning this commission to Dr. Miss A.R. Desai was to ascertain whether allegations of torture and ill-treatment as set out in the letter of the petitioner were, in fact, made by the women prisoners including Devamma and Pushpa Paeen to the petitioner and what was the truth in regard to such allegations. Pursuant to the order made by this Court, Dr. Miss A.R. Desai visited Bombay Central prison and after interviewing women prisoners lodged there, made a detailed report to this Court. The Report is a highly interesting and instructive socio-legal document Which provides an insight into the problems and difficulties facing women prisoners and we must express our sense of gratitude to Dr. Miss A.R. Desai for the trouble taken by her in submitting such a wonderfully thorough and perceptive report. We are not concerned here directly with the conditions prevailing in the Bombay Central Jail or other jails in the State of Maharashtra because the primary question which is raised in the letter of the petitioner relates to the safety and security of women prisoners in police lock up and their protection against torture and ill-treatment. But even so we would strongly recommend to the Inspector General of Prisons, Maharashtra that he may have a look at this Report made by Dr. Miss A.R. Deasai and consider what further steps are necessary to be taken in order to improve the conditions in the Bombay Central Jail and other jails in the State of Maharashtra and to make life for the women prisoners more easily bearable by them. There is only one matter about which we would like to give directions in this writ petition and that is in regard to

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the need to provide legal assistance not only to women prisoners but to all prisoners

lodged in the jails in the State of Maharashtra. We have p already had occasion to point out in several decisions given by this Court that

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legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only by Article 39 but also by Articles 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law, because nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are priced out of the legal system, lose faith in

the legal process and a

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feeling begins to overtake them that democracy and rule of law are merely slogans or myths intended to perpetuate the domination of the rich and the powerful and to protect the establishment and the vested interests.

Imagine the helpless condition of a prisoner who is lodged in a jail who does not know to whom he can turn for help in order to vindicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill-treatment or oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated, it may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is therefore absolutely essential that legal assistance must be made available to prisoners in C: jails whether they be under-trial or convicted prisoners. The Report of Dr. Miss A.R. Desai shows that there is

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no adequate arrangement for providing legal assistance to women prisoners

and we dare say the situation which prevails in the matter of providing legal assistance in the case of women prisoners must also be the same in regard to male prisoners. It is pointed out in the Report of Dr. Miss A.R. Desai that two prisoners in the Bombay Central Jail, one a German national and the other a Thai national were duped and defrauded by a lawyer, named Mohan Ajwani who misappropriated almost half the belongings of the German national and the jewellery of the Thai national on the plea that he was retaining such belongings and jewellery for payment of his fees. We do not know whether this allegation made by these two German and Thai women prisoners is true or not but, if true, it is a matter of great shame for the legal profession and it needs to be thoroughly investigated. The profession of law is a noble profession which has always regarded itself as a branch of social service and a lawyer owes a duty to the society to help people in distress and more so when those in distress are women and in jail. Lawyers must realise that law is not a pleasant retreat where we are concerned merely with mechanical interpretation of rules made by the legislature but it is a teeming open ended avenue through which most of the traffic of human existence passes. There are many casualties of this traffic and it is the function of the legal profession to help these casualties in a spirit of dedication and service. It is for the lawyers to minimise the numbers of those casualties who still go without legal assistance. The lawyers must positively reach out to those sections of humanity who are poor, illiterate and ignorant and 57

who, when they are placed in a crisis such as an accusation of crime or arrest or imprisonment, do not know what to do or where to go or to whom to turn. If lawyers, instead of coming to the rescue of persons in distress, exploit and prey upon them, the legal profession will come into disrepute and large masses of people in the country would lose faith in lawyers and that would be destructive of democracy and rule of law. If it is true that these two German and Thai women prisoners were treated by Mohan Ajwani in the manner alleged by them and this is a question on which we do not wish to express any opinion ex parte-it deserves the strongest condemnation. We would therefore direct that the allegations made by the two German and Thai women prisoners as set out in paragraph 9.2 of the Report of Dr. Miss A.R. Desai be referred to the Maharashtra State Bar Council for taking such action as may be deemed fit. But, this incident highlights the need for setting up a machinery for providing legal assistance to prisoners in jails. There is fortunately a legal aid organisation in the State of Maharashtra headed by the Maharashtra State Board of Legal Aid and Advice which has set up committees at the High Court and district levels. We would therefore direct

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the Inspector General of Prisons in Maharashtra to issue a circular to all Superintendents of Police in Maharashtra requiring them- 1. to send a list of all under-trial prisoners to the Legal Aid Committee of the district

in which the jail is situated giving particulars of the date of entry of the under-trial prisoners in the jail and to the extent possible, of the offences with which they are charged and showing separately male prisoners

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and female prisoners. 2. to furnish to the concerned District Legal Aid Committee a list giving particulars of the persons arrested on suspicion under section 41

of the Code of Criminal Procedure

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who have been in jail beyond a period of 15 days. 3. to provide facilities to the lawyers nominated by the concerned District Legal Aid Committee to enter the jail and to interview the prisoners who have expressed their desire to have their assistance. 4. to furnish to

the lawyers nominated by the concerned District Legal Aid Committee whatever

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information is required by them in regard to the prisoners in jail. 5. to put up notices

at prominent places in the jail that lawyers nominated by the concerned District Legal Aid Committee would be visiting the jail on particular days and that any prisoner who desires to have their assistance can meet them and avail of their counselling services;

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and 6. to allow any prisoner who desires to meet the lawyers

nominated by the concerned District Legal Aid Committee to interview and meet such lawyers regarding any matter for which he requires legal assistance

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and such interview should be within sight but out of hearing of and jail official.

We would also direct that in order to effectively carry out these directions which are being given by us to the Inspector General of Prisons, the Maharashtra State Board of Legal Aid and Advice will instruct the District Legal Aid Committees of the districts in which jails are situated to nominate a couple of selected lawyers practising in the district court to visit the jail or jails in the district at least once in a fortnight with a view to ascertaining whether the law laid down by the Supreme Court and the High Court of Maharashtra in regard to the rights of prisoners including the right to apply for bail and the right to legal aid is being properly and effectively implemented

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and to interview the prisoners who have expressed their desire to

obtain legal assistance and to provide them such legal assistance as may be necessary for the purpose of applying for release on bail or parole and ensuring them adequate legal representation in courts, including filing or preparation of appeals or revision applications against convictions and legal aid and advice in regard to any other problems which may be facing them or the members of their families. The Maharashtra State Board of Legal Aid & Advice will call for periodic reports from the district legal aid committees with a view to ensuring that these directions given by us are being properly carried out. We would also direct the Maharashtra State Board of Legal Aid and Advice to pay an honorarium of Rs. 25/- per lawyer for every visit to the jail together with reasonable travelling expenses from the court house to jail and back. These directions in so far as the city of Bombay is concerned, shall be carried out by substituting the High Court Legal Aid Committee for the District Legal Aid Committee, since there is no District Legal aid committee in the city of Bombay but the Legal Aid Programme is carried out by the High Court Legal Aid Committee. We may point out that this procedure is being followed with immense benefit to the prisoners in jails by the Tamil Nadu State Legal Aid & Advice Board. We may now take up the question as to how protection can be accorded to the women prisoners in police lock ups. We put forward several suggestions to the learned advocate appearing on behalf of the petitioner and the State of Maharashtra in the course of the hearing and there was a meaningful and constructive debate in court. The State of Maharashtra offered its full co-operation to the Court in laying down the guidelines which should be followed so far as women prisoners in police lock ups are concerned and most of the suggestions made by us were readily accepted by the State of Maharashtra. We propose to give the following directions as a result of meaningful and constructive debate in court in regard to various aspects of the question argued before us. i.

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We would direct that four or five police lock ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in police lock up in which male suspects are detained.

The State of Maharashtra has intimated to us that there are already three cells where female suspects are kept and are guarded by female constables and has assured the Court that two more cells with similar arrangements will be provided exclusively for female suspects. ii. We would further direct that

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interrogation of females should be carried out only in the presence of female police officers/constables. iii. Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail.

The Maharashtra State Board of Legal Aid & Advice will forthwith get a pamphlet prepared setting out the legal rights of an arrested person and the State of Maharashtra will bring out sufficient number of printed copies of the pamphlet in Marathi which is the language of the people in the State of Maharashtra as also in Hindi and English and printed copies of the pamphlet in all the three languages

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shall be affixed in each cell in every police lock up

and shall be read out to the arrested person in any of the three languages which he understands

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as soon as he is brought to the police station.

iv. We would also direct that

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whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance. The State Government will provide necessary funds to the concerned Legal Aid Committee for carrying out this direction. v.

We would direct that in the city of Bombay, a City Sessions Judge, to be nominated by the principal Judge of the City Civil Court, preferably a lady Judge, if there is one, shall make surprise visits to police lock ups in the city periodically

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with a view to providing the arrested persons an opportunity to air their grievances and ascertaining what are the conditions in the police lock ups and whether the requisite facilities are being provided

and the provisions of law are being observed and the directions given by us are being carried out. If it is found as a result of inspection that there are any lapses on the part of the police authorities, the City Sessions Judge shall bring them to the notice of the Commissioner of Police and if necessary to the notice of the Home Department and if even this approach fails, the City Sessions Judge may draw the attention of the Chief Justice of the High Court of Maharashtra to such lapses. This direction in regard to police lock ups at the districts head quarters, shall be carried out by the Sessions Judge of the district concerned. vi. We would direct that

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as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest; and lastly vii. e would direct that the magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has right under section 54 of the

Code of Criminal Procedure 1973

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to be medically examined. We are aware that section 54 of the

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of Criminal Procedure 1973

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undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. But very often the arrested person is not aware of this right and on account of his ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock up. It is for this reason that we are giving a specific direction requiring the magistrate to inform the arrested person about this right of medical examination in case he has any complaint of torture or maltreatment in police custody.

We have no doubt that if these directions which are being given by us are carried out both in letter and spirit, they will afford considerable protection to prisoners in police lock ups and save them from possible torture or ill- treatment. The writ petition will stand disposed of in terms of this order. 60

Unit: III Implementations and Enforcement Mechanisms In this unit, you will learn about, • Human Rights and Role of National Human Rights Commission • Commission ▪ Composition of Commission ▪ Functions and Powers of Commission • Mechanism Implementation • State Human Rights Commission • Human Right Courts at District Level • Working of the Human Rights Commission • Functions of National Human Rights Commission • Role of Non-Government Organisations in the Protection of Human Rights • Extra Ordinary Situations and Human Rights • Emergency Powers of President, Governor and Human Rights • Proclamation of the Extra-Ordinary Laws (MISA, NASA, TADA and Armed Special Power Act 1958) • Protection of Witnesses • Proposals to Amend the Code of Criminal Procedure, 1973 Human Rights and

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Role of National Human Rights Commission The National Human Rights Commission is an expression of India's concern for the protection and promotion of human rights. It is a unique expert body, which is created under the Protection of Human Rights Act, 1993, for examining and investigating the complaints relating to violations of human rights, as also the negligence on the part of any public servant in preventing such violation. In India, the National Human Rights Commission can play a vital role in influencing the policy making and sometimes even policy initiations, facilitating protection and promotion of human rights, such institutions provide an excellent mechanism for building public opinion and strong alliances and partnerships with non-governmental organisations and other human rights activists for influencing the national agenda on human rights. Apart from the resolution of disputes brought to such institutions, voice articulated, studies conducted, and research produced by these institutions carry great credibility and respectability and thus, can be important source material in the quest of securing and protecting human rights. There is a need to evolve more meaningful interaction and networking among these institutions.

The straggle for protection and promotion of human rights is long and arduous. It is important that we constantly remain engaged in devising structures and institutions, which can make us all more sensitive and responsive towards protection and promotion of human rights. It is to be noted that the wide comprehension of human rights indicates that the judiciary alone is not equipped to perform the entire task of promotion and protection of human rights. There is a need of a similar institution to

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complement the judiciary by monitoring the functioning of the institutions of the State,

which most often are responsible for violation and neglect in prevention of violation of human rights. The National Human Rights Commission is an institution acts as a catalyst to improve the quality of governance, on which depends the state of human rights in a country. 61

The proposal for a Commission as originally contained in a

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Human Rights Commission Bill which was introduced in the Lok Sabha on 14th May, 1993. When the same was considered by the Parliamentary Standing Committee on Home Affairs,

it was extensively criticized with regard to the powers, functions and manner of functioning of the proposed Commission. After certain modifications in the light of comments made on the original Bill, the Commission was initially constituted on 12th October, 1993 under the Protection of Human Rights Ordinance on 28th September, 1993, which was later presented to the Parliament on 25th November, 1993 to replace the Ordinance and became 'The Protection of Human Rights Act, 1993 (hereinafter referred to as PHRA). The Act is extended to the whole of India, but applies to the State of Jammu and Kashmir only of the matters pertaining to or relatable

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to any of the Entries enumerated in List I and List III of the Seventh Schedule to the

Constitution

as applicable to the State.

Subsequently, the PHRA, 1993, has amended in the year 2006 for effective implementation of

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human rights. Important Features of the Protection of Human Rights Act: The PHRA envisages the establishment of a National Human Rights Commission and the State Human Rights

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Human Rights Courts. The Protection of Human Rights Act, 1993 defines the term 'human rights' to mean 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Courts in India. In this definition 'human rights' have been given a wider ambit than those embodied in the Indian Constitution so as to include the rights listed in International Covenants. The role of judiciary has been remarkable to interpret the various enactments and the provisions giving brighter spectrum and the new dimensions to the various provisions of the Act. Recent important verdicts of Hon'ble Supreme Court, High Courts, and various Commissions and Tribunals have raised the scope of various provisions of the Act. The enactment of PHRA has empowered the National Human Rights Commission (

herein-after referred to as NHRC) to function from New Delhi with jurisdiction all over India. The powers of the Commission are intended to be so wide as to oversee the functioning of the organs of the State, not with a view to interfering with their constitutionally assigned functions, but to highlighting before them the pressing problems endangering human rights in order that the constitution, which the people of this country have given unto themselves to safeguard a true democratic system of administration, becomes a meaningful instrument of justice and equity and an invigorating force to carry the nation forward. The Commission completes 13 years of its existence on October, 12,2006.

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Over the past 13 years, the Commission has endeavored to give a positive meaning and content to the objectives set out in the

PHRA, 1993 for better protection of human rights. The Commission has worked vigorously and effectively all these years to create awareness and sensitizing public authorities for promoting and protecting human rights in the country. Apart from redressal of individual complaints and suo-moto actions of human rights violations, the NHRC undertakes various programmes to address societal issues, systematic reforms of police setup, prisons and to spread in promoting a culture of human rights in a country which has varied kinds of problems stemming from its size and population. The PHRA also embodies provisions with regard to the establishment of State Human Rights Commissions all over India to supplement the efforts of NHRC. Besides, Human Rights Courts are also being set up in the Districts to deal exclusively with the proven cases of human rights violations. Characteristics of the Commission: The establishment of the National Human Rights Commission was the result of criticism against India, both at National and International level, regarding human rights situation in Kashmir and Punjab. Several India watchers thought at that time that, the creation of the NHRC was a tactical move on the part of the Government of India to take some of the pressure off, so far as the alleged violation of human rights in Kashmir and Punjab were concerned. Due to this 62

background that the Commission needs is the credibility and acceptance, which will ultimately come from the work it does, it stands on human rights issues and the fate of its recommendations. Its advocacy for abolition of TADA, its stand on custodial deaths, rights of women and children, and the police atrocities have all led to an atmosphere where the NHRC has made its presence felt. Its recommendations have generally been accepted by the Governments on various matters. Despite all this and taking into account the vastness and variety of human rights issues in India, the Commission faces a gigantic task. The question is whether the arrangements envisaged under the National Human Rights Commission Act, 1993 are sufficient to meet the challenge? It may be mentioned that the Act is a very comprehensive piece of legislation which, apart from the Commission, it also envisages State Human Rights Commissions at State level and Human Rights Courts at District level for 'better protection of human rights'. Therefore, the Commission happens to be the only institution operational under the Act. An attempt here is made to analyse and assess the statutory framework of NHRC from the point of view of credibility and acceptance. Because ultimately these will determine whether it can face the challenge of creating a human rights culture in this country. Credibility or acceptance of any institution created by the State such as a National Human Rights Commission depends at least upon three factors i.e. autonomy and transparency. Autonomy: It involves the capacity to take an independent decision uninfluenced by any vested interest including the State. Autonomy is ensured by the manner of appointments to the Commission, the statutory status and the position of its members, security of their tenure and unconditional financial grants to carry out its activities. All these matters have been adverted to in the Act. The Commission consists of five members including its Chairperson.⁶ While the Chairperson has to be

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a person, who has been the Chief Justice of the Supreme Court, the other two members

have to be respectively the

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Judge of the Supreme Court and the Chief Justice of a High Court. Two members have to be appointed from amongst those persons

who have

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knowledge of, or practical experience in, matters relating to human rights.

So far, only Judges have been appointed as the members of the Commission. It is pertinent to mention that the eligibility criteria for membership of the Commission in terms of qualification and background would have to be carefully considered. The guiding principle must be that eminence of the members should enhance the credibility, prestige and the moral authority of the Commission. The members should also intimately aware of the field conditions in the country with respect to various aspects of human rights, in particular, the legal and enforcement aspects and the welfare thrust of the administration in respect of vulnerable sections of the society. The Members of the Commission, including its Chairperson are appointed for a five years term and can be removed earlier only on the grounds of proved misbehavior or incapacity after an inquiry made by the Supreme Court in this regard. That accords the members necessary security of tenure. The Members of the Commission, including its chairperson are appointed by the President of India after recommendations by a nominating Committee chaired by the Prime Minister and consisting of Speaker of the Lok Sabha, Minister in-charge of the Ministry of Home Affairs in the Government of India, Leader of Opposition of Lok Sabha, Leader of Opposition in Rajya Sabha, and Deputy Chairmen of Rajya Sabha as Members.⁹ The Constitution nominating committee is such that the persons of stature and integrity will be appointed by the Commission. Financial autonomy is also very crucial for the Commission. Section 32 of the said Act¹⁰ requires the Central Government to pay the Commission by way of grants such sums of money as the Government 'may think fit for being utilised for the purposes of the Act' after due appropriation made by the Parliament. Thus, the actual amount to be handed over to the Commission depends upon the goodwill of the Government. Transparency: 63 In the functioning of the Commission, transparency is another factor crucial for its creditability and acceptance. It is ensured by the openness and fairness of the procedures adopted to pursue matters before it. The Commission has framed detailed regulations which govern its procedures to make an inquiry.^{11*} The Commission either proceeds to inquire into the matter itself or it may hand over the case for further investigation for which it maintains its own investigative machinery

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headed by a person not below the rank of a Director General of Police.¹²

Thus, the Commission does not depend upon the State for investigation. The investigative machinery works under the control and direction of the Commission. To ensure more transparency, outsiders can be appointed as investigators or observers. To ensure fairness, the regulations require the commission to afford, in its discretion, a personal hearing to the petitioner or any other person if the Commission considers it necessary for the appropriate disposal of the matter before it. Witnesses who appear before it, may also be cross-examined and an opportunity of reasonable hearing is given to a person who might be adversely affected by the findings of the Commission. The openness with which the Commission is supposed to function, is further clear from the fact that it is required to provide a copy of its inquiry to the complainant, make its decision public and place its Reports before the Parliament. The Act and the Regulations made there under, thus ensure openness as well as fairness of the proceedings. Composition of the Commission:

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The Commission shall consist of - i. a Chairperson who has been a Chief Justice of the Supreme Court; ii. one Member who is, or has been, a Judge of the Supreme Court; iii. one Member who is, or has been, the Chief Justice of a High Court; iv. two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. Apart from this, the Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes [and the

Scheduled Tribes] and National Commission for Women, shall be deemed to be

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Members of the Commission for the discharge of functions enumerated in clauses (b) to (j) of

Sec. 12 of the Act. Appointing Authority: Every appointment shall be made by the President on a warrant under hand and seal appoints the Chairperson and other members,

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after obtaining the recommendations of a committee composed of- a) The Prime MinisterChairperson b) Speaker of the House of the PeopleMember c) Minister-

in-charge of the Ministry of Home AffairsMember d) Leader of the Opposition in the House of PeopleMember e) Leader of the Opposition in the Council of StatesMember f) Deputy Chairman of the Council of StatesMember Terms and Removal of the Chairperson and Other Members of the Commission: The terms of the office of the Chairperson and other nominated Members is

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five years, from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier. A

member of the Commission is eligible for reappointment provided he had not attained the age of seventy years, but the Chairperson is not eligible for a second term. 64

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The Chairperson or any Member of the Commission can be removed from his office only by Order of the President

of India on the ground of proved misbehavior or incapacity after an inquiry by

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the Supreme Court, on reference being made to it by the President.

Further, in any one of the following cases, the President may by order

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remove the Chairperson or any other Member who i. is adjudged an insolvent; or ii. engages during his term of office in any paid employment outside the duties of his office; or iii. is unfit to continue in office by reason of infirmity of mind or body; or iv. is of unsound mind and stands so declared by a competent court; or v. is convicted and sentenced to imprisonment for an offence

which in the opinion of the President involves moral turpitude.

Functions and Powers of the Commission: The Commission has been envisaged as an activist body for creating a human rights culture in the country. The effectiveness and impact of the Commission will depend upon the range of functions, it is required to perform. The powers conferred upon it to accomplish the job and the ultimate fate of its recommendations. Apart from its functions of adjudicating complaints regarding human rights violations, it acts as an overseer of the human rights situation in the country with the help of its suo motu initiations. The functions that are to be discharged by

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the Commission are 1. inquire, suo motu, or on a petition presented to it by a victim or any person on his behalf, [

or on a direction or order of any court]

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into complaint of- i. violation of human rights or abetment thereof; or ii. negligence in the prevention of such violation by a public servant; 2.

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intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court; 3. [

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notwithstanding anything contained in any other law for the time being in force,

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any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations

thereon to the Government] 4.

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review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation; 5. review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures; 6. study treaties and other international instruments on human rights and make recommendations for their effective implementation; 7. undertake and promote research in the field of human rights; 8. spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means; 9. encourage the efforts of non-governmental organizations and institutions working in the field of human rights; 10. such other functions as it may consider necessary for the promotion of human rights.

According to Section 29 all the above provisions except clause (f), shall be applicable to the State Human Rights Commissions. The Commission has been empowered to hear and inquire all the complaints regarding the violations of 65 human rights. The Commission proceeds either suo motu or on the receipt of a complaints. The procedure adopted in both the cases is the same. However, the

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complaints of violations of human rights by Members of the Armed Forces

are kept outside the purview of inquiry and investigation. It is also incumbent upon the Commission to submit an Annual Report and also Special Reports to the Central Government and State Governments concerned. The said Governments shall have to present the Reports, along with a memorandum of action or acceptance, before each House of Parliament and also before the House of the State Legislature.

The Commission

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is authorized to utilize the services of any officer or investigating agency of the Central or the State Governments for the purpose

of conducting any investigation pertaining to the inquiry. It is also to be noted that, the functions are enumerated in Section 12, which encompasses a wide area to enable the Commission not only to inquire into the violations or negligence in prevention of violation of human rights but also to promote the human rights culture and perform any function necessary for the promotion of human rights. The main function of the National Human Rights Institutions is to promote and protect human rights in its widest perspective. It is important to note that the Paris Principles lay down the minimum standards to be observed in setting up any National Human Rights Institutions, even though no single model is prescribed. Variations in the mechanism consistent with the national ethos are permissible so long as the essence of Paris Principles is observed. The National Institutions must be strong and effective which can contribute substantially to the realization of human rights and fundamental freedoms. It is no longer doubted that effective enjoyment of human rights requires the existence of national infrastructures for their promotion and protection. The Paris Principles affirm that National Institutions are to

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be vested with competence to promote and protect human rights and given as broad a mandate as possible which must be set forth clearly in a Constitutional

and Legislative text. The Paris Principles contain guidelines for the composition of National Human Rights Institutions, dealing with the mode of appointment of its members ensuring pluralism guarantees for operational independence, including the nature of its responsibilities and methods

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of operation. The Vienna Declaration and Programme of Action adopted by the 1993 World Conference of Human Rights

confirmed the principles and encourage the establishment and strengthening of National Institutions having regard to the Principles, in addition to Office of United Nations High Commissioner for

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Human Rights. The Paris Principles relating to the status of National Institutions

are an important step in the evolutionary process. Governments continue to avoid strict adherence to Paris Principles apprehending interference by an autonomous body. For this reason, the nature of constitution of the National Human Rights Institution and the manner in which it functions determines its efficacy. It is relevant to mention here that ever since the constitution of the National Human Rights Commission, in accordance with the Paris Principles, the Supreme Court of India has been facilitated considerably in the performance of its task of the protection of human rights. The NHRC has been constituted for the better protection of human rights. The complementarities developed between the Supreme Court and the NHRC has been enabled the better protection of human rights and promotion of human rights culture in the country. The NHRC has been discharging its role as a catalyst to improve the quality of governance, which helps in greater respect for human rights. In short, the NHRC of India is seen as institution, which has proved that, if properly constituted, such an institution is greatly efficacious in enabling the State to discharge its obligation under the United Nation Charter and the National Democratic Constitution of protecting human rights. Implementation Mechanism: The important implementation mechanisms that can be made use of by the National Human Rights Commission in the process of dealing with violation of human rights are as follows: a) Individual Complaints 66

b) Intervening in Court proceedings Individual Complaints: The procedure for dealing with the complaints comes under Regulation 8 of the National Human Rights Commission (Procedure) Regulations, 1994 which stipulates that "

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All Complaints in whatever form received by the Commission shall be registered and assigned a number and placed for admission

before a bench of two members constituted for the purpose not later than the two weeks of receipt thereof. Ordinarily the complaints of the following nature are not entertainable by the Commission: i. In regard to the events which happened more than one year before the making of complaints; ii.

With regard to matters which are sub-judice; iii. Which are vague, anonymous or pseudonymous iv. Those which are outside

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the purview of the Commission. The Commission cannot inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

Besides this, the NHRC or the State Commissions shall not

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inquire into any matter after the expiry of one year, from the date on which the act constituting the violation of human rights is alleged to have been

committed. This provision or inhibition of the Commission contained in Section 36(2) of the Act came for consideration before the Supreme Court in *Paramjit Kaur v. State of Punjab*. One of the main questions for consideration before the Court was whether the inhibition contained in Section 36(2) would apply to the Commission even when the Supreme Court under Article 32 of the Constitution referred a matter of alleged violation of human rights to the Commission? In the instant case, *S.Saghir Ahmad and S. Rajendra Babu, JJ.* observed that the provisions of the Act, do not bind or limit the powers of the Supreme Court in exercise of its powers under Article 32. It is, therefore, reasonable to hold that the Supreme Court designated the Commission as a body *suigeneris* to carry out the functions and determine issues as entrusted to it

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by the Supreme Court. This Court in exercise of the jurisdiction under Article 32 of the Constitution entrusted the

National Human Rights Commission to deal with certain matters in the manner indicated in the course of its order. All authorities in the country are bound by the directions of this Court and have to act in aid of this Court. National Human Rights Commission is no exception.

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The Commission would function pursuant to the directions issued by this Court and not under Act under which it is constituted. In deciding the matters referred by

the Supreme Court, the NHRC

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is given a free hand and is not circumscribed by any conditions. Therefore, the jurisdiction exercised by NHRC in these matters is of a special nature not covered by enactment or law, and thus acts

suigeneris. The power and jurisdiction of the Supreme Court under Article 32 of the Constitution cannot be curtailed by any statutory limitation, including those contained in Section 36(2) of the Act. If the Supreme Court can exercise that power unaffected by the prohibition contained in Sec. 36(2), there is no reason why the Commission, at the request of the Supreme Court, cannot investigate or look into the violations of human rights even though the period of limitation indicated in Section 36(2) might have expired. In such a situation, the Commission will not be affected by the bar contained in Section 36(2) and it will be well within its rights to investigate the matter referred to it by this Court. Intervening in Court Proceedings: Comprehensive powers have been given to the Commission for the performance of its functions. The Commission either proceeds to inquire the matter itself or it may hand over the case for further investigation for which it maintains its own 67 investigative machinery. While inquiring into the complaint, the Commission has

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all the powers of a civil court trying a suit under the Code of Civil Procedure and particularly in respect of the following matters: i. summon and enforce the attendance of witnesses and examining them on oath; ii. discovery and production of any document; iii. receiving evidence on affidavits; iv. requisitioning any public record or copy thereof from any court or office; v. issuing

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for the examination of witnesses or documents; and vi. any other matter which may be prescribed; The Commission has power to require any person, subject to any privilege, which may be claimed, by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and Section 177 of the Indian Penal Code. The Commission may authorise any officer, not below the rank of a Gazetted Officer to enter into any building or place where the Commission has reason to believe that any document relating to the subject matter of inquiry may be found, and may seize any such document

relating to the subject matter of inquiry may be found, and may seize any such document or take extract or copies there from.

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The Commission shall be deemed to be civil court and when any offence as is described in Sections 175, 178, 179, 180 or Section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under Sec. 346 of the

Cr.P.C., 1973. However, under the present statutory scheme, Sec. 13 deals with Commission's inquiry powers, which does not provide the Commission with the authority to compel personal presence is an important aspect to strengthen the powers of the Commission. Hence, the Commission, in its Annual Report 1993-94 suggested an Amendment to Sec. 13 of the PHRA granting it, the power to compel attendance of any person during inquiry. But till so far, it has not been complied with. Powers of Investigation: The Commission has enormous powers of investigation. The Commission either proceeds to inquire into the matter itself or it may hand over the case for further investigation for which it maintains its own investigative machinery,

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headed by person not below the rank of Director General of Police,

who is appointed by the Commission itself. Thus, the Commission does not depend upon the State for investigation. The investigation machinery works under the control and direction of

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the Commission. While inquiring into the complaints of violations of human rights,

the Commission

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may i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it: Provided that - a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own; 68 b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complaint accordingly; ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of complaint, initiate an inquiry.

A complaint may be dismissed in limine. However, once a complaint is admitted for hearing, the Commission may either set down the matter for inquiry or investigation, as it may deem proper. To ensure fairness, the regulations require the Commission to afford, in its discretion, a personal hearing to the petitioner or to any other person if the Commission considers it necessary for the appropriate disposal of the matter before it. Witnesses, who appear before it, may also be cross-examined and an opportunity of reasonable hearing is given to a person who might be adversely affected by the findings of the Commission. The Protection of Human Rights Act and the regulations made there-under, thus ensure openness as well as fairness of the proceedings. The Commission is thus one of the most powerful Commissions of inquiry. Powers of the Commission subsequent to Inquiry: Sec. 18 deals with the steps to be taken by the National Human Rights Commission [during and] after conducting an inquiry. If an inquiry conducted under the Act either suo-moto or on the basis of a petition reveals that the violation of human rights has occurred, the Commission cannot by itself take any step to get the wrong undone, but may take any of the following steps: a)

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where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant,

it may recommend to the concerned Government or authority the initiation of

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proceedings for prosecution or such other action as the Commission may deem fit, against the concerned person

or persons; b)

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approach the Supreme Court or the High Courts concerned for such directions, orders or writs, as that Courts may deem necessary; c) recommend to the concerned Government or authority for the grant of such immediate interim relief

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to the victim or the members for his family as the Commission may consider

necessary: d)

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the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government, or authority,

and

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the concerned government or authority shall, within a period of one month,

or such further time as the Commission may allow, forward

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its comments on the report, including the action taken or proposed to be taken

thereon, to the Commission.

Limitations on the jurisdiction of the Commission: Sec. 19 deals with the special provisions when the members of the Armed Forces violate the human rights. As regards the complaints of violation of human rights by the armed forces of the Union, the Commission is not empowered to make an inquiry or investigation in the matter directly. Instead, it may seek a report from the Central Government on its own motion or on the complaint filed by a party. It may then make its recommendations to the Central Government. The Government is required to inform the Commission ordinarily within three months, of the action taken on its recommendations. There may be some justification to follow a different procedure and to bar an inquiry or investigation against the armed forces on the ground of national security, when these forces are engaged in defending the country 69

against foreign aggression. But, there is no justification to take them out of the normal jurisdiction of the Commission when these forces are deployed to do policing which is not unusual in this country. The Act does not specifically confer upon the Commission, a jurisdiction to inquire or investigate human rights violations by organised groups in the society. The focus of the Act is violation of the human rights by the public servants. Certain organised groups such as terrorists, religious fundamentalists, caste and communal groups are now perceived as the greatest threat to human rights. So far as the State or its functionary is concerned, they work under various types of pressures and check. They are supposed to adhere to rules of media, citizens and NGO's. Organised groups work under no such constraint. The Act should appropriately focus upon these groups. State Human Rights Commissions: According to the stipulation of the Protection of Human Rights Act, 1993, there should be a State Human Rights Commission in every State. The State Government shall specify the place for headquarters

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of the State Commission. The Chairperson shall hold office for a term of five years, or until he attains the age of 70 years, whichever is earlier.

The State Commission shall

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consist of (a) a Chairperson who has been a Chief Justice of a High Court; (b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years' experience as District Judge; (c) one Member to be appointed from amongst persons having knowledge of or practical experience in matters relating to human rights.]

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The Chairperson and Members shall be appointed by the Governor by Warrant under his hand and seal, provided that every appointment shall be made after obtaining the recommendation of a Committee consisting of: a) the Chief Minister as the Chairperson; b) Speaker of the Legislative Assembly

as Member c) Minister in charge of the Department of Home in that State as Member d) Leader of the Opposition in the Legislative Assembly as Member The Chairperson is appointed

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for a term of five years or till he attains the age of seventy years, whichever is earlier.

The other members are appointed for five years and they are

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eligible for reappointment for another term of five years. But no member shall hold office after attaining the age of seventy years.

The Chairperson or any other member of the State Commission may

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be removed from his office in the same manner and on the same ground as

in the case of the Chairperson and Members of National Human Rights Commission. The State Commission shall submit an Annual Report to

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the State Government, which shall cause the report to be laid before the House of State Legislature along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.

