

## VEER NARMAD SOUTH GUJARAT UNIVERSITY

### LL.M. HUMAN RIGHTS LAW

#### **Objectives :**

Human Right is doubtless the major concern of all societies developed as well as developing. Formerly, human rights were conceived rather narrowly as mere freedom from arbitrary government and classical constitutions provided guarantees of individual liberty or minority protection against the State in their constitutional bill of rights. It was realised much later, and much more so, since the end of the Second World War that the threats to liberty, equality and justice did not emanate from the State alone. Many nations of Asia and Africa came to nationhood during this period. Their assertion of sovereignty challenged main premises of international law which had been taken as established by the developed nations. These nations had to bring their development and they needed capital. Foreign aid and foreign investments were invited but these could very well lead to their Second Subjugation. Poverty, ignorance exploitation had to be fought at the global level. Development had to come without the sacrifice of human values. A greater awareness of human rights and duties not only as negative restrictions on the State but as positive obligations for creating an environment in which human being could live with dignity, was necessary. If law was to be a real instrument of social engineering, the lawyers, judges as well as law teachers and law students had to be informed by human rights and duties at the LL.M. level that would essentially seek to conscientize the future law teaches, researchers and activists, about human rights and duties.

The focus of a PG Programme on human rights and duties and their interrelationships must be on the national problems with on international or global perspective. Thoughts and ideas cannot be parochial or national. They are Universal; but their articulation becomes meaningful only when they are seen in the context of local experience. The contents of the courses must be informed by transformational dimension. The study methodology must be macro at the thought level and micro at the experience level. While we must therefore focus on on the local problems, we must not let the global perspective out of sight. The world community concerns about human rights and duties have been expressed through various conventions. On the national levels, they are contained in constitutional provisions such as directive principles of state policy, fundamental rights, fundamental duties and judicial, legislative as well as administrative strategies of reconstruction. Human rights and duties acquire much more comprehensive and wider meaning. It requires us to take up cudgels against poverty; ignorance; exploitation; discrimination based on casts, colour or sex; make provisions for drinking water, population control, conservation and preservation of natural resources, ecological balance, protection of consumers against ruthless and profit seeking, traders and manufacturers, provisions against hazardous industries and so on and so forth. Human rights and duties are important parameter of a just social and future lawyers must be able to assess any programme of social transformation with reference to them.

## Structure of the LL.M. Programme

### HUMAN RIGHTS LAW

Credits for each paper/course : 4 Credits

Core paper/course : 4 Credits

Elective papers/courses (Specialization areas) : 4 Credits

Each semester with minimum 15 teaching weeks will comprise of minimum 4 hours of teaching per paper per week, including seminar and assignment.

An academic year is divided into two semesters. The semester period generally shall be

Odd Semester : July to November/December

Even Semester : December to April/May

#### Semester - I

C-101	Constitutional Law-I (History of Indian Constitution & Preambular vision)	: 4 Credits
C-102	The Concept of Law (Legal Theory)	: 4 Credits
HRLE-401	Concept and Development of Human Rights	: 4 Credits
HRLE-402	Human Rights and International Order	: 4 Credits
HRLE-403	Protection and Enforcement of Human Rights in India:	4 Credits
HRLE-404	Women and Human Rights and Duties	: <u>4 Credits</u> 24 Credits

#### Semester - II

C-103	Constitutional Law-II (Comparative Constitutionalism & Federalism)	: 4 Credits
C-104	Legal Education and Research Methodology	: 4 Credits
HRLE-405	Minorities and Human Rights	: 4 Credits
HRLE-406	Children and Human Rights and Duties	: 4 Credits
HRLE-407	International Humanitarian Law and Refugee Law	: 4 Credits
HRLE-408	Science & Technology and Human Rights and Duties:	<u>4 Credits</u> 24 Credits

