UNIT 9: MEANING AND NATURE OF HUMAN RIGHTS, EVOLUTION OF HUMAN RIGHTS

UNIT STRUCTURE

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9.1 LEARNING OBJECTIVES

After going through this unit, you will be able to -

- explain the meaning and sources of human rights
- examine the nature and characteristics of human rights.
- discuss the evolution of human rights with reference to the three generations of rights.

9.2 INTRODUCTION

Human Rights are inherent and inalienable rights of a person by virtue of the fact that he or she is a human being. Every individual in this world wants dignity that gives him or her the feeling that his or her life is worth living. Human rights nurture this dignity and its very existence Indicates the fact that human beings are aware of one another's worth. These rights are essential to ensure that a person lives a dignified life in this world. These

rights are equal to all persons irrespective of race, religion, nationality, language, sex or any other factor.

Human rights enable one to respect the rights of others. Denial of human rights creates havoc and unrest in the society, ultimately leading to the stage of violence and conflict within and between societies.

In this unit discussion will be made on the meaning, sources, nature, characteristics and evolution of human rights.

9.3 MEANING OF HUMAN RIGHT

Human beings are rational beings. They, by virtue of their being human, posses certain basic and inalienable rights which are commonly known as human rights. These rights belong to them because of their existence. Therefore, these rights become operative with their birth. Human rights as birthrights belong to all individuals irrespective of their caste, creed, religion, sex and nationality. In fact, the very foundation of human rights is based on the concept that every human being is born equal in this world and that he or she must have the equal opportunity to pursue a life with dignity. These rights are essential for them as they give them freedom and dignity and help them in their physical, moral, social and spiritual welfare. Because of their immense significance to human beings, human rights are also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

The meaning of human rights becomes more visible in the ways in which it has been defined. In simple language, human rights can be defined as the rights that all people have by virtue of their being human. The rights which protect and maintain the dignity of individuals can be termed as human rights.

The United Nations Centre for Human Rights defines human rights as “those rights which are inherent in our nature and without which we cannot live as human being”. The World Conference on Human Rights in 1993 at Vienna stated in its declaration that all human rights derive from the dignity and worth inherent in the human person, and that the human person

is the central subject of human rights and fundamental freedoms.Noted constitutional expert, D. D. Basu defines human rights as those minimum rights which every individual must have against the state or other public authority by virtue of his or her being a member of human family, irrespective of any other consideration.

Louise Arbour, the High Commissioner of the Office of the United Nations High Commissioner for Human Rights says “Human rights are our common heritage and their realisation depends on the contributions that each and every one of us is willing to make, individually and collectively, now and in the future”.

Human rights are, therefore, those rights which belong to an individual as a consequence of being human. An individual can seek human rights only in an organised community, that is, a state where the civil social order exists. Human rights should be protected and made available to all. The functions of all the laws should be to protect them in the interest of humanity.

9.4 NATURE AND CHARACTERISTICS OF HUMAN RIGHTS

Human rights are those rights that one has simply because he or she is a human being. These are considered as universal, equal, inalienable rights which every human being has regardless of any kind of distinctions. In other words, it can be said that human rights are inalienable and universal in nature. Every individual must be entitled to these rights equally and without any kind of discrimination. These rights are basic minimum requirements for the survival of human beings. The basic foundation of the concept of human rights is that it is based on the respect for the dignity and worth of each human being. Each and every person of this world must show due respect to other’s rights. Human rights can be enjoyed only within the state and the state authority must take initiative to enforce and protect these rights. At the same time these rights also set positive limitations on the state power and prevent the state authority from unnecessary encroachment

in the life of the individual. The characteristics of human rights can be mentioned as follows:

- **Human rights are inalienable:** Every human being is entitled to human rights due to the very existence of the person as a human being. They are inherent in all human beings irrespective of their sex, caste, creed, religion and nationality.
- **Human rights are universal:** Human rights are universal in nature. These are applicable to all without any consideration and without exception. Human rights are of universal concern of all human beings.
- **Human rights are dynamic:**Human rights are not static, they are dynamic. New perspectives and new forms of rights are evolving with the passage of times. Human rights have been evolving over the years to meet the new challenges.
- **Human rights are permanent:** Human rights are permanent. They cannot be taken away from the individual by any authority. These rights originate with the birth of the individual.
- **Human rights are not absolute:** Though human rights are birth rights, they are not absolute. For the common good and greater interest of the society and the state, certain restrictions can be imposed upon the enjoyment of the rights. Again human rights should be enjoyed in such a manner that it does not lead to the disturbance of other people in the society.
- **Human rights are individual rights as well as collective rights:** Human rights are the rights of the individual as well as groups of individuals. Some of the human rights can be enjoyed solely by a person while some other can be enjoyed as a group. For example, right to life is an individual right and right to development is a collective right.