It is to be noted that the powers and functions of the State Commissions and the procedure of inquiry and investigation are similar to that of National Human Rights Commission. Though, the Protection of Human Rights Act provides for the subject matters to be dealt with exclusively by the National or State Commissions, in practice these divisions are rarely adhered to. In effect, the complainant is free to seek redress from the National or State Commission irrespective of the subject matter of his complaint. The only restriction is that once either of the Commission takes cognizance of a case, the other commission must hand over the case to that Commission and close it, at its own end. The ideal remedy would be the establishment of a hierarchical relation whereby, cases reach the National Human Rights Commission after having been dealt with by the State Commission or alternatively, the implementation of 70 the subject division format whereby the Commission have a clear demarcation of issues to be considered by each. For this purpose, the National Human Rights Commission has been actively advocating for the setting up of State Commissions in all States. Following the appeals by the NHRC and discussions with it so far, some States have set up State Human Rights Commissions which include, Assam, Andhra Pradesh, Chhattisgarh,

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Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal.

Most of the states are yet to constitute State Human Rights Commissions. Therefore, all the complaints of human rights violations are being referred to the NHRC. In India, because of its size, territory-wise as well as population-wise, it is difficult for any single institution to meet the growing demand of the protection of human rights of all persons, especially in the context of increasing violations of human rights. Thus, there is a work load on the part of NHRC regarding the receiving of complaints has increased beyond proportion. Therefore, it is the need of the hour that every State must constitute its own Human Rights Commission so as to provide speedy justice to the people and to protect them from the violation of their human rights. Human Rights Courts at District Level: Prior to enactment of the Protection of Human Rights Act, through which the NHRC has been established, most of the human rights violations were to be redressed either by the Supreme Court under Article 32 or by the High Courts under Article 226 of the Constitution of India through their writ jurisdiction. The remedy provided under the Constitution is expensive and beyond the reach of common man. But now, with the establishment of Human Rights Courts at District level, a laudable attempt has been made to bring justice within the reach of common man. Sec. 30 of the PHRA which provides for the establishment of Human Rights Courts at District level is as follows: For the purpose of providing

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speedy trial of offences arising out of violation of human rights,

the State Government may,

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with the concurrence of the Chief Justice of the High Court, by notification, specify for each District a Court of Session to be a Human Rights Court

to try the said offences; a) a Court of Session is already specified as a special court; or b) a Special Court is already constituted, for such offences under any other law for the time being in force. In pursuance of the power given in Sec. 30, some of the State Governments have notified the establishment of Human Rights Courts at District level in their States. The provisions contained in this section are very weak, for it uses the word 'may' which indicates that it is not mandatory for the State Governments to establish Human Rights Courts at District level. That's why only few States, i.e. Andhra Pradesh, Assam, Tamil Nadu, Sikkim have established Human Rights Courts and recently Uttar Pradesh has also notified the establishment of such courts. In fact, in some of the States where the Human Rights Courts are being established, the jurisdiction of such courts and procedure to be adopted, while dealing with the petitions of violation of human rights has not been expressly specified. Therefore, the non-availability of any clear-cut jurisdiction and procedure regarding these courts while dealing with violation of human rights is making these courts ineffective. The very fact that, the majority of the States have not yet established the Human Rights Courts in their States even after the lapse of more than ten years from the date of commencement of the Protection of Human Rights Act, which shows the States casual attitude towards the protection of human rights. Further, if the assumption is that the powers of these courts while dealing with the cases involving violation of human rights will be same as that of Supreme Court or of High Courts, under Articles 32 and 226 of the Constitution of India respectively. It is also not clear whether these Courts can hear the petition brought before them by the 71

complainant or will duly hear those cases which have been directed by the National or State Human Rights Commission to these Courts for prosecution. Therefore, the repent provision under Section 30 of the PHRA is

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inadequate, defective and requires modification without which, Human Rights Courts at the District level, even if formed, cannot function

properly and effectively. The National Human Rights Commission has recommended in its Annual Reports repeatedly an amendment to Section 30 so as to impose mandatory obligation on every State to establish Human Rights Courts at District level properly defining their jurisdiction and the procedure to be followed in dealing with the human rights cases. Working of the Human Rights Commission: The NHRC at New Delhi and several of the State Human Rights Commissions started on their sensitive task with great enthusiasm. To set right some of the inadequacies of the law, a seven Member Advisory Committee was set up by the National Human Rights Commission headed by the former Chief Justice of the Supreme Court of India Justice A.M. Ahmadi and this Committee made the following significant recommendations for the effective functioning of the NHRC AND SHRC's: a) The NHRC and the SHRC's should be granted financial autonomy to facilitate more effective functioning. b) The composition of the NHRC should be changed to consist of two judicial and three non-judicial members, one of whom should be a woman. c) The definition of 'Armed Forces' should be changed to bring human rights violations by Para-Military personnel under the purview of the NHRC. d) The NHRC and the SHRC's should be further

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empowered to enquire into any matter after the expiry of one year from the date when the Act constituting violation of human rights is alleged to have been

committed, if there is sufficient reason for not filing the complaint within the said period. At present, the NHRC can investigate human rights violations only within one year of their occurrence. e) The recommendations of the NHRC 'must receive proper faithful and time-bound consideration' by the Central and State Governments, which should intimate, within three months, acceptance or otherwise of their recommendations and submit reasons in case of non-acceptance. Regarding the work and effectiveness of the NHRC, it should be undoubtedly acknowledged that the work has been both qualitatively and quantitatively at a high level. The fact that the number of complaints reaching the Commission doubled and trebled year after year shows that the people started looking at NHRC as an effective institution for the promotion and protection of human rights. During the last few years, the NHRC has laid emphasis on the Economic, Social and Cultural Rights, along with Civil and Political Rights on the premise that all rights are inter-related and inter-dependent. Apart from the working for the eradication of bonded labour and child labour, rights of the women, dalits, minorities and other marginalized groups, the Commission has also undertaken projects in other fields, such as public health, right to food etc, workshops and seminars on HIV/AIDS, nutritional deficiencies, access to health care, tobacco control, etc., have been conducted, yielding useful recommendations for implementation by the Government. The Commission has been engaged in prison and penal reforms and training of personnel to sensitize them to human rights. It is also to be noted that the Commission has vigorously undertaken the issue of protection of civil liberties and has proposed systematic reforms in the police, prisons and criminal justice system. The Commission has intervened in a case on police reforms pending before the Supreme Court. The Indian experience has already established the importance and pre-eminence of the NHRC in its complementary role to the Judiciary in areas concerning human rights. The NHRC has also been coordinating the commendable work being done by many NGO's in the field of human rights, particularly to that of improving prison 72

administration and penal reforms. Thus, the NHRC can and does play an important role in coordinating and monitoring efforts of both civic and public bodies and agencies. It is also to be noted that in 2004-2005, the Commission in 45 cases, recommended interim relief under Sec. 18(3) of the Act, to the extent of Rs. 23,27,000/- . Since 1993, the Commission has recommended more than Rs. 10 crores by way of interim relief in 632 cases. The role of the NHRC and the impact of its intervention is too well known to require elaboration. The Commission's intervention did help to build confidence among different sections of the plural society, which is essential in an inclusive democracy. The true role and efficacy of the Commission has to be appreciated which is to facilitate human governance. The nation's commitment to human rights is judged in the international and protection of human rights. Functions of National Human Rights Commission: An assessment Today, we are witnessing some kind of an incremental growth in the human rights movement all over the world. Since the NHRC came into being, during the last few years, it has focused to a fairer extent on violation of human rights by the organs of the State, the Police, and the Paramilitary forces. The better capacity of the NHRC to directly monitor the performance of institutions in certain situations, has been utilized by the Supreme Court to aid its function of issuing directions in appropriate cases like mental homes, protective homes, child labor, bonded labour, etc., The complementarities between these institutions has considerably improved the mechanism for the protection of human rights in the country, which is primarily a State responsibility. The nature and extent of State's responsibility for the protection of human rights was indicated by the NHRC in its orders, made in the case of recent Gujarat communal disturbances. The Commission observed:⁴⁴ "It is the primary and inescapable responsibility of the State to protect the right to life, liberty, equality and dignity of all of those who, constitute it. It is also the responsibility of the State to ensure that such rights are not violated either through overt acts, or through abetment or negligence. It is a clear and emerging principle of human rights jurisprudence that the State is responsible not only for the acts of its own agents, but also for the acts of non-state players acting within its jurisdiction. The State is, in addition, responsible for any inaction that may cause or facilitate the violation of human rights". On this basis, the Government was held accountable on the principle of *res ipsa loquitur*; and on its failure to satisfactorily discharge the burden of proving performance of its duty, the NHRC found the Government responsible for the violation of human rights within its jurisdiction. State of Gujarat illustrates the importance of the NHRC in enforcing accountability; and the efficacy of the complementary between the Supreme Court and the NHRC, which has developed over the years, in the protection and enforcement of human rights. Believing firmly in the value of Indian secularism and deeply moved by any incident of religious intolerance and resulting violence anywhere, the Commission acted swiftly and steadfastly. In the recent outbreak of violence in State of Gujarat, the Commission taking suo-moto cognizance of new reports of the communal flare up and alleged inaction by the police and other high functionaries of the State, issued notices to the Chief Secretary and Director General of Police of the State calling for detailed report about the measures being taken, and in contemplation to prevent any further escalation of the situation in the State. The Commission decided that Verma J.S., former Chairperson of the National Human Rights Commission, along with the senior officials of the Commission pay a visit to the State to develop an, on the spot understanding of the situation. Such engagements and involvements of the Commission are important not only for ensuring accountability and efficiency of the administration but also to build confidence and accommodation amongst the different sections of the plural society. Such engagement provides strategic and moral support to those working for ensuring tolerance and respect for human rights.⁴⁵ The promptness with which the administration responded to the NHRC's observations and 73

recommendations for Gujarat is an index of the efficacy and utility of the institution in improving the quality of governance. A number of precise recommendations have been made by the Commission to bring the justice to those responsible for the violations of the rights that have occurred and to ameliorate the suffering of those, who are the victims. The Gujarat example illustrates the role of independent the National Human Rights Institutions in enforcing accountability. Though the protection of human rights is the primary responsibility of the judiciary, the NHRC of India and the judiciary in India have worked in ways complementing each other in securing and enforcing accountability. Intervention by the NHRC is a strategic use of inviting judicial power to the aid of the Commissions Agenda of protecting and promoting human rights. The Commission also took up with the police administration the setting up of a police complaints authority in the office of the Director General of Police in each State, in order to have a general oversight of the conduct of the police officials. The Commission has given its serious attention in improving the conditions prevailing in the jails. The Commission has been insisting that the State Government should effectively implement the Supreme Courts judgement which laid down the guidelines and gave directions in regard to release of under-trial prisoners on bail, as the majority of them are from disadvantages sections of society, having rural background. The Commission has taken the issue of custodial violence seriously. It firmly believes that, all cases of custodial deaths, rapes, etc., including those involving the army and para-military forces should be reported to the Commission as early as on 14th December, 1993, issued instructions all States asking them to direct all District Magistrates and Super tendants of Police to report directly to the Commission on any instance of death or rape in police custody within 24 hours of its occurrence, failing which, there would be a presumption that efforts were being made to suppress the truth. It reflects the credibility and force for the directives that the States have continued to comply with these instructions. It is pertinent to note that the Commission did not remain silent in the wake of miseries, torture and deprivation caused by natural calamity in recent years in which thousands of lives were lost, many others became handicapped lost their property and became shelter less. In order to ensure that the rights of affected population, particularly the most vulnerable groups were protect in the aftermath of the widespread destruction caused by the Orissa Super Cyclone in October, 1999, the Commission took suo-moto cognizance of the situation and based on the spot study, by its own officials made number of recommendations to the State Government to ensure that the human rights of marginalized groups, widow and orphans, the destitute, dalits and tribals were not ignored, but kept in the centre of the focus of all involved. Again, the Commission took suo-moto cognizance of calamity arising from the devastating earthquake in January, 2001 which hit large areas of State of Gujarat. The Court has described the Commission as 'a unique expert body in itself. Fundamental rights guaranteed by the Constitution represent the basic human rights possessed by every human being. The jurisdiction of the Supreme Court under Article 32 'cannot be curtailed by any Statutory limitation' including those contained in the various provisions of National Human Rights Commission Act. The court has emphasised that all authorities in the country are bound by the directions of the Supreme Court and have to act in aid of the court (Article 144). In addition to above, the Commission has also been involved in guiding policy formulation on issues of national importance. It has recommended a major policy approach on issue of HIV/AIDS. The policy approach has been evolved after a very wide national consultation spread over a time of more than two years and involving expertise drawn from medical and health profession, health workers, NGO's and human rights activists engaged on health issues, academics and others concerned. Expanding non-governmental organisation movement on issues of human rights has also come to the support and aid of the Commissions endeavours. NGO's are the ears and eyes of the Commission and no field of Commission's activity remains insulated from NGO's, Ties with NGO's have continued to expand all over the country, in fields as varied as matters relating human rights complaints, to human rights education, research, counselling and practical programmes for groups whose human rights were in jeopardy or needing promotion and protection. It has also worked towards 74

networking of the NGO's to make their role efficacious. The support of the civil society Has been the most important source of strength of the judiciary and the NHRC, and this due to the faith of the Indian citizenry in these institutions. The Commission believing in importance and significance of human rights education, believing that the education in human rights is the key to promote a culture of human rights, has encouraged various educational agencies such as NCERT, NCTE, UGC, Universities and Colleges to bring in human rights education in the curriculum agenda and the life of educational institutions. The Role of Non-Government Organisations in the Protection of Human Rights: No study of human rights in independent India can complete without specific mention of the role of the Non- Government Organization's (herein after referrers as NGO's) in exposing instances of human rights violation for suitable action by the Government.⁴⁷ Since the end of the Second World War and most especially since the end of the 1970's, there has been an explosive emergence of local, national and international voluntary organizations working for the promotion and protection of human rights on every continent and in almost every country in the world. These NGO's vary enormously in their membership, leadership and purposes, in the scope of their activities and programmes and in the influence or impact they have in domestic, regional or international arenas. Now a days, there is a wide range of NGO's working in India in various fields relating to human rights, specifically in the field of child welfare, environment, bonded labour, women rights, health, disabled rights, education, labour welfare, welfare of indigenous people and the rehabilitation of manual scavengers. Besides the groups which are specifically involved to respond to the lawlessness of the State, there are hundreds of groups struggling for distributive justice. There are also advocacy and support groups. The exceptional role of Non-Governmental Organisations in furthering human rights is given appropriate and special recognition in the Protection of Human Rights Act, 1993. Sec. 12 (i) of the said Act, expressly charges the Commission to 'encourage the efforts of non-governmental organisations and institution as working in the field of human rights'. This is a responsibility which the Commission readily assumes, for the cause has much to gain both from the practical help and from the constructive criticisms that NGO's and the Commission can bring to bear in their mutual interaction and growing relationship. There are many ways in which the relationship of the National Human Rights Commission with NGO's can be further strengthened. As the Commission increasingly begins to concentrate on specific human rights problems i.e. child labour or bonded labour, it is normal that it should turn to NGO's having specialised knowledge in such fields. The Commission has already had the benefit of interacting with a large number of NGO's, both Indian and foreign, certain of them have brought complaints that are under consideration by the Commission. Yet others have helped the Commission by their reports and publication and by their vigilance in the defence of human rights. In the development of the working relationship, the Commission is particularly grateful to NGO's for coming forward with complaints regarding the violations of human rights. Analysis of the complaints received by the Commission indicates that over 200 NGO's were involved in the submission of such complaints which were received from all parts of the country. The Commission would like to further rationalise and expand its arrangements of co- operation with NGO's. It firmly believes that the promotion and protection of human rights require the courage and commitment that NGO's bring to their endeavours and it is for this reason that the Commission has consistently taken the position that the country has much to gain by encouraging their efforts, whether the NGO's be national or foreign. Frequently, the NGO's provided the impetus for the Commission's efforts in regard to the special problems of dalits, tribals, child labour, child prostitution, the conditions of refugees and other vulnerable groups. The issue of jail reforms, too, attracted major NGO participation, as did their concern with issues of human rights areas of insurgency or terrorism. The work of Non-Governmental Organisations is central to the spread of human rights awareness and the 75 articulation and the defence of human rights. Indeed, the efforts of NGO's and the Commission are complementary, in a relationship that is at once both constructive and critical. No field of activity of the Commission now remains insulated from NGO's, whose advice has also been sought on ways to make the Commission more effective. The Commission receives number of public interest complaints from NGO's and they have often been associated with aspects of investigations undertaken by the Commission. Further, in respect of projects and programmes, the list grows of NGO's working closely with the Commission, particularly in respect of serious societal issues relating, inter alia, to matters such as child labour, bonded labour, child prostitution, literacy and human rights education, health care, malnutrition, the rights of women, and of vulnerable and marginalized groups, the problems of Dalits and Tribals. The major problem with the Indian NGO's is that there is a lack of co ordination of their activities in terms of their fields, territorial areas and target groups. Hence, to co-ordinate and channelize the efforts of NGO's working in the field of human rights and to make known their contribution to the outside world, the National Human Rights Commission has compiled a National Register of NGO's working in human

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rights area. To encourage the efforts of NGO's, working in the field of human rights

is a statutory responsibility of the Commission. The promotion of protection of human rights cannot possibly gather the momentum it requires without the fullest co-operation between the Commission and NGO's. NGO's are closely involved with the Commission through the complaints they submit to it and through seminars and work shops in human rights related matters. The Function of NGO's in the Human Rights Arena: NGO's in the human rights arena perform a wide variety of functions. These will vary with the differing political, social, economic and cultural situation in which NGO's find themselves. The strategies and tactics the NGO's will employ, will be different from the issues of NGO's in situation of intense political repression, or of NGO's in the third world countries facing such multiple crisis as famine, ecological degradation, foreign debt, ethnic violence, lawlessness and corruption. Information Gathering, Evaluation and Dissemination: One of the most important functions performed by NGO's engaged in human rights work is that of monitoring the behavior of the State and of other power elites of gathering, evaluating and dissemination of information. In the process of exposing human rights violation, the importance of information emerges in part from the paradox that is central to the human rights struggle. In the recent years, the information or fact-finding function of NGO's has under serious scrutiny, especially from the Governments charge with committing violations and from their supporters. As a consequence, many in the human rights community have been sensitized to the need for their data, to pass tests of validity and reliability. NGO's have monitored the behavior of armed opposition or terrorists. Finally, with respect to information, it is important to recognize that often in a better position than Government agencies both to collect and to assess information with respect to the observance of economic, social and cultural are critical preconditions for effective action in the area of human rights to have a policy impact that information needs to be discriminated. Advocacy to stop Abuses and Secure Redress: Advocacy means actively taking up the case of those, whose rights are violated. For a human rights organization, advocacy may speak out for the voiceless and it entails expanding and making more visible what may be only a blatant conflict. Legal Aid, Scientific Expertise and Humanitarian Assistance: 76 Organization concerned with human rights has also been engaged in a broad range of activities which can be grouped under the heading of humanitarian assistance. This may involve sending food, clothes or reading material to political prisoners, extending material to aid to the families of such prisoners providing emergency relief to refugees and internally displaced persons, providing shelter for the homeless for street children. More generally, physicians and other health workers have provided treatment to torture victims. They have investigated the medical consequences of the use of tear gas and plastic bullets and they have conducted research into the health impact of disasters such as Bhopal and Chernobyl. Keeping open the Political System: On the whole, human rights NGO's are not mass based organization. Human Rights NGO's are very much involved in political struggle in as much as the struggle for human rights, struggle about power and its control. The human rights organization is different because its purpose is largely to keep the political process open and to keep the Government accountable so that the power is not inordinately centralized or abused. Building Solidarity: NGO's and People's organization on the front line in human rights struggle are often both highly vulnerable and highly isolated. Building solidarity across the different sectors of society between workers and peasants, women organization, organizations of indigenous peoples and across ethnic and religious groups is a task taken on, by much organization working in the human rights arena. In heterogeneous societies, many NGO's recognize that change will come only by a radical restructuring of the social order. Hence, efforts are directed towards information sharing and networking as a first step by such creating solidarity. Education, Concretization or Empowerment: NGO's have come to realize that people cannot defend their rights unless they know their rights. It is increasingly felt that human rights can play a significant role in the empowerment of the impoverished. The educational efforts that engage NGO's in the human rights area, tend to be at the non-formal level, rather than the formal school setting and involve consultations, workshops and seminars and training courses for women, trade unionist, peasants, and the indigenous or church people. New methodologies have been developed, especially for reaching the illiterate, including street theatre, comic books, film poster competitions, folk music. In case of repression cases, it is possible to consider long-range objectives, education, conscientization and empowerment move to a priority position in the human rights agenda as the best hope for the future. Legislation to Incorporate or Develop Human Rights Standards: At the International and regional level, the burden of legislative drafting has fallen to international human rights NGO's which have been playing an increasingly important in this area. The NGO's are often engaged in drafting legislative proposals, preparing position papers on pending legislation and testifying before Parliamentary or other Government Committees. Today, NGO's working groups closely follow the drafting of new international human rights, legislation- treaties, declaration, and guidelines and make major inputs into the process. They plan an equally important role in identifying defining new issues and areas requiring the legislation. Lobbying National and International Authorities: 77

Within the International Organizational context, NGO's will lobby expert members of key human rights bodies, or governments, or officials of the organization in order to get the votes necessary to pass a resolution, have an item inscribed into the agenda, establish a rapporteur, or commit the organization to a pro-human rights course of action. Yet, the human rights struggle is clearly a political struggle and there is nothing inherently wrong with the human rights NGO supporting or opposing specific policies on human rights grounds. Predisposed to utilize democratic tactics and strategies, many national NGO's concerned with human rights have become as professional as other private interest groups in lobbying within their own country. Some have also learned how to take their case to international arenas and forms when domestic remedies are exhausted e.g., to the UN Human Rights Committee, the UN Commission on Human Rights, its Sub- Commission, or the Sub-Commission's Working Groups on Indigenous Populations or on Slavery. Individuals and Organizations have learned how to petition within regional arenas before the European Commission or Court of Human Rights, the Inter-American Human Rights Commission or Court or the African Commission on Human and People's Rights. Amnesty International: The London-based Amnesty International has been playing an important role in monitoring the implementation of human rights in different countries of the world. In its first annual report published countries of the year 1972-73, the Amnesty International drew the attention of the Indian Government towards the detention of 17,000 people under prevention in West Bengal and sought their release. It is to be noted that the large-scale arrests during the National Emergency imposed on 20th June 1975, of members of all opposition parties in India, was the most significant event of the post-independence period of Indian history. On 27th June, 1975, the AI made public appeal to the Indian Prime Minister to free all political prisoners arrested under MISA. After 1980, the AI showed its deep concern about the deaths of people in police or jail custody, by writing to the Chief Ministers of the States of Karnataka, Madhya Pradesh., Uttar Pradesh and West Bengal where such incidents of human rights were mostly noticed. The imposition of the National Security Ordinance on 23rd September, 1980 was objected by AI on grounds that it was opposed to the fundamental and legal safeguards as laid down in the Universal Declaration and the Covenant on Civil and Political Rights. While the 1981 report of Amnesty International drew attention towards the killing of sympathizers of the Naxalites in encounters in Tamil Nadu and the main stories in the next few reports were related to the detentions and killings of Punjab Sikhs and Akali Dal leaders. In some subsequent reports, the AI attacked the amended National Security Act, which allowed detention without trial, the Terrorist And Disruptive (Prevention) Act, 1985 and unlawful killings and fake encounters by the police and security forces, referred to by AI as "extrajudicial executions". Human Rights Watch: Human Rights Watch began in 1978 with the founding of its Helsinki division. Today it has many divisions covering a major part of the globe, in the continent of Africa, the America, Asia, the Middle East as well as the signatories of the Helsinki accord. It is an independent, non-governmental organization supported by contributions from private individuals and foundations worldwide. It has its offices in New York, Washington, Los Angeles, London, Brussels, Moscow, Dushanbe, Rio de Janeiro and Hong Kong. Human Rights Watch conducts regular systematic investigations of human rights abuses in some seventy countries of the world including India. Its latest report on women's human rights violations for the period 1990-1995 contains the work of research done by staff members and consultations around the world. This report contains an account of cases of rape committed in Jammu and Kashmir by the Armed Forces as well as Armed Militants. As per this report, 'rape has been used as a weapon to punish, intimidate, coerce, humiliate and degrade. 78

The increase in reports of rapes by militant groups in Kashmir has coincided with the rise in violent crimes against civilians by these groups. The extremist militant groups seeking to enforce the 'Islamic Code Behavior' have launched other violent attacks on women. Despite the enormous diversity among NGO's working for the promotion and protection of human rights in the Commonwealth and the despite the radically different situations they confront-modern industrial society verses third world poverty, stable democracy verses military rule, peace verses civil strife- it is nonetheless possible to generalize to some extent about the problems they face. These problems can be clustered under as survival relevance, legitimacy and efficiency. Extra Ordinary Situations and Human Rights States of Emergency A state of emergency derives from a governmental declaration made in response to an extraordinary situation posing a fundamental threat to the country. The declaration may suspend certain normal functions of government, may alert citizens to alter their normal behaviour, or may authorise government agencies to implement emergency preparedness plans as well as to limit or suspend civil liberties and human rights. The need to declare a state of emergency may arise from situations as diverse as an armed action against the state by internal or external elements, a natural disaster, civil unrest, an epidemic, a financial or economic crisis or a general strike. States of emergency are not uncommon occurrences, particularly in dictatorial regimes where the state of emergency may endure as long as the regime lasts. In some situations, martial law is also declared, allowing the military greater authority to act. Other terms for referring to emergency situations are state of exception, state of alarm and state of siege. Key Components of a State of Emergency States of emergency have two components: • a legal framework consisting of the constitutional and legislative bases for the state of emergency, and • an operational framework involving the organisational structure and strategic plans for dealing with the state of emergency. While separate, these components must be compatible; in other words, the legal framework must take into account operational requirements, and the operational requirements must respect the legal framework, including international law. Focusing on the legal framework, this backgrounder will deal with democratic accountability, human rights and the rule of law during states of emergency. Why is this issue important? The implementation of emergency law invariably leads to restrictions on normal economic, civil or political activity and rights in order to address the extraordinary circumstances that have given rise to the emergency situation. Certain restrictions may be fully justified. 79

At the same time, there is a danger that a government will take advantage of a state of emergency to introduce unwarranted restrictions on human rights and civil liberties, to neutralise political opponents, to postpone elections, or for other self-serving purposes that would be more difficult to pursue under normal circumstances. In some countries, there has been a tendency to maintain states of emergency for years or even decades, long after the original reason for its proclamation has disappeared. The danger that a "constitutional dictatorship" can arise out of a state of emergency should not be under-stated. What essential principles must be respected during emergency rule? A country's constitution or legislation normally describes the circumstances that can give rise to a state of emergency, identifies the procedures to be followed, and specifies limits on the emergency powers that may be invoked or the rights that can be suspended. While each country will want to define its own practices, international norms have developed that can provide useful guidance. For example, important international treaties

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such as the European Convention of Human Rights and Fundamental Freedoms (ECHR) and the International Covenant on Civil and Political Rights (

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stipulate that states are to observe the following principles. 1. Temporality: this refers to the exceptional nature of the declaration of a state of emergency. 2. Exceptional Threat: the crisis must present a real, current or at least an imminent danger to the community 3. Declaration: the state of emergency must be announced publicly; this informs citizens of the legal situation and reduces the possibility of a de facto state of emergency, that is, a situation whereby the state restricts human rights without officially proclaiming a state of emergency. 4. Communication: notification of the measures taken must be made to other states and relevant treaty- monitoring bodies; for example, if a state is to derogate from its obligations under the ECHR or ICCPR then it must inform the Secretary General of respectively the Council of Europe or the UN of its derogation, the measures it has taken and the reasons therefore, as well as the termination of the derogation. 5. Proportionality: the measures taken to counter the crisis must be proportional to the gravity of the emergency situation; this applies to the area of application, their material content and their duration. 6. Legality: human rights and fundamental freedoms during a state of emergency must respect the limits provided for by the relevant instruments of international and national law; furthermore, a state of emergency does not imply a temporary suspension of the rule of law, nor does it authorise those in power to act in disregard of the principle of legality, by which they are bound at all times. 7. Intangibility: this concerns the fundamental rights from which there can be no derogation, even during times of emergency. Which human rights cannot be limited even in the event of a state of emergency? Certain human rights are non-derogable under any circumstances. The ECHR and the ICCPR identify these rights as follows: • the right to life • prohibition of torture • freedom from slavery • freedom from post facto legislation and other judicial guarantees • the right to recognition before the

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law • freedom of thought, conscience and religion. The UN Human Rights Committee has

recognised that, in addition to the non-derogable rights listed above, there are several other humanitarian provisions that must remain inviolable. 80

• the humane treatment of all persons deprived of their liberty • prohibitions against hostage-taking and unacknowledged incarceration • protection of the rights of persons belonging to minorities • the prohibition of propaganda advocating war or national, racial, or religious hatred • procedural guarantees and safeguards designed to ensure the integrity of the judicial system. What special powers can be proclaimed in a state of emergency? Special emergency powers are granted to the government by virtue of the constitution or statutory laws. Examples of emergency measures or powers range widely, for example: • the restriction of press freedom and the prohibition of public meetings • domestic deployment of the armed forces • evacuation of people from their homes and places of work • searches of homes and other private places without a warrant; arrests without charges • confiscation of private property (with or without compensation) and/or its destruction • regulation of the operations of private enterprise; interference with financial transactions and export regulations • special legislation to punish non-compliance with emergency regulations. In some countries (e.g., the UK), special judicial bodies may be set up during the emergency situation, whereas in other countries (e.g., Germany), extraordinary judicial bodies are forbidden. In a state of emergency, responsibility for government must remain with civilian authorities on the national and local level. Security forces assist the civilian authorities in a subsidiary role. What mechanisms and approaches can help guard against the abuse of emergency powers? The role of parliament Most legal systems ensure that the executive does not have sole authority to declare a state of emergency and provide for parliamentary ratification of the decision of the executive – often, with a qualified vote. As a general rule, governments, checked by parliament, must provide a well-considered justification for both their decision to declare a state of emergency and the specific measures to address the situation. Most parliaments also have the power to review the state of emergency at regular intervals and to suspend it as necessary. This parliamentary role is especially important in long-lasting states of exception, where the principle of civilian supremacy over the security sector may be at risk. Whatever the emergency situation, the post hoc accountability powers of parliament, i.e. the right to conduct inquiries and investigations on the execution of emergency powers ought to be guaranteed by law. This is important for both assessing government behaviour and identifying lessons learned with a view to future emergencies. The role of the judicial system The judicial system must continue to ensure the right to fair trial. It also must provide individuals with an effective means of recourse in the event that government officials violate their human rights. In order to guard against infringement of

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non-derogable rights, the right to take proceedings before a court on questions relating to the lawfulness of emergency measures must be

safeguarded through independence of the judiciary. The courts can play a major role in decisions concerning the legality of a declaration of a state of emergency as well as in reviewing the legality of specific emergency measures. 81
The role of civil society An emergency situation exerts enormous pressure on state and society. To deal with it effectively, governments need the cooperation of their citizens. Any abuse or unwarranted limitation of human rights in such a situation will undermine that cooperation and make it more difficult to surmount the emergency situation. A state has a vital interest in dealing with a state of emergency in an accountable and responsible manner. The role for neighbouring states and the international community
Emergency situations may also affect the relations of a state with its neighbours and have implications for the international community. All states should have an interest in ensuring that the declaration and implementation of states of emergency are subject to certain limitations and proceed in accordance with international norms. The international community needs to be actively engaged in ensuring that governments observe these norms. In particular, it must work with concerned governments to secure a swift return to normalcy and the restoration of the constitutional order in which rights can again be fully ensured. Which branch of government can declare a state of emergency? Most states have legal mechanisms governing the declaration of a state of emergency and the implementation of derogation's. As concerns the prerogative to declare a state of emergency, the three most common approaches are the following: • The executive declares the state of emergency and is obliged to inform parliament within a specified period of time (e.g. US) • The executive declares the state of emergency but must have this ratified by parliament before it can proceed with emergency measures (e.g. Germany) • Parliament itself declares the state of emergency (e.g. Hungary) Typically, a state of emergency empowers the executive to name coordinating officials to deal with the emergency and to override normal administrative processes regarding the passage of administrative rules. Emergency Powers of President, Governor and Human Rights Emergency Provisions of the Constitution For Central Gov. to meet abnormal situation effectively Federal to Unitary 3 types of emergencies: Article 352 – National Emergency –due to War, External Aggression, Armed Rebellion; Constitution express this type 'proclamation of emergency' Article 356 –President's Rule, State Emergency, Constitutional Emergency –due to failure of constitutional machinery; Constitution NOT use emergency for this type Article 360 –Financial Emergency –due to a threat to the financial stability or credit of India Article 352: 1.

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If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or [armed rebellion], he may,

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Proclamation, make a declaration to that effect [

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in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation]. 2. A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation. 3. The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing. 4. Every Proclamation

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this article shall be laid before each House of Parliament and shall,

except where it is a Proclamation revoking a previous Proclamation,

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cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People

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has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the

Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period,

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the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the

House of the People. 5. A Proclamation so approved shall, unless revoked, cease to operate on the expiration of

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a period of six months from the date of the passing of the second

of the resolutions approving the Proclamation under clause (4):

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Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and

75%

MATCHING BLOCK 302/385

W

a resolution approving the continuance in force of such Proclamation has been passed by

the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period,

64%

MATCHING BLOCK 303/385

W

the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the

continuance in force of the Proclamation has been also passed by the House of the People. 6. For the purposes of clauses (4) and (5), a resolution may be passed

87%

MATCHING BLOCK 304/385

W

by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the Members of that House present and voting. 7.

Notwithstanding anything contained in the foregoing clauses,

73%

MATCHING BLOCK 305/385

W

the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such Proclamation if the

House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation 8.