**Semester - III**

C-105	Law & Social Transformation in India	:	4 Credits
C-106	Judicial Process	:	4 Credits
HRLE-409	Human Rights and Criminal Justice System	:	4 Credits
HRLE-410	Disadvantaged Groups and Human Rights (Socially and Economically Disadvantaged, Tribals and other Indigenous People, Mentally-ill, Disabled)	:	4 Credits
HRLE-411	Environmental Law, Policy, Human Rights and Duties:	:	4 Credits
HRLE-412	Human Rights and Issus of Poverty, Accountability Governance and Development	:	<u>4 Credits</u>
			24 Credits

**Semester - IV**

C-107	Practical/Project Work		
	Classroom Teaching	:	4 Credits
	Clinical Research Report	:	4 Credits
	Doctrinal Research	:	4 Credits
	Non-Doctrinal Research	:	4 Credits
C-108	Dissertation and Submission of Thesis	:	<u>8 Credits</u>
			24 Credits

## Semester - I

### **C-101 Constitutional Law-I (History of Indian Constitution and Preambular Vision)**

**4 Credits**

1. Equality and Social justice
  - 1.1 Equality before law and equal protection of law-meaning-constitutional provisions - total conspectus.
  - 1.2 Classification for differential treatment - constitutional validity
  - 1.3 Gender justice and empowerment of women
  - 1.4 Administrative discretion and equality
  - 1.5 Compensatory discrimination : justice to weaker sections of the society : SC/ST/OBC
  - 1.6 Strategies for ameliorative justice
  - 1.7 Equality and private discrimination
  - 1.8 Equality and protective discrimination
  - 1.9 Right to Equality : privatization and its impact of affirmative action
  
2. Freedoms and Social Control
  - 2.1 Freedom of Speech and expression : right to information
  - 2.2 Freedom of Press and Media and challenges of new scientific developments
  - 2.3 Citizen's liberties and restraints, their validity
  - 2.4 Property and Social Control
    - 2.4.1 1950 to 1978
    - 2.4.2 After 1978
    - 2.4.3 from fundamental right to constitutional right
  - 2.5 Right to strike, hartal and bandh
  
3. Personal liberty
  - 3.1 Rights of accused : double jeopardy, self incrimination, retroactive punishment
  - 3.2 Right to life and personal liberty : meaning, scope and limitations
  - 3.3 Procedure established by law and due process
  - 3.4 Preventive Detention - Constitutional Policy and Constitutional safeguards.
  - 3.5 Right to education : Primary education and higher education.
  
4. Secularism and Freedom of Religion
  - 4.1 Concept of Secularism and Constitutional Provisions : Historical perspective of Indian secularism
  - 4.2 Non-discriminatory State
  - 4.3 Freedom of Religion : Scope and limits of freedoms
  - 4.4 Religion and State in India : State control and non-interference with religion
  - 4.5 Minority rights : Scope and meaning of minority
    - minority rights to educational institutions

5. Fundamental rights and Directive principles
  - 5.1 Fundamental rights and directive principles - judicial balancing
  - 5.2 Directive Principles : Directions of social change
  - 5.3 Judicial policy towards Directive Principles
  - 5.4 What is State? Meaning, Scope and expansion - need to widen definition in wake of liberalisation.
  - 5.5 What is law? Meaning, Scope and expansion.
  - 5.6 Reading Directive Principles into Fundamental rights
  - 5.7 Emerging of new rights and compensation jurisprudence.
  
6. Fundamental Duties
  - 6.1 the need and status in constitutional setup
  - 6.2 the relationships of the fundamental duties with fundamental rights and directive principles.

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- Rajeev Bhargava, **Secularism and Its Critics** (2009) Oxford.
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- B. Sivaramayya, **Inequalities and the Law** (1984). Eastern.
- M.P. Jain, **Indian Constitutional Law**, Vol. I & II (2010) Lexis Nexis