CHECK YOUR PROGRESS

Q. 1: Mention the definition of human rights as given by the United Nations Centre for Human Rights.

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Q. 2: Human rights are inalienable and universal in nature. (True/False)

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Q. 3: Write about any two characteristics of Human rights.

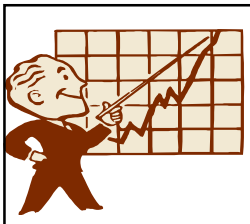
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9.5 VARIOUS KINDS OF HUMAN RIGHTS

Though human rights are classified into various categories, absolute and complete separation of these rights is not possible. These rights are indivisible and interdependent. All human rights are equally important for the survival and dignified life of a human beings. Classification of human rights into various kinds is made only for better understanding of human rights. The various kinds of human rights are discussed below:

- **Civil and Political Rights:** Civil rights refer to those rights which are related to the life, liberty and property of individuals. These rights are very essential for civilized and dignified life. Example of civil rights are- right to life, right to liberty, right to property, etc. Political rights are those rights which provide opportunity to the individuals to take part in political affairs of the state. Some of the political rights are- right to vote, right to be elected, right to criticize government policy, etc.
- **Economic, Social and Cultural Rights:** Economic, social and cultural rights are very important for survival of human beings. Without these rights individual cannot lead a decent life. These rights are essential for ensuring social equality and social justice. Example of some economic, social and cultural rights are right to work, right to education, right to social security, right to leisure, right to participate in the cultural life, etc.

- **Collective Rights:** Collective rights are also called solidarity rights. These rights are enjoyed by groups of people at the community level. Some of these collective rights are - right to self determination, right to development, right to peace, etc.



CHECK YOUR PROGRESS

Q. 4: What is meant by civil rights?

.....

Q. 5: Mention any two political rights.

.....

Q. 6: Social, economic and cultural rights are very important for ensuring …….. and …… (Fill in the blanks)

Q. 7: Mention any three collective rights.

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9.6 SOURCES OF HUMAN RIGHTS

In the contemporary time the main source of human rights is the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948. The UDHR is regarded as the yardstick for achieving human rights by all the countries. It contain basic civil, political, social, economic and cultural rights. Apart from the UDHR, two Covenants adopted by the UN, such as International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are also considered as important sources of human rights. Various other human rights treaties and documents adopted by various international and regional organisations, such as the Council of Europe, the Organisation of American States, the European Union etc also constitute important sources of human rights. Some of the such documents are- the American Convention on Human rights of 1969, the European Convention of Human Rights and Fundamental Freedom of 1950, the African Charter on Human and People's Rights of 1981 etc.

9.7 EVOLUTION OF HUMAN RIGHTS

The origin of human rights can be traced back to the ancient thought and philosophical concepts of 'natural law' and 'natural rights'. The Greek and Roman philosophers recognised the idea of 'natural rights'. But the concept of human rights was for the first time institutionalised only in 1215 after the declaration of ***Magna Carta*** in Europe which established the Rule of Law. This charter incorporated many human rights issues, for example, the right of the Church to be free from governmental interference, the rights of all free citizens to own and inherit property and be free from excessive taxes. It established the right of widows who owned property to choose not to remarry. It also contained provisions forbidding bribery and official misconduct. The other landmarks that have given an institutionalized turn to the concept of human rights are the American Declaration of Independence (1776), the French Declaration on the Rights of the Man and of the Citizen (1789) and the Bolshevik Revolution in Russia (1917). The American Declaration of Independence was based on the understanding that certain rights such as life, liberty and the pursuit of happiness were fundamental to all people. The French Declaration of the Rights of the Man and of the Citizen challenged the sovereignty of the aristocracy and recognized the "liberty, equality and fraternity of individual" and defined a set of individual rights and collective rights. Though these are very important milestones in the evolution of human rights, yet these are not universal in the sense that rights under these declarations are not meant for all. For example, under the Magna Carta, rights are guaranteed only to the feudal lords; in the American Declaration of Independence, rights are confined to the white population of the United States. The Bolshevik Revolution overthrew the autocratic monarchy (known as czars) in Russia and secured rights for the working class.