66%

MATCHING BLOCK 306/385

W

Where a notice in writing signed by not less than one tenth of the total number of members of the House of the People has been given of, their intention to move a resolution for disapproving,

or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (l) or

78%

MATCHING BLOCK 307/385

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a Proclamation varying such Proclamation, (a) to the Speaker, if the House is in session; or (b) to the President, if the House is not in session, a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or as the

case may be, by the President, for the purpose of considering such resolution. 83

9. The power conferred on the President by this article shall

include the power to issue different Proclamations on different grounds, being war or external aggression or armed rebellion or imminent danger of war or external aggression or armed rebellion, whether or not here is a Proclamation already issued by the President under clause (l) and such Proclamation is in operation. Article 353: While a Proclamation of Emergency is in operation, then — 1.

100%

MATCHING BLOCK 308/385

W

notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised; 2. the

power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List: Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India,— i.

90%

MATCHING BLOCK 309/385

W

the executive power of the Union to give directions under clause (a), and ii. the power

of Parliament

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MATCHING BLOCK 310/385

W

to make laws under clause (b), shall also extend to any State other than

a State in which or in any part of which the Proclamation of

65%

MATCHING BLOCK 311/385

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Emergency is in operation if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to

the

100%

MATCHING BLOCK 312/385

W

part of the territory of India in which the Proclamation of Emergency is in operation.]

Article 354: 1.

100%

MATCHING BLOCK 313/385

W

The President may, while a Proclamation of Emergency is in operation, by order

direct that all or any of the provisions of articles 268 to 279 shall for such period, not extending in any case beyond the expiration of the financial year in which such Proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit. 2. Every order made under clause (1)

97%

MATCHING BLOCK 314/385

W

shall, as soon as may be after it is made, be laid before each House of Parliament. Article 355:

100%

MATCHING BLOCK 315/385

W

It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.

Article 356: 1.

83%

MATCHING BLOCK 316/385

W

If the President, on receipt of a report from the Governor *** of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation— a) assume to himself all or any of the

functions of the Government of the State and

66%

MATCHING BLOCK 317/385

W

all or any of the powers vested in or exercisable by the Governor *** or any body or authority in the State other than the Legislature of the State; b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament; 84 c) make such incidental and consequential provisions as appear to

the President

82%

MATCHING BLOCK 318/385

W

to be necessary or desirable for giving effect to the objects of the Proclamation,

including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State: Provided that nothing in this clause shall authorise

83%

MATCHING BLOCK 319/385

W

the President to assume to himself any of the powers vested in or exercisable by

a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts. 2.

100%

MATCHING BLOCK 320/385

W

Any such Proclamation may be revoked or varied by a subsequent Proclamation. 3.

100%

MATCHING BLOCK 321/385

W

Every Proclamation under this article shall be laid before each House of Parliament and shall,

except where it is a Proclamation revoking a previous Proclamation,

92%

MATCHING BLOCK 322/385

W

cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is

35%

MATCHING BLOCK 323/385

W

dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the

Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period,

66%

MATCHING BLOCK 324/385

W

the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the

House of the People. 4. A Proclamation so approved shall, unless revoked, cease to operate on

100%

MATCHING BLOCK 325/385

W

the expiration of a period of [six months from the date of

issue of the Proclamation]:

94%

MATCHING BLOCK 326/385

W

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of [six months] from the date on which under this clause it would otherwise have ceased to operate,

100%

MATCHING BLOCK 327/385

W

but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of [six months] and

75%

MATCHING BLOCK 328/385

W

a resolution approving the continuance in force of such Proclamation has been passed by

the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period,

64%

MATCHING BLOCK 329/385

W

the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the

continuance in force of the Proclamation has been also passed by the House of the People: [

90%

MATCHING BLOCK 330/385

W

Provided also that in the case of the Proclamation issued under clause (1) on the 11th day of

May, 1987

100% **MATCHING BLOCK 331/385** **W**

with respect to the State of Punjab, the reference in

the first provision to this clause to “three years” shall be construed as a reference to [five years.] 5. Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation

83% **MATCHING BLOCK 332/385** **W**

shall not be passed by either House of Parliament unless— a) Proclamation of Emergency is in operation, in the whole of

India or, as the case may be, in the whole or any part of the State, at the time of the

91% **MATCHING BLOCK 333/385** **W**

passing of such resolution, and b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly

of the State concerned:] Provided that nothing in this clause shall apply to the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab.] 85
Article 357: 1. Where by a Proclamation issued under clause (1) of article 356, it has been declared

91% **MATCHING BLOCK 334/385** **W**

that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament,

it shall be competent— a) for Parliament to

34% **MATCHING BLOCK 335/385** **W**

confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may

think fit to impose, the power so conferred to any other authority to be specified by him in that behalf; b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof; c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament. 2. Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority.] Article 358: 1. [While a Proclamation of Emergency declaring that

86% **MATCHING BLOCK 336/385** **W**

the security of India or any part of the territory thereof is threatened by war or by external aggression

100% **MATCHING BLOCK 337/385** **W**

is in operation], nothing in article 19 shall restrict the power of the State

as defined in Part III

95%

MATCHING BLOCK 340/385

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to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect: [

Provided that [where such Proclamation of Emergency] is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as

92%

MATCHING BLOCK 338/385

W

the security of India or any part of the territory thereof is threatened by activities in or in relation to

the

100%

MATCHING BLOCK 339/385

W

part of the territory of India in which the Proclamation of Emergency is in operation.] 2.

Nothing in clause (1) shall apply— a)

73%

MATCHING BLOCK 342/385

SA VIJAYAKUMAR vb.pdf (D146964320)

to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency

in operation when it is made; or b) to any executive action taken otherwise than under a law containing such a recital.]
Article 359: 1.

98%

MATCHING BLOCK 341/385

W

Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of [the rights conferred by Part III (except articles 20 and 21)] as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order [(1

A) While an order made under clause (1) mentioning any of [the rights conferred by Part III (except articles 20 and 21)]

58%

MATCHING BLOCK 346/385

SA VIJAYAKUMAR vb.pdf (D146964320)

is in operation, nothing in that Part conferring those rights shall restrict the power of the State

as defined in the said Part

92%

MATCHING BLOCK 350/385

SA VIJAYAKUMAR vb.pdf (D146964320)

to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as 86 soon as the

order aforesaid

100%

MATCHING BLOCK 343/385

W

ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect:.] [

Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as

92%

MATCHING BLOCK 344/385

W

the security of India or any part of the territory thereof is threatened by activities in or in relation to

the

100%

MATCHING BLOCK 345/385

W

part of the territory of India in which the Proclamation of Emergency is in operation.] [(1

B) Nothing in clause (1A) shall apply: a)

73%

MATCHING BLOCK 358/385

SA

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to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency

in operation when it is made; or b) to any executive action taken otherwise than under a law containing such a recital. 2.

100%

MATCHING BLOCK 347/385

W

An order made as aforesaid may extend to the whole or any part of the territory of India: [

Provided that where a Proclamation of Emergency is in operation only in a part of the territory of India, any such order shall not extend to any other part of the territory of India unless the President, being satisfied that

92%

MATCHING BLOCK 348/385

W

the security of India or any part of the territory thereof is threatened by activities in or in relation to

the

100%

MATCHING BLOCK 349/385

W

part of the territory of India in which the Proclamation of Emergency is in operation,

considers such extension to be necessary.] 3. Every order made under clause (1)

97%

MATCHING BLOCK 351/385

W

shall, as soon as may be after it is made, be laid before each House of Parliament. Article 359

A: [Application of this Part to the State of Punjab.] Rep. by the Constitution (Sixty-third Amendment) Act, 1989, s. 3 (w.e.f. 6-1-1990).

Article 360: 1. If the President is satisfied that a situation has arisen whereby the financial stability or credit of India

88%

MATCHING BLOCK 352/385

W

or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect. 2.

A Proclamation issued under clause (1)— a) may be revoked or varied by a subsequent Proclamation; b)

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MATCHING BLOCK 353/385

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shall be laid before each House of Parliament; c) shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People

59%

MATCHING BLOCK 354/385

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has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to

in sub-clause (c), and if

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MATCHING BLOCK 355/385

W

a resolution approving the Proclamation has been passed by the

Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period,

66%

MATCHING BLOCK 356/385

W

the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the

House of the People.] 3. During the period any such Proclamation as is mentioned in clause (1)

91%

MATCHING BLOCK 357/385

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is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and

to the giving of such other directions as the President may deem necessary and adequate for the purpose. 87

4. Notwithstanding anything in this Constitution— a) any such direction may include— i. a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State; ii. a provision requiring all Money Bills or other Bills to which the provisions of article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State; b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts. Jammu & Kashmir is not the only state for which special provisions have been laid down in the Indian Constitution — a wide range of safeguards are available to as many as 11 other states, listed in Articles 371, 371A to 371H, and 371J. One important difference between Articles 370 and 371 compared to Articles 371A-H and 371J, is that while the latter set of provisions were incorporated into the Constitution by Parliament through amendments under Art 368 (which lays down the “power of Parliament to amend the Constitution and procedure therefor”), Articles 370 and 371 have been part of the Constitution from the time of its commencement on January 26, 1950. Following reasons are responsible for special provisions for the states : 1. The condition in which the Constitution of India was passed was very critical and different from today’s time. The issue of federalism was one of the areas of debate. In order to cater the special needs of states, the founders of the new India provides special provision. 2. The special development boards were specifically constituted to cater the developmental needs of the areas such as Katchh and Marathwada in Gujarat and Maharashtra respectively. 3. The required consideration was also given to the tribal culture by the provision of autonomy through tribal councils and local governance models, Eg: Tuensang district of Nagaland. 4. The discretionary power was accorded with the governor of some states in order to manage the local level challenges in very efficient manner. 5. The constitution provided special protection to customary law in order to protect them from outside influence. The conceptualization of Justice for these communities was protected as per their laws. 6. Special provision also takes care of economic viability of local governance and thus provided scope for revenue collection and also grants for various welfare schemes from central government. 7. The Presidential authority in many areas provides the ultimate protection to these special provisions in order to keep them for the welfare of groups with special needs. Article 371 → Special Provisions for Maharashtra & Gujarat President is authorised to provide that Governor of Maharashtra & Gujarat would have special responsibilities for: 1. Establishment of separate development boards for Vidarbha, Marathwada & rest of Maharashtra + Kutchh & rest of Gujarat 2. A report on working of these boards will be placed each year before state legislative assembly 3. Equitable allocation of funds for developmental expenditure over the mentioned areas 4. Equitable arrangements providing adequate facilities for technical education, vocational training & adequate opportunities for employment in state services Article 371 – A → Special Provisions for Nagaland 88

1. An act of parliament relating to following matters would not apply to Nagaland unless state assembly so decides: • Religious & social practices of Nagas • Nagas customary law & procedure • Administration of civil or criminal justice involving decisions according to Naga customary law • Ownership & transfer of land & its resources 2. Special responsibility of governor with respect to law & order in the state (after consulting COMs, but his decision will be final) regarding internal disturbances occurring in Naga hills mainly in Tuensang area (Special responsibility ceases if President directs so) 3. Governor has to ensure that money provided by the GOI out of consolidated fund of India for any specific purpose, is included in the demand for grant relating to that specific purpose only, not any other. 4. A regional council for Tuensang district, consisting of 35 members should be formed & governor in his discretion shall make all the rules & terms regarding this council. 5. For a period of 10 years, from the formation of the state of Nagaland or for a further period as specified by Governor, on recommendations of the regional council, following provisions would be operative for Tuensang district: 6. Administration of Tuensang district shall be carried on by the governor 7. Governor in his discretion shall arrange for equitable distribution of money, between Tuensang district & Rest of Nagaland, provided by the center. 8. There shall be a minister for Tuensang affairs in state COMs 9. Final decision on all matters relating to Tuensang district shall be made by governor in his discretion 10. Members in Nagaland assembly from the Tuensang district are not elected directly by the people but by regional council. Article 371 – B → Special Provisions for Assam 1. President may provide for the constitution & functions, a committee of Legislative assembly of the state, consisting of members of that assembly elected from the tribal area of Assam 2. President can also direct that the governor shall have special responsibility to secure proper functioning of that committee Article 371 – C → Special Provisions for Manipur 1. President may provide for the constitution & functions, a committee of Legislative assembly of the state, consisting of members of that assembly elected from the hill areas of Manipur. 2. President can also direct that the governor shall have special responsibility to secure proper functioning of that committee 3. Governor should submit an annual report to the President regarding the administration of Hill areas Article 371 – D & E → Special Provisions for Andhra Pradesh 1. President is empowered to provide equitable opportunities & facilities for people belonging to different parts of the state in matters of public employment & education. 2. For above purpose, President may require the state government to organize civil posts in local cadre for different parts of the state & also provide for direct recruitment to posts in local cadre (or in any such educational institution) 89

3. President may provide for the establishment of an administrative tribunal in the state to deal with certain disputes, relating to appointment, allotment or promotion to civil posts in the state. 4. Only SC is to exercise jurisdiction over such tribunal which means they are outside the purview of HC (President may abolish the tribunals if he thinks it is not necessary) 5. Article 371 E: Parliament may by law provide for the establishment of a University in the State of Andhra Pradesh. Article 371 – F → Special Provisions for Sikkim 1. Legislative assembly shall not less than 30 members + 1 seat from the state in Lok Sabha & 1 in parliamentary constituency 2. For the purpose of protecting the rights & interest of different sections of Sikkim population, Parliament is empowered to provide number of seats in Sikkim administrative assembly for the people belonging to such sections 3. Governor in his discretion (On direction of President) have special responsibility for peace & equitable arrangement for socio-economic development of different sections of Sikkim Article 371 G → Special Provisions for Mizoram 1. Legislative assembly shall not be less than 40 members 2. An act of parliament relating to following matters would not apply to Mizoram unless state assembly so decides: • Religious & social practices of Mizo • Mizo customary law & procedure • Administration of civil or criminal justice involving decisions according to Mizo customary law • Ownership & transfer of land & its resources Article 371 H → Special provisions for Arunachal Pradesh 1. Legislative assembly shall not be less than 30 members 2. Governor of Arunachal Pradesh, on directions of President, shall have special responsibility for law & order in state (May consult with COMs but his decision will be final) Article 371 – I → Special provisions for Goa 1. Legislative assembly shall not be less than 30 members Article 371-J It'll grant special status to six backward districts of Hyderabad-Karnataka region to: 1. Establish a separate Development Board 2. This board will see that sufficient funds are allocated for Development of the region. 3. Local reservation in education and Government-jobs (Domicile requirement) All these provisions cater the needs of special circumstances that exist in those areas in order to provide the constitutional remedies for various socio-economic challenges. Proclamation of The Extra-Ordinary Laws (MISA, NASA, TADA and Armed Forces Special Power Act 1958) 90

The first thing that may be highlighted is the legislative measure which the authorities of the State had to take to deal with the problem arising from the political offences which were an organized attempt against the established government of our country. These offences were generally known as offences of terrorism and disruption. They were such that the peace and order of the country was very much disturbed, the individuals were targeted and political institutions were disrupted. The legislation that had been enacted to deal with the problem of terrorism naturally affected the rights and remedies of the persons and they contained peculiar features of their own. The legislation was so drastic that there was a hue and cry against the legislative measures, particularly from the Human Rights organizations; In order to improve the status of the existing law more than one commission and organization had occasion to deal with the problem of revising the laws. The next important thing that affected the safeguard of due process of law was the rise in the incidence of crime because of which the authorities of the State considered it necessary to enact laws and provide for special procedures discarding the normal safeguards to the accused. In the context of these crimes what is noticed is the mistreatment of the accused by denying him the safeguards needed as an individual. The excesses of the law enforcement agencies have been exposed by the individuals by taking the matter to the courts and by the human rights organizations by politicizing the issue. These phenomena are discussed in this particular chapter, first the discussion is with regard to anti- terrorism legislation and then the discussion is with regard to the ill- treatment of the affected persons. I. Anti-Terrorism Legislation In India also, the Union Parliament and certain State Legislatures have enacted laws on the lines of the laws enacted by other countries. Among the laws which have departed from the fundamental principle of Due Process Theory are the Central Laws like the Maintenance of Internal Security Act (MISA),

85%

MATCHING BLOCK 359/385

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the Terrorist and Disruptive Activities Prevention Act (TADA) the Prevention of Terrorism Act (POTA),

UAPA, etc. Among the State Laws which have bypassed the principle of Due Process and adopted the Crime Control Theory are the State Laws like the Maharashtra Crime Control Act (MCOCA) enacted by the Maharashtra Legislative Assembly. i. Preventive Detention laws so Far Enacted in India In the exercise of its legislative power the Union Parliament has been enacted the Preventive Detention Laws which have taken to the courts number of times questioning the very validity of such laws. The first preventive detention law was the Preventive Detention Act 1951 which was to be in force for one year and could be extended year after year. However, the validity of this law lapsed in 1966, and afterwards the Union Legislature enacted the Maintenance of Internal Security Act, 1971, which was followed by other preventive detention laws, like the National

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MATCHING BLOCK 360/385

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Security Act, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, the Terrorist and Disruptive Activities Prevention Act

etc. In all these cases controversies had arisen about the protection to the rights of the individuals, reference may be made to some of them as follows: Article 22(4) of the Constitution of India elucidates the mandate to be followed in case of person arrested under preventive detention legislation existing in India.

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MATCHING BLOCK 361/385

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The word 'preventive' is used in contra-distinction to the word 'punitive'. The

intent behind the punitive detention is to punish a person for crime that he has already committed in contrast to the concept of preventive detention where the intent is to prevent a person suspected to commit a crime before he tries to do it. No offences are proved nor are any charge formulated. The main and ultimate intent behind preventive detention is to detain a person suspected to commit crime which harms the society or cause threat to the government in contrast to the usual conviction to be proved by evidence in law. 91

(1) The Preventive Detention (PD) Acts: The first Preventive Act was enacted by the Parliament on 26th February 1950. The main intent behind this legislation was to empower State to detain a person in preventive manner from committing of an offence which will cause threat to the defence of India, India- Foreign relation, sovereignty of India and public order as well as the essential goods and services for the community at large. Section 3 empowered the Central and State Governments and certain officials under them to make orders of detention if they deemed fit in order to prevent a person from committing any act which would cause harm to the above-mentioned factors, may preventively detain such suspected person. (2) Maintenance of Internal Security Act (MISA), 1971: But the Preventive detention law was revived in the form of Maintenance of internal Security Act, 1971(MISA), in less than two years' time after the lapse of the first Preventive Detention Act, 1950. This Act continued to be in operation until the year 1977. That Act was repealed by the Janata Government in 1978, which came to power after the defeat of, the Congress Ministry headed by Smt. Indira Gandhi. But in less than two years' time after the repeal of the MISA the caretaker Government headed by Mr. Charan Singh again revived the Preventive Detention Law in the form

100%

MATCHING BLOCK 362/385

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of Prevention of black-marketing and Maintenance of Supplies of Essential Commodities Act.

Its object is to prevent black-marketing, hoarding of essential commodities. It requires the detaining authority to furnish grounds of detention within a period of 5 days from the date of detention, extendible to 10 days in exceptional cases. Within 3 weeks the Government is required to place grounds of detention with detenu's representation before

60%

MATCHING BLOCK 363/385

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the Advisory Board. The Board must submit its report to the Government within 7 weeks from the date of detention. The maximum period for which the

Advisory Board

could detain a person after the confirmation has been restricted to 6 months from the date of detention. The aggrieved person has right to move the courts under Articles 32 and 226

78%

MATCHING BLOCK 364/385

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of the Constitution. (3) Conservation of Foreign Exchange, and Prevention of Smuggling Activities (COFEPOSA) Act 1974:

Parliament has passed the COFEPOSA to provide for preventive detention for preventing smuggling and conserving foreign exchange. The constitutional safeguards embodied in Article 22 (5) of the Constitution are available to a person

95%

MATCHING BLOCK 365/385

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SHABANA NIHAR A PH20015.pdf (D143037469)

detained under the Conservation of Foreign Exchange, Prevention of Smuggling Activities Act,

and 1974 (CO FEPOSA). Merely because

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MATCHING BLOCK 366/385

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obligation to forward the representation made by the detenu along with the reference to the 1950,

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MATCHING BLOCK 368/385

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VIJAYAKUMAR vb.pdf (D146964320)

and Section 10 of the MISA, 1971, it cannot be said that there is no obligation cast on the Government to consider the representation made by the detenu before forwarding it to the Advisory Board. The repeal of MISA and retention of the COFEPOSA does not imply that preventive detention can be freely used without any power of judicial review and without any checks and balance against persons engaged in

anti- social and

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economic offences. The courts have always viewed with disfavour the detention without trial whatever be the nature of offence. The

Court re-affirmed its view expressed in its earlier decisions that

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the Government is bound to consider the representation made by the detenu without waiting for the opinion of the Advisory Board.

In a landmark judgement in Attorney General of India v. Amrit Lal Prajivanda's a nine judge constitution Bench of the

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Supreme Court unanimously has held that during the period of emergency the President is empowered to suspend fundamental rights of

detention. During that period the Presidential order suspending enforcement of certain

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any executive action inconsistent with such rights. The Court held the two enactment's of 1975 period as constitutionally valid. The Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA) and (SAFEMA) as they were passed to deal with the Security of

the country and had to be implemented effectively. The court also upheld Section 12-A of COFEPOSA which had done away with the requirements of supply of grounds of detention and the consultation with Advisory Board during the 92 emergency. The court also upheld the provisions

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of such smugglers and foreign exchange manipulators (the detainees) in whosever name they may have been held. After the emergency was over on March 21, 1977 the detainees challenged the validity of their detention and seizure of their property on the ground both the Act violate Arts. 14, 19, & 22 of the Constitution. The ruling of the court is as follows: 1. Union legislation was perfectly eligible to enact both the COFEPOSA & the SAFEMA. 2.

As per sec 3 of COFEPOSA, order for detention is same as order under Section 2(2) of SAFEMA. The detentions orders under the purview of section 12 as well as the orders which fall outside the purview of sec 12 are primarily eligible to determine the applicability of SAFEMA to the person under detention along with their accomplice including associates and relatives as well. The only exception to this is the orders to which the provisions under sec 2(2) (b) are applicable. 3. The person under the detention or his associates or relatives cannot challenge the detention in case the detention is considered to be the basis to apply SAFEMA where the person under detention did not challenge the detention in the court or already held to be unsuccessful by the court for such detention. 4.

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The definition of "illegally acquired properties" in clause (c) of section 3 OF SAFEMA is not invalid or ineffective. 5. The

main object and intent of SAFEMA is to cover under its ambit such person who are relatives or associates of the person detained in order to seize the property of the detenu which are held in the name of such persons. Thus, the applicability of such legislation to relative or associates of the person detained is held to be valid. However, it must be taken in consideration that such applicability shall not affect the property of such relative and associates. 6. S. 5 clause A of COFEPOSA is not in consonance with and

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is violative of Article 22 (5) of the Constitution of India and

hence is not valid. 7. However, the petitioners did not prove the violation of Article 14, 19 and 21 of the Constitution of India by the SAFEMA. This is a very important judgment of the Supreme Court. By upholding the validity of the above Acts, the court has struck a heavy blow on economic offenders by depriving them of their ill-gotten gains. The object of the enactment of both the Acts was to have proper check on the activities of smugglers and foreign exchange manipulators aiming at violation of the regulations and restrictions on import and export by the government. The COFEPOSA aims to act as deterrence by empowering the authorities to preventive detain suspect person and thus is law relating to preventive detention whereas SAFEMA aim as economic protection to the country by providing the preventive detention of the economic violators who are engaged in acquisition of property through themselves or through others. (4) The National Security Act, (NASA) 1980: Again in 1980 the President issued the National Security Ordinance providing for preventive detention of persons responsible for communal and caste riots and other activities prejudicial to the country's security. The ordinance has become an Act now. It provides that a person may be detained for the period of 12 months maximum but at the same time allows the person detained to challenge his detention on various grounds inter alia including that of infringement of the guaranteed fundamental rights. The person detained must be informed the reason of his detention with the 10 days from his arrest. He must be provided with an opportunity to represent before the Advisory board in respect of the detention. It also provides that any person may be detained in prevention if he is suspect that he may commit any act detrimental

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to the security of the country, public order or supplies and services essential to the life of the community. (5)

Terrorist & Disruptive Activities Prevention Act, (TADA) 1987: 93

This Act was passed primarily with a view to dealing with specific situations of terrorism in Punjab, Kashmir and even parts of the north-east. The Act vests sweeping powers in the State Governments which in effect means local politicians and the Police-which is likely to be misused. There were wide spread complaints of misuse of the provisions of

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the Act. The Supreme Court in the famous case of Kartar Singh v. State of Punjab held that

the accused shall be tried under the TADA strictly when he is accused of committing of any terrorist act in true spirit and otherwise, he shall be tried under ordinary penal laws by the courts of regular jurisdiction and thus narrowed down the scope of TADA. Regarding the applicability of section 3 the Court unanimously held that the provision of section 3 shall apply in cases where intention of the accused is to intimate the government or spread terror among public inter alia as well as in case the accused used the arms and ammunition capable to cause death of the public and damages of the property. Alternatively, it may be said that the person be treated as terrorist only when the three ingredients of intention, action to that effect and result of persists simultaneously. Hence section 3 of TADA cannot be applied to the acts which affect the law and order merely, but such act has to be dealt under the ambit of the ordinary penal law. The validity of the Act was challenged by more than 500 under trials. Another safeguard laid down by the court against the misuse of the Act was that of speedy trial of accused as one of the fundamental rights guaranteed under the

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Constitution of India under art 21. The Court held that S.22 is violative of the fundamental rights as guaranteed by the Constitution of India

under art 21 and hence struck down. Section 22 permitted identification of an accused on the basis of his photograph. The court in this regard unanimously said that these legislations are not in consonance of the human rights and humanitarian laws well as it is utter violation of the fundamental rights guaranteed by the Constitution of India and hence ultimately led to infringement of human rights by the enforcement agencies. The Court held that the Act did not provide a blanket power of unlimited detention without trial and a citizen shall be eligible for right to bail if the investigation is not completed within six months which can be extended to max one year as per the discretion of the Hon'ble court. (6)

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Prevention of Terrorism Act (POTA), 2002: The Prevention of Terrorism Act was

enacted at a joint meeting of both Houses of Parliament on March 26, 2002. When the bill was introduced in Parliament there was a serious disagreement among the members. Government had failed to get the Bill passed by Rajya Sabha, therefore it used the enabling provision of the Constitution and called a Joint Session of the Lok Sabha and Rajya Sabha. The Members of Parliament stated that there was no categorical idea as to how the existing laws were insufficient to tackle the problem of terrorism and what new things the POTA is going to do. The constitutional validity of the POTA was challenged by the People's Union for Civil Liberties (PUCL) pointing out several drawbacks in the legislation, the most important of them being that the legislation ignored the mandates of the Constitution and the Human Rights in regard to the safeguards to be afforded to the individuals by any law, particular the pre-trial or the preventive detention laws. A Bench of the Supreme Court comprising Justices S. Rajendra Babu and G.P. Mathur dismissed the writ petitions challenging its constitutional validity. The Bench based its observation on the Supreme Court's judgment in the Sanjay Dutt case in 1994 . In that case, a presumption against the accused, Sanjay Dutt, under TADA arose on the basis of the fact of a mere possession of a fire-arm by him in a notified area. The Supreme Court in its judgment had said that the Police should 'prove conscious possession' of the firearm by the accused. Protection of Witnesses: In accordance with the dictates of International Organizations laid down in the form of Human Rights Law there has to be protection afforded to the witnesses. The following provisions of the statutory enactments in India contain the law on protection of witnesses in India: 1. Prevention of Terrorism Act, 2002: 94 The Prevention of Terrorism Act shortly called the POTA is based on the rationalization that the prevalent justice system did not prove proper effective mechanism to deal with the crime like terrorism which is existing since last 50 years in the country. This rationale however is not far from the actual truth. The so-called terrorism in British India with the Independence is tackled by the British through the two legislations Cr.P. C and IPC by amending it time to time in lieu with the new criminal activity and techniques thereof. There are various other law in India to deal with terrorist activities in India such as

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Armed Forces Special Powers Act, 1958, National Security Act, 1890, the Unlawful Activities (Preventive) Act, 1967, Disturbed Areas Act, Prevention of Seditious Meetings Act, 1911

among others along with the traditional ones Criminal Procedure Code, 1973 and the Indian Penal Code 1860. The Union Parliament has enacted special provisions in these Statutes with regard to various matters, such as, the rule regarding bail, arrest and detention, bail, evidence etc. One of the important provisions in the POTA is with regard to protection of witnesses. Sec. 12 of POTA dealing with Protection of Witnesses reads as follows: Protection of Witnesses: 1. Notwithstanding anything contained in the Code, if the Special Court so desires, all or any of the proceedings to be taken under this Act, may, shall be held in camera for the reasons to be recorded in writing, 2. A Special Court on its own motion, or on an application made before it by a witness in any proceeding, or through his Prosecution, is satisfied that the life of any such witness required, as it deems proper for maintaining the identity along with the address of such witness to be secret. 3. Notwithstanding of Sub-Section (2), a Special Court may take the measures as required as follows: a) Holding the proceedings at the place as per the Special Court discretion; b) Avoid mentioning of the names and addresses of the witnesses in any proceeding, in the orders of judgements passed by it or in any records of the cases that are open to public; c) The Special Court may take proper steps for protecting the identity and address of the witnesses to be kept in concealment; d) The Special Court may decide in the public interest not to publish any or all proceeding in any manner. 4. A person infringing any decisions or directions of the Special Court under Subsection 3 shall be punishable with an imprisonment for a term which may be extended to one year and with fine that may be extended to rupees one thousand 2. AP Control of Organized Crimes Act, 2001: It is a well admitted fact that because of its vast resources and misuse of some of the legal provision, today organized crime is pretending to be a solemn threat to the society by nullifying the usual process of law by way of sub version of the enforcement agencies, and violent threat against the persons who are inclined to give any evidence against offence. It is supported and encouraged by black money and illegal gratification, which is produced due to the illegal activities, like extortion, smuggling, unlawful narcotic trading, ransom kidnapping, contracts killings, money laundering, interalia. According to recent statistics, it is very clear that enormous wealth is being generated by carrying out such organized felony activities. This certainly can adversely affects and cause harm to the economy. The criminals of organized crime in support of the terrorist organization promote nacre terrorism that persist beyond the boundaries of nations, internationally. There are numerous criminal syndicates whose evil influence is fast piercing into different class of current economy and society, thereof posing as an eminent threat to the safety and well-being of citizens. Recent incidences have clearly suggested that these organized criminal gangs and mafia that are functioning throughout the India along with their 95 activities extended to Andhra Pradesh. The modern communication and technologies that are being used by these gangs are also quite superior to those resources that are available with law enforcement agencies. Apart from this, as our persisting penal as well as procedural law and the adjudicating system are planned to deal with the customary crime only, it seems to be insufficient machinery required to control the power and activities of these organized criminal gangs. Undeniably, our society directly and indirectly faces adverse effects due to the persisting and operative criminal syndicates throughout the country. And as the procedural laws, penal laws and the adjudicator system are insufficient to control the powerful challenges of organized crime in the State of Andhra Pradesh, this Bill is introduced to give effect to the above decision. 3. Application of Maharashtra Control of Organized Crime Act, 1999 to the Union Territory of Delhi: This particular legislation is articulated on the lines of the Organized Crimes Control Act. This Act incorporates numerous special provisions regarding arrest, detention, bail, evidence and several significant matters pertaining to criminal justice. However, among all these, one important provision enacted in this legislation pertains to the protection of witnesses. Section 19 of the Act reads as under: A Special Court either on its own motion or on an application made by any witness or even his Prosecutor, shall decide as it deem fit and take all such necessary steps to conceal the identity of any witness along with his address. Notwithstanding the provisions of Sub-Section 2, the measures which a Special Court may be taken under that Sub- Section. II. Proposals to Amend the Code of Criminal Procedure, 1973: The crime referred in IPC is generally divided in various types of four kinds by the assistance of CRPC as follows: a) Crime which can be bailed and are not at all cognizable. b) Crime which are not bailed else are nor cognizable c) Crimes which can be bailed and are recognized as well d) Crimes which cannot be bailed and are not even recognized. e) Although, we can also mention the last type of additional crime, cognizable as well as surety capability or else cannot be surety capacity of the ahead major fault. S.116-120 Indian Panel Code instance crime reduces below preceding kind. These kinds shift by the side of the foremost fault as well as resolve agreement through. The suggestion given through the NPC mentioned in the 3rd Report as well as part or else the strength fundamental verdicts of the admired suits resembling D.K. Basu and Joginder Kumar, along with in addition in each verdict given by Apex Tribunal as underlined the significance of private freedom offered in Article 21, furnish increase to single important query, that is it cannot be worthwhile to modify the CrPC offered: An individual cannot be detained for the any crimes which are stated as bailed furthermore not at all cognizable. To state in different language, any judge cannot pass any judgement detain certification related with the crime. Hence, it can be precisely be stated that in relation of whichever crime whichever is considered as bail- able in addition to which cannot be cognized, summon can be raised, it is given out via a tribunal procedure-server otherwise through different ways except a Police Official. The significance of phrase "bail-able" might be a bit altered in support of this specific reason. The phrase "bail-able" is defined to understand as a mechanical security subsequent to detain through the constabulary/tribunal. Hence, unenviable ground to detain a human being blamed pro the crime that is defined as cognizable as well as non-cognizable crime. As per the rules it is made up to mark that any police or other regulatory cannot detain the individual lacking the warrant. 96