1. Natural Law
  - 1.1 What is Natural Law? Natural Law and search of absolute values
  - 1.2 Greek origins and Jus Gentium
  - 1.3 Medieval period
  - 1.4 Renaissance, Reformation and counter reformation
  - 1.5 Grotius and International Law
  - 1.6 Natural Law & Social Contract
  - 1.7 Kant and Human Freedom
  - 1.8 The Meaning and Development of Natural Law in Eighteenth and Nineteenth Century
  - 1.9 Fuller and Morality of law
  - 1.10 Hart on Natural Law
  - 1.11 Finnis and Restatement of Natural Law
  - 1.12 Indian concept and perception of Natural law
2. Classical Legal Positivism
  - 2.1 What is legal positivism
  - 2.2 Jeremy Bentham and Utilitarians
    - 2.2.1 Bentham's "of Laws in General"
  - 2.3 John Austin
  - 2.4 Bentham and Austin compared
  - 2.5 Classical Legal Positivism and Indian Legal System
3. Modern Legal Positivism
  - 3.1 HLA and the Concept of Law
  - 3.2 Hans Kelsen and the Pure Theory of Law
  - 3.3 Modern Trends in Analytical and Normative Legal Theory
  - 3.4 John Rawls and Distributive Justice
  - 3.5 Robert Nozick and the Minimal State
  - 3.6 Joseph Raz and the 'Source' thesis
4. Law and Social Theory
  - 4.1 What is sociological jurisprudence and sociology of law?
  - 4.2 Rescoe Pound and Social Engineering
  - 4.3 August Comte and Sociology
  - 4.4 Herbert Spencer and Laissez Faire
  - 4.5 Emile Durkheim and Law and Social Solidarity
  - 4.6 Max Weber and theory of legitimate domination
  - 4.7 Sociological Jurisprudence Since Rescoe Pound
    - 4.7.1 Laswell
    - 4.7.2 McDougal
    - 4.7.3 Talcott Parsons
    - 4.7.4 Selznick

- 4.8 From Sociological Jurisprudence to Sociology of Law
  - 4.8.1 Unger and Development of Modern Law
  - 4.8.2 Michael Foucault
  - 4.8.3 Jurgen Habermas
  - 4.8.4 Autopoiesis
- 4.9 Sociological Jurisprudence and Indian Perspective
- 5. Legal Realism
  - 5.1 American Realism
    - 5.1.1 Oliver Wendell Holmes
    - 5.1.2 Karl Llewellyn
    - 5.1.3 Jerome Frank
    - 5.1.4 American Realist Method
  - 5.2 The Scandinavian Realism
    - 5.2.1 Alf Ross
    - 5.2.2 Karl Olivecrona
  - 5.3 Comparing American Realism and Scandinavian Realism
  - 5.4 Modern Realism.
- 6. Historical and Anthropological Approaches
  - 6.1 The Historical School
    - 6.1.1 Savigny
    - 6.1.2 Sir Henry Maine
  - 6.2 Anthropological Jurisprudence
  - 6.3 Legal Pluralism
  - 6.4 Historical Perception and Indian Perspective
- 7. Marxist Theories of Law & State
  - 7.1 Marx and Hegel's Philosophy
  - 7.2 Marx and Justice, Morality and Human Rights
  - 7.3 The "withering away of the State"
  - 7.4 Other Marxist thinking
  - 7.5 Marxist Theories of Law and State - a Critique.
- 8. Critical Legal Theory
  - 8.1 Critical Legal Studies
  - 8.2 Postmodern Legal Theory
  - 8.3 Feminist Jurisprudence
  - 8.4 Critical Race Theory

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- S.N. Dhyani, Fundamentals of Jurisprudence The Indian Approach (1992) Central Law Agency.
- R.W.M. Dias, Jurisprudence (1994) Butterworth & Co.
- Avtar Singh, Introduction to Jurisprudence (2001) Wadhwa.
- Wayne Morrison, Jurisprudence From the Greeks to Post-modernism (1997) Lawman (India).
- M.D.A Freeman, Llyod's Introduction to Jurisprudence (1994) Sweet and Maxwell.
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- John Rawls, A Theory of Justice (2000) Universal.
- Jeremy Bentham, Theory of Legislation (1985)
- W. Friedman, Law in a Changing Society (1996) Universal.