In the mid 20th century, the concept of human rights emerged as more comprehensive and extensive in its approach and universal in its application. In the first half of the 20th century after the World War I, the League of Nations was established. The League provided for certain human rights

provisions. It emphasised on the protection of minority rights and respect for the human rights of the subject peoples of the colonial states. Despite its efforts, the League failed to protect human rights of the people. The Second World War broke out in 1939 which led to severe violation of rights of the people worldwide. After the end of the Second World War in 1945 the United Nations was established. With the establishment of the United Nations, the concept of human rights became more concrete and comprehensive in nature. The United Nations Charter and Universal Declaration of Human Rights (UDHR) fully universalised the whole concept of human rights. The Charter of the UN reaffirmed "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". With the adoption of the Universal Declaration of Human Rights on 10 December 1948, the UN urged the member nations to promote a number of human, civil, economic and social rights. To make the states legally obliged to protect and promote rights of people, the UN adopted two covenants in 1966, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which came into force in 1976. The UN also adopted two Optional Protocols to the International Covenant on Civil and Political Rights. These protocols are- Optional Protocol to the International Covenant on Civil and Political Rights which came into force on 23 March, 1973 and the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of death penalty in 1989.

Apart from the United Nations the regional organizations have also played an important role in the evolution of the concept of human rights. The Council of Europe adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms on 4th November 1950. The Organization of American States adopted the American Convention on Human Rights in 1969. The Organization of African Unity adopted the African Charter on Human and Peoples' Rights in 1981. The evolution of the concept of human rights can also be examined in terms of three generations of rights. The division of human rights into three generations was introduced

by Czech Jurist Karel Vasale in 1979. These three generations of rights are discussed below:

- **First Generation of Human Rights:** The first generation rights are the earliest form of rights that emerged in Europe in the 18th century. Originating from the American War of Independence and French Revolution, these are primarily civil and political rights. These rights aim at controlling undue interference of the state in the life of the people. Some of these rights are – right to freedom of speech, right to freedom of thought and belief, right to life, liberty and property, right to vote, right to be elected and so on. Inspired by these rights, many countries of the world included these rights in their constitutions. These rights were first enshrined at the global level by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
- **Second Generation of Human Rights:** The second generation rights emerged with the working class movement in the 19th century. These rights are 'security oriented rights' as they tend to provide socio-economic and cultural security to the people. These rights are based on the ideas of equality and guaranteed access to essential social and economic goods, services and opportunities. These rights are fundamentally social, economic and cultural in nature. These rights indicate positive interference of the state and hence various means for the protection of these rights are adopted by the states. Some of these rights are right to employment, right to equal wages, right to adequate means of livelihood, the right to form unions, right to social security etc.
- **Third Generation of Human Rights:** The third generation human rights have emerged in the 20th century after the great havoc following the two world wars. These are group rights and have developed as a result of global consensus on some particular issues. In fact, these rights are a response to the phenomenon of global interdependence. These rights belong to the community as a whole. These rights include right to self determination, right to a healthy environment, right to sustainable development, right to peace, right to good government,

right to humanitarian assistance, the rights of indigenous minorities etc. Some of the collective rights have already been recognised under many progressive documents of the world community, including the Declaration on the Right to Development adopted by the UN General Assembly in 1986, the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, the 1992 Rio Declaration on Environment and Development, the African Charter on Human and People's rights etc.

Recently, the fourth generation of human rights has also come up. These rights have developed to serve some of the particular needs of the present day. Examples of this category include gay rights, lesbian rights, etc.

Thus, the evolution of the concept of human rights took a long time and by passing various stages it has taken the present comprehensive and concrete form in the 21th century.

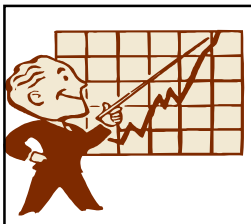


ACTIVITY 1.1

Try to find out the difference between first generation of rights and second generation of rights.

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CHECK YOUR PROGRESS

Q. 8: In which year was the Magna Carta adopted?

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Q. 9: The Universal Declaration of Human Rights was adopted on …… (Fill in the blank)

Q. 10: Discuss the Three Generations of Rights.

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9.8 UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly, a prime body of the United Nations in 1948 "as a common standard of achievement for all peoples and nations". It has created a history, a new concern for the fundamental rights of the people spreading throughout the world irrespective of race, culture, religion, place of birth and so on. It is the first kind of joint effort at the international level for the protection of rights and freedom of people across the globe.