No Police has a right to detain any person by not having warrant, i.e. in the example of non-cognizable crimes, (a). Although, there are many side of the S41 which empowers the police with the right. For Example, 41(b) states in the case that a person who is in the state of the in control of "a few apply of residence violation" which can be detained pending that established survival of legal justification intended for such crimes must be merely distinguish between according to cognizable crimes. The base of bail ability is not at all considered. It ought to be consequently specially said that detain will not be done in specific type of trails. The cases which are in relation to these crimes as well as still detain certification must not be passed via tribunals. The tribunal will pass such kind of summons that are not at all served by the above-mentioned manner. Discussion deed and Annexure III explains some kind of crimes, beside through its explanation. 2(2) detention can be done in relation to the crimes which are treated as crime s which areailable as well as the cognizable, by the current circumstances (declared in Annexure IV). Conversely, the individual will be handout through a manifestation observe, through as well as convincing his manifestation at the law enforcement place or in the front of the Judge. Although, in case applicable grounds to consider about the probability of blamed escaping plus that have been extremely frantic to catch or else he is usual type of criminal, for that purpose it is essential to a bridged each and every such grounds through letters, plus to be guilty capable regulate official along that even by the judge. For instance, blame is a usual criminal, yet the equipment in admiration of this floor will be traced. The expression "bail-able" will be omitted by the crime therefore plus they will be defined as easy as cognizable. It is also recommended that suitable alteration will be done via crime recognized S41, which offers that detain of individual will not be completed for the crime as well as previous than the circumstances revealed. The barred crime as of annexure in that order will be constant cognizable crime. It is suggested in respect of offences, which are punishable with imprisonment that may expand for 7years send to prison otherwise fewer, plus are stated in the Annexure V in addition to these currently measured as not at all-bail- able as well as cognizable crime by the CCrP), it will be measured asailable as well as cognizable crime in addition its compulsory be therefore handled. The prohibiting of some of the crimes through the kind are apprehensive as those carrying a punishment of in the S.124 as well as previous revealed plus those crime will be carry on believed as not at allailable nor cognizable, as active. (4) No alteration is planned for such kind of crimes which are carrying a punishment of put in prison extra 7years in the rule presently active. The crimes which are not at all cognizable the penalty to them will be jail for the maximum term of 7yrs it has previously up dated in the list of Anx V, taking into consideration the character of crime, rule has measured as the not at all cognizable. General principles to be observed in case of arrest: There are hardly any universal ethics that should be track in direction to create detain for crime else those crime which are jailed or life or put to death are then set penalty, moreover not given to those who were penalize expand till the life jailed. These universal values that will be assumed while creation seize are summed up in subsequent pointers: Detain shall take place; a) in the circumstances, where it happen to be necessary to fetch the activities of the person who is guilty beneath self-control, in direction to set up intellect of defence and security for the sufferers of violence in the case there are probability of the person guilty to escape as well as evade the procedure of rule, 97

b) where the lay blame on prevent his aggressive actions or renowned as a regular criminal moreover if there is probability to perform extra crime complimentary, in every such circumstances it is necessary to carry on his actions beneath control, by observance him in protection; c) where the security of the in prison person itself is obligatory; or d) where the detain of the individuals is compulsory for securing or protecting the evidence recounting the crimes e) At the times the safekeeping of individual is necessary for attaining the evidence in relation to any crime which is liable to been charged by the 7yrs or additional, by cross-examining the person. On this ground this, building position S157 of CCrP is applicable that says what time a regulatory examining the trail repossessing each and every the applicable proof concerning the crime, will continue to create detain of person who is guilty simply "compulsory" to do so. Sub-section (1) of S157 is pertinent furthermore it states as follow "If, beginning sequence external or else, an official in accuse of a police force position has grounds to suppose the assignment of a crime which he is authorized below S156 to examine, will be immediately transmit a declaration of the similar to a judge authorized to obtain cognizance as crime ahead a constabulary account as well as shall continue in individual, and will be assign individual of his subsidiary representative less than such position as the country administration might, by universal or extraordinary command, recommend is related with, to continue, to the mark, to examine the truth in addition to situation trail, as well as, if essential, to obtain process for the detection as well as detain of the criminal..." Simply on Suspicion of involvement in a crime, No detain to be completed: It is recommended rule should now purposely offer to an individual must not be detained, simply on the argument of feeling of responsibility in the crime by building essential alteration by the S41 as well as previous. Since the substance recovered as well as obtainable prior to the examining constabulary official, it is vital for that person to prima facie be content, him in opposition to whom equipment are reclaim, is implicate in a crime. If the examining administrator is pleased past hesitation, forward as well as detain the individual lack of warrant. In this orientation, it is relevant to declare the important judgment laid downstairs with the European court of human being privileges thirtieth August 1990, in Fox, Campbell and Hartley v. U. K. In this tribunal European trial of human being privileges had confirmed that division 11 of Northern Ireland (Emergency Provisions) Act, 1978, it authorizes constabulary representative to detain an individual "supposed of organism a terrorist", as violative of Art 5(1) of the ECHR. In the given trail, the Tribunal by popular assumed that simple misgiving, conversely genuine, couldn't be measured as an opinion intended for detain. This judgment agrees through the contemporary conception of individual privileges, which are in addition unreservedly preserved in Part III of Constitution of India. Along to this judgment, the above mentioned expressions (suspected of being a terrorist) were restored by the expressions "has been apprehensive in the assignment, research or commencement of take actions of violence." Statutorily integration of protects controlled in D.K.Basu's trail: In this context, it is similarly important to provide a parliamentary acknowledgment to the preserve lay downwards through the Apex Tribunal in their judgment in D.K. Basu's trail. These preserve to be integrated (being No.1 to 11) set up in the law. Legislative body of Schedule NGOs to be permitted to holiday regulate posting: Possibly the mainly universal grievance frequently seen in this scrupulous relationship is so as to moderately repeatedly people are jailed in constabulary safekeeping lacking chronicle the unlawful crime in opposition to as well as lack of a few declaration before construction whichever confirmation in consider to this nature of confinement otherwise detain prepared by act administrative establishment. It is observed that the individual which are illegally arrested in police force 98

charge may frequently reserved quantity of days plus are as well regularly bother through bad behaviour plus 3rd degree technique. Consequently, suggested there must be precise stipulation in the CCrP specially to have power over such prohibited way in addition to maintain and ensure on it. In addition this, for generating a responsibility ahead the administrator in accuse of the constabulary Station is in addition extremely necessary to draft the condition which gives authority to legislature of inventory not related to state associations to call the Police post whenever they want to call there is no time limit. These legislature must be remain a guarantee that no official by mistreatment his control arrest any human being in the Police post with no custody an evidence of detain as well as will give guarantee supplementary with the intention of the requirements preserved in our charter as well as the CCrP are person harshly experiential. In this is recommended modus operandi ought to be developing for record the authentic NGOs as well as intended for maintenance the confirmation of their governments. Requirement to raise composite skill of crime as well as incorporate the impression of Plea Bargaining: Moderately some crime detail beneath the IPC that are fundamentally national in environment, it be converted into similarly critical to amplify the amount of crime. It is consequently recommended that there must be an immense decriminalization of rule. In the Context, the rule assignment in their 154th Report scheduled CCrP, have suggested that the conception similar to request negotiate ought to be integrated in the Code. Certainly, untimely ladder must be engaged charming the supposed description. No detain must be completed below S.107 to 110 of CrPC as well as beneath comparable necessities. So far as procedures below S.107 to 110 of CrPC are apprehensive, no detain must be finished with examining official. It is suggested that police force representative reflect it essential, he must be authorized to obtain an individual temporary tie of good quality performance to maintain harmony as of individuals. This must be extensive to each parallel crime below the limited Police Law. It is not at each and every recommended or moreover planned that alter to be complete in S.151 of CCrP. Therefore, it is suggested that in confident conditions, bail must be approved to a few individuals as a subject of track, apart from in several of the grave crime. It is suggested by the stipulation of bail must be through moderate as well as surety must be approved in relation of crimes, previous than a few grave crimes for instance murder, rape plus crime in opposition to the country. Further bail must as well be settled approximately as a substance of route excluding in anywhere it is detained guilty person might vanish in addition to escape detain or whilst it is required to avert him started executing extra crime. Therefore, the necessities in CrPC recitation to allowance of security must be altered. There would not be seize or arrest of individual via police, merely for the motivation of inquiring before question. It understandable that needless capture or confinement give result to unnecessary and illegal meddling by means of the individual's private freedom certain through Article 21, it develops into decisively necessary to continue alteration in the conditions of CrPC. Despite guarantee the security plus healthy creature of the prisoner is moreover the accountability of the arrest ability. Consequently, it is suggested to hand must also be an uttered stipulation in this concerned. Regulation must specifically complete it extremely apparent that formerly an individual is detained, it will be the accountability of such impressive as well as capturing power to guarantee his security as well as comfort, for the stage he is captive. The suggestion given by the NPC in consideration to the compulsory remedial assessment of the arrested individual consequently warrants an immediate performance. In association to this, the verdict made by the Hon'ble A.P. Apex Tribunal in Challa Ramkonda Reddy v. State of A.P. will take into their knowledge. It was newly confirmed through the Apex Tribunal in many cases as well as the instance known there, where the status must be said legally responsible for reparation for the neglectful otherwise unresponsive behaviour of law enforcement or prison establishment must be reserved in psyche. The scheme will be put temporarily, we able to obtain thought, where an individual is in detention for effortless robbery or riot, who yet although is having a weak heart; was not permitted to take tablets with him at the jail even no 99

tablets were offered to him though he request to do so and ultimately he is death. As the case, an individual is permitted to continue his tablets except experienced a heart assault. In this circumstance, the worried establishment does not take a few rationally and punctual step, like only if facility of doctor are provided to him, which ultimately dies. Now we can raise the question that is will a person be left to die, simply since he has in detention and jailed for a slight crime. It is apparent to supposed powers that be accountable for it. It is since that has not been detained, his relatives would have engaged concern and he must be saved. As a result, it will be very huge a penalty. In different cases, it will be defensible if the condition is assumed accountable for compensation. It is therefore not compulsory that the rule will be provide to safekeeping evidence is to be preserved at each and every police station. Such documentation must be reserved release to examination through for the inspection of component of Bar along with the representatives of the recorded NGOs concerned in individual Rights. This evidence must include the specific with others: a) name as well as address of the individual who is arrested; b) the official detaining the person will give its basic information along with the badge; c) The point at which the person is arrested person d) cause and basis on which such detain took place; e) particulars concerning any possessions improved beginning or at the example of the individual in detention or jailed; and f) name of the individuals who were knowledgeable about his detain. However, it is tremendously necessary to elucidate the defend referred to are in calculation with the offered through the judgment of the Apex Tribunal in D.K.Basu, essential in the parliamentary gratitude through building essential alteration. Complicated responsibility of State: Any more phases will be needed detect in the verdict of the Apex Tribunal in renowned Kasturlal v. State of U.P suit. In the given instance; the gold improved beginning the individual in detained reserved in the Malkhana of the regulatory. In the, form of time any individual detains unrestricted, his gold did not reinstate to back to him since the detained gold steal by one disturbed constabulary. However, the individual raised the case against him improvement of his gold otherwise its price, however by the ultimate court on the view with the intention of no case in the favour of complicated action of administration which are relevant to independent authority of the circumstances. It as stated in the Apex Tribunal through item 300 of the foundation. The section conserves the duty as well the responsibility for the nation to take legal action and be charged gain preceding inauguration establishment. In fact, S300 obviously mentioned that aforementioned law carry on awaiting the assembly otherwise State parliament set up a act in this context, instance might be rest on the circumstances in that the State must be supposed responsible through the complicated action dedicated through its workers in addition to as well anywhere not responsible on the view be active be through the country administrators in route of implement the independent influence of situation. Now it is necessary to elucidate the precise peculiarity among supreme as well as non ruler meaning in vision of the disagreement among the decision of the extreme Tribunal. Severe fulfillment through S172, CCrP described intended for. S172 of the CCrP necessitates states "each regulate official building an examination in section is compulsory to sustain the evidence by assembly a gradually admission of his procedures in the examination surroundings onward the occasion at in sequence the occasion at which underway as well as stopped his examination, the seats call through the direct inquiry as well as a declaration condition establish throughout his examination." This police diary will be the evidence which will replicate the precise instance, position as well as conditions of detain. Although it is very critical necessities afore mentioned must severely meet by the terms with, though, it will be pertinent to perceive several of the significant justification terminated through the Apex Tribunal in Shamshul Kanwar v. 100

State. These explanations are stated by the subsequent to; anywhere the trial states the ambiguity popular in the nation in the topic of be relevant to preserve below S172. The Apex tribunal in the case of Shamshul Kanwar v. State stated to the truth that will be Police policy in addition to its Standing instructions in all the States that are set the approach in that some of the diaries are necessary preserved through the regulator as well as it has not at all consistency amid. Moreover, the tribunal as well took stand that in a few States similar to UP, the book preserved by the S172 is identified with a specific name. However, a number of regions as AP, etc which is recognised for the 'case diary.' The tribunal did make some points of the foundation intended for difference among two types of dairies. The tribunals also stated that the source to the expression "police diary or else otherwise" happening in S62 CRPC. Beyond the tribunal did stated out where the term "case diary" can be mentioned as per A.P. Rules furthermore in the policy of a small number of different Regions together with Kerala, point towards somewhat dissimilar than a "general diary". Separate by it a few different Regions, where it shows the Standing Charges of the regulatory under S172 and which can be preserved in different two division ,foremost division evidence aspects which are the procedural steps took by representative for the duration of their option of through specific situation to occasion representative have arriving the in order as well as the additional procedure throughout the examination with the moment element should surround announcement of situation. These kinds of alteration will in addition certify precise instance lying on, situate by as well as conditions in which blamed be detain through constabulary in charge, are punctually traced as well as replicate through the evidence, that is certainly a constitutional evidence established throughout the search that is clearly narrated to announcement traced through representative in conditions of S161 plus pertinent objects collected throughout the examination. Considering it such dealings, the Apex Tribunal optional a constitutional alters to exact this irregularity as well as vagueness inside observed preservation of book beneath S172. It is consequently sensible to modify S172 suitably, representing the mode in which the personal organizer sustained, its contented is to evidence as well as the method in which these thorough is toward survive converse patio as well as the advanced executive, but one, below this specific part. Individual known as defend alongside injustice of regulate analysis, the consequence suit journal accurately has its significance. IV. Arbitrary enforcement of Penal Laws by the Law Enforcement Officials: With regards to the enforcement of laws also there have been cases affecting the rights of the individuals and preference has been given to the authority of the State. There have been cases of a serious nature like those of three celebrated personalities: 1) Dr. Binayak Sen 2) Arun Feriera 3) Muhammed Ahmed Kazmi. These three respectable citizens were arrested by police enraged by their sympathy towards oppressed poor people. In the democracy innocent citizens have to be protected against tyrannical laws and oppressive policing. The due process laws are those laws which authoritatively snatch the life and liberty of citizens. Police claims that if chaos and lawlessness is to be curbed then people of dubious background have to be arrested. Media and the Human Rights activists have been raising voice against police highhandedness and brutalities. Unfortunately, the Public Interest Attorneys and Human Rights' Advocates do not raise objections when tyrannical laws are enacted which do not have safeguards for innocent suspects who wrongly get arrested under faulty suspicion perceived by police. In the state of Manipur to which our Olympic Bronze Medalist Boxer Woman Mary Kom belongs the Armed Forces Special Powers Act 1958 is in Force. Several women have been raped by the army men and several women have been murdered after rape. The voice of protesting civilians is choked by further torture. The height of absurdity is that while the state is declared as troubled area, the elections are regularly held. The authors of this paper wish to cite the case of Thang jam Manorama Devi, woman aged 32 dragged out of bed from her house after midnight on 11th July 2004 by the soldiers of 17th Battalion of Assam Rifles and later found dead thrown in the streets of Imphal. 101

It was disturbing for the entire nation that on July 15, 2004, around 30 women, aged between 45 and 73, walked naked through the city of Imphal to the Assam Rifles bastion at Kangla Fort. "Indian Army rape us too," they screamed at the astounded guards at the gates. "We are all Manorama's mothers. Can a civilized nation do this to own women? is the question this author presents before the learned participants of this national seminar. It is also disturbing fact for the legal fraternity that over 20, 000 civilians have been killed in Manipur after AFSPA 1958 was imposed on people of Manipur without 'Procedure Established by Law' They were simply gunned down. Is the Constitution of India held aloft in this country? Was the President of India who took Oath "I will protect preserve and defend the Constitution of India" rising to the occasion when article 21 was being trampled upon on every day basis? Another case is about the excesses in the state of Jharkhand. The whole world stands in support of the woman teacher Ms. Soni Sori tortured in most disgusting and cruel manner. Fake Encounters: Citizens are killed in encounters in all the nations. The most developed and rich nations also have triggered happy police. Encounter is always done under plea that the felon was dangerous and police had to kill the felon in self- defence. Due Process law does not allow any encounter under any circumstances but still when the judicial process starts the police officials get acquittal. A fake encounter is where a person has been killed by police in cold blood and not in self-defence. A genuine encounter is that in which a person has been killed by police or Para military force in self-defence. Central Government and the State Governments use this word only as genuine encounter. According Amnesty International's Annual Report 2011, "Recent data disclosed by the National Human Rights Commission New Delhi (NHRC) on people killed in clashes with the police between 1993 and 2008, showed that of the 2,560 deaths reported, out of the se deaths 1,224 (deaths) occurred in "faked encounters" implying they were extra- judicial executions," adding, "By the end of the year, the NHRC had awarded compensation to the relatives of 16 victims, "The report mentioned, encounter deaths is an area wherein utter disregard for "due process" is shown by the front line police officials and the bureaucrats supporting them. The case of Cherkuri Rajkumar and Hemchandra Pandey: On the night of 1st July and in the wee hours of 2nd July 2010 Andhra Pradesh Police killed Cherkuri Rajkumar alias Azad along with free-lance journalist Hemchandra Pandey, in an encounter that took place in the forest in Aliabad district Democratic Rights Organization, a national coalition of human rights organizations in India probed the encounter killing of Cherkuri Rajkumar alias Azad and Pandey. Bhushan who was part of fact findi ng mission filed two petitions in the Supreme Court on behalf of Swami Agnivesh and Bineeta Pandey, widow of Hemchandra Pandey through noted lawyer Prashant Bhushan the matter came up for hearing on 14 January 2011 before the Bench comprising Justice Aftab Alam and Justice R.M. Lodha. After hearing the matter the judges observed "we can't allow the republic, killing its own children" The observation of the Supreme Court put a big question mark on encounter killings going on all over India, in utter disregard of 'due process. The media reported that the post-mortem report of Azad's body mentioned blackening of skin due to burns around bullet holes on the chest. This can be the sign of firing point blank and cannot be an encounter at all. Hundreds are being killed in this manner every year by the state police and the Para military police. "You will die our police lock up or in one of our prison cells and we can also finish you in an encounter" is the attitude the front line police have in India. 3. Killing the minors in Encounter One can understand encounter deaths claimed by police regarding adult deaths. But media has come up with a story of killing 16 children between the ages 12 and 16 in encounter by the Central Reserve Police Force on the night of 28th June 2012 . In one of the operations against Maoists in Orissa-Andhra Pradesh border area 8 00 CRPF jawans were air 102

dropped to attack villagers claiming that they were gathering to plan a big attack on police. While the Home Minister congratulated the paramilitary under him, the Minister for tribal affairs went public with his dismay over the massacre. CRPF Director General aggressively defended the police action without repentance for killing the children. Director General of Police CRPF Vijay Kumar said while admitting that children were killed in the attack "bullets are blind and therefore bullets cannot distinguish between adults and children" The DG CRPF forgot that guns cannot fire themselves unless someone aims at a target and triggers. II. Problems which have arisen on account of mistreatment of Persons accused of offence With regards to the enforcement of laws also there have been cases affecting the rights of the individuals and preference has been given to the authority of the State. There have been cases of a serious nature like those of three celebrated personalities: 1) Dr. Binayak Sen 2) Arun Feriera 3) Muhammed Ahmed Kazmi. These three respectable citizens were arrested by police enraged by their sympathy towards oppressed poor people. In the democracy innocent citizens have to be protected against tyrannical laws and oppressive policing. The due process laws are those laws which authoritatively snatch the life and liberty of citizens. Police claims that if chaos and lawlessness is to be curbed then people of dubious background have to be arrested. Media and the Human Rights activists have been raising voice against police highhandedness and brutalities. Unfortunately, the Public Interest Attorneys and Human Rights' Advocates do not raise objections when tyrannical laws are enacted which do not have safeguards for innocent suspects who wrongly get arrested under faulty suspicion perceived by police. In the state of Manipur to which our Olympic Bronze Medalist Boxer Woman Mary Kom belongs the Armed Forces Special Powers Act 1958 is in Force. Several women have been raped by the army men and several women have been murdered after rape. The voice of protesting civilians is choked by further torture. The height of absurdity is that while the state is declared as troubled area, the elections are regularly held. The authors of this paper wish to cite the case of Thang jam Manorama Devi , woman aged 32 dragged out of bed from her house after midnight on 11th July 2004 by the soldiers of 17th Battalion of Assam Rifles and later found dead thrown in the streets of Imphal. It was disturbing for the entire nation that on July 15, 2004, around 30 women, aged between 45 and 73, walked naked through the city of Imphal to the Assam Rifles bastion at Kangla Fort. "Indian Army rape us too," they screamed at the astounded guards at the gates. "We are all Manorama's mothers. Can a civilized nation do this to own women? is the question this author presents before the learned participants of this national seminar. It is also disturbing fact for the legal fraternity that over 20, 000 civilians have been killed in Manipur after AFSPA 1958 was imposed on people of Manipur without 'Procedure Established by Law' They were simply gunned down. Is the Constitution of India held aloft in this country? Was the President of India who took Oath "I will protect preserve and defend the Constitution of India" rising to the occasion when article 21 was being trampled upon on every day basis? Another case is about the excesses in the state of Jharkhand. The whole world stands in support of the woman teacher Ms. Soni Sori tortured in most disgusting and cruel manner. Fake Encounters: Citizens are killed in encounters in all the nations. The most developed and rich nations also have triggered happy police. Encounter is always done under plea that the felon was dangerous and police had to kill the felon in self- defence. Due Process law does not allow any encounter under any circumstances but still when the judicial process starts the police officials get acquittal. A fake encounter is where a person has been killed by police in cold blood and not in self-defence. A genuine encounter is that in which a person has been killed by police or Para military force in self-defence. Central Government and the State Governments use this word only as genuine encounter. According Amnesty International's Annual Report 2011, "Recent data disclosed by the National Human Rights Commission New Delhi (NHRC) on people killed in clashes with the police between 1993 and 2008, showed that of the 103

2,560 deaths reported, out of these deaths 1,224 (deaths) occurred in "faked encounters" implying they were extra-judicial executions," adding, "By the end of the year, the NHRC had awarded compensation to the relatives of 16 victims, "The report mentioned, encounter deaths is an area wherein utter disregard for "due process" is shown by the front line police officials and the bureaucrats supporting them. The case of Cherkuri Rajkumar and Hemchandra Pandey: On the night of 1st July and in the wee hours of 2nd July 2010 Andhra Pradesh Police killed Cherkuri Rajkumar alias Azad along with free-lance journalist Hemchandra Pandey, in an encounter that took place in the forest in Aliabad district Democratic Rights Organization, a national coalition of human rights organizations in India probed the encounter killing of Cherkuri Rajkumar alias Azad and Pandey. Bhushan who was part of fact finding mission filed two petitions in the Supreme Court on behalf of Swami Agnivesh and Bineeta Pandey, widow of Hemchandra Pandey through noted lawyer Prashant Bhushan the matter came up for hearing on 14 January 2011 before the Bench comprising Justice Aftab Alam and Justice R.M. Lodha. After hearing the matter the judges observed "we can't allow the republic, killing its own children" The observation of the Supreme Court put a big question mark on encounter killings going on all over India, in utter disregard of "due process. The media reported that the post-mortem report of Azad's body mentioned blackening of skin due to burns around bullet holes on the chest. This can be the sign of firing point blank and cannot be an encounter at all. Hundreds are being killed in this manner every year by the state police and the Para military police. "You will die our police lock up or in one of our prison cells and we can also finish you in an encounter" is the attitude the frontline police have in India. It is the concept of Due Process of Law very much a part of the legal system. For example, the Preamble of the Constitution declares the high ideals for which the Constitution has been adopted. These high ideals are to the effect that justice, liberty, equality and fraternity will be the goal of the new Republic. Among the specific provisions enacted in the Constitution are the provisions dealing with Life, Liberty and Property. And the State is prohibited from depriving the citizens of their invaluable rights without the due process of law. Thus, Due process is an aspect of Rule of Law and a very significant principle of our constitutional democracy. The principle of Due Process of Law is applicable to several aspects of the State Administration. The laws that are enacted by the State, the implementation of the laws that is undertaken by the Executive and the judicial action in determining the rights and duties of the individuals must all conform to the principle of Due Process of law. While substantive due process requires valid and reasonable laws to be enacted for application to the people in various circumstances, the procedural due process requires the methods of administering the laws also to be just, fair and reasonable. We have in our country Due Process of Law in both the forms, i.e., the substantive Due Process and Procedural Due Process. For judicial process to be in place: 1. There must be procedural as well as substantive laws passed by legislature. 2. There must be courts comprising duly qualified judges, 3. There must be infrastructure and ministerial staff to keep record of every day steps and Progress 4. There must be some kind of technology to proceed with the procedure. The words Judicial Process and the Due Process need to be explained before proceeding further with the discussion. No Judicial Process in the world can work without laws. Therefore, legal process or process of making laws must precede the judicial process. But here we are concerned with emergent trends in judicial process only. The trends are again classified in terms legal knowledge, technology of courtroom, electronic case management. When it comes to due process law, it is police versus public. The police become the arm of the repressive state and the public becomes intimidated threatened oppressed mass of subjects. In words of Dr. S.Radhakrishnan even a democracy can be tyrannical at times when elected representatives get busy in retaining power for long term. How to implement Programs, how to chalk out policies, and to retain power out of these three the last one precedes the other two. The 104

state then has lesser and lesser regard for due process. Unfortunately, India has reached this stage. We can say the emerging trend is India has such judicial process through which it is impossible to come out unscathed. There are two parallel judicial processes. First one is the routine courts and routine laws. The second one has special laws, special investigating agencies and special courts that mostly function from jails. On 17-11-2012 when condemned Ajmal Kasab was hanged, the celebrity criminal lawyer Ujwal Nikam said "for one decade I was functioning 9 AM to 5 PM from the premises of Arthur Road Prison." The concept of Judicial Process while delivering inaugural address at the National Conference on "Judicial Process Emerging Trends" on 29th September 2012 at Venkateshwara University Tirupati Justice L. Narsimha Reddy A.P. High Court dwelt elaborately on judicial process. Justice Reddy observed that Judicial Process is the complex procedure of hearing or trial of a case by the judge having jurisdiction to try and the litigant having locus standing to knock the doors of the court. The judicial process sets in when the state, the citizen, or the legal person created by law viz. an Institution registered under the Societies Act, a Public Trust registered under the Public Trust Act., a functioning Society index under the accommodating Act or a Corporation registered under the Indian Companies Act sets in motion the trial by filing a plaint/, suit or complaint in the court of law.. Judicial process is basically whole complex phenomenon of court working. The judicial process is not confined to what the judges alone do but it includes what the clerical staff the bailiff and the advocates who are officials of the court together do. The logical question will arise as to whether the Quasi- Judicial proceedings are also included in the judicial process. The argument of the research scholar would be that all quasi-judicial process including arbitration, mediation and conciliation under respective laws must be brought in the arena of the Judicial Process. What Due Process demands is that every action of the State authorities must be based on a valid law. It is necessary that the taking of somebody's property in public interest may be there, but it must be within the authority of law. While editorial of the instrument of administration of India takes care of Life and Liberty, Article 300-A. takes care of property. Practice recognized by act reveal in Article 21 of the Constitution of India embodies "Due Process". Some jurists are of the opinion that American "Due Process" and Indian "Procedure established by law" are different in guarding life and liberty. For judicial process to occur: 1. There must be procedural as well as substantive laws passed by legislature, 2. There must be courts comprising duly qualified judges, 3. There must be infrastructure and ministerial staff to keep record of every day steps and Progress 4. There must be some kind of technology to proceed with the procedure. 105

Unit: IV Human Rights Violation In this unit, you will learn about, ? Vulnerable Groups ? Violation of Rights of Scheduled Castes and Tribes ? Violation of the Rights of Women ? Violation of the Rights of Children ? Violation of the Rights of Minorities ? Violation of the Rights of the Disabled ? Violation of the Rights of the Elderly in India ? The Domestic Violence Act, 2005 Vulnerable Groups Meaning Our society is a diversified patchwork of different sets of people practicing different cultures, customs and belonging to different race, religion, caste, gender and so on. These diversities however lead to a lot of inequalities in the population. In such conditions there is a growth of vulnerable groups who are the most exploited, suppressed and discriminated groups in the country. The Constitution of India uses the term Weaker Sections to refer to these vulnerable groups. Forms of Violations of Rights The unjust treatment meted out by these vulnerable groups are stated as follows: ? Discrimination: These groups are discriminated on grounds of being socially and economically weaker sections of the society. In case of women and children it is much greater since the society treats them as biologically weak. Post globalisation has witnessed the growth of several crimes as against the past due to large-scale migration and displacement. While changes in technology have made lives easier, it has further entangled relationships and the human nature in general has undergone major alterations which in turn has created a furore in the sphere of social discrimination. For e.g. Pre-Natal Diagnosis for Sexual Determination. ? Exploitation: The attribute of taking undue advantage of the weaker sections in the society results in exploitation which in turn leads to anti- social behaviours. For e.g. Insurgency such as the Naxalite movement. ? Deprivation: –Exploitation and deprivation are both connected to each other as one leads to the other. For example, the growing cases of malnutrition that is reported daily through the media is rampant in areas that are deprived and exploited. ? Neglect: The other main attribute of vulnerability is neglect which generally happens in case of the tribal and women as they seem to be least empowered and illiterate. ? Violence: The world today is experiencing major cases of violence against the weak. This has however manifested into insurgent movements and fight for survival movements. 107

Violation of Rights of the Scheduled Castes The traditional Indian society has a complex system of stratification based on the caste system. Its grades the society in a hierarchical order which is socially visible in the behavior of different caste groups. Problems of the Scheduled caste can be enumerated as follows: ? Untouchability and other crimes: Untouchability has been a major crime practiced for generations together against the lower caste. There has always been a depiction of untouchability related crimes in the media and the government of India has taken several measures to combat these sectarian crimes against the lowest in the social strata. ? Poverty: Along with Untouchability comes the issue of poverty which is the most prominently held fear of the lower castes in the India society. They are denied access to landholdings and all attempts made to undermine poverty is defeated in the long run. There have been attempts to bring the scheduled caste in the mainstream. However, the success has been limited. ? Economic Exploitation: Further, the main issue that the people in this group face is economic exploitation on account of illiteracy, landlessness and poverty. Attempts to alleviate their status were made by social reformers in various parts of India. Violation of Rights of Scheduled Tribes The Scheduled Tribes, who are the original people (aborigines) from the forests are the most vulnerable group of people in India. They constitute 8.6% of the population living here with a maximum concentration of population seen in the north eastern parts of India. This group is recognized as the weaker section by the Constitution of India. The violation of rights which began from the time of the British are still found. The main problems of the tribal's are as follows: ? Land Alienation: The tribal's have been alienated from their native lands owned by their forefathers for generations together. This is not a post-Independence phenomenon, but it was common even during the colonial days. The Forest laws not only alienated the Forest Dwellers (as know today) but further pushed them to the brinks of poverty and vulnerability. They no more live contented lives and their art and culture that was known to proliferate throughout the world, does not exist any longer. ? Forest Land Loss caused due to environmental degradation: The Scheduled Tribes are landless and usually face discrimination. They are further deprived of land which is, today used for commercial purposes. Further, the forest cover has been soon depleting in India that has caused severe damages to the environmental conditions in which the tribal's lived. ? Displacement: Development induced displacement has been a regular feature amongst tribals and there has been largescale migration to cities and townships on account of this. ? Economic Exploitation and Bonded Labour: On account of being landless there is a need to work as agricultural labourers in the farms to earn a living for themselves. This, however, takes a brutal turn and the indebted poor are made to work as bonded labourers where they are expected to work for long hours without being paid and it is the employee who decides the tenure and the nature of such work. Matters worse when the families are attacked for not obeying orders. ? Lack of Basic amenities: The tribals lack all basic necessities required to live a life in a sufficiently decent life. Right from malnutrition, disease, lack of proper food, excess intake of liquor, lack of schooling, the tribals face a larger set of problems and the government which lacks in an adequate monitoring sector finds the entire exercise of spending on their amenities, a very difficult exercise. Largescale corruption has not only led to deprivation but today the tribals are more into insurgent movements and are ready to sacrifice their lives demanding for separate states. 108

Violation of the Rights of Women In India, women are the most vulnerable and this happens in almost every caste, religion and race. There is discrimination, both for being a low caste and for being a woman. Some social customs and traditions, beliefs and cultural values accord secondary status to women. The only way the change in the lives of women can come is through the change in the general mindsets of the people. With several movements fighting for the rights of women, the women today are found to be economically more independent than what they were in the yester years. In general, the problems faced by women are as follows: ?

Violence is almost universal problem of women: Violence against women is not a new phenomenon in India. Women in Indian society have been victims of ill-treatment, humiliation, torture, and exploitation for as long as written records of social organisation and family life are available. These records are replete with incidents of abduction, rape, murder, and torture of women. ?

Discrimination and Decline in the Female Population: Normally, in the population of any country, male- female ratio remains more or less the same, that is, 50:50. In India as the census reports reveal female population has been steadily declining ever since 1901. The male preference has led to the abuse of technology. Thousands of unwanted females, children are killed at the stage of foetus itself. It is said that in India, out of 12 million female children born every year, around 25% of them die before they attain the age of 15. Of the children who die every year, about 3 lakh female children, that is, more than the number of male children, die for one or the other reason. Of the children which die every year in India, the 6th child dies due to gender discrimination. ?

Economic Exploitation: Women workers are given much work but are paid less wages or salary especially in the unorganized sector. Equal pay for equal work remains only a slogan. Equal Remuneration Act, 1976 has proved to be a dead letter in this regard. There are also many instances of such exploitation even in the organized sector.