**Objectives**

Protection of Human Rights became an important issue after the Second World War and after the acceptance of Universal Declaration of Human Rights. The growth of Human Rights Law and jurisprudence thereafter was spontaneous and continuous. The changes in the global scenario bring new concept of human rights protection against violation. In one sense, human rights can be said as the rights which the nature has endowed with human beings. However, they are not mere privileges given to the subjects by the ruler but are liberties permitted to the "citizens" in a democracy. Manifestly, a law that violates human rights is no law at all. Probably this perspective may give an impression that human rights are not different from natural rights envisaged by the natural law school.

Although Indian polity waited for more than one score and five years for adoption of Fundamental Duties in the Constitution, it is beyond doubt that every human being has responsibility and obligation not only towards the other fellow being but also towards society at large. Only when a society is aware of this right duty relationship can there be any meaning to human rights.

This course is intended to provide instruction on theoretical, conceptual, historical and other general aspects of human rights and duties. It encompasses philosophical and historical foundations, concept of rights and duties, and concept and classification of human duties and responsibilities.

**Syllabus**

1. Philosophical and Historical foundations of human rights and duties
  - i. Philosophical Foundations  
(Quest for Quality of Life, Human ideals)
    - (a) Human society: man and society
    - (b) Human Values: Universal, Cultural, Social Dignity, Justice and Equality
    - (c) Moral and Ethical Traditions and ideas
    - (d) Polity: Thought and Ideas
    - (e) Needs of Humankind : material, spiritual
  - ii. Historical Development  
History of human rights civilization, Magna Carta, British Bill of Rights, French and American Declaration, International Bill of Rights.
2. The Concept of Rights
  - i. Meaning, nature and definition
  - ii. Classification of rights
3. Theories of rights and duties
  - i. Natural rights theory
  - ii. Liberal theory of rights



- Rama Jois : **Human Rights : Bhartiva Values** (1988)
- Lon L Fuller : **The Morality of Law**
- John Finnis : **Natural Law and Natural Rights** (1980)
- Julius Stone : **Human Law and Human Justice** (2000) Universal
- M.G. Chitkara : **Human Rights : Commitment and Betrayal** (1996)
- Kamenka E. : **Ideas and Ideologies Human Rights** (1978)
- Galtung : **Human Rights in Anotherkey** (1994)
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- P.K. Das : **International Law Documents** (2003), Universal
- Anand A.S. : "Human Rights at the Threshold of the New Millenium", **Journal of Indian Law Institute**, Vol. 40, Nos.1-4, 1998, pp.1-5.
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- Hart H.L. : **Law, Liberty and Morality** 1969, Oxford
- : **The Concept of Law**, 1971, Oxford
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- Lee Harper : **To Kill a Mocking Bird**, 1960
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- Raz Joseph : **The Morality of Freedom**, 1986
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- Waldron J.J. (ed.) : **Theories of Rights**, 1984, Oxford
- Winston, Morton E. : **The Philosophy of Human Rights**, 1989, Wadsworth

- U.N. High Commissioner for Human Rights : **An Introduction : Making Human Rights a Reality** (New York : UN Publication Division, 1996)
- UNESCO : **Philosophical Foundations of Human Rights** (Paris : UNESCO, 1986)
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**Objectives**

The focus of this paper is on the development of international concern for human rights and of norms and institutional mechanisms at the international and regional levels. Through nine units, it deals with the emergence of international and regional concern for human rights; emergence of diverse international instruments on rights and duties; the role of the United Nations; some specific rights such as self-determination, freedom from discrimination, freedom from torture, right of women, and rights of the child; European Convention; American Convention; African Charter and developments in Asian Region.