Historical Development of the UDHR

The genesis of the Universal Declaration can be traced back to the growth of the United Nations itself. After the Charter of the United Nations (UN) came into force in 1945, the UN engaged itself for the implementation of its principles including the rights and freedom of the people. The Economic and Social Council, one of the prime organs of the United Nations was entrusted to formulate the International Bill of Rights enshrined in the UN Charter itself. As a result of this, the Commission on Human Rights was established in 1946 as a subsidiary body of the Economic and Social Council. The Commission on Human Rights was directed to submit proposals, recommendations, reports concerning International Bill of Human Rights, international convention on civil liberties, status of women, protection of minorities and so on. As such the Commission on Human Rights appointed a Drafting Committee in January 1947 to prepare the draft of the Declaration. The Commission decided to apply the term "International Bill of Human Rights" to a series of documents and accordingly it decided to prepare two sets of documents, such as a draft declaration consisting of a declaration of general principles of human rights and a draft convention containing specific rights which would be legally binding on the states. The Commission on Human Rights at its Third Session held in June, 1948 discussed the report submitted by the Drafting Committee and finally adopted a draft of the Declaration for submission to the Economic and Social Council. The Council adopted a resolution without vote and submitted it before the

General Assembly. The General Assembly adopted it on 10th December, 1948 through a resolution passed unanimously. This resolution is known as the Universal Declaration of Human Rights.

OTHER IMPORTANT INTERNATIONAL INSTRUMENTS PERTAINING TO HUMAN RIGHTS

After formulating the Universal Declaration and two International Covenants, the United Nations engaged itself in formulating some other conventions and declarations for the better protection of the human rights around the world. These conventions and declarations to a large extent elaborate the main contents of the UDHR and the two covenants, namely-

International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, and also affirm some rights which were not mentioned in the International Bill of Rights. Some of these international instruments are-

- The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the General Assembly of the United Nations in 1948 and it came into force from 12 January, 1951. The convention under Article 1 defines genocide as an international crime, whether committed in the time of war or peace. It is defined as certain acts 'committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group'. The Convention is silent in stating the penalties for the persons convicted of the crime of genocide. The Convention provides that the Contracting Parties will enact necessary penalties based in accordance with their own constitution, to provide effective punishment.
- The Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishmentwas adopted by the General Assembly in 1984, which came into force from 26 June, 1987. The Convention under Article 2 provides that each party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. The

Optional Protocol on Convention Against Torture was adopted by the General Assembly in 2002.

- The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the General Assembly in 1965, which came into force on 4 January, 1969. It defines racial discrimination as "any distinct, exclusion, restrictions, preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". It is the most comprehensive United Nations' initiative regarding discrimination on the ground of 'race, colour, descent or national or ethnic origin'.
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the General Assembly in 1979, which came into force from September, 1981. Before that the General Assembly in 1967 also adopted the Declaration on the Elimination of Discrimination Against Women. In fact, to materialise the principles of this Declaration, CEDAW was adopted by the General Assembly. Part III of the Convention lays down certain areas where the State should protect women from discrimination. These areas are- education, employment, health care, forced marriage, domestic violence, and so on. It wants to bring equality among man and woman by guaranteeing some special rights to women.
- The Convention on the Rights of the Child was adopted by the General Assembly in 1989 and it came into force on 2nd September, 1990. The Convention under Article 1 states that a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. This Convention has provided a number of rights to children, such as – right to life, privacy, family environment, education, right against exploitation etc.

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the General Assembly in 1990, which came into force on 1st July, 2003. This Convention, under Article 2 defines migrant worker as a person who is to be engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted by the General Assembly in 1992. It is the most comprehensive document speaking about the rights of the minority. Article 1 of this Declaration requires the States to recognise and promotethe identity of the minorities within their respective territories by law and other measures.
- The rights of the refugees are protected by the United Nations through the Convention Relating to the Status of Refugees of 1951 and the United Nations High Commissioner for Refugees (UNHCR), established in 1951. UNHCR is a subsidiary body of the General Assembly that provides humanitarian, non-political and social service for the international protection of the refugees.



9.9 LET US SUM UP

- Human rights as birth rights are part of all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are inherent and inalienable rights of a person because of the fact that he or she is a human being.
- Human rights are the rights of individual as well as a group of individuals. Some of the basic characteristics of human rights are- Human rights are inalienable, universal, dynamic, permanent. Human rights are not absolute.
- Human rights are of various kinds. Such as- civil and political rights, economic, social and cultural rights, collective rights etc. Some of

the civil and political rights are- right to life, right to liberty, right to vote, right to be elected, etc. Examples of social, economic and cultural rights are- right to work, right to education, right to social security, right to leisure, right to participate in the cultural life. Right to self determination, right to development are some of the collective rights.