Violation of the Rights of Children Etymologically, a child is any young human being below the age of full physical development or below the legal age of majority. It is only when the right environment is provided that children grow into good and successful human beings. However, today the times have changed and children from all strata of the society face severe difficulties in the form of excessive exposure to media, violence in all forms beginning right from their homes, fear and lack of trust. Following are a few issues that surround children 's life 's and their freedom is endangered: ?

Lack of access to education: Education which is believed to be the basic right of every child in the world, has been denied in most parts of India. This is very prominently seen throughout the country irrespective of the government attempts to promote education to children. ?

Poverty and Malnutrition: According to the World Health Organisation (WHO) globally, 30% of children under five are estimated to be stunted and 18% have low weight-for-height, and 43 million children are overweight. Optimal breastfeeding could save the lives of 1.5 million children under five every year. Nearly nine million children die every year from preventable diseases and infections: the largest killer being Diarrhoeal disease. There are over 2 billion cases of diarrhoeal disease every year and is the leading cause of malnutrition amongst children under five. ?

Violence and Child Abuse: According to UNICEF violence against children can be "physical and mental abuse and injury, neglect or negligent treatment, exploitation and sexual abuse. Violence may take place in homes, schools, orphanages, residential care facilities, on the streets, in the workplace, in prisons and in places of detention." Such violence can affect the normal development of a child impairing their mental, physical and 109 social being. In extreme cases abuse of a child can result in death. Child abuse has many forms: physical, emotional, sexual, neglect, and exploitation. Any of these that are potentially or actually harmful to a child's health, survival, dignity and development are abuse. This definition is derived from the W.H.O. ?

Child Labour: India is sadly the home to the largest number of child labourers in the world. The census found an increase in the number of child labourers from 11.28 million in 1991 to 12.59 million in 2001. M.V. Foundation in Andhra Pradesh found nearly 400,000 children, mostly girls between seven and 14 years of age, toiling for 14- 16 hours a day in cottonseed production across the country of which 90% are employed in Andhra Pradesh. 40% of the labour in a precious stone cutting sector is children. NGOs have discovered the use of child labourers in mining industry in Bellary District in Karnataka in spite of a harsh ban on the same. In urban areas there is a high employment of children in the zari and embroidery industry. Poverty and lack of social security are the main causes of child labour. Violation of the Rights of Minorities India is a multi-lingual and a multi-religious country. Indian society is pluralistic in character from the religious and other points of view. Since a very long-time people belonging to various religious communities has been living together in this country. Though the majority of the people living in this land are Hindus [82.41%], people belonging to other religious communities such as Muslims [11.67%], Christians [2.32%], Sikhs [2%], Buddhists [0.77%], Jains [0.41%] and others [0.43%] are also living along with the Hindus by enjoying similar rights and opportunities. By virtue of their numerical strength, the Hindus constitute the majority while the rest of the religious communities come under what is known as religious minorities. Regarding the concept of "minority" in the Indian context, it can be said that the term has not been properly defined anywhere in the Indian Constitution. But "minority status" has been conferred on many groups. ?

According to the Article 29 of the Constitution, any group living within the jurisdiction of India is entitled to preserve and promote its own language, script or literature, and culture. ? Article 30 states that a minority group

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whether based on religion or language shall have the right to establish and administer educational institution of their choice.

Problems of Religious Minorities Racial, religious, ethnic, linguistic and other minorities are subject to some or the other problems everywhere. The four main problems which they normally face is: ? Problem of prejudice and discrimination: Sharing a common nationality with the majority in the offing, it becomes essential for the minorities to identify with them. There are several occasions where their behaviour is observed to check on their affiliations. This hinders their progress in the long run. ? Problem of preserving their distinct social and cultural life: Several customs and cultures are under scrutiny at times and lead to controversies of all types giving opportunities to aggravate the problems of minorities. ? Problem of Protection: Need for security and protection is very often felt by the minorities. Especially in times of communal violence, caste conflicts, observance of festivals and religious functions on a mass scale, minority groups often seek police protection. Government in power also finds it difficult to provide such a protection to all the members of the minorities. It is highly expensive also. State governments which fail to provide such protection are always criticised. ? Problem of Communal Tensions and Riots: Communal tensions and riots have been incessantly increasing since independence. Whenever the communal tensions and riots take place for whatever reason, minority interests get threatened; fears and anxieties become widespread. It becomes a tough task for the government in power to restore the confidence in them. 110

Violation of the Rights of the Disabled According to the World Health Organization "Disability is any restriction or lack (resulting from an impairment) of ability to perform in a manner or within the range considered normal for a human being". Around 400 million disabled persons live in the developing world. Most often they are the poorest. Poverty is the most important cause of disability. Every year millions of people go below the poverty line. This makes them more vulnerable to disability. The WHO estimates that worldwide there are 1.5 million blind children, mainly in Asia and Africa. In developing countries up to 70 per cent of blindness is either preventable or treatable. The WHO also estimates that around 50 per cent of disabling hearing impairment is also preventable. In 1995 this has affected a total of 120 million people worldwide. It is estimated that at least 10 per cent of the developing world's population is disabled in one way or the other. The disabled are deprived of all opportunities for social and economic development. The basic facilities like health, education and employment are denied to them. The State infrastructure is grossly inadequate and ill functioning where disabled are concerned. It is estimated that 40 million of more than 100 million children out of school have disabilities. Around 70 per cent of the disabled are unemployed. Millions are in the verge of collapsing due to severe disabilities. People with physical disabilities at least get noticed, but the others with mental illness are just written off. Along with the physical problems they also bear the brunt of social ostracism and stigma. The specific problems encountered by the disabled people are: ? Access: Accessibility is fundamental to realization and enjoyment of any right. Though the earlier definition of access included only 'physical access' and took only architectural barrier into consideration, the modern day analysis of access is more holistic in nature. It encompasses within itself accessibility to quality education, information and communication, entertainment and technology. Emanating from the Beijing Conference and the Disabilities Act, this understanding of access provides the scope for not only full personality development but also participation in social and political life. Access to public transport, toilets, hospitals, government offices, public spaces like parks, educational institutions, places of worship are still in accessible to people. Still whatever interventions are made are restricted to the physical access. The areas like education, teaching aids, books in Braille and interpreters for the hearing and speech impaired are still not available to large sections of the disabled. ? Employment: According to the Census 2002, Disabled people constitute at least 6 per cent of our population; still their basic needs for social security, individual dignity and meaning full employment remain unmet. They are at the mercy of the government and the civil society, which have a lackadaisical attitude towards them. The disability Act 1995 provides for 3 per cent reservation in all categories of jobs in government sector. Though it has been three years to this notification, its implementation is still not complete. ? Education: Education is yet another thing crucial for the persons with disability. In India education to the disabled is not provided as part of the mainstream but through other isolated institutions which operate on a service and charity mode. Most of the times these institutions are not fully integrated into the mainstream education system. There are only around 3000 special schools in India today. Of them only 900 are schools for the hearing impaired, 400 for children with visual impairment, 700 for those with loco motor disability and one thousand for the intellectually disabled. More than 50,000 children with disability are enrolled in the Integrated Education for Children, a government-sponsored programme. Only a few schools have special provisions like resource rooms, special aids and special teachers. This is restricted only to big cities. Since there are no special schools or special education services in rural India, children with special needs either have to make do with the regular schools in the village or go without education. Pre-vocational and vocational training is provided only in specialized institutions and in select cities. 111

? Discrimination: Persons with disability suffer from both social and material disability. The society, which is caught up with uniformity, cannot see people with differences with the same eye. There is lot of stigma attached to disability, which hinders their normal social interaction. The other discrimination they face is in terms of access to places. Public buildings, public transport system and other places of importance are not accessible to them. The employment opportunities available to them are also very low. They suffer the triple jeopardy of being disabled, poor and stigmatized. Violation of the Rights of the Elderly in India Elderly or old age consists of ages nearing or surpassing the average life span of human beings. The boundary of old age cannot be defined exactly because it does not have the same meaning in all societies. Government of India adopted 'National Policy on Older Persons' in January, 1999. The policy defines 'senior citizen' or 'elderly' as a person who is of age 60 years or above. Out of every 10 elderly couples in India, more than 6 are forced by their children to leave their homes. With no place to go and all hopes lost, the elderly have to resort to old age homes, which do not guarantee first class treatment. In India, unlike USA, parents do not leave their children on their own after they turn 18 (of course there are exceptions), but children find it hard to accept the fact that there are times when parents want to feel the love that they once shared with them. There are times when parents just want to relax and want their children to reciprocate their care. Every parents want to see their child grow and be successful, but no parent wants their child to treat them like an unnecessary load on their responsibilities. Every other day, we see news of parents being beaten up by their children, parents and in laws being forced to do the house hold chores, being made to live in small dungeon like rooms, their property being forcefully taken over by over ambitious children. There are 81million older people in India-11 lakh in Delhi itself. According to an estimate nearly 40% of senior citizens living with their families are reportedly facing abuse of one kind or another, but only 1 in 6 cases actually comes to light. Although the President has given her assent to the Maintenance and Welfare of Parents and Senior Citizens Act which punishes children who abandon parents with a prison term of three months or a fine, situation is grim for elderly people in India. According to NGOs incidences of elderly couples being forced to sell their houses are very high. Some elderly people have also complained that in case of a property dispute they feel more helpless when their wives' side with their children. Many of them suffer in silence as they fear humiliation or are too scared to speak up. According to them a phenomenon called 'grand dumping' is becoming common in urban areas these days as children are being increasingly intolerant of their parents' health problems. After a certain age health problems begin to crop up leading to losing control over one's body, even not recognizing own family owing to Alzheimer are common in old age. It is then children began to see their parents as burden. It is these parents who at times wander out of their homes or are thrown out. Some dump their old parents or grandparents in old-age homes and don't even come to visit them anymore. Delhi has nearly 11 lakh senior citizens but there are only 4 governments 'run homes for them and 31 by NGOs, private agencies and charitable trusts. The facilities are lacking in government run homes. The Domestic Violence Act, 2005 The phenomenon of domestic violence is widely prevalent but has remained largely visible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety. 112

It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. The Bill, seeks to provide for the following: ? It covers those women who are or have been in a relationship with the abuser where both together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner. ? It defines the expression "domestic violence" to include actual abuse or threat or abuse that is

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physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition. ?

It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate. ? It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence. ? It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc. 113

Further Readings: •

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B.P. Singh (ed.), (1999), Human Rights in India: Problems and Perspectives, New Delhi: Deep and Deep. 114

Hit and source - focused comparison, Side by Side

Submitted text As student entered the text in the submitted document.
Matching text As the text appears in the source.

1/385	SUBMITTED TEXT	12 WORDS	100%	MATCHING TEXT	12 WORDS
	These rules together make up, i.e. constitute, what the entity is.			These rules together make up, i.e. constitute, what the entity is.	
	W http://www.wenqujingdian.com/Public/editor/attached/file/20180610/20180610091815_22304.pdf				

2/385	SUBMITTED TEXT	79 WORDS	100%	MATCHING TEXT	79 WORDS
	Constitutions concern different levels of organizations, from sovereign states to companies and unincorporated associations. A treaty which establishes an international organization is also its constitution, in that it would define how that organization is constituted. Within states, a constitution defines the principles upon which the state is based, the procedure in which laws are made and by whom. Some constitutions, especially codified constitutions, also act as limiters of state power, by establishing lines which a state's rulers cannot cross, such as fundamental rights.			Constitutions concern different levels of organizations, from sovereign states to companies and unincorporated associations. A treaty which establishes an international organization is also its constitution, in that it would define how that organization is constituted. Within states, a constitution defines the principles upon which the state is based, the procedure in which laws are made and by whom. Some constitutions, especially codified constitutions, also act as limiters of state power, by establishing lines which a state's rulers cannot cross, such as fundamental rights.	
	W https://www.studocu.com/row/document/bahauddin-zakariya-university/construction-and-graphics/cons ...				

3/385	SUBMITTED TEXT	15 WORDS	82%	MATCHING TEXT	15 WORDS
	Indian Constitution ? Development of Indian Constitution ? Sources of Indian Constitution ? Features of Indian Constitution ?			Indian Constitution Indian Constitution: • Sources of Indian Constitution: • Salient features of the Indian Constitution:	
	W https://www.lawcolumn.in/meaning-and-classification-of-the-constitution/				

4/385	SUBMITTED TEXT	11 WORDS	95% MATCHING TEXT	11 WORDS
<p>CONSTITUTION The Constitution of India is the supreme law of India.</p> <p>W https://www.worldwidejournals.com/paripex/recent_issues_pdf/2018/March/March_2018_1520252970__79.pdf</p>		<p>Constitution". The Constitution of India is the Supreme Law of India.</p>		
5/385	SUBMITTED TEXT	18 WORDS	100% MATCHING TEXT	18 WORDS
<p>procedures, powers, and duties of government institutions, and sets out fundamental rights, directive principles, and the duties of citizens.</p> <p>W https://kids.playquiz2win.com/class-5/social-studies-class-5/the-constitution-of-india-class-5/</p>		<p>procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles, and the duties of citizens.</p>		
6/385	SUBMITTED TEXT	27 WORDS	69% MATCHING TEXT	27 WORDS
<p>in terms of the Constitution of India which was adopted by the Constituent Assembly on 26th November 1949 and came into force on 26th January, 1950. The Constitution</p> <p>W https://egyankosh.ac.in/bitstream/123456789/67770/3/Unit-5.pdf</p>		<p>in adoption of the so drafted Constitution of India by the Constituent Assembly on 26th November, 1949 and came into force on 26th January 1950. Source : The Constitution</p>		
7/385	SUBMITTED TEXT	25 WORDS	52% MATCHING TEXT	25 WORDS
<p>of the Parliament of the Union consists of the President and two Houses known as the Council of States (Rajya Sabha) and the House of</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>of Constitution, the Parliament of India, shall consists of three organs. The President, the Council of States (Rajya Sabha) and the House of</p>		
8/385	SUBMITTED TEXT	27 WORDS	72% MATCHING TEXT	27 WORDS
<p>that there shall be a Council of Ministers with the Prime Minister as its head to aid and advice the President, who shall exercise his/her, functions in accordance</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>that 'there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President, who shall in the exercise of his functions, act in accordance</p>		
9/385	SUBMITTED TEXT	25 WORDS	82% MATCHING TEXT	25 WORDS
<p>SOURCES OF INDIAN CONSTITUTION 4 The Constitution framers adopted from several sources, features which are present in the Indian Constitution. Sources Government of India Act, 1935 Federal Scheme,</p> <p>W https://www.lawcolumn.in/meaning-and-classification-of-the-constitution/</p>		<p>Sources of Indian Constitution: The Constitution framers adopted several sources, features that are present in the Indian Constitution. The main sources are: – 1)Government of India Act, 1935-Federal scheme,</p>		
10/385	SUBMITTED TEXT	11 WORDS	100% MATCHING TEXT	11 WORDS
<p>appointment of State Governors by the Centre and advisory jurisdiction of</p> <p>W https://www.lawcolumn.in/meaning-and-classification-of-the-constitution/</p>		<p>appointment of State Governors by the Centre and advisory jurisdiction of</p>		

11/385	SUBMITTED TEXT	30 WORDS	66% MATCHING TEXT	30 WORDS
<p>appointment of state governors by the centre and advisory jurisdiction of the Supreme Court Australian Constitution Concurrent List, Freedom of trade, commerce and intercourse joint sitting of the two Houses of Parliament. Weimar Constitution</p>		<p>appointment of State Governors by the Centre and advisory jurisdiction of Supreme Court. 5)Canadian Constitution-Residuary powers with the Centre. 6)Australian Constitution-Concurrent List, freedom of trade and commerce, and a joint sitting of two houses of Parliament. 7)French Constitution-</p>		
<p>W https://www.lawcolumn.in/meaning-and-classification-of-the-constitution/</p>				
12/385	SUBMITTED TEXT	13 WORDS	78% MATCHING TEXT	13 WORDS
<p>the ideals of liberty equality and fraternity in the Preamble South African Constitution Procedure</p>		<p>The ideals of liberty, equality, and fraternity in the preamble. 8) Japanese Constitution-Procedure</p>		
<p>W https://www.lawcolumn.in/meaning-and-classification-of-the-constitution/</p>				
13/385	SUBMITTED TEXT	10 WORDS	100% MATCHING TEXT	10 WORDS
<p>Dr. B.R. Ambedkar, the Chairman of the Drafting Committee</p>		<p>Dr. B.R. Ambedkar, the Chairman of the Drafting Committee</p>		
<p>W https://www.lawcolumn.in/meaning-and-classification-of-the-constitution/</p>				
14/385	SUBMITTED TEXT	31 WORDS	98% MATCHING TEXT	31 WORDS
<p>each house of Parliament by a majority of the total membership of that house and. by a majority of not less than two-third of the members of that house present and voting.</p>		<p>each House of Parliament by a majority of the total membership of that House and by a majority of not less than two third of the members of that House present and voting</p>		
<p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
15/385	SUBMITTED TEXT	18 WORDS	63% MATCHING TEXT	18 WORDS
<p>India that is Bharat shall be a Union of States." Though the word 'Federation' is not used, the</p>		<p>india, that is bharat, shall be a union of states". the expression "union" indicates that the indian federation is not the</p>		
<p>W https://nanopdf.com/download/these-notes-are-prepared-by-radhika-seth-law-centre-2-this-is-5aeb86 ...</p>				
16/385	SUBMITTED TEXT	20 WORDS	63% MATCHING TEXT	20 WORDS
<p>of powers between the two, (b) there is a written constitution, which is the supreme law of the land</p>		<p>of powers between the Central and State Governments. The division is made by a written Constitution which is the Supreme Law of the Land.</p>		
<p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
17/385	SUBMITTED TEXT	17 WORDS	75% MATCHING TEXT	17 WORDS
<p>The real executive power is thus vested in the Council of Ministers with the Prime Minister</p>		<p>the real executive power is vested in the Council of Ministers whose head is the Prime Minister, (</p>		
<p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				

18/385	SUBMITTED TEXT	48 WORDS	51% MATCHING TEXT	48 WORDS
	Right to equality, (ii) Right to freedom, (iii) Right against exploitation, (iv) Right to freedom of Religion, v) Cultural and Educational rights and vi) Right to constitutional remedies. Right to property (Article-31) originally a fundamental right has been omitted by the 44th Amendment Act. 1978. It is now a legal right.		Right to equality (Articles 14–18) • Right to freedom (Articles 19–22) • Right against exploitation (Articles 23–24) • Right to freedom of religion (Articles 25–28) • Cultural and educational rights (Articles 29–30) • Right to constitutional remedies (Right to property (Article 31). However, it was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978. • It is made a legal right	
	W https://www.drishitias.com/printpdf/fundamental-rights-part-1			

19/385	SUBMITTED TEXT	164 WORDS	93% MATCHING TEXT	164 WORDS
	To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem; ? To cherish and follow the noble ideals, which inspired our national struggle for freedom; ? To uphold and protect the sovereignty, unity and integrity of India; ? To defend the country and render national service when called upon to do so; ? To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities, to renounce practices derogatory to the dignity of woman; ? To value and preserve the rich heritage of our composite culture; ? To protect and improve the natural environments including forests, lakes, rivers and wild life and to have compassion for living creatures; ? To develop scientific temper, humanism and the spirit of inquiry and reform; ? To safeguard public property and to abjure violence; ? To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of Endeavour and achievement ?		to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem; (b) to cherish and follow the noble ideals which inspired our national struggle for freedom; (c) to uphold and protect the sovereignty, unity and integrity of India; (d) to defend the country and render national service when called upon to do so; (to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; 27 Downloaded by bismillah fazl () IOMoARcPSD 3869385 (to value and preserve the rich heritage of our composite culture; (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; h) to develop the scientific temper, humanism and the spirit of inquiry and reform; (i) to safeguard public property and to abjure violence; (to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; (
	W https://pdfcoffee.com/constitution-law-2015-constitution-law-2015-pdf-free.html			

20/385	SUBMITTED TEXT	14 WORDS	78% MATCHING TEXT	14 WORDS
	right to work, public assistance in case of old age, unemployment, sickness and disablement,			
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21/385	SUBMITTED TEXT	15 WORDS	66% MATCHING TEXT	15 WORDS
	the provisions of the Constitution, they can be declared as null and void by the			
	SA Dessertation aafiya new.docx (D138764633)			

22/385	SUBMITTED TEXT	48 WORDS	100% MATCHING TEXT	48 WORDS
	as – "In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."		as "In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."	
	<p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>			

23/385	SUBMITTED TEXT	36 WORDS	75% MATCHING TEXT	36 WORDS
	Right to Equality 8 This includes equality before law, prohibition of discrimination on grounds of religion, race, caste, gender or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles.		Right to Equality: • Equality before law. • Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. • Equality of opportunity in matters of public employment. • Article 17 - Abolition of Untouchability. • Article 18 - Abolition of titles (
	<p>W https://testbook.com/question-answer/as-part-of-the-fundamental-rights-the-constitutio--5fd23a824 ...</p>			

24/385	SUBMITTED TEXT	18 WORDS	100% MATCHING TEXT	18 WORDS
	freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from		Freedom of conscience and free profession, practice and propagation of religion. • Freedom to manage religious affairs. • Freedom from	
	<p>W https://www.drishitias.com/printpdf/fundamental-rights-part-1</p>			

25/385	SUBMITTED TEXT	13 WORDS	78% MATCHING TEXT	13 WORDS
	right of minorities to establish and administer educational institutions of their choice. Right to		right of minority to establish and administer educational institutions of their choice includes right to	
	<p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>			

26/385	SUBMITTED TEXT	204 WORDS	95% MATCHING TEXT	204 WORDS
<p>It shall be the duty of every citizen of India ? To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem; ? To cherish and follow the noble ideals which inspired our national struggle for freedom; ? To uphold and protect the sovereignty, unity and integrity of India; ? To defend the country and render national service when called upon to do so; ? To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; ? To value and preserve the rich heritage of our composite culture; ? To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; ? To develop the scientific temper, humanism and the spirit of inquiry and reform; ? To safeguard public property and to abjure violence; ? To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; ? Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years. 9</p> <p>W https://pdfcoffee.com/constitution-law-2015-constitution-law-2015-pdf-free.html</p>		<p>It shall be the duty of every citizen of India – (to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem; (b) to cherish and follow the noble ideals which inspired our national struggle for freedom; (c) to uphold and protect the sovereignty, unity and integrity of India; (d) to defend the country and render national service when called upon to do so; (to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; 27 Downloaded by bismillah fazl () IOMoARcPSD 3869385 (to value and preserve the rich heritage of our composite culture; (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; h) to develop the scientific temper, humanism and the spirit of inquiry and reform; (i) to safeguard public property and to abjure violence; (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; (who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.</p>		
27/385	SUBMITTED TEXT	14 WORDS	89% MATCHING TEXT	14 WORDS
<p>security of the State, friendly relations with foreign countries, public order, decency or morality),</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
28/385	SUBMITTED TEXT	23 WORDS	41% MATCHING TEXT	23 WORDS
<p>right to life and liberty, right to education, protection in respect to conviction in offences and protection against arrest and detention in certain cases.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
29/385	SUBMITTED TEXT	10 WORDS	100% MATCHING TEXT	10 WORDS
<p>DIRECTIVE PRINCIPLES OF STATE POLICY Directive Principles of State Policy:</p> <p>W https://legalpaathshala.com/definition-of-constitution-and-its-classification/</p>		<p>Directive Principles of State Policy: – Directive principles of state policy</p>		
30/385	SUBMITTED TEXT	14 WORDS	96% MATCHING TEXT	14 WORDS
<p>State to secure a social order for the promotion of welfare of the people</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

31/385	SUBMITTED TEXT	18 WORDS	97% MATCHING TEXT	18 WORDS
<p>this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III. ?</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
32/385	SUBMITTED TEXT	46 WORDS	81% MATCHING TEXT	46 WORDS
<p>The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. ? The State shall</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
33/385	SUBMITTED TEXT	43 WORDS	94% MATCHING TEXT	43 WORDS
<p>The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. ? The State shall,</p> <p>The State shall, in particular strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations [Article 38(2)]. (The State shall</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
34/385	SUBMITTED TEXT	29 WORDS	94% MATCHING TEXT	29 WORDS
<p>to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
35/385	SUBMITTED TEXT	16 WORDS	89% MATCHING TEXT	16 WORDS
<p>the citizens, men and women equally, have the right to an adequate means of livelihood; ?</p> <p>the citizens, men and women equally" the right to an adequate means of livelihood (</p> <p>W https://www.gapinterdisciplinarity.org/res/articles/(50-55).pdf</p>				
36/385	SUBMITTED TEXT	24 WORDS	73% MATCHING TEXT	24 WORDS
<p>concentration of wealth and means of production to the common detriment; ? That there is equal pay for equal work for both men and women; ?</p> <p>concentration of wealth and means of production the common detriment (Article 39(c)),securing equal pay for equal work for both men and women (</p> <p>W https://www.gapinterdisciplinarity.org/res/articles/(50-55).pdf</p>				

37/385	SUBMITTED TEXT	69 WORDS	86% MATCHING TEXT	69 WORDS
<p>That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; ? Those children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. ?</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
38/385	SUBMITTED TEXT	18 WORDS	92% MATCHING TEXT	18 WORDS
<p>with such powers and authority as may be necessary to enable them to function as units of self-government. ?</p> <p>with such powers and authority as may be necessary to enable them to function as institution of Self-government</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
39/385	SUBMITTED TEXT	53 WORDS	100% MATCHING TEXT	53 WORDS
<p>The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic</p> <p>SA dissertation completing.docx (D26696797)</p>				
40/385	SUBMITTED TEXT	33 WORDS	98% MATCHING TEXT	33 WORDS
<p>The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
41/385	SUBMITTED TEXT	24 WORDS	76% MATCHING TEXT	24 WORDS
<p>The State shall make provision for securing just and humane conditions of work and for maternity relief. ? The State shall endeavour to secure,</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
42/385	SUBMITTED TEXT	10 WORDS	100% MATCHING TEXT	10 WORDS
<p>to secure the participation of workers in the management of</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

43/385	SUBMITTED TEXT	13 WORDS	87% MATCHING TEXT	13 WORDS
<p>education for all children until they complete the age of fourteen years. ?</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>education for all children until they complete the age of six years".</p>		
44/385	SUBMITTED TEXT	16 WORDS	90% MATCHING TEXT	16 WORDS
<p>promote with special care the educational and economic interests of the weaker sections of the people,</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>promote with special care the educational and economic interest of the weaker sections of the people (</p>		
45/385	SUBMITTED TEXT	20 WORDS	83% MATCHING TEXT	20 WORDS
<p>The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. 10 ?</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
46/385	SUBMITTED TEXT	15 WORDS	70% MATCHING TEXT	15 WORDS
<p>the State to protect every monument or place or object of artistic or historic interest,</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
47/385	SUBMITTED TEXT	25 WORDS	51% MATCHING TEXT	25 WORDS
<p>a majority of the total membership in each House of Parliament and a majority of not less than two-thirds of the members present and voting</p> <p>W https://pdfcoffee.com/constitution-law-2015-constitution-law-2015-pdf-free.html</p>		<p>a majority of total membership of each House and by a majority of not less than 2/3 of the members of the present and voting.</p>		
48/385	SUBMITTED TEXT	26 WORDS	50% MATCHING TEXT	26 WORDS
<p>A majority of the total membership in each House of Parliament. ? A majority of not less than two-thirds of all the members present and voting</p> <p>W https://pdfcoffee.com/constitution-law-2015-constitution-law-2015-pdf-free.html</p>		<p>a majority of total membership of each House and also a majority of not less than 2/3 of the of the House present and voting.</p>		
49/385	SUBMITTED TEXT	38 WORDS	56% MATCHING TEXT	38 WORDS
<p>judiciary from the executive in the public services of the State. ? The State shall endeavour to – ? Promote international peace and security; ? Maintain just and honourable relations between nations; ? Foster respect for international law and treaty obligations</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

50/385	SUBMITTED TEXT	45 WORDS	98% MATCHING TEXT	45 WORDS
<p>Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. 13</p>		<p>Human RightsHuman rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.</p>		
<p>W http://unis.unvienna.org/unis/en/united_nations/un_human-rights.html</p>				
51/385	SUBMITTED TEXT	16 WORDS	100% MATCHING TEXT	16 WORDS
<p>The principle of universality of human rights is the cornerstone of international human rights law.</p>		<p>The principle of universality of human rights is the cornerstone of international human rights law.</p>		
<p>W https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf</p>				
52/385	SUBMITTED TEXT	13 WORDS	100% MATCHING TEXT	13 WORDS
<p>as first emphasized in the Universal Declaration on Human Rights in 1948,</p>		<p>as first emphasized in the Universal Declaration on Human Rights in 1948,</p>		
<p>W http://unis.unvienna.org/unis/en/united_nations/un_human-rights.html</p>				
53/385	SUBMITTED TEXT	16 WORDS	75% MATCHING TEXT	16 WORDS
<p>it is the duty of States to promote and protect all human rights and fundamental freedoms,</p>		<p>it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."</p>		
<p>W https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf</p>				

54/385

SUBMITTED TEXT

337 WORDS

97% MATCHING TEXT

337 WORDS

Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law. Interdependent and Indivisible All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others. Equal and Non-discriminatory Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights." Both Rights and Obligations Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others. Importance of Human Rights Human Rights

Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law. Interdependent and indivisible All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others. Equal and non-discriminatory Universal Declaration of Human Rights Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights." Both Rights and Obligations Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others. United Nations Human Rights Bodies The Human Rights

W http://unis.unvienna.org/unis/en/united_nations/un_human-rights.html

55/385

SUBMITTED TEXT

59 WORDS

100% MATCHING TEXT

59 WORDS

human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. Universal and Inalienable

Human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. Universal and inalienable

W http://unis.unvienna.org/unis/en/united_nations/un_human-rights.html

56/385	SUBMITTED TEXT	54 WORDS	100% MATCHING TEXT	54 WORDS
<p>In 1948, the United Nations General Assembly proclaimed the Universal Declaration of Human Rights (UDHR) for all people and all nations. In the UDHR, the United Nations stated in clear and simple terms rights that belong equally to every person. These rights belong to you. Familiarize yourself with them. Help to promote and defend them.</p>				
<p>SA A Socio-legal Study of Judicial Contribution for Protecting Human Rights in India (Rajender Kumar ... (D28680544)</p>				

57/385	SUBMITTED TEXT	62 WORDS	90% MATCHING TEXT	62 WORDS		
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top; padding-right: 20px;"> <p>of human rights in particular situations. Fundamental Rights and Human Rights 18 The judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural</p> </td> <td style="width: 50%; vertical-align: top;"> <p>of Human Rights and Indian Constitution Fundamental Rights and Human Rights the judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural</p> </td> </tr> </table>					<p>of human rights in particular situations. Fundamental Rights and Human Rights 18 The judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural</p>	<p>of Human Rights and Indian Constitution Fundamental Rights and Human Rights the judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural</p>
<p>of human rights in particular situations. Fundamental Rights and Human Rights 18 The judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural</p>	<p>of Human Rights and Indian Constitution Fundamental Rights and Human Rights the judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural</p>					
<p>W https://www.gapinterdisciplinarity.org/res/articles/(50-55).pdf</p>						

General Assembly Resolution 217A (III) of 10 December 1948. WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, WHEREAS it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, WHEREAS it is essential to promote the development of friendly relations between nations, WHEREAS the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, WHEREAS Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, WHEREAS a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, Now, therefore, the General Assembly Proclaims 15 THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. ? All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. ? Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. ? Everyone has the right to life, liberty and security of person. ? No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. ? No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment ? Everyone has the right to recognition everywhere as a person before the law. ? All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of

General Assembly resolution 217 A(III) of 10 December 1948. Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in co-operation the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, Now, therefore, The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. Article 1 All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Everyone has the right to life, liberty and security of person. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Everyone has the right to recognition everywhere as a person before the law. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of

W [https://humanrights.gov.au/our-work/commission-general/universal-declaration-human-rights-human-r ...](https://humanrights.gov.au/our-work/commission-general/universal-declaration-human-rights-human-r...)

59/385	SUBMITTED TEXT	40 WORDS	100% MATCHING TEXT	40 WORDS
	<p>educational rights and the right to Constitutional remedies. Fundamental rights differ from ordinary rights in the sense that the former are inviolable. No law, ordinance, custom, usage, or administrative order can abridge or take them away. Any law, which is violative of</p> <p>W https://www.gapinterdisciplinarity.org/res/articles/(50-55).pdf</p>		<p>educational rights and the right to Constitutional remedies.10 Fundamental rights differ from ordinary rights in the sense that the former are inviolable. No law, ordinance, custom, usage, or administrative order can abridge or take them away. Any law, which is violative of 10 "</p>	

60/385	SUBMITTED TEXT	14 WORDS	100% MATCHING TEXT	14 WORDS
	<p>The Supreme Court of India recognizes these fundamental rights as 'Natural Rights' or 'Human Rights'.</p> <p>W https://www.gapinterdisciplinarity.org/res/articles/(50-55).pdf</p>		<p>The Supreme Court of India recognizes these fundamental rights as 'Natural Rights' or 'Human Rights'.</p>	

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. ? No one shall be subjected to arbitrary arrest, detention or exile. ? Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. ? Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. ? No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed. ? No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks. ? Everyone has the right to freedom of movement and residence within the borders of each state. ? Everyone has the right to leave any country, including his own, and to return to his country. ? Everyone has the right to seek and to enjoy in other countries asylum from persecution. ? This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. ? Everyone has the right to a nationality. ? No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. ? Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. ? Marriage shall be entered into only with the free and full consent of the intending spouses. 16 ? The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. ? Everyone has the right to own property alone as well as in association with others. ? No one shall be arbitrarily deprived of his property. ? Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance ? Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. ? Everyone has the right to freedom of peaceful assembly and association. ? No one may be compelled to belong to an association. ? Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. ? Everyone has the right of equal access to public service in his country. ? The will of the people shall be the basis of the authority of government; this will be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. ? Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. No one shall be subjected to arbitrary arrest, detention or exile. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. Article 13 1. Everyone has the right to freedom of movement and residence within the borders of each state. 2. Everyone has the right to leave any country, including his own, and to return to his country. Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. Article 15 1. Everyone has the right to a nationality. 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. 2. Marriage shall be entered into only with the free and full consent of the intending spouses. 3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Everyone has the right to freedom of peaceful assembly and association. 2. No one may be compelled to belong to an association. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2. Everyone has the right of equal access to public service in his country. 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural

rights indispensable for his dignity and the free development of his personality. ? Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. ? Everyone, without any discrimination, has the right to equal pay for equal work. ? Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. ? Everyone has the right to form and to join trade unions for the protection of his interests. ? Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. ? Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. ? Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. ● Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. ? Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. 17 ? Parents have a prior right to choose the kind of education that shall be given to their children. ● Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. ? Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. ● Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. ● Everyone has duties to the community in which alone the free and full development of his personality is possible. ? In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. ? These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. ● Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

rights indispensable for his dignity and the free development of his personality. Article 23 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. 2. Everyone, without any discrimination, has the right to equal pay for equal work. 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. 4. Everyone has the right to form and to join trade unions for the protection of his interests. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. 2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. 3. Parents have a prior right to choose the kind of education that shall be given to their children. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. Everyone has duties to the community in which alone the free and full development of his personality is possible. 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein. ^

W [https://humanrights.gov.au/our-work/commission-general/universal-declaration-human-rights-human-r ...](https://humanrights.gov.au/our-work/commission-general/universal-declaration-human-rights-human-r...)