**Syllabus**

1. International and Regional Concern for Human Rights
  - i. Concern for protection of the individual in anti-slave trade treaties, humanitarian law treaties, International Labour Organization, League of Nations (mandate system, social and economic welfare), Nazism and Fascism, the Holocaust, the war crimes trials, spread of nationalism in Asia and Africa and struggle against colonialism.
  - ii. Regional Approaches to Human Rights – Relevance and factors contributing to regionalism in human rights.
2. Human Rights, Duties and Responsibilities  
Universal Declaration of Human Rights 1948, UN Article 29 of General Assembly Declaration on the Right and Responsibility of individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom 1999, UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations 1997.
3. Human Rights and the United Nations  
Normative and institutional framework of the United Nations : Role of the UN General Assembly, the Economic and Social Council and its commissions and sub-commissions.
4. The International Bill of Rights
  - i. Universal Declaration of Human Rights, 1948
  - ii. International Covenant of Economic, Social and Cultural Rights, 1966
  - iii. International Covenant of Civil and Political Rights, 1966
5. Some Specific Rights
  - i. Rights of the peoples and nations to self-determination : Declaration on the Granting of Independence to Colonial Countries and Peoples 1960; Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States 1970 (fifth principle); Declaration the Permanent

Sovereignty over Natural Resources 1962, Declaration of a New International Economic Order 1974; Charter of Economic Rights and Duties 1974

ii. Freedom from discrimination

Convention on Elimination of All Forms of Racial Discrimination 1965; Convention on the Suppression and Punishment of the Crime of Apartheid 1972 and Convention against Apartheid in Sports 1985, UN Declaration on Elimination of all Forms of Intolerance and Discrimination based on Religion or Belief 1987; UNESCO Declaration on Race and Racial Prejudice 1978; UNESCO Declaration of Principles on Tolerance 1995.

iii. Freedom from Torture

Convention on Prevention and Punishment of the Crime of Genocide 1948; Convention on the Protection of All Persons from Being Subjected to Torture and Other Cruel, inhuman or Degrading Treatment or Punishment 1984.

iv. Rights of Women

ILO Conventions on Equal Remuneration (1951) and Discrimination in Employment (1958); Convention on Elimination of All Forms of Discrimination against Women 1979; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949.

Rights of the Child

v. Rights of the Child

UN Convention on the Rights of the Child 1989, ILO Convention on Child Labour 1999.

6. European Convention On Human Rights

i. History and normative developments since 1950

ii. Monitoring and Enforcement Machinery: European Court of Human Rights, European Commission of Human Rights, Council of Europe

7. American Convention on Human Rights 1969

i. History and development of human rights institutions in Latin America

ii. American Commission and Court of Human Rights

8. African Charter on Human and People's Rights

i. OAU Charter 1963

ii. African Charter of Human and People's Rights 1981

iii. Mechanism of implementation: African Commission and Court of Human and Peoples' Rights

9. Developments in Asian Region

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: **International Human Rights Law - Cases, Material, Commentans**
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- K.P. Saksena (ed) : **Human Rights : Perspectives and Challenges**, 1994, Lancers Books, New Delhi.
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**Objectives**

This paper focuses on the normative and institutional aspects of human rights and duties against the backdrop of the politics and society in India, Divided into 7 units, it deals with the Constitution and human rights and duties, special laws for the protection of vulnerable sections of the people, implementation and enforcement mechanisms, problems of enforcement, state and society and human rights violations, Indian politics and human rights violations, and the importance of internalizing human rights and duties.

**Syllabus**

1. The Constitution and Human Rights and Duties
  - i. Constituent Assembly debates on the Fundamental Rights, Directive Principles and Fundamental Duties, Problems of choosing "Fundamental Rights".
  - ii. Problem of defining reasonable restrictions on fundamental rights
  - iii. International human rights and the Indian Constitution
  - iv. Fundamental Duties of State and Citizen : problems of implementing Duties
  - v. Directive Principles of State Policy
  - vi. Interrelationships and tensions inter se
2. Special Laws for Protection of Specific Categories/Vulnerable Sections of the People
  - i. Reservations and the right to equality
  - ii. Protection of Minorities
  - iii. Protection of Women : in Private and Public domain
  - iv. Contract and unorganized workers; bonded labor
  - v. Children
3. Implementation and Enforcement Mechanisms
  - i. Judiciary
  - ii. National Institutions : SC/ST Commission for Backward Classes, Minorities Commission, Women's Commission, National Commission for Protection of Rights of Child
  - iii. Human Rights Commissions : National and State
  - iv. Professional Councils : Press, Medical, Bar
  - v. Consumer Courts
  - vi. NGOs, Social movements and pressure groups working through democratic institutions such as lobbying MPs, Information Media
4. Problems of Enforcement of Human Rights in India
  - i. Poverty and inaccessibility of legal redress
  - ii. Abuse of executive power : deaths and torture in police custody etc.
  - iii. Special Laws violative of human rights
  - iv. Lack of accountability and transparency in government functioning and the right to information