62/385	SUBMITTED TEXT	23 WORDS	66% MATCHING TEXT	23 WORDS
<p>Universal Declaration of Human Rights (UDHR) on 10 December 1948. Drafted as 'a common standard of achievement for all peoples and nations', the</p> <p>SA A Socio-legal Study of Judicial Contribution for Protecting Human Rights in India (Rajender Kumar ... (D28680544)</p>				
63/385	SUBMITTED TEXT	15 WORDS	90% MATCHING TEXT	15 WORDS
<p>the International Covenant on Civil and Political Rights and its two Optional Protocols, and the</p> <p>SA A Socio-legal Study of Judicial Contribution for Protecting Human Rights in India (Rajender Kumar ... (D28680544)</p>				
64/385	SUBMITTED TEXT	67 WORDS	100% MATCHING TEXT	67 WORDS
<p>States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.</p> <p>W http://unis.unvienna.org/unis/en/united_nations/un_human-rights.html</p>				
65/385	SUBMITTED TEXT	15 WORDS	62% MATCHING TEXT	15 WORDS
<p>ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.</p> <p>ensure that international human rights standards are progressively being implemented and realized at the country level,</p> <p>W https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf</p>				
66/385	SUBMITTED TEXT	9 WORDS	100% MATCHING TEXT	9 WORDS
<p>the rule of law at the national and international levels.</p> <p>The Rule of Law at the National and International Levels:</p> <p>W https://link.springer.com/chapter/10.1007/978-3-662-62304-6_14</p>				
67/385	SUBMITTED TEXT	38 WORDS	100% MATCHING TEXT	38 WORDS
<p>The judiciary' (also known as the judicial system or 'court system) is the system of courts that interprets and applies the law in the name of the state. The judiciary also provides a mechanism for the resolution of disputes.</p> <p>The judiciary (also known as the judicial system or court system) is the system of courts that interprets and applies the law in the name of the state. The judiciary also provides a mechanism for the resolution of disputes.</p> <p>W https://pdfcoffee.com/constitution-law-2015-constitution-law-2015-pdf-free.html</p>				

68/385	SUBMITTED TEXT	13 WORDS	100% MATCHING TEXT	13 WORDS
<p>be individuals of integrity and ability with appropriate training or qualifications in law.</p> <p>W https://www.icj.org/wp-content/uploads/2015/04/MENA-Arab-Court-of-Human-Rights-Publications-Repor ...</p>		<p>be "individuals of integrity and ability with appropriate training or qualifications in law." 26</p>		
69/385	SUBMITTED TEXT	16 WORDS	93% MATCHING TEXT	16 WORDS
<p>race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status,</p> <p>W https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf</p>		<p>race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status.</p>		
70/385	SUBMITTED TEXT	10 WORDS	100% MATCHING TEXT	10 WORDS
<p>the Protection of Women against Sexual Harassment at Workplace Bill</p> <p>SA yash pratap.docx (D39188369)</p>				
71/385	SUBMITTED TEXT	12 WORDS	87% MATCHING TEXT	12 WORDS
<p>a mandatory retirement age or the expiry of their term of office,</p> <p>W https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf</p>		<p>a mandatory retirement age or the expiry of their terms of office. •</p>		
72/385	SUBMITTED TEXT	14 WORDS	100% MATCHING TEXT	14 WORDS
<p>for reasons of incapacity or behaviour that renders them unfit to discharge their duties. •</p> <p>W https://www.icj.org/wp-content/uploads/2015/04/MENA-Arab-Court-of-Human-Rights-Publications-Repor ...</p>		<p>for reasons of incapacity or behaviour that renders them unfit to discharge their duties,</p>		
73/385	SUBMITTED TEXT	15 WORDS	76% MATCHING TEXT	15 WORDS
<p>for enforcement of any of the fundamental rights conferred by Part III of Indian Constitution</p> <p>W https://indiankanoon.org/doc/123553778/</p>		<p>for the enforcement of any of the rights conferred by Part III of the Constitution.</p>		
74/385	SUBMITTED TEXT	22 WORDS	95% MATCHING TEXT	22 WORDS
<p>Delhi Domestic Working Women's Forum V Union of India (1995) ? People's Union for Civil Liberties (PUCL) V Union of India (1997) ?</p> <p>SA Special Laws on Security in India An Analysis of Judicial Response of AFSPA and PSA.pdf (D163704875)</p>				

75/385	SUBMITTED TEXT	16 WORDS	100% MATCHING TEXT	16 WORDS
<p>for the enforcement of any of the rights conferred by Part III and for any other purpose.</p>		<p>for the enforcement of any of the rights conferred by Part III and for any other purpose. (2)</p>		
<p>W https://www.ijlsi.com/wp-content/uploads/Doctrine-of-Judicial-Review-in-Indian-Constitution.pdf</p>				
76/385	SUBMITTED TEXT	24 WORDS	62% MATCHING TEXT	24 WORDS
<p>The Right to Constitutional Remedies, as we know, is a guarantor of all other fundamental rights available to the people of India. In addition to</p>				
<p>SA Sunita, H14899, Corrected File.pdf (D138091622)</p>				
77/385	SUBMITTED TEXT	25 WORDS	88% MATCHING TEXT	25 WORDS
<p>of the constitution. Since the language of the constitution is not free from ambiguities and its meaning is likely to be interpreted differently by different authorities.</p>		<p>of the Land. Since language of the Constitution is not free from ambiguities and its meaning is likely to be interpreted differently by different authorities</p>		
<p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
78/385	SUBMITTED TEXT	11 WORDS	100% MATCHING TEXT	11 WORDS
<p>is issued by a higher court to a lower court</p>				
<p>SA A Socio-legal Study of Judicial Contribution for Protecting Human Rights in India (Rajender Kumar ... (D28680544)</p>				
79/385	SUBMITTED TEXT	35 WORDS	47% MATCHING TEXT	35 WORDS
<p>The Supreme Court of India consists of Chief Justice of India and not more than 25 other judges. Appointment, Qualifications and Tenure of Judges Appointment of Judges Every Judge of Supreme Court is appointed by the President</p>		<p>the Supreme Court of India shall consist of a Chief Justice of India and 25 other judges until the number of judges is Appointment of Judges : The Judges of the Supreme Court are appointed by the President.</p>		
<p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
80/385	SUBMITTED TEXT	15 WORDS	66% MATCHING TEXT	15 WORDS
<p>judges of the Supreme Court and of the High Court as he may deem necessary.</p>		<p>judges of the supreme court and of the high courts in the states as the president may deem necessary</p>		
<p>W https://nanopdf.com/download/these-notes-are-prepared-by-radhika-seth-law-centre-2-this-is-5aeb86 ...</p>				
81/385	SUBMITTED TEXT	16 WORDS	78% MATCHING TEXT	16 WORDS
<p>the senior most judge of the Supreme Court to hold the office of the Chief Justice.</p>		<p>the senior-most judge of the Supreme Court, considered suitable to hold the office, be appointed as the Chief Justice</p>		
<p>W https://pdfcoffee.com/a-k-jain-constitution-1st-part-pdf-free.html</p>				

82/385	SUBMITTED TEXT	25 WORDS	40% MATCHING TEXT	25 WORDS
<p>is conferred the responsibility of the final interpreter and the guardian of the constitution. Simultaneously it is also the guardian of the fundamental rights of</p> <p>W https://www.thehindu.com/news/national/explained-the-constitution-bench-of-the-supreme-court/arti...</p>		<p>is at the apex of the Indian judicial system. As the guardian of the Constitution, it is the primary duty of the SC to uphold the fundamental rights of</p>		
83/385	SUBMITTED TEXT	16 WORDS	100% MATCHING TEXT	16 WORDS
<p>appointment as a judge of the Supreme Court unless he is • A citizen of India and •</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>appointment as a judge of the Supreme Court, unless he is a citizen of India and (</p>		
84/385	SUBMITTED TEXT	42 WORDS	52% MATCHING TEXT	42 WORDS
<p>between the Government of India and any of the States of the Union, the Government of India and any State or states on one side and any other state or states on the other side, or between two or more states. The</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>between the Government of India and one or more states; or (b) the Government of India and any state or states on the one side and one or more other states on the other; or (c) between two or more states. The</p>		
85/385	SUBMITTED TEXT	20 WORDS	55% MATCHING TEXT	20 WORDS
<p>appointment of other judges of Supreme Court the President appoints them in consultation with the Chief Justice of India. The</p> <p>SA JAGWINDER KAUR full dissertation 1.09.21.pdf (D112336208)</p>				
86/385	SUBMITTED TEXT	11 WORDS	100% MATCHING TEXT	11 WORDS
<p>There shall be a High Court in each State; however,</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>there shall be a High Court in each State. However,</p>		
87/385	SUBMITTED TEXT	39 WORDS	64% MATCHING TEXT	39 WORDS
<p>a common High Court for two or more States as stated above. The High Court at the head of the judiciary in the State. Constitution of High Court Every High Court shall consist of a Chief Justice and some other judges.</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>a common High Court for two or more States or for two or more States and a Union Territory. The High Court stands at the head of the Judiciary in the State. Constitution of High Courts - Every High Court consists of a Chief Justice and such other Judges</p>		
88/385	SUBMITTED TEXT	14 WORDS	78% MATCHING TEXT	14 WORDS
<p>unable to perform his duties or is appointed to act temporarily as Chief Justice.</p> <p>W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/</p>		<p>unable to perform the duties of his office or is appointed to act temporarily as chief justice;</p>		

89/385	SUBMITTED TEXT	55 WORDS	34% MATCHING TEXT	55 WORDS
<p>of Judges of High Court Appointment of Judges of High Court Every Judge of High Court is appointed by a President. In making the appointment the President shall consult the Chief Justice of India, Governor of the State also the Chief Justice of that High Court in the matter of appointment of a Judge other than Chief Justice.</p>		<p>of Judges of a High Court. Appointment of Judges - Article 217 provides that every judge of a High Court shall be appointed by the President. The President the Chief Justice of a High Court after consultation with the Chief Justice of India and the Governor the State concerned. In case of a Judge other than the Chief Justice</p>		
<p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
90/385	SUBMITTED TEXT	24 WORDS	64% MATCHING TEXT	24 WORDS
<p>have • Held for at least 10 years of judicial office in the territory of India or has been for at least 10 years</p>		<p>have been for at least three years' graduates of any university in the territory of India or have been for at least three years</p>		
<p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
91/385	SUBMITTED TEXT	14 WORDS	83% MATCHING TEXT	14 WORDS
<p>an advocate of a High Court or of two or more such courts in succession.</p>		<p>an advocate of a high court or of two or more high courts for 10 years in succession,</p>		
<p>W https://nanopdf.com/download/these-notes-are-prepared-by-radhika-seth-law-centre-2-this-is-5aeb86 ...</p>				
92/385	SUBMITTED TEXT	11 WORDS	100% MATCHING TEXT	11 WORDS
<p>a common High Court for two or more states or</p>		<p>a common high court for two or more states or</p>		
<p>W https://nanopdf.com/download/these-notes-are-prepared-by-radhika-seth-law-centre-2-this-is-5aeb86 ...</p>				
93/385	SUBMITTED TEXT	16 WORDS	84% MATCHING TEXT	16 WORDS
<p>superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction,</p>		<p>superintendence over all courts and tribunals throughout the territories of India in relation to which it exercises jurisdiction,</p>		
<p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
94/385	SUBMITTED TEXT	11 WORDS	100% MATCHING TEXT	11 WORDS
<p>The Supreme Court of India is the highest court of</p>				
<p>SA JAGWINDER KAUR full dissertation 1.09.21.pdf (D112336208)</p>				
95/385	SUBMITTED TEXT	30 WORDS	96% MATCHING TEXT	30 WORDS
<p>every High Court shall have power throughout the territorial limits in relation to which it exercises jurisdiction to any person or authority including the appropriate cases, any Government within those territories,</p>				
<p>SA A Socio-legal Study of Judicial Contribution for Protecting Human Rights in India (Rajender Kumar ... (D28680544)</p>				

96/385	SUBMITTED TEXT	15 WORDS	100% MATCHING TEXT	15 WORDS
<p>writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari or any of them.</p> <p>SA A Socio-legal Study of Judicial Contribution for Protecting Human Rights in India (Rajender Kumar ... (D28680544)</p>				
97/385	SUBMITTED TEXT	13 WORDS	100% MATCHING TEXT	13 WORDS
<p>consultation with the Chief Justice of the High Court of the concerned State.</p> <p>SA dissertation completing.docx (D26696797)</p>				
98/385	SUBMITTED TEXT	13 WORDS	100% MATCHING TEXT	13 WORDS
<p>in Fertilizer Corporation Kamgar Union v. Union of India (AIR 1981 SC 344)</p> <p>In Fertiliser Corporation Kamgar (Union) v Union of India (AIR 1981 SC 434),</p> <p>W https://pdfcoffee.com/a-k-jain-constitution-1st-part-pdf-free.html</p>				
99/385	SUBMITTED TEXT	29 WORDS	48% MATCHING TEXT	29 WORDS
<p>Supreme Court in its recent decisions. Now, the court permits public interest litigation at the instance of the so-called "PUBLIC-SPIRITED CITIZENS" 4 for the enforcement of Constitutional and Legal</p> <p>Supreme Court in its recent rulings. The Court now permits 'Social action litigation' or 'public interest litigation' (pro bono publico litigation) at the instance of 'public-spirited citizens', for the enforcement of any constitutional 01 legal</p> <p>W https://pdfcoffee.com/a-k-jain-constitution-1st-part-pdf-free.html</p>				
100/385	SUBMITTED TEXT	11 WORDS	96% MATCHING TEXT	11 WORDS
<p>any public-spirited citizen can move/approach the court for the public cause (</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
101/385	SUBMITTED TEXT	39 WORDS	66% MATCHING TEXT	39 WORDS
<p>public welfare) by filing a petition in the Supreme Court under Art.32 of the Constitution or in the High Court under Art.226 of the Constitution or before the Court of Magistrate under Sec. 133 of the Code of Criminal Procedure, 1973.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
102/385	SUBMITTED TEXT	17 WORDS	70% MATCHING TEXT	17 WORDS
<p>public spirited citizen can move/approach the court for the public cause (in the interests of the</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

103/385	SUBMITTED TEXT	21 WORDS	77% MATCHING TEXT	21 WORDS
<p>of the Supreme Court in S.P. Gupta vs. Union of India. (AIR 1982 SC 149) popularly known as "JUDGES TRANSFER CASE",</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>of the High Court concerned. S.P. Gupta & others v. Union of India, AIR 1982 SC 149, popularly known as the Judges Transfer case</p>		
104/385	SUBMITTED TEXT	43 WORDS	94% MATCHING TEXT	43 WORDS
<p>public welfare) by filing a petition: • In the Supreme Court under Article 32 of the Constitution of India; • In the High Court under Article 226 of the Indian Constitution • In the Court of Magistrate under Section 133 of the Code of Criminal procedure 30</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
105/385	SUBMITTED TEXT	17 WORDS	79% MATCHING TEXT	17 WORDS
<p>of the Constitution. Some of the FRs are available only to citizens while others are available to</p> <p>W https://www.drishtias.com/printpdf/fundamental-rights-part-1</p>		<p>of the country. • Some of the rights are available only to the citizens while others are available to</p>		
106/385	SUBMITTED TEXT	35 WORDS	100% MATCHING TEXT	35 WORDS
<p>the Government and Parliament of India and the Government and the legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India".</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>		<p>the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."</p>		
107/385	SUBMITTED TEXT	24 WORDS	81% MATCHING TEXT	24 WORDS
<p>to secure to all its citizens justice (social, economic and political), liberty (of thought, expression, belief, faith and worship) and equality (of status and</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
108/385	SUBMITTED TEXT	24 WORDS	100% MATCHING TEXT	24 WORDS
<p>are, "nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws".</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

109/385	SUBMITTED TEXT	23 WORDS	91% MATCHING TEXT	23 WORDS
<p>This included modifying the traditional requirements of locus standi, liberalizing the procedure to file writ petitions, creating or expanding FRs, overcoming evidentiary problems,</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
110/385	SUBMITTED TEXT	12 WORDS	100% MATCHING TEXT	12 WORDS
<p>Where a legal wrong or a legal injury is caused to</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
111/385	SUBMITTED TEXT	20 WORDS	82% MATCHING TEXT	20 WORDS
<p>or to a determinate class of persons by reason of violation of any constitutional or legal right . . .</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
112/385	SUBMITTED TEXT	18 WORDS	72% MATCHING TEXT	18 WORDS
<p>socially or economically disadvantaged position, unable to approach the Court for any relief, any member of the public</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
113/385	SUBMITTED TEXT	14 WORDS	93% MATCHING TEXT	14 WORDS
<p>it "includes right to live with human dignity and all that goes along with it".</p> <p>it also the right to live with human dignity", and all that goes along with it,</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
114/385	SUBMITTED TEXT	19 WORDS	100% MATCHING TEXT	19 WORDS
<p>no person shall be deprived of his life or personal liberty except according to the procedure established by law"—</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
115/385	SUBMITTED TEXT	27 WORDS	88% MATCHING TEXT	27 WORDS
<p>s—the PIL cases were generally filed by public-spirited persons (lawyers, journalists, social activists or academics). Most of the cases related to the rights of disadvantaged sections of society</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

116/385	SUBMITTED TEXT	11 WORDS	100%	MATCHING TEXT	11 WORDS
<p>The breadth of issues which were raised in PIL also expanded</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					
117/385	SUBMITTED TEXT	19 WORDS	100%	MATCHING TEXT	19 WORDS
<p>has reached to such a stage where it has started undermining the very purpose for which PIL was introduced.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					
118/385	SUBMITTED TEXT	18 WORDS	100%	MATCHING TEXT	18 WORDS
<p>In other words, the dark side is slowly moving to overshadow the bright side of the PIL project. (1)</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					
119/385	SUBMITTED TEXT	15 WORDS	100%	MATCHING TEXT	15 WORDS
<p>the number of per capita judges in India is much lower than many other countries</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					
120/385	SUBMITTED TEXT	30 WORDS	100%	MATCHING TEXT	30 WORDS
<p>Indian Supreme Court as well as High Courts is facing a huge backlog of cases, it is puzzling why the courts have not done enough to stop non-genuine PIL cases.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					
121/385	SUBMITTED TEXT	24 WORDS	100%	MATCHING TEXT	24 WORDS
<p>by allowing frivolous PIL plaintiffs to waste the time and energy of the courts, the judiciary might be violating the right to speedy trial</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					
122/385	SUBMITTED TEXT	12 WORDS	95%	MATCHING TEXT	12 WORDS
<p>they admit PIL cases on account of raising an issue that is (</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					

123/385	SUBMITTED TEXT	29 WORDS	100%	MATCHING TEXT	29 WORDS
<p>popular in the society. Conversely, the desire to become people's judges in a democracy should not hinder admitting PIL cases which involve an important public interest but are potentially unpopular.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					
124/385	SUBMITTED TEXT	72 WORDS	100%	MATCHING TEXT	72 WORDS
<p>The court is not chosen by the people and is not responsible to them in the sense in which the House of People is. However, it will win for itself a permanent place in the hearts of the people and augment its moral authority if it can shift the focus of judicial review from the numerical concept of minority protection to the humanitarian concept of the protection of the weaker section of the people."</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					
125/385	SUBMITTED TEXT	33 WORDS	100%	MATCHING TEXT	33 WORDS
<p>judiciary is often unable to ensure that its guidelines or directions in PIL cases are complied with, for instance, regarding sexual harassment at workplace (Vishaka case) or the procedure of arrest by police (D.K.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					
126/385	SUBMITTED TEXT	56 WORDS	100%	MATCHING TEXT	56 WORDS
<p>Disturbing the constitutional balance of power: Although the Indian Constitution does not follow any strict separation of powers, it still embodies the doctrine of checks and balances, which even the judiciary should respect. However, the judiciary on several occasions did not exercise self-restraint and moved on to legislate, settle policy questions, take over governance, or monitor executive agencies.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					
127/385	SUBMITTED TEXT	21 WORDS	100%	MATCHING TEXT	21 WORDS
<p>might dilute the original commitment to use this remedy only for enforcing human rights of the victimized and the disadvantaged groups."</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					
128/385	SUBMITTED TEXT	15 WORDS	100%	MATCHING TEXT	15 WORDS
<p>most convenient vehicle for bringing public grievances before courts and because the courts' orders in</p> <p>SA sudhir kumar pal.docx (D158491393)</p>					

129/385	SUBMITTED TEXT	11 WORDS	100% MATCHING TEXT	11 WORDS
Speedy trial is one of the essential requisites of law.		Speedy trial is one of the essential requisites of law,		
W https://authorzilla.com/p5G5Q/13-chapter-8-pdf-shodhganga.html				
130/385	SUBMITTED TEXT	27 WORDS	66% MATCHING TEXT	27 WORDS
their behaviour and values and generating endless fear. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings. 14.		their behaviour and values are altered; and they suffer from constant fear and anxiety. In addition to the trauma of rape itself, victims have to suffer further agony during legal proceedings.		
W https://authorzilla.com/p5G5Q/13-chapter-8-pdf-shodhganga.html				
131/385	SUBMITTED TEXT	10 WORDS	100% MATCHING TEXT	10 WORDS
Delhi Domestic Working Women's Forum V Union of India (1995)				
SA sudhir kumar pa.docx (D158491393)				
132/385	SUBMITTED TEXT	23 WORDS	75% MATCHING TEXT	23 WORDS
the broad parameters in assisting the victims of rape. 1. The complainants of sexual assault cases should be provided with legal representation. It				
SA dissertation completing.docx (D26696797)				
133/385	SUBMITTED TEXT	69 WORDS	100% MATCHING TEXT	69 WORDS
well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It				
SA dissertation completing.docx (D26696797)				
134/385	SUBMITTED TEXT	83 WORDS	96% MATCHING TEXT	83 WORDS
important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case. 2. Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her. 3. The police				
SA dissertation completing.docx (D26696797)				

135/385	SUBMITTED TEXT	19 WORDS	100% MATCHING TEXT	19 WORDS
<p>a duty to inform the victim of her right to representation before any questions were asked of her and</p> <p>SA dissertation completing.docx (D26696797)</p>				
136/385	SUBMITTED TEXT	12 WORDS	100% MATCHING TEXT	12 WORDS
<p>In all rape trials anonymity of the victim must be maintained,</p> <p>W https://authorzilla.com/p5G5Q/13-chapter-8-pdf-shodhganga.html</p>				
137/385	SUBMITTED TEXT	45 WORDS	100% MATCHING TEXT	45 WORDS
<p>the police report should state that the victim was so informed. 4. A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable. 5.</p> <p>SA dissertation completing.docx (D26696797)</p>				
138/385	SUBMITTED TEXT	12 WORDS	87% MATCHING TEXT	12 WORDS
<p>Commission for men shall perform all or any of the following functions, namely:;</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>				
139/385	SUBMITTED TEXT	47 WORDS	96% MATCHING TEXT	47 WORDS
<p>advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained. 6.</p> <p>SA dissertation completing.docx (D26696797)</p>				
140/385	SUBMITTED TEXT	17 WORDS	100% MATCHING TEXT	17 WORDS
<p>Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>				
141/385	SUBMITTED TEXT	31 WORDS	100% MATCHING TEXT	31 WORDS
<p>Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal. 18.</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>				

142/385	SUBMITTED TEXT	29 WORDS	100% MATCHING TEXT	29 WORDS
<p>Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place.</p> <p>SA yash pratap.docx (D39188369)</p>				
143/385	SUBMITTED TEXT	17 WORDS	80% MATCHING TEXT	17 WORDS
<p>People's Union for Civil Liberties (PUCL) V Union of India (1997) Equivalent citations: AIR 1997 SC 568,</p> <p>SA Special Laws on Security in India An Analysis of Judicial Response of AFSPA and PSA.pdf (D163704875)</p>				
144/385	SUBMITTED TEXT	13 WORDS	88% MATCHING TEXT	13 WORDS
<p>report on "Tapping of politicians phones" by the Central Bureau of Investigation (CBI). report on tapping of politicians. telephones by the Central Bureau of Investigation [CBI].</p> <p>W https://authorzilla.com/p5G5Q/13-chapter-8-pdf-shodhganga.html</p>				
145/385	SUBMITTED TEXT	15 WORDS	100% MATCHING TEXT	15 WORDS
<p>On the occurrence of any public emergency, or in the interest of public safety, on the occurrence of any public emergency or in the interest of public safety.</p> <p>W https://authorzilla.com/p5G5Q/13-chapter-8-pdf-shodhganga.html</p>				
146/385	SUBMITTED TEXT	80 WORDS	90% MATCHING TEXT	80 WORDS
<p>Telephone-Tapping is a serious invasion of an individual's privacy. With the growth of highly sophisticated communication technology, the right to hold telephone conversation, in the privacy of one's home or office without interference, is increasingly susceptible to abuse. It is no doubt correct that every Government, howsoever democratic, exercises some degree of subrosa operation as a part of its intelligence out-fit but at the same time citizen's right to privacy has to be protected from being abused by the authorities of the day. 2.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
147/385	SUBMITTED TEXT	10 WORDS	100% MATCHING TEXT	10 WORDS
<p>the Central Government or a State Government or any Officer</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>				

148/385	SUBMITTED TEXT	13 WORDS	88% MATCHING TEXT	13 WORDS
<p>the occurrence of a public emergency or in the interest of public safety</p> <p>W https://authorzilla.com/p5G5Q/13-chapter-8-pdf-shodhganga.html</p>		<p>the occurrence of any public emergency or in the interest of public safety.</p>		
149/385	SUBMITTED TEXT	24 WORDS	91% MATCHING TEXT	24 WORDS
<p>in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>				
150/385	SUBMITTED TEXT	23 WORDS	94% MATCHING TEXT	23 WORDS
<p>in the interest of: (i) The sovereignty and integrity of India. (ii) The security of the State. (iii) Friendly relations with foreign states. (iv) Public order. (v)</p> <p>W https://authorzilla.com/p5G5Q/13-chapter-8-pdf-shodhganga.html</p>		<p>In the interests of (i) the sovereignty and integrity of India (ii) the security of the State (iii) friendly relations with foreign States (iv) public order (v)</p>		
151/385	SUBMITTED TEXT	11 WORDS	100% MATCHING TEXT	11 WORDS
<p>the Central Government or the State Government or any officer</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>				
152/385	SUBMITTED TEXT	37 WORDS	92% MATCHING TEXT	37 WORDS
<p>surveillance" under Chapter XX of the U.P. Police Regulations constituted an infringement of any of the fundamental rights guaranteed by Part III of the Constitution. Regulation 236(b) which permitted surveillance by "domiciliary visits at night" was held to</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
153/385	SUBMITTED TEXT	17 WORDS	88% MATCHING TEXT	17 WORDS
<p>personal liberty" in Article 21 were elaborately considered by this Court in Kharak Singh's case. The majority</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
154/385	SUBMITTED TEXT	18 WORDS	65% MATCHING TEXT	18 WORDS
<p>right to privacy" as part of the right to life under Article 21 of the Constitution on the</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

155/385	SUBMITTED TEXT	43 WORDS	92% MATCHING TEXT	43 WORDS
<p>that "life" in the 5th and 14th Amendments of the U.S. Constitution corresponding to Article 21, means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs-his arms and legs etc.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
156/385	SUBMITTED TEXT	26 WORDS	87% MATCHING TEXT	26 WORDS
<p>security of one's privacy against arbitrary intrusion by the police is basic to a free society. It is therefore implicit in 'the concept of ordered liberty'</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
157/385	SUBMITTED TEXT	25 WORDS	86% MATCHING TEXT	25 WORDS
<p>the Fourth Amendment which reads. 46 The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
158/385	SUBMITTED TEXT	40 WORDS	100% MATCHING TEXT	40 WORDS
<p>that an unauthorised intrusion into a person's home and the disturbance caused to him thereby, is as it were the violation of a common law right of a man-an ultimate essential of ordered liberty, if not of the very concept of</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
159/385	SUBMITTED TEXT	12 WORDS	87% MATCHING TEXT	12 WORDS
<p>English Common Law maxim asserts that "every man's house is his castle"</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
160/385	SUBMITTED TEXT	99 WORDS	100% MATCHING TEXT	99 WORDS
<p>the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person's house, where he lives with his family, is his "castle": it is his rampart against encroachment on his personal liberty.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

161/385	SUBMITTED TEXT	18 WORDS	100% MATCHING TEXT	18 WORDS
<p>nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
162/385	SUBMITTED TEXT	24 WORDS	70% MATCHING TEXT	24 WORDS
<p>the right of personal liberty in Article 21 as a right of an individual to be free from restriction or encroachments on his person, whether</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
163/385	SUBMITTED TEXT	11 WORDS	100% MATCHING TEXT	11 WORDS
<p>encroachments are directly imposed or indirectly brought about by calculated measures.</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>				
164/385	SUBMITTED TEXT	11 WORDS	100% MATCHING TEXT	11 WORDS
<p>right to privacy" is a part of the right to "</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
165/385	SUBMITTED TEXT	28 WORDS	87% MATCHING TEXT	28 WORDS
<p>right to be let alone". A citizen has a right "to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters". 18.</p> <p>right to be let alone is guaranteed by Article 21 of the Constitution. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters.</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
166/385	SUBMITTED TEXT	12 WORDS	87% MATCHING TEXT	12 WORDS
<p>that "the right to privacy is implicit in the right to life</p> <p>SA Special Laws on Security in India An Analysis of Judicial Response of AFSPA and PSA.pdf (D163704875)</p>				
167/385	SUBMITTED TEXT	50 WORDS	100% MATCHING TEXT	50 WORDS
<p>right to privacy is a part of the right to "life" and "personal liberty" enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right to privacy, Article 21 is attracted. The said right cannot be curtailed "except according to procedure established by law". 19. The</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

168/385	SUBMITTED TEXT	25 WORDS	100% MATCHING TEXT	25 WORDS
<p>the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy".</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
169/385	SUBMITTED TEXT	19 WORDS	81% MATCHING TEXT	19 WORDS
<p>means the right to express one's convictions and opinions freely by word of mouth, writing, printing, picture, or</p> <p>means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
170/385	SUBMITTED TEXT	45 WORDS	100% MATCHING TEXT	45 WORDS
<p>Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone-conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law. 20.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
171/385	SUBMITTED TEXT	15 WORDS	89% MATCHING TEXT	15 WORDS
<p>No one shall be subject to arbitrary or unlawful interference with his privacy, family,</p> <p>No one shall be subjected to arbitrary or unlawful interference with his privacy, family,</p> <p>W https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf</p>				
172/385	SUBMITTED TEXT	30 WORDS	83% MATCHING TEXT	30 WORDS
<p>or correspondence, nor to lawful attacks on his honour and reputation. 2. Every one has the right to the protection of the law against such interference or attacks. Article 12 of the</p> <p>or correspondence, nor to unlawful attacks on his honour and reputation. 2. has the right to the protection of the law against such interference or attacks." Article 23 ICCPR "1. The</p> <p>W https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf</p>				
173/385	SUBMITTED TEXT	17 WORDS	96% MATCHING TEXT	17 WORDS
<p>the Constitution. 21. India is a signatory to the International Covenant on Civil and Political Rights, 1966.</p> <p>SA Special Laws on Security in India An Analysis of Judicial Response of AFSPA and PSA.pdf (D163704875)</p>				
174/385	SUBMITTED TEXT	28 WORDS	60% MATCHING TEXT	28 WORDS
<p>the Constitution directs that the State shall endeavour to inter alia, foster respect for international law and treaty obligations in the dealings of organised peoples with one another.</p> <p>SA Special Laws on Security in India An Analysis of Judicial Response of AFSPA and PSA.pdf (D163704875)</p>				

175/385	SUBMITTED TEXT	16 WORDS	100% MATCHING TEXT	16 WORDS
<p>No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>		<p>no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.</p>		
176/385	SUBMITTED TEXT	13 WORDS	100% MATCHING TEXT	13 WORDS
<p>Article 11 of the International Covenant on Civil and Political Rights. The</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
177/385	SUBMITTED TEXT	13 WORDS	100% MATCHING TEXT	13 WORDS
<p>Occurrence of any public emergency" or "in the interest of public safety"</p> <p>W https://authorzilla.com/p5G5Q/13-chapter-8-pdf-shodhganga.html</p>		<p>occurrence of any public emergency or in the interest of public safety.</p>		
178/385	SUBMITTED TEXT	35 WORDS	83% MATCHING TEXT	35 WORDS
<p>Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action. The expression "public safety" means the state or condition of freedom from danger</p> <p>W https://authorzilla.com/p5G5Q/13-chapter-8-pdf-shodhganga.html</p>		<p>Public Emergency. : This means .the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action.. 2. In the interest of Public Safety. : This means .the state or condition of freedom from danger</p>		
179/385	SUBMITTED TEXT	25 WORDS	91% MATCHING TEXT	25 WORDS
<p>in the interest of (i) sovereignty and integrity of India, (ii) the security of the State, (iii) friendly relations with foreign States, (iv) public order</p> <p>W https://authorzilla.com/p5G5Q/13-chapter-8-pdf-shodhganga.html</p>		<p>In the interests of (i) the sovereignty and integrity of India (ii) the security of the State (iii) friendly relations with foreign States (iv) public order (</p>		
180/385	SUBMITTED TEXT	20 WORDS	75% MATCHING TEXT	20 WORDS
<p>the sovereignty and integrity or India, the security of the State, friendly relations with foreign States of public order or</p> <p>SA dissertation completing.docx (D26696797)</p>				
181/385	SUBMITTED TEXT	26 WORDS	69% MATCHING TEXT	26 WORDS
<p>in the interest of the sovereignty and integrity of India or the security of the State or friendly relations with sovereign States or public order or</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

182/385	SUBMITTED TEXT	46 WORDS	82% MATCHING TEXT	46 WORDS
<p>procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself". Thus, understood, "procedure" must rule out anything arbitrary, freakish or bizarre.</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>				
183/385	SUBMITTED TEXT	17 WORDS	75% MATCHING TEXT	17 WORDS
<p>the rights of the citizens guaranteed 50 under Articles 19(1)(a) and 21 of the Constitution of India.</p> <p>SA SHABANA NIHAR A PH20015.pdf (D143037469)</p>				
184/385	SUBMITTED TEXT	14 WORDS	76% MATCHING TEXT	14 WORDS
<p>of the intercepted material shall be destroyed as soon as its retention is</p> <p>of the intercepted material must be destroyed as soon as their retention is</p> <p>W https://authorzilla.com/p5G5Q/13-chapter-8-pdf-shodhganga.html</p>				
185/385	SUBMITTED TEXT	20 WORDS	52% MATCHING TEXT	20 WORDS
<p>the Central or State Government, as the case may be, and also to the sender and the addressee of the</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>				
186/385	SUBMITTED TEXT	16 WORDS	65% MATCHING TEXT	16 WORDS
<p>in her letter addressed to this Court stated that Five out of fifteen women prisoners interviewed</p> <p>SA Dissertation aafiya new.docx (D138764633)</p>				
187/385	SUBMITTED TEXT	23 WORDS	87% MATCHING TEXT	23 WORDS
<p>in the Bombay Central Jail alleged that they had been assaulted by the police in the police lock up and two of them</p> <p>SA Dissertation aafiya new.docx (D138764633)</p>				
188/385	SUBMITTED TEXT	20 WORDS	72% MATCHING TEXT	20 WORDS
<p>that they had been assaulted and tortured in the lock up. Treating the letter as a writ petition the Court</p> <p>SA Dissertation aafiya new.docx (D138764633)</p>				

189/385	SUBMITTED TEXT	18 WORDS	76% MATCHING TEXT	18 WORDS
<p>the meanwhile, the Director of the College of Social Work, Nirmala Niketan, Bombay was directed to interview the women</p> <p>SA Dissertation aafiya new.docx (D138764633)</p>				
190/385	SUBMITTED TEXT	10 WORDS	100% MATCHING TEXT	10 WORDS
<p>no adequate arrangement for providing legal assistance to women prisoners</p> <p>SA dissertation completing.docx (D26696797)</p>				
191/385	SUBMITTED TEXT	71 WORDS	95% MATCHING TEXT	71 WORDS
<p>Legal assistance to a poor or indigent accused, arrested and put in jeopardy of his life or personal liberty, is a constitutional imperative mandated not only by Art. 39A but also by Articles 14 and 21 of the Constitution. It is a Necessary sine qua non of justice and where it is not provided, injustice is likely to result and every act of injustice corrodes the foundations of democracy and rule of law.</p> <p>SA dissertation completing.docx (D26696797)</p>				
192/385	SUBMITTED TEXT	16 WORDS	90% MATCHING TEXT	16 WORDS
<p>The Inspector General of Prisons in Maharashtra should issue a circular to all Superintendents of</p> <p>SA dissertation completing.docx (D26696797)</p>				
193/385	SUBMITTED TEXT	12 WORDS	100% MATCHING TEXT	12 WORDS
<p>who have been in jail beyond a period of 15 days.</p> <p>SA dissertation completing.docx (D26696797)</p>				
194/385	SUBMITTED TEXT	33 WORDS	94% MATCHING TEXT	33 WORDS
<p>to provide facilities to lawyers nominated by the concerned district Legal Aid Committee to enter the jail and to interview the prisoners who have expressed their desire to have their assistance; ii. to furnish to</p> <p>SA dissertation completing.docx (D26696797)</p>				
195/385	SUBMITTED TEXT	17 WORDS	79% MATCHING TEXT	17 WORDS
<p>information is required by them in regard to the prisoners in jail; iii. to put up notices</p> <p>SA dissertation completing.docx (D26696797)</p>				

196/385	SUBMITTED TEXT	23 WORDS	86%	MATCHING TEXT	23 WORDS
<p>to allow any prisoner to meet such lawyers. Such interview should be within, sight but out of hearing of any jail official. [343</p> <p>SA dissertation completing.docx (D26696797)</p>					
197/385	SUBMITTED TEXT	29 WORDS	74%	MATCHING TEXT	29 WORDS
<p>The Court has given the following further directions: i. Four or five police lock ups should be selected in reasonably good localities where only female suspects should be kept and</p> <p>SA Dessertation aafiya new.docx (D138764633)</p>					
198/385	SUBMITTED TEXT	14 WORDS	100%	MATCHING TEXT	14 WORDS
<p>should be guarded. by female constables. Female suspects should not be kept in</p> <p>SA Dessertation aafiya new.docx (D138764633)</p>					
199/385	SUBMITTED TEXT	48 WORDS	83%	MATCHING TEXT	48 WORDS
<p>ii. Interrogation of females should be carried out only in the presence of female police officers/constables. [345 G] iii. A person arrested must be immediately informed of the grounds of his arrest. It must immediately be made known to the arrested person that he is entitled to apply for bail.</p> <p>SA Dessertation aafiya new.docx (D138764633)</p>					
200/385	SUBMITTED TEXT	10 WORDS	100%	MATCHING TEXT	10 WORDS
<p>be affixed in each cell in every police lock up.</p> <p>SA dissertation completing.docx (D26696797)</p>					
201/385	SUBMITTED TEXT	34 WORDS	94%	MATCHING TEXT	34 WORDS
<p>iv. Whenever a person is arrested by the police and taken to the police lock up, the police should immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee</p> <p>SA Dessertation aafiya new.docx (D138764633)</p>					
202/385	SUBMITTED TEXT	15 WORDS	82%	MATCHING TEXT	15 WORDS
<p>legal assistance to him at State cost provided he is willing to accept such</p> <p>SA Dessertation aafiya new.docx (D138764633)</p>					

203/385	SUBMITTED TEXT	30 WORDS	58% MATCHING TEXT	30 WORDS
<p>with a view to providing the arrested persons an opportunity to air their grievances and for ascertaining the conditions in the police lock up, whether the requisite facilities are being provided,</p> <p>SA dissertation completing.docx (D26696797)</p>				
204/385	SUBMITTED TEXT	80 WORDS	87% MATCHING TEXT	80 WORDS
<p>As soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest. [347 B-C] vii. The magistrate before whom an arrested person is produced shall enquire from him whether he has any complaint of torture or maltreatment in police custody and inform him that he has</p> <p>SA Dessertation aafiya new.docx (D138764633)</p>				
205/385	SUBMITTED TEXT	12 WORDS	95% MATCHING TEXT	12 WORDS
<p>a letter addressed by Sheela Barse, a journalist, complaining of custodial violence</p> <p>SA dissertation completing.docx (D26696797)</p>				
206/385	SUBMITTED TEXT	15 WORDS	66% MATCHING TEXT	15 WORDS
<p>women prisoners whilst confined in the police lock up in the city of Bombay. The</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
207/385	SUBMITTED TEXT	16 WORDS	71% MATCHING TEXT	16 WORDS
<p>Director of College of Social Work, Nirmala Niketan, Bombay will visit the Bombay Central Jail and</p> <p>Director of College of Social Work, Bombay to visit the Bombay Central Jail and</p> <p>W https://www.ijlsi.com/wp-content/uploads/Doctrine-of-Judicial-Review-in-Indian-Constitution.pdf</p>				
208/385	SUBMITTED TEXT	15 WORDS	86% MATCHING TEXT	15 WORDS
<p>the need to provide legal assistance not only to women prisoners but to all prisoners</p> <p>the urgent need to provide legal aid not only to women prisoners but to all prisoners</p> <p>W https://authorzilla.com/p5G5Q/13-chapter-8-pdf-shodhganga.html</p>				
209/385	SUBMITTED TEXT	14 WORDS	100% MATCHING TEXT	14 WORDS
<p>that they had been assaulted by the police in the police lock up.</p> <p>SA Dessertation aafiya new.docx (D138764633)</p>				

210/385	SUBMITTED TEXT	18 WORDS	83%	MATCHING TEXT	18 WORDS
<p>Devamma and Pushpa Paeen who were allegedly assaulted and tortured whilst they were in the police lock up.</p> <p>SA dissertation completing.docx (D26696797)</p>					
211/385	SUBMITTED TEXT	105 WORDS	96%	MATCHING TEXT	105 WORDS
<p>legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only by Article 39 but also by Articles 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law, because nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are priced out of the legal system, lose faith in</p> <p>SA dissertation completing.docx (D26696797)</p>					
212/385	SUBMITTED TEXT	35 WORDS	100%	MATCHING TEXT	35 WORDS
<p>feeling begins to overtake them that democracy and rule of law are merely slogans or myths intended to perpetuate the domination of the rich and the powerful and to protect the establishment and the vested interests.</p> <p>SA dissertation completing.docx (D26696797)</p>					
213/385	SUBMITTED TEXT	10 WORDS	100%	MATCHING TEXT	10 WORDS
<p>no adequate arrangement for providing legal assistance to women prisoners</p> <p>SA dissertation completing.docx (D26696797)</p>					
214/385	SUBMITTED TEXT	35 WORDS	75%	MATCHING TEXT	35 WORDS
<p>the Inspector General of Prisons in Maharashtra to issue a circular to all Superintendents of Police in Maharashtra requiring them- 1. to send a list of all under-trial prisoners to the Legal Aid Committee of the district</p> <p>SA dissertation completing.docx (D26696797)</p>					
215/385	SUBMITTED TEXT	25 WORDS	97%	MATCHING TEXT	25 WORDS
<p>and female prisoners. 2. to furnish to the concerned District Legal Aid Committee a list giving particulars of the persons arrested on suspicion under section 41</p> <p>SA dissertation completing.docx (D26696797)</p>					

216/385	SUBMITTED TEXT	46 WORDS	100%	MATCHING TEXT	46 WORDS
<p>who have been in jail beyond a period of 15 days. 3. to provide facilities to the lawyers nominated by the concerned District Legal Aid Committee to enter the jail and to interview the prisoners who have expressed their desire to have their assistance. 4. to furnish to</p> <p>SA dissertation completing.docx (D26696797)</p>					
217/385	SUBMITTED TEXT	16 WORDS	87%	MATCHING TEXT	16 WORDS
<p>information is required by them in regard to the prisoners in jail. 5. to put up notices</p> <p>SA dissertation completing.docx (D26696797)</p>					
218/385	SUBMITTED TEXT	12 WORDS	100%	MATCHING TEXT	12 WORDS
<p>and 6. to allow any prisoner who desires to meet the lawyers</p> <p>SA dissertation completing.docx (D26696797)</p>					
219/385	SUBMITTED TEXT	14 WORDS	90%	MATCHING TEXT	14 WORDS
<p>and such interview should be within sight but out of hearing of and jail official.</p> <p>SA dissertation completing.docx (D26696797)</p>					
220/385	SUBMITTED TEXT	11 WORDS	100%	MATCHING TEXT	11 WORDS
<p>and to interview the prisoners who have expressed their desire to</p> <p>SA dissertation completing.docx (D26696797)</p>					
221/385	SUBMITTED TEXT	47 WORDS	100%	MATCHING TEXT	47 WORDS
<p>We would direct that four or five police lock ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in police lock up in which male suspects are detained.</p> <p>SA Dessertation aafiya new.docx (D138764633)</p>					

222/385	SUBMITTED TEXT	58 WORDS	100%	MATCHING TEXT	58 WORDS
<p>interrogation of females should be carried out only in the presence of female police officers/constables. iii. Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail.</p> <p>SA Dissertation aafiya new.docx (D138764633)</p>					
223/385	SUBMITTED TEXT	12 WORDS	100%	MATCHING TEXT	12 WORDS
<p>shall be affixed in each cell in every police lock up</p> <p>SA dissertation completing.docx (D26696797)</p>					
224/385	SUBMITTED TEXT	9 WORDS	100%	MATCHING TEXT	9 WORDS
<p>as soon as he is brought to the police station.</p> <p>SA dissertation completing.docx (D26696797)</p>					
225/385	SUBMITTED TEXT	81 WORDS	98%	MATCHING TEXT	81 WORDS
<p>whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps far the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance. The State Government will provide necessary funds to the concerned Legal Aid Committee for carrying out this direction.</p> <p>v.</p> <p>SA Dissertation aafiya new.docx (D138764633)</p>					
226/385	SUBMITTED TEXT	32 WORDS	77%	MATCHING TEXT	32 WORDS
<p>with a view to providing the arrested persons an opportunity to air their grievances and ascertaining what are the conditions in the police lock ups and whether the requisite facilities are being provided</p> <p>SA dissertation completing.docx (D26696797)</p>					

227/385

SUBMITTED TEXT

91 WORDS

94% MATCHING TEXT

91 WORDS

as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest; and lastly vii. e would direct that the magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has right under section 54 of the

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228/385

SUBMITTED TEXT

172 WORDS

100% MATCHING TEXT

172 WORDS

Role of National Human Rights Commission The National Human Rights Commission is an expression of India's concern for the protection and promotion of human rights. It is a unique expert body, which is created under the Protection of Human Rights Act, 1993, for examining and investigating the complaints relating to violations of human rights, as also the negligence on the part of any public servant in preventing such violation. In India, the National Human Rights Commission can play a vital role in influencing the policy making and sometimes even policy initiations, facilitating protection and promotion of human rights, such institutions provide an excellent mechanism for building public opinion and strong alliances and partnerships with non-governmental organisations and other human rights activists for influencing the national agenda on human rights. Apart from the resolution of disputes brought to such institutions, voice articulated, studies conducted, and research produced by these institutions carry great credibility and respectability and thus, can be important source material in the quest of securing and protecting human rights. There is a need to evolve more meaningful interaction and networking among these institutions.

ROLE OF NATIONAL HUMAN RIGHTS COMMISSION The National Human Rights Commission is an expression of India's concern for the protection and promotion of human rights. It is a unique expert body, which is created under the Protection of Human Rights Act, 1993, for examining and investigating the complaints relating to violations of human rights, as also the negligence on the part of any public servant in preventing such violation. In India, the National Human Rights Commission can play a vital role in influencing the policy making and sometimes even policy initiations, facilitating protection and promotion of human rights, such institutions provide an excellent mechanism for building public opinion and strong alliances and partnerships with non-governmental organisations and other human rights activists for influencing the national agenda on human rights. Apart from the resolution of disputes brought to such institutions, voice articulated, studies conducted and research produced by these institutions carry great credibility and respectability and thus, can be important source material in the quest of securing and protecting human rights. There is a need to evolve more meaningful interaction and networking among these institutions.

W [https://www.gapinterdisciplinarity.org/res/articles/\(50-55\).pdf](https://www.gapinterdisciplinarity.org/res/articles/(50-55).pdf)

229/385

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to be medically examined. We are aware that section 54 of the

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230/385	SUBMITTED TEXT	105 WORDS	98% MATCHING TEXT	105 WORDS		
<p>undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. But very often the arrested person is not aware of this right and on account of his ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock up. It is for this reason that we are giving a specific direction requiring the magistrate to inform the arrested person about this right of medical examination in case he has any complaint of torture or maltreatment in police custody.</p> <p>SA Dissertation aafiya new.docx (D138764633)</p>						
231/385	SUBMITTED TEXT	13 WORDS	88% MATCHING TEXT	13 WORDS		
<p>complement the judiciary by monitoring the functioning of the institutions of the State,</p> <p>SA sudhir kumar pal.docx (D158491393)</p>						
232/385	SUBMITTED TEXT	18 WORDS	67% MATCHING TEXT	18 WORDS		
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>to any of the Entries enumerated in List I and List III of the Seventh Schedule to the</p> <p>W https://gshrc.gujarat.gov.in/overview.htm</p> </td> <td style="width: 50%; vertical-align: top;"> <p>to only of the entries enumerated in List-II (State List) and III (Concurrent List) the seventh schedule to the</p> </td> </tr> </table>					<p>to any of the Entries enumerated in List I and List III of the Seventh Schedule to the</p> <p>W https://gshrc.gujarat.gov.in/overview.htm</p>	<p>to only of the entries enumerated in List-II (State List) and III (Concurrent List) the seventh schedule to the</p>
<p>to any of the Entries enumerated in List I and List III of the Seventh Schedule to the</p> <p>W https://gshrc.gujarat.gov.in/overview.htm</p>	<p>to only of the entries enumerated in List-II (State List) and III (Concurrent List) the seventh schedule to the</p>					
233/385	SUBMITTED TEXT	130 WORDS	93% MATCHING TEXT	130 WORDS		
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>Human Rights Courts. The Protection of Human Rights Act, 1993 defines the term 'human rights' to mean 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Courts in India. In this definition 'human rights' have been given a wider ambit than those embodied in the Indian Constitution so as to include the rights listed in International Covenants. The role of judiciary has been remarkable to interpret the various enactments and the provisions giving brighter spectrum and the new dimensions to the various provisions of the Act. Recent important verdicts of Hon'ble Supreme Court, High Courts, and various Commissions and Tribunals have raised the scope of various provisions of the Act. The enactment of PHRA has empowered the National Human Rights Commission (</p> <p>W https://www.gapinterdisciplinarity.org/res/articles/(50-55).pdf</p> </td> <td style="width: 50%; vertical-align: top;"> <p>HUMAN RIGHTS ACT The Protection of Human Rights Act, 1993 defines the term 'human rights' 16 to mean 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, or embodied in the International Covenants and enforceable by the Courts in India. In this definition 'human rights' have been given a wider ambit than those embodied in the Indian Constitution so as to include the rights listed in International Covenants. 17 The role of judiciary has been remarkable to interpret the various enactments and the provisions giving brighter spectrum and the new dimensions to the various provisions of the Act. Recent important verdicts of Hon'ble Supreme Court, High Courts, and various Commissions and Tribunals have raised the scope of various provisions of the Act. ROLE OF NATIONAL HUMAN RIGHTS COMMISSION The National Human Rights Commission</p> </td> </tr> </table>					<p>Human Rights Courts. The Protection of Human Rights Act, 1993 defines the term 'human rights' to mean 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Courts in India. In this definition 'human rights' have been given a wider ambit than those embodied in the Indian Constitution so as to include the rights listed in International Covenants. The role of judiciary has been remarkable to interpret the various enactments and the provisions giving brighter spectrum and the new dimensions to the various provisions of the Act. Recent important verdicts of Hon'ble Supreme Court, High Courts, and various Commissions and Tribunals have raised the scope of various provisions of the Act. The enactment of PHRA has empowered the National Human Rights Commission (</p> <p>W https://www.gapinterdisciplinarity.org/res/articles/(50-55).pdf</p>	<p>HUMAN RIGHTS ACT The Protection of Human Rights Act, 1993 defines the term 'human rights' 16 to mean 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, or embodied in the International Covenants and enforceable by the Courts in India. In this definition 'human rights' have been given a wider ambit than those embodied in the Indian Constitution so as to include the rights listed in International Covenants. 17 The role of judiciary has been remarkable to interpret the various enactments and the provisions giving brighter spectrum and the new dimensions to the various provisions of the Act. Recent important verdicts of Hon'ble Supreme Court, High Courts, and various Commissions and Tribunals have raised the scope of various provisions of the Act. ROLE OF NATIONAL HUMAN RIGHTS COMMISSION The National Human Rights Commission</p>
<p>Human Rights Courts. The Protection of Human Rights Act, 1993 defines the term 'human rights' to mean 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Courts in India. In this definition 'human rights' have been given a wider ambit than those embodied in the Indian Constitution so as to include the rights listed in International Covenants. The role of judiciary has been remarkable to interpret the various enactments and the provisions giving brighter spectrum and the new dimensions to the various provisions of the Act. Recent important verdicts of Hon'ble Supreme Court, High Courts, and various Commissions and Tribunals have raised the scope of various provisions of the Act. The enactment of PHRA has empowered the National Human Rights Commission (</p> <p>W https://www.gapinterdisciplinarity.org/res/articles/(50-55).pdf</p>	<p>HUMAN RIGHTS ACT The Protection of Human Rights Act, 1993 defines the term 'human rights' 16 to mean 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, or embodied in the International Covenants and enforceable by the Courts in India. In this definition 'human rights' have been given a wider ambit than those embodied in the Indian Constitution so as to include the rights listed in International Covenants. 17 The role of judiciary has been remarkable to interpret the various enactments and the provisions giving brighter spectrum and the new dimensions to the various provisions of the Act. Recent important verdicts of Hon'ble Supreme Court, High Courts, and various Commissions and Tribunals have raised the scope of various provisions of the Act. ROLE OF NATIONAL HUMAN RIGHTS COMMISSION The National Human Rights Commission</p>					
234/385	SUBMITTED TEXT	27 WORDS	46% MATCHING TEXT	27 WORDS		
<p>Human Rights Commission Bill which was introduced in the Lok Sabha on 14th May, 1993. When the same was considered by the Parliamentary Standing Committee on Home Affairs,</p> <p>SA sudhir kumar pal.docx (D158491393)</p>						

235/385	SUBMITTED TEXT	23 WORDS	88% MATCHING TEXT	23 WORDS
<p>Over the past 13 years, the Commission has endeavored to give a positive meaning and content to the objectives set out in the</p>		<p>Over the past fifteen years the Commission has endeavoured to give a positive meaning and a content to the objectives set out in the</p>		
<p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>				
236/385	SUBMITTED TEXT	27 WORDS	40% MATCHING TEXT	27 WORDS
<p>human rights. Important Features of the Protection of Human Rights Act: The PHRA envisages the establishment of a National Human Rights Commission and the State Human Rights</p>				
<p>SA A Socio-legal Study of Judicial Contribution for Protecting Human Rights in India (Rajender Kumar ... (D28680544)</p>				
237/385	SUBMITTED TEXT	17 WORDS	78% MATCHING TEXT	17 WORDS
<p>a person, who has been the Chief Justice of the Supreme Court, the other two members</p>				
<p>SA sudhir kumar pal.docx (D158491393)</p>				
238/385	SUBMITTED TEXT	23 WORDS	60% MATCHING TEXT	23 WORDS
<p>Judge of the Supreme Court and the Chief Justice of a High Court. Two members have to be appointed from amongst those persons</p>				
<p>SA yash pratap.docx (D39188369)</p>				
239/385	SUBMITTED TEXT	12 WORDS	100% MATCHING TEXT	12 WORDS
<p>knowledge of, or practical experience in, matters relating to human rights.</p>				
<p>SA A Socio-legal Study of Judicial Contribution for Protecting Human Rights in India (Rajender Kumar ... (D28680544)</p>				
240/385	SUBMITTED TEXT	15 WORDS	100% MATCHING TEXT	15 WORDS
<p>headed by a person not below the rank of a Director General of Police.¹²</p>				
<p>SA sudhir kumar pal.docx (D158491393)</p>				

241/385	SUBMITTED TEXT	87 WORDS	73% MATCHING TEXT	87 WORDS
<p>The Commission shall consist of - i. a Chairperson who has been a Chief Justice of the Supreme Court; ii. one Member who is, or has been, a Judge of the Supreme Court; iii. one Member who is, or has been, the Chief Justice of a High Court; iv. two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. Apart from this, the Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes [and the National Commission for</p> <p>SA yash pratap.docx (D39188369)</p>				
242/385	SUBMITTED TEXT	22 WORDS	56% MATCHING TEXT	22 WORDS
<p>after obtaining the recommendations of a committee composed of- a) The Prime MinisterChairperson b) Speaker of the House of the PeopleMember c) Minister-</p> <p>after obtaining the recommendation of a Committee consisting of (a) The Chief Minister – Chairperson (b) Speaker of the Legislative Assembly – Member (c) Home Minister</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>				
243/385	SUBMITTED TEXT	25 WORDS	100% MATCHING TEXT	25 WORDS
<p>five years, from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier. A</p> <p>five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier; (2) A</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>				
244/385	SUBMITTED TEXT	17 WORDS	90% MATCHING TEXT	17 WORDS
<p>Members of the Commission for the discharge of functions enumerated in clauses (b) to (j) of</p> <p>SA yash pratap.docx (D39188369)</p>				
245/385	SUBMITTED TEXT	21 WORDS	80% MATCHING TEXT	21 WORDS
<p>The Chairperson or any Member of the Commission can be removed from his office only by Order of the President</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
246/385	SUBMITTED TEXT	12 WORDS	100% MATCHING TEXT	12 WORDS
<p>the Supreme Court, on reference being made to it by the President.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

247/385	SUBMITTED TEXT	23 WORDS	93% MATCHING TEXT	23 WORDS
<p>the Commission are 1. inquire, suo motu, or on a petition presented to it by a victim or any person on his behalf, [</p> <p>the commission shall inquire, suo motu or on a petition presented to it by a victim or any person on his behalf</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>				
248/385	SUBMITTED TEXT	67 WORDS	73% MATCHING TEXT	67 WORDS
<p>remove the Chairperson or any other Member who i. is adjudged an insolvent; or ii. engages during his term of office in any paid employment outside the duties of his office; or iii. is unfit to continue in office by reason of infirmity of mind or body; or iv. is of unsound mind and stands so declared by a competent court; or v. is convicted and sentenced to imprisonment for an offence</p> <p>SA dissertation completing.docx (D26696797)</p>				
249/385	SUBMITTED TEXT	14 WORDS	100% MATCHING TEXT	14 WORDS
<p>notwithstanding anything contained in any other law for the time being in force,</p> <p>notwithstanding anything contained in any other law for the time being in force,</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>				
250/385	SUBMITTED TEXT	23 WORDS	78% MATCHING TEXT	23 WORDS
<p>into complaint of- i. violation of human rights or abetment thereof; or ii. negligence in the prevention of such violation by a public servant; 2.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
251/385	SUBMITTED TEXT	22 WORDS	100% MATCHING TEXT	22 WORDS
<p>intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court; 3. [</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

252/385	SUBMITTED TEXT	132 WORDS	86% MATCHING TEXT	132 WORDS
<p>review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation; 5. review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures; 6. study treaties and other international instruments on human rights and make recommendations for their effective implementation; 7. undertake and promote research in the field of human rights; 8. spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means; 9. encourage the efforts of non-governmental organizations and institutions working in the field of human rights; 10. such other functions as it may consider necessary for the promotion of human rights.</p>		<p>review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation The Commission shall review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures The Commission study treaties and other international instruments on human rights and make recommendations for their effective implementation The Commission shall undertake and promote research in the field of human rights The Commission shall spread literacy among various sections of society and promote awareness of the safeguards available 52 for the protection of these rights through publications, the media, seminars and other available means The Commission shall encourage efforts of and institutions working in the field of human rights The commission may perform any such other functions as it may consider necessary for the protection of human rights.</p>		
<p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>				
253/385	SUBMITTED TEXT	37 WORDS	96% MATCHING TEXT	37 WORDS
<p>any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations</p>				
<p>SA A Socio-legal Study of Judicial Contribution for Protecting Human Rights in India (Rajender Kumar ... (D28680544)</p>				
254/385	SUBMITTED TEXT	27 WORDS	68% MATCHING TEXT	27 WORDS
<p>be vested with competence to promote and protect human rights and given as broad a mandate as possible which must be set forth clearly in a Constitutional</p>		<p>be vested with competence to promote and protect human rights. 2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional</p>		
<p>W https://www.ohchr.org/Documents/Publications/training12en.pdf</p>				
255/385	SUBMITTED TEXT	18 WORDS	76% MATCHING TEXT	18 WORDS
<p>of operation. The Vienna Declaration and Programme of Action adopted by the 1993 World Conference of Human Rights</p>		<p>of the Declaration. 2 Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights,</p>		
<p>W https://www.ohchr.org/Documents/Publications/training12en.pdf</p>				
256/385	SUBMITTED TEXT	13 WORDS	83% MATCHING TEXT	13 WORDS
<p>Human Rights. The Paris Principles relating to the status of National Institutions</p>		<p>human rights institutions, the Principles relating to the Status of National Institutions,</p>		
<p>W https://www.ohchr.org/Documents/Publications/training12en.pdf</p>				

257/385	SUBMITTED TEXT	13 WORDS	87% MATCHING TEXT	13 WORDS
<p>complaints of violations of human rights by Members of the Armed Forces</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
258/385	SUBMITTED TEXT	33 WORDS	83% MATCHING TEXT	33 WORDS
<p>the purview of the Commission. The Commission cannot inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.</p> <p>W https://gshrc.gujarat.gov.in/overview.htm</p> <p>the article 246 of the Constitution, but the commission not inquire into any matter which is pending before a State Commission or any other commission duly constituted under any law for the time being in force. [</p>				
259/385	SUBMITTED TEXT	22 WORDS	63% MATCHING TEXT	22 WORDS
<p>is authorized to utilize the services of any officer or investigating agency of the Central or the State Governments for the purpose</p> <p>SA dissertation completing.docx (D26696797)</p>				
260/385	SUBMITTED TEXT	21 WORDS	85% MATCHING TEXT	21 WORDS
<p>All Complaints in whatever form received by the Commission shall be registered and assigned a number and placed for admission</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
261/385	SUBMITTED TEXT	28 WORDS	89% MATCHING TEXT	28 WORDS
<p>inquire into any matter after the expiry of one year, from the date on which the act constituting the violation of human rights is alleged to have been</p> <p>SA dissertation completing.docx (D26696797)</p>				
262/385	SUBMITTED TEXT	19 WORDS	73% MATCHING TEXT	19 WORDS
<p>by the Supreme Court. This Court in exercise of the jurisdiction under Article 32 of the Constitution entrusted the</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
263/385	SUBMITTED TEXT	27 WORDS	92% MATCHING TEXT	27 WORDS
<p>The Commission would function pursuant to the directions issued by this Court and not under Act under which it is constituted. In deciding the matters referred by</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

264/385	SUBMITTED TEXT	142 WORDS	90% MATCHING TEXT	142 WORDS
	<p>for the examination of witnesses or documents; and vi. any other matter which may be prescribed; The Commission has power to require any person, subject to any privilege, which may be claimed, by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and Section 177 of the Indian Penal Code. The Commission may authorise any officer, not below the rank of a Gazetted Officer to enter into any building or place where the Commission has reason to believe that any document relating to the subject matter of inquiry may be found, and may seize any such document</p>			<p>for the examination of witnesses or documents; (f) Any other matter which may be prescribed. (2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code. (3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document</p>
	<p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>			

265/385	SUBMITTED TEXT	107 WORDS	95% MATCHING TEXT	107 WORDS
	<p>The Commission shall be deemed to be civil court and when any offence as is described in Sections 175, 178, 179, 180 or Section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under Sec. 346 of the</p>			<p>The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the 53 accused as if the case has been forwarded to him under section 346 of the</p>
	<p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>			

266/385	SUBMITTED TEXT	35 WORDS	90% MATCHING TEXT	35 WORDS
	<p>is given a free hand and is not circumscribed by any conditions. Therefore, the jurisdiction exercised by NHRC in these matters is of a special nature not covered by enactment or law, and thus acts</p>			
	<p>SA sudhir kumar pal.docx (D158491393)</p>			

267/385	SUBMITTED TEXT	59 WORDS	81% MATCHING TEXT	59 WORDS
	<p>all the powers of a civil court trying a suit under the Code of Civil Procedure and particularly in respect of the following matters: i. summon and enforce the attendance of witnesses and examining them on oath; ii. discovery and production of any document; iii. receiving evidence on affidavits; iv. requisitioning any public record or copy thereof from any court or office; v. issuing</p>			
	<p>SA sudhir kumar pal.docx (D158491393)</p>			

268/385	SUBMITTED TEXT	12 WORDS	100% MATCHING TEXT	12 WORDS
<p>the Commission. While inquiring into the complaints of violations of human rights,</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>		<p>The Commission while inquiring into the complaints of violations of human rights</p>		
269/385	SUBMITTED TEXT	130 WORDS	98% MATCHING TEXT	130 WORDS
<p>may i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it: Provided that - a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own; 68 b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complaint accordingly; ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of complaint, initiate an inquiry.</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>		<p>may- (i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:- Provided that- (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own; (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly; (ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.</p>		
270/385	SUBMITTED TEXT	13 WORDS	91% MATCHING TEXT	13 WORDS
<p>headed by person not below the rank of Director General of Police,</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
271/385	SUBMITTED TEXT	26 WORDS	94% MATCHING TEXT	26 WORDS
<p>where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant,</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
272/385	SUBMITTED TEXT	18 WORDS	97% MATCHING TEXT	18 WORDS
<p>proceedings for prosecution or such other action as the Commission may deem fit, against the concerned person</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
273/385	SUBMITTED TEXT	37 WORDS	71% MATCHING TEXT	37 WORDS
<p>approach the Supreme Court or the High Courts concerned for such directions, orders or writs, as that Courts may deem necessary; c) recommend to the concerned Government or authority for the grant of such immediate interim relief</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