- v. Inadequate functioning of democratic institutions and democratic deficit
  - vi. Social prejudices against castes, women, minorities etc.
5. The State and Civil Society in India and Human Rights Violations
    - i. Human Rights violations in private domain : within the family, by dominant castes, religious groups
    - ii. Human Rights violations in public domain : State, landlords, employers, etc., Riots and violence in connection with inter-community tensions
    - iii. Unequal access to natural resources
    - iv. Impact of development policies on human rights
  6. Indian Politics and Human Rights Violations
    - i. Impact of colonialism on Indian and polity
    - ii. Assaults on Indian democracy
  7. Importance of Internalizing Human Rights and Duties  
 Urgent need for not only sensitizing others of human rights and duties, but of practising oneself those values: self-inculcation, endeavour to live up to those ideals: Duty to respect others' rights, respect each other's human dignity.

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**Objectives**

In six units, this paper elaborates the following aspects of Women's Rights and Duties : historical, philosophical and social perspectives, status of women in contemporary Indian society, international norms for protection of women, the status of women under the Indian Constitution, special laws and policies for protection of women in India, and institutional for protection of women in India.

**Syllabus**

1. Historical, Philosophical and Social Perspectives
2. Status of Women in Contemporary Indian Society
  - i. Poverty, illiteracy, lack of independence, oppressive social customs and gender bias
  - ii. Violence against and abuse of women in public and private domains
3. International Norms for Protection of Women
  - i. ILO conventions for protection of female labour
  - ii. UNESCO Convention against Discrimination in Education 1960
  - iii. UN Convention on Political Rights of Women 1952, Convention on Elimination of All Forms of Discrimination against Women 1979, Convention on Nationality of Married Women 1957, Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949, Declaration on the Elimination of Violence against Women 1993, Convention on Political Rights of Women 1952.
  - iv. Declaration on the Participation of Women in Promoting International Peace and Co-operation 1982.
  - v. Documents of the Four World Conferences on Women : Mexico 1975, Copenhagen 1980, Nairobi 1985, Beijing 1995.
  - vi. Protection of women in armed conflicts
  - vii. Other relevant developments
4. The Constitution of India and the Status of Women
  - i. Fundamental Rights and Directive Principles under the Constitution
  - ii. Special provisions for the protection of women : Article 15(3), Article 39(d) & (e), Article 42, Articles 243-D & 243-T.
5. Special Laws and Policies for Protection of Women
  - i. Special Laws: Suppression of Immoral Traffic Act 1956, Indecent Representation of Women (Prohibition) Act 1986, Commission of Sati (Prevention) Act 1982, Medical Termination of Pregnancy Act 1971, Maternity Benefit Act 1961, Equal Remuneration Act 1976, Dowry Prohibition Act 1961, Other laws having a direct bearing on protection of women.
  - ii. Gaps between international norms and Indian law, if any

- iii. Women and public policy: Female health and family welfare, literacy programmes, female labour welfare, issue of current public debate: political rights of women (reservations and protection of women), personal laws and status of women.
6. Institutional Mechanisms for Protection of Women
    - i. Constitutional mechanisms : Legislature, Executive and Judiciary (special contribution of judiciary)
    - ii. Statutory mechanism : National Commission for Women, National Human Rights Commission, State Commissions
    - iii. The Non-Governmental Organizations
    - iv. The information media
    - v. Role of education

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