274/385	SUBMITTED TEXT	15 WORDS	89% MATCHING TEXT	15 WORDS		
<p>to the victim or the members for his family as the Commission may consider</p> <p>SA sudhir kumar pal.docx (D158491393)</p>						
275/385	SUBMITTED TEXT	21 WORDS	100% MATCHING TEXT	21 WORDS		
<p>the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government, or authority,</p> <p>SA sudhir kumar pal.docx (D158491393)</p>						
276/385	SUBMITTED TEXT	13 WORDS	100% MATCHING TEXT	13 WORDS		
<p>the concerned government or authority shall, within a period of one month,</p> <p>SA sudhir kumar pal.docx (D158491393)</p>						
277/385	SUBMITTED TEXT	14 WORDS	100% MATCHING TEXT	14 WORDS		
<p>its comments on the report, including the action taken or proposed to be taken</p> <p>SA sudhir kumar pal.docx (D158491393)</p>						
278/385	SUBMITTED TEXT	26 WORDS	69% MATCHING TEXT	26 WORDS		
<p>of the State Commission. The Chairperson shall hold office for a term of five years, or until he attains the age of 70 years, whichever is earlier.</p> <p>SA dissertation completing.docx (D26696797)</p>						
279/385	SUBMITTED TEXT	45 WORDS	86% MATCHING TEXT	45 WORDS		
<table border="0"> <tr> <td style="width: 50%; vertical-align: top;"> <p>The Chairperson and Members shall be appointed by the Governor by Warrant under his hand and seal, provided that every appointment shall be made after obtaining the recommendation of a Committee consisting of: a) the Chief Minister as the Chairperson; b) Speaker of the Legislative Assembly</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p> </td> <td style="width: 50%; vertical-align: top;"> <p>The Chairperson and Members shall be appointed by the Governor by warrant under his hand and seal: Provided that every appointment under this sub-section shall be made after the recommendation of a Committee consisting of (a) The Chief Minister — Chairperson (b) Speaker of the Legislative Assembly —</p> </td> </tr> </table>					<p>The Chairperson and Members shall be appointed by the Governor by Warrant under his hand and seal, provided that every appointment shall be made after obtaining the recommendation of a Committee consisting of: a) the Chief Minister as the Chairperson; b) Speaker of the Legislative Assembly</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>	<p>The Chairperson and Members shall be appointed by the Governor by warrant under his hand and seal: Provided that every appointment under this sub-section shall be made after the recommendation of a Committee consisting of (a) The Chief Minister — Chairperson (b) Speaker of the Legislative Assembly —</p>
<p>The Chairperson and Members shall be appointed by the Governor by Warrant under his hand and seal, provided that every appointment shall be made after obtaining the recommendation of a Committee consisting of: a) the Chief Minister as the Chairperson; b) Speaker of the Legislative Assembly</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>	<p>The Chairperson and Members shall be appointed by the Governor by warrant under his hand and seal: Provided that every appointment under this sub-section shall be made after the recommendation of a Committee consisting of (a) The Chief Minister — Chairperson (b) Speaker of the Legislative Assembly —</p>					
280/385	SUBMITTED TEXT	19 WORDS	67% MATCHING TEXT	19 WORDS		
<table border="0"> <tr> <td style="width: 50%; vertical-align: top;"> <p>for a term of five years or till he attains the age of seventy years, whichever is earlier.</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p> </td> <td style="width: 50%; vertical-align: top;"> <p>for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier; (2)</p> </td> </tr> </table>					<p>for a term of five years or till he attains the age of seventy years, whichever is earlier.</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>	<p>for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier; (2)</p>
<p>for a term of five years or till he attains the age of seventy years, whichever is earlier.</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>	<p>for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier; (2)</p>					

281/385	SUBMITTED TEXT	22 WORDS	70% MATCHING TEXT	22 WORDS
<p>eligible for reappointment for another term of five years. But no member shall hold office after attaining the age of seventy years.</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>		<p>eligible for re-appointment for another term of five years; Provided that no Member shall hold office after he has attained the age of seventy years. (3)</p>		
282/385	SUBMITTED TEXT	16 WORDS	80% MATCHING TEXT	16 WORDS
<p>be removed from his office in the same manner and on the same ground as</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>be removed from his office in the like manner and on the like ground as</p>		
283/385	SUBMITTED TEXT	62 WORDS	100% MATCHING TEXT	62 WORDS
<p>consist of (a) a Chairperson who has been a Chief Justice of a High Court; (b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years' experience as District Judge; (c) one Member to be appointed from amongst persons having knowledge of or practical experience in matters relating to human rights.]</p> <p>SA yash pratap.docx (D39188369)</p>				
284/385	SUBMITTED TEXT	17 WORDS	79% MATCHING TEXT	17 WORDS
<p>Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal.</p> <p>W https://en.wikipedia.org/wiki/Supreme_Court_of_India</p>		<p>Himachal Pradesh • Jammu and Kashmir • Karnataka • Kerala • Madhya Pradesh • Maharashtra • Manipur • Mizoram • Nagaland • Odisha • Punjab • Rajasthan • Tamil Nadu • Telangana • Uttarakhand • Uttar Pradesh • West Bengal</p>		
285/385	SUBMITTED TEXT	44 WORDS	76% MATCHING TEXT	44 WORDS
<p>the State Government, which shall cause the report to be laid before the House of State Legislature along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
286/385	SUBMITTED TEXT	12 WORDS	100% MATCHING TEXT	12 WORDS
<p>speedy trial of offences arising out of violation of human rights,</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				

287/385	SUBMITTED TEXT	27 WORDS	94% MATCHING TEXT	27 WORDS
<p>with the concurrence of the Chief Justice of the High Court, by notification, specify for each District a Court of Session to be a Human Rights Court</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
288/385	SUBMITTED TEXT	19 WORDS	73% MATCHING TEXT	19 WORDS
<p>inadequate, defective and requires modification without which, Human Rights Courts at the District level, even if formed, cannot function</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
289/385	SUBMITTED TEXT	29 WORDS	87% MATCHING TEXT	29 WORDS
<p>empowered to enquire into any matter after the expiry of one year from the date when the Act constituting violation of human rights is alleged to have been</p> <p>SA dissertation completing.docx (D26696797)</p>				
290/385	SUBMITTED TEXT	20 WORDS	66% MATCHING TEXT	20 WORDS
<p>such as the European Convention of Human Rights and Fundamental Freedoms (ECHR) and the International Covenant on Civil and Political Rights (</p> <p>such documents as the European Convention for the of Human Rights and Fundamental Freedoms (1953) and the International Covenant on Economic, Social and Cultural Rights (1966).</p> <p>W https://iep.utm.edu/hum-rts/</p>				
291/385	SUBMITTED TEXT	21 WORDS	52% MATCHING TEXT	21 WORDS
<p>non-derogable rights, the right to take proceedings before a court on questions relating to the lawfulness of emergency measures must be</p> <p>non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention must not be</p> <p>W https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf</p>				
292/385	SUBMITTED TEXT	36 WORDS	75% MATCHING TEXT	36 WORDS
<p>If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or [armed rebellion], he may,</p> <p>if the President is satisfied that a grave emergency exists whereby the security of India or any part of India is threatened, either by war or external aggression or armed rebellion, he may</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
293/385	SUBMITTED TEXT	15 WORDS	65% MATCHING TEXT	15 WORDS
<p>rights area. To encourage the efforts of NGO's, working in the field of human rights</p> <p>SA dissertation completing.docx (D26696797)</p>				

294/385	SUBMITTED TEXT	94 WORDS	76% MATCHING TEXT	94 WORDS
<p>in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation]. 2. A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation. 3. The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing. 4. Every Proclamation</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>in respect of the whole of India or any part of India as may be specified in the Proclamation. The of Emergency made under clause (1) may be varied or revoked by the President by a subsequent Proclamation [Cl. (2)]. The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (i.e. the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under Article 75) that such a Proclamation may be issued has been communicated to him in writing. The Proclamation</p>		
295/385	SUBMITTED TEXT	13 WORDS	100% MATCHING TEXT	13 WORDS
<p>this article shall be laid before each House of Parliament and shall,</p> <p>W https://pdfcoffee.com/a-k-jain-constitution-1st-part-pdf-free.html</p>		<p>this article shall be laid before each House of Parliament and shall</p>		
296/385	SUBMITTED TEXT	26 WORDS	87% MATCHING TEXT	26 WORDS
<p>cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:</p> <p>W https://pdfcoffee.com/a-k-jain-constitution-1st-part-pdf-free.html</p>		<p>cease to operate at the expiration of tw o months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.</p>		
297/385	SUBMITTED TEXT	36 WORDS	47% MATCHING TEXT	36 WORDS
<p>has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month referred to above, without approving the Proclamation but the Proclamation has been approved by the</p>		
298/385	SUBMITTED TEXT	48 WORDS	66% MATCHING TEXT	48 WORDS
<p>the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>the Proclamation shall cease to operate at the expiration of 30 days from the date on which the Lok Sabha sits after fresh election, unless before the expiry of the above period of thirty days a resolution, approving the Proclamation has been passed by the</p>		
299/385	SUBMITTED TEXT	14 WORDS	100% MATCHING TEXT	14 WORDS
<p>a period of six months from the date of the passing of the second</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>a period of six months from the date of the passing of the second</p>		

300/385	SUBMITTED TEXT	53 WORDS	100% MATCHING TEXT	53 WORDS
<p>Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause:</p>		<p>provided that if and so often as a resolution approving the continuance in force of such a proclamation is passed by both houses of parliament the proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause.</p>		
<p>W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/</p>				
301/385	SUBMITTED TEXT	13 WORDS	84% MATCHING TEXT	13 WORDS
<p>law • freedom of thought, conscience and religion. The UN Human Rights Committee has</p>				
<p>SA JAGWINDER KAUR full dissertation 1.09.21.pdf (D112336208)</p>				
302/385	SUBMITTED TEXT	15 WORDS	75% MATCHING TEXT	15 WORDS
<p>a resolution approving the continuance in force of such Proclamation has been passed by</p>		<p>a resolution approving the continuance in force of such a proclamation is passed by</p>		
<p>W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/</p>				
303/385	SUBMITTED TEXT	41 WORDS	64% MATCHING TEXT	41 WORDS
<p>the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the</p>		<p>the Proclamation shall cease to operate at the expiration of 30 days from the date on which the Lok Sabha sits after fresh election, unless before the expiry of the above period of thirty days a resolution, approving the</p>		
<p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
304/385	SUBMITTED TEXT	33 WORDS	87% MATCHING TEXT	33 WORDS
<p>by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the Members of that House present and voting. 7.</p>		<p>by House of Parliament by a majority of the total membership of that House and by a majority of not less than two third of the members of that House present and voting</p>		
<p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
305/385	SUBMITTED TEXT	18 WORDS	73% MATCHING TEXT	18 WORDS
<p>the President shall revoke a Proclamation issued under clause (l) or a Proclamation varying such Proclamation if the</p>		<p>The President shall revoke a Proclamation of Emergency or a Proclamation varying such proclamation if the</p>		
<p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				

306/385	SUBMITTED TEXT	36 WORDS	66% MATCHING TEXT	36 WORDS
<p>Where a notice in writing signed by not less than one tenth of the total number of members of the House of the People has been given of, their intention to move a resolution for disapproving,</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>Where a notice in writing signed by not less than 1/10 th of the total number of members of the Lok Sabha have been given their intention to move a resolution for disapproving</p>		
307/385	SUBMITTED TEXT	51 WORDS	78% MATCHING TEXT	51 WORDS
<p>a Proclamation varying such Proclamation, (a) to the Speaker, if the House is in session; or (b) to the President, if the House is not in session, a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or as the</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>a Proclamation of Emergency - (a) to the Speaker, if the House is in session; or (b) to the President, if the House is not is session; a special sitting of the Lok Sabha shall be held within 14 days from the date on which such a notice is received by the Speaker or the</p>		
308/385	SUBMITTED TEXT	36 WORDS	100% MATCHING TEXT	36 WORDS
<p>notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised; 2. the</p> <p>W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/</p>		<p>notwithstanding anything in this constitution, the executive power of the union shall extend to the giving of directions to any state as to the manner in which the executive power thereof is to be exercised. the</p>		
309/385	SUBMITTED TEXT	16 WORDS	90% MATCHING TEXT	16 WORDS
<p>the executive power of the Union to give directions under clause (a), and ii. the power</p> <p>W https://pdfcoffee.com/constitution-law-2015-constitution-law-2015-pdf-free.html</p>		<p>the executive power of the Union to give directions under clause (a) and the power</p>		
310/385	SUBMITTED TEXT	14 WORDS	100% MATCHING TEXT	14 WORDS
<p>to make laws under clause (b), shall also extend to any State other than</p> <p>W https://pdfcoffee.com/constitution-law-2015-constitution-law-2015-pdf-free.html</p>		<p>to make laws under clause (b) shall also extend to any state other than</p>		
311/385	SUBMITTED TEXT	29 WORDS	65% MATCHING TEXT	29 WORDS
<p>Emergency is in operation if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to</p> <p>W https://www.doccity.com/en/constitutional-law-semester-third/2545369/</p>		<p>emergency is in force, if the security of india or any part of the territory is threatened by in or in relation to</p>		

312/385	SUBMITTED TEXT	15 WORDS	100% MATCHING TEXT	15 WORDS
<p>part of the territory of India in which the Proclamation of Emergency is in operation.]</p> <p>W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/</p>		<p>part of the territory of india in which the proclamation of emergency is in operation.</p>		
313/385	SUBMITTED TEXT	14 WORDS	100% MATCHING TEXT	14 WORDS
<p>The President may, while a Proclamation of Emergency is in operation, by order</p> <p>W https://pdfcoffee.com/constitution-law-2015-constitution-law-2015-pdf-free.html</p>		<p>The President may, while a Proclamation of Emergency is in operation by order</p>		
314/385	SUBMITTED TEXT	17 WORDS	97% MATCHING TEXT	17 WORDS
<p>shall, as soon as may be after it is made, be laid before each House of Parliament. Article 355:</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>shall, as soon be may be after it is made, be laid before each House of Parliament. (Article 359). 4.</p>		
315/385	SUBMITTED TEXT	37 WORDS	100% MATCHING TEXT	37 WORDS
<p>It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.</p> <p>W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/</p>		<p>it shall be the duty of the union to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of this constitution."</p>		
316/385	SUBMITTED TEXT	55 WORDS	83% MATCHING TEXT	55 WORDS
<p>If the President, on receipt of a report from the Governor *** of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation— a) assume to himself all or any of the</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>if the President, on receipt of a report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of Constitution, he may a Proclamation. By that Proclamation: (1) assume to himself all or any of the</p>		
317/385	SUBMITTED TEXT	57 WORDS	66% MATCHING TEXT	57 WORDS
<p>all or any of the powers vested in or exercisable by the Governor *** or any body or authority in the State other than the Legislature of the State; b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament; 84 c) make such incidental and consequential provisions as appear to</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>all or any of the powers vested in or exercisable by the Governor to anybody or authority in the State. (2) The President may declare that the powers of the Legislature of the State shall be exercised by or under the authority of Parliament. (3) The may make such incidental and consequential provisions as may appear to</p>		

318/385	SUBMITTED TEXT	14 WORDS	82% MATCHING TEXT	14 WORDS
<p>to be necessary or desirable for giving effect to the objects of the Proclamation,</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>to be necessary or desirable for giving effect to the object of Proclamation. When Proclamation</p>		
319/385	SUBMITTED TEXT	15 WORDS	83% MATCHING TEXT	15 WORDS
<p>the President to assume to himself any of the powers vested in or exercisable by</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>The President may assume to himself all or any of the powers vested in or exercisable by</p>		
320/385	SUBMITTED TEXT	13 WORDS	100% MATCHING TEXT	13 WORDS
<p>Any such Proclamation may be revoked or varied by a subsequent Proclamation. 3.</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>Any such Proclamation may be revoked or varied by a subsequent Proclamation.</p>		
321/385	SUBMITTED TEXT	16 WORDS	100% MATCHING TEXT	16 WORDS
<p>Every Proclamation under this article shall be laid before each House of Parliament and shall,</p> <p>W https://pdfcoffee.com/a-k-jain-constitution-1st-part-pdf-free.html</p>		<p>Every Proclamation under this article shall be laid before each House of Parliament and shall</p>		
322/385	SUBMITTED TEXT	26 WORDS	92% MATCHING TEXT	26 WORDS
<p>cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:</p> <p>W https://pdfcoffee.com/a-k-jain-constitution-1st-part-pdf-free.html</p>		<p>cease to operate at the expiration of o months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.</p>		
323/385	SUBMITTED TEXT	35 WORDS	35% MATCHING TEXT	35 WORDS
<p>dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>dissolved or the dissolution of the Lok Sabha takes place during the period of one month referred to above, without approving the Proclamation but the Proclamation has been approved by the</p>		
324/385	SUBMITTED TEXT	48 WORDS	66% MATCHING TEXT	48 WORDS
<p>the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>the Proclamation shall cease to operate at the expiration of 30 days from the date on which the Lok Sabha sits after fresh election, unless before the expiry of the above period of thirty days a resolution, approving the Proclamation has been passed by the</p>		

325/385	SUBMITTED TEXT	12 WORDS	100% MATCHING TEXT	12 WORDS
the expiration of a period of [six months from the date of		the expiration of a period of six months from the date of		
W https://www.lawfinderlive.com/bts4/CONSTITU.htm				
326/385	SUBMITTED TEXT	54 WORDS	94% MATCHING TEXT	54 WORDS
Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of [six months] from the date on which under this clause it would otherwise have ceased to operate,		provided that if and so often as a resolution approving the continuance in force of such a proclamation is passed by both houses of parliament the proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate		
W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/				
327/385	SUBMITTED TEXT	15 WORDS	100% MATCHING TEXT	15 WORDS
but no such Proclamation shall in any case remain in force for more than three years:		but no such Proclamation shall in any case remain in force for more than three years.		
W https://www.lawfinderlive.com/bts4/CONSTITU.htm				
328/385	SUBMITTED TEXT	15 WORDS	75% MATCHING TEXT	15 WORDS
a resolution approving the continuance in force of such Proclamation has been passed by		a resolution approving the continuance in force of such a proclamation is passed by		
W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/				
329/385	SUBMITTED TEXT	41 WORDS	64% MATCHING TEXT	41 WORDS
the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the		the Proclamation shall cease to operate at the expiration of 30 days from the date on which the Lok Sabha sits after fresh election, unless before the expiry of the above period of thirty days a resolution, approving the		
W https://www.lawfinderlive.com/bts4/CONSTITU.htm				
330/385	SUBMITTED TEXT	19 WORDS	90% MATCHING TEXT	19 WORDS
Provided also that in the case of the Proclamation issued under clause (1) on the 11th day of		provided that in the case of the proclamation issued under clause (1) on the 6th day of 1983		
W https://www.lawfinderlive.com/bts4/CONSTITU.htm				
331/385	SUBMITTED TEXT	10 WORDS	100% MATCHING TEXT	10 WORDS
with respect to the State of Punjab, the reference in		with respect to the State of Punjab. The reference in		
W https://www.lawfinderlive.com/bts4/CONSTITU.htm				

332/385	SUBMITTED TEXT	21 WORDS	83% MATCHING TEXT	21 WORDS
<p>shall not be passed by either House of Parliament unless— a) Proclamation of Emergency is in operation, in the whole of</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>shall not be passed by either House of Parliament unless (a) a proclamation of emergency is in operation at the time of</p>		
333/385	SUBMITTED TEXT	41 WORDS	91% MATCHING TEXT	41 WORDS
<p>passing of such resolution, and b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>passing of such resolution, and (b) the Election Commission certifies that the continuance in force of the proclamation under Article 356 during the period specified in such resolution is necessary on account of difficulties in holding general elections to the state legislative Assembly</p>		
334/385	SUBMITTED TEXT	19 WORDS	91% MATCHING TEXT	19 WORDS
<p>that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament,</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>that the powers of the Legislature of the State shall be exercised by or under the authority of Parliament. (3)</p>		
335/385	SUBMITTED TEXT	29 WORDS	34% MATCHING TEXT	29 WORDS
<p>confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may</p> <p>W https://nanopdf.com/download/these-notes-are-prepared-by-radhika-seth-law-centre-2-this-is-5aeb86 ...</p>		<p>confer on the president the power to make laws for the states. parliament may also authorise the president to delegate such powers to any other authority as specified by him subject to such conditions as he may</p>		
336/385	SUBMITTED TEXT	19 WORDS	86% MATCHING TEXT	19 WORDS
<p>the security of India or any part of the territory thereof is threatened by war or by external aggression</p> <p>W https://nanopdf.com/download/these-notes-are-prepared-by-radhika-seth-law-centre-2-this-is-5aeb86 ...</p>		<p>the security of india or of any part of the territory thereof is threatened, whether war or external aggression</p>		
337/385	SUBMITTED TEXT	14 WORDS	100% MATCHING TEXT	14 WORDS
<p>is in operation], nothing in article 19 shall restrict the power of the State</p> <p>W https://pdfcoffee.com/constitution-law-2015-constitution-law-2015-pdf-free.html</p>		<p>is in operation nothing in Article 19 shall restrict the power of the State</p>		
338/385	SUBMITTED TEXT	20 WORDS	92% MATCHING TEXT	20 WORDS
<p>the security of India or any part of the territory thereof is threatened by activities in or in relation to</p> <p>W https://www.docsity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/</p>		<p>the security of india or any part of the territory is threatened by in or in relation to</p>		

339/385	SUBMITTED TEXT	15 WORDS	100% MATCHING TEXT	15 WORDS
part of the territory of India in which the Proclamation of Emergency is in operation.] 2.		part of the territory of india in which the proclamation of emergency is in operation.		
W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/				
340/385	SUBMITTED TEXT	68 WORDS	95% MATCHING TEXT	68 WORDS
to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect: [
SA VIJAYAKUMAR vb.pdf (D146964320)				
341/385	SUBMITTED TEXT	81 WORDS	98% MATCHING TEXT	81 WORDS
Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of [the rights conferred by Part III (except articles 20 and 21)] as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order [(1		where a proclamation of emergency is in operation, the president may by order declare that the right to move any court for the enforcement of such of the rights conferred by part 111 (except articles. 20 and 21) as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the proclamation is in force or for such shorter period as may be specified in the order.		
W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/				
342/385	SUBMITTED TEXT	23 WORDS	73% MATCHING TEXT	23 WORDS
to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency				
SA VIJAYAKUMAR vb.pdf (D146964320)				
343/385	SUBMITTED TEXT	20 WORDS	100% MATCHING TEXT	20 WORDS
ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect:] [ceases to operate (except as respects things done or omitted to be done before the law so ceases to have effect).		
W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/				
344/385	SUBMITTED TEXT	20 WORDS	92% MATCHING TEXT	20 WORDS
the security of India or any part of the territory thereof is threatened by activities in or in relation to		the security of india or any part of the territory is threatened by in or in relation to		
W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/				

345/385	SUBMITTED TEXT	14 WORDS	100% MATCHING TEXT	14 WORDS
<p>part of the territory of India in which the Proclamation of Emergency is in operation.] [(1</p> <p>part of the territory of india in which the proclamation of emergency is in operation.</p> <p>W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/</p>				
346/385	SUBMITTED TEXT	18 WORDS	58% MATCHING TEXT	18 WORDS
<p>is in operation, nothing in that Part conferring those rights shall restrict the power of the State</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>				
347/385	SUBMITTED TEXT	18 WORDS	100% MATCHING TEXT	18 WORDS
<p>An order made as aforesaid may extend to the whole or any part of the territory of India: [</p> <p>An order made as aforesaid may extend to the whole or any part of the territory of India.</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				
348/385	SUBMITTED TEXT	20 WORDS	92% MATCHING TEXT	20 WORDS
<p>the security of India or any part of the territory thereof is threatened by activities in or in relation to</p> <p>the security of india or any part of the territory is threatened by in or in relation to</p> <p>W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/</p>				
349/385	SUBMITTED TEXT	15 WORDS	100% MATCHING TEXT	15 WORDS
<p>part of the territory of India in which the Proclamation of Emergency is in operation,</p> <p>part of the territory of india in which the proclamation of emergency is in operation.</p> <p>W https://www.doccity.com/en/llb-3-years-notes-on-constitutional-law-and-jurisprudence/5190822/</p>				
350/385	SUBMITTED TEXT	49 WORDS	92% MATCHING TEXT	49 WORDS
<p>to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as 86 soon as the</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>				
351/385	SUBMITTED TEXT	18 WORDS	97% MATCHING TEXT	18 WORDS
<p>shall, as soon as may be after it is made, be laid before each House of Parliament. Article 359</p> <p>shall, as soon be may be after it is made, be laid before each House of Parliament. (Article 359). 4.</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				

352/385	SUBMITTED TEXT	21 WORDS	88% MATCHING TEXT	21 WORDS
<p>or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect. 2.</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>or credit of India part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.</p>		
353/385	SUBMITTED TEXT	35 WORDS	90% MATCHING TEXT	35 WORDS
<p>shall be laid before each House of Parliament; c) shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:</p> <p>W https://pdfcoffee.com/a-k-jain-constitution-1st-part-pdf-free.html</p>		<p>shall be laid before each House of Parliament and shall cease to operate at the expiration of o months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.</p>		
354/385	SUBMITTED TEXT	22 WORDS	59% MATCHING TEXT	22 WORDS
<p>has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month referred to</p>		
355/385	SUBMITTED TEXT	10 WORDS	100% MATCHING TEXT	10 WORDS
<p>a resolution approving the Proclamation has been passed by the</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>a resolution, approving the Proclamation has been passed by the</p>		
356/385	SUBMITTED TEXT	47 WORDS	66% MATCHING TEXT	47 WORDS
<p>the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>the Proclamation shall cease to operate at the expiration of 30 days from the date on which the Lok Sabha sits after fresh election, unless before the expiry of the above period of thirty days a resolution, approving the Proclamation has been passed by the</p>		
357/385	SUBMITTED TEXT	33 WORDS	91% MATCHING TEXT	33 WORDS
<p>is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>		<p>is in operation, the executive authority of the Union shall extend to the giving direction to any State to observe such canons of financial propriety as may be specified in the directions and</p>		
358/385	SUBMITTED TEXT	23 WORDS	73% MATCHING TEXT	23 WORDS
<p>to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>				

359/385	SUBMITTED TEXT	14 WORDS	85%	MATCHING TEXT	14 WORDS
<p>the Terrorist and Disruptive Activities Prevention Act (TADA) the Prevention of Terrorism Act (POTA),</p> <p>SA JAGWINDER KAUR full dissertation 1.09.21.pdf (D112336208)</p>					
360/385	SUBMITTED TEXT	19 WORDS	80%	MATCHING TEXT	19 WORDS
<p>Security Act, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, the Terrorist and Disruptive Activities Prevention Act</p> <p>SA Yashdeep Rastogi.docx (D132871276)</p>					
361/385	SUBMITTED TEXT	12 WORDS	76%	MATCHING TEXT	12 WORDS
<p>The word 'preventive' is used in contra-distinction to the word 'punitive'. The</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>					
362/385	SUBMITTED TEXT	13 WORDS	100%	MATCHING TEXT	13 WORDS
<p>of Prevention of black- marketing and Maintenance of Supplies of Essential Commodities Act.</p> <p>SA Lovedeep - LLM dissertation.docx (D129611902)</p>					
363/385	SUBMITTED TEXT	25 WORDS	60%	MATCHING TEXT	25 WORDS
<p>the Advisory Board. The Board must submit its report to the Government within 7 weeks from the date of detention. The maximum period for which the</p> <p>SA RAJIV KUMAR_Law.pdf (D157531773)</p>					
364/385	SUBMITTED TEXT	14 WORDS	78%	MATCHING TEXT	14 WORDS
<p>of the Constitution. (3) Conservation of Foreign Exchange, and Prevention of Smuggling Activities (COFEPOSA) Act 1974:</p> <p>SA SHABANA NIHAR A PH20015.pdf (D143037469)</p>					
365/385	SUBMITTED TEXT	13 WORDS	95%	MATCHING TEXT	13 WORDS
<p>detained under the Conservation of Foreign Exchange, Prevention of Smuggling Activities Act,</p> <p>SA SHABANA NIHAR A PH20015.pdf (D143037469)</p>					

366/385	SUBMITTED TEXT	17 WORDS	100%	MATCHING TEXT	17 WORDS
<p>obligation to forward the representation made by the detenu along with the reference to the 1950,</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>					
367/385	SUBMITTED TEXT	20 WORDS	100%	MATCHING TEXT	20 WORDS
<p>economic offences. The courts have always viewed with disfavour the detention without trial whatever be the nature of offence. The</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>					
368/385	SUBMITTED TEXT	67 WORDS	69%	MATCHING TEXT	67 WORDS
<p>and Section 10 of the MISA, 1971, it cannot be said that there is no obligation cast on the Government to consider the representation made by the detenu before forwarding it to the Advisory Board. The repeal of MISA and retention of the COFEPOSA does not imply that preventive detention can be freely used without any power of judicial review and without any checks and balance against persons engaged in</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>					
369/385	SUBMITTED TEXT	20 WORDS	57%	MATCHING TEXT	20 WORDS
<p>the Government is bound to consider the representation made by the detenu without waiting for the opinion of the Advisory Board.</p> <p>SA RAJIV KUMAR_Law.pdf (D157531773)</p>					
370/385	SUBMITTED TEXT	20 WORDS	100%	MATCHING TEXT	20 WORDS
<p>Supreme Court unanimously has held that during the period of emergency the President is empowered to suspend fundamental rights of</p> <p>SA Lovedeep - LLM dissertation.docx (D129611902)</p>					
371/385	SUBMITTED TEXT	40 WORDS	53%	MATCHING TEXT	40 WORDS
<p>any executive action inconsistent with such rights. The Court held the two enactment's of 1975 period as constitutionally valid. The Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA) and (SAFEMA) as they were passed to deal with the Security of</p> <p>SA Lovedeep - LLM dissertation.docx (D129611902)</p>					

372/385	SUBMITTED TEXT	72 WORDS	80% MATCHING TEXT	72 WORDS
<p>of such smugglers and foreign exchange manipulators (the detainees) in whosoever name they may have been held. After the emergency was over on March 21, 1977 the detainees challenged the validity of their detention and seizure of their property on the ground both the Act violate Arts. 14, 19, & 22 of the Constitution. The ruling of the court is as follows: 1. Union legislation was perfectly eligible to enact both the COFEPOSA & the SAFEMA. 2.</p> <p>SA Lovedeep - LLM dissertation.docx (D129611902)</p>				
373/385	SUBMITTED TEXT	21 WORDS	84% MATCHING TEXT	21 WORDS
<p>The definition of "illegally acquired properties" in clause (c) of section 3 OF SAFEMA is not invalid or ineffective. 5. The</p> <p>SA Lovedeep - LLM dissertation.docx (D129611902)</p>				
374/385	SUBMITTED TEXT	12 WORDS	100% MATCHING TEXT	12 WORDS
<p>is violative of Article 22 (5) of the Constitution of India and</p> <p>SA SHABANA NIHAR A PH20015.pdf (D143037469)</p>				
375/385	SUBMITTED TEXT	20 WORDS	63% MATCHING TEXT	20 WORDS
<p>to the security of the country, public order or supplies and services essential to the life of the community. (5)</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>				
376/385	SUBMITTED TEXT	18 WORDS	63% MATCHING TEXT	18 WORDS
<p>the Act. The Supreme Court in the famous case of Kartar Singh v. State of Punjab held that</p> <p>SA Special Laws on Security in India An Analysis of Judicial Response of AFSPA and PSA.pdf (D163704875)</p>				
377/385	SUBMITTED TEXT	23 WORDS	45% MATCHING TEXT	23 WORDS
<p>Constitution of India under art 21. The Court held that S.22 is violative of the fundamental rights as guaranteed by the Constitution of India</p> <p>SA SHABANA NIHAR A PH20015.pdf (D143037469)</p>				
378/385	SUBMITTED TEXT	18 WORDS	100% MATCHING TEXT	18 WORDS
<p>whether based on religion or language shall have the right to establish and administer educational institution of their choice. whether based on religion or language, shall have the right to establish and administer educational institution of their choice.</p> <p>W https://www.lawfinderlive.com/bts4/CONSTITU.htm</p>				

379/385	SUBMITTED TEXT	25 WORDS	100% MATCHING TEXT	25 WORDS
<p>physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition. ?</p> <p>W https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf</p>		<p>physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.</p>		
380/385	SUBMITTED TEXT	12 WORDS	95% MATCHING TEXT	12 WORDS
<p>Prevention of Terrorism Act (POTA), 2002: The Prevention of Terrorism Act was</p> <p>SA Lovedeep - LLM dissertation.docx (D129611902)</p>				
381/385	SUBMITTED TEXT	24 WORDS	54% MATCHING TEXT	24 WORDS
<p>Armed Forces Special Powers Act, 1958, National Security Act, 1890, the Unlawful Activities (Preventive) Act, 1967, Disturbed Areas Act, Prevention of Seditious Meetings Act, 1911</p> <p>SA VIJAYAKUMAR vb.pdf (D146964320)</p>				
382/385	SUBMITTED TEXT	14 WORDS	76% MATCHING TEXT	14 WORDS
<p>Desai, A.R. (ed.), (1986), Violations of Democratic Rights in India, Bombay: Popular Prakashan. •</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				
383/385	SUBMITTED TEXT	14 WORDS	100% MATCHING TEXT	14 WORDS
<p>The Indian Experience, New Delhi: Oxford University Press. • Austin, Granville, (2002), The Indian</p> <p>SA SHABANA NIHAR A PH20015.pdf (D143037469)</p>				
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<p>Mehta, P. L. and Neena Verma, (1995), Human Rights Under the Indian</p> <p>SA yash pratap.docx (D39188369)</p>				
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<p>B.P. Singh (ed.), (1999), Human Rights in India: Problems and Perspectives, New Delhi: Deep and Deep. 114</p> <p>SA sudhir kumar pal.docx (D158491393)</p>				