- Evolution of human rights to a more comprehensive form took a long period of time. Its origin can be traced back to the ancient thought and philosophical concepts of 'natural law' and 'natural rights'. Some of the important documents of the early period which contained human rights provision are- the Magna Carta of 1215, the American Declaration of Independence of 1776, the French Declaration on the Rights of Men of 1789. The League of Nations also emphasised on the protection of certain rights.
- The concept of human rights evolved in the proper sense of the term with the establishment of the United Nations. The United Nations Charter fully universalised the whole concept of human rights. Some of the important documents adopted by the UN in the field of human rights are- the Universal Declaration of Human Rights in 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1966.
- Apart from the UN, regional organisations have also played an important role in developing the concept of human rights. Various documents have been adopted at the regional level for this purpose, such as- the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the American Convention on Human Rights of 1969, the African Charter on Human and Peoples' Rights of 1981.
- The evolution of human rights can also be discussed in terms of Three Generations of Rights. The first generation rights are the earliest form of rights that emerged in Europe in the 18th century

and these rights are basically civil and political rights such as right to life, liberty and property, right to vote, right to be elected etc. The second generation rights emerged with the working class movement in the 19th century and these rights are fundamentally social, economic and cultural in nature such as right to employment, right to equal wages, right to social security etc. The third generation human rights, that emerged in the 20th century are group rights and have developed as a result of global consensus on some particular issues. Some of these rights are- right to self determination, right to a healthy environment, right to sustainable development etc.



9.10 FURTHER READING

1. Agarwal, H.O. (2006). *Human Rights*. Allahabad: Central Law Publications.
2. Stephen, R.M. (2002). *Human Rights: Concepts and Perspectives*. New Delhi : Concept Publishing Company.
3. Syed, M.H. (2003). *Human Rights: The New Era*. New Delhi: Kilaso Books.
4. Yasin, Adil-ul&UpadhayayArchana (2004). *Human Rights*. New Delhi: Akansha Publishing House.

9.11 ANSWERS TO CHECK YOUR PROGRESS

AnsTo Q. No 1 : Human rights are “those rights which are inherent in our nature and without which we cannot live as human being”.

AnsTo Q. No 2 : True

AnsTo Q. No 3 : (i) Human rights are inalienable: Every human being is entitled to human rights due to the very existence of the person as a human being. They are

inherent in all human beings irrespective of their sex, caste, creed, religion and nationality.

(ii) Human rights are universal: Human rights are universal in nature. These are applicable to all without any consideration and without exception. Human rights are always been of universal concern of human being.

AnsTo Q. No 4 : Civil rights refer to those rights which are related to the life, liberty and property of individuals. These rights are very essential for civilised and dignified life.

AnsTo Q. No 5 : Right to vote, Right to be elected

AnsTo Q. No 6 : social equality and social justice

AnsTo Q. No 7 : Right to self determination, Right to development, Right to peace

AnsTo Q. No 8 : 1215

AnsTo Q. No 9 : 10 December 1948

AnsTo Q. No 10 : (i) First Generation of Human Rights: The first generation rights are the earliest form of rights that emerged in Europe in the 18th century, from the American War of Independence and French Revolution and these are primarily civil and political rights. These rights aim at controlling undue interference of the state in the life of the people. Some of these rights are like – right to freedom of speech, right to freedom of thought and belief, right to life, liberty and property, right to vote, right to be elected and so on. These rights were first enshrined at the global level by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

(ii) Second Generation of Human Rights: The second generation rights emerged with the working class movement in the 19th century. These rights are based on the ideas of equality and guaranteed access

to essential social and economic good, services and opportunities. These rights are fundamentally social, economic and cultural in nature. These rights indicate positive interference of the state and the state adopts various means for the protection of these rights. Some of these rights are right to employment, right to equal wages, right to adequate means of livelihood, the right to form unions, right to social security etc.

(iii) Third Generation of Human Rights: The third generation human rights have emerged in the 20th century after the great havoc followed by the two world wars. These are group rights and developed as a result of global consensus on some particular issues. These rights include right to self determination, right to a healthy environment, right to sustainable development, right to peace, right to good government, right to humanitarian assistance, the rights of indigenous minorities etc.



9.12 MODEL QUESTIONS

A) Very Short Questions

Q. 1: Who divided human rights into three generations of rights?

Q. 2: Mention the names of the two Covenants adopted by the United Nations to protect and promote human rights.

Q. 3: What do you mean by collective rights?

B) Short Questions (answer each question in around 150 words)

Q. 1: What do you mean by human rights?

Q. 2: Briefly write about the three generations of human rights.

Q. 3: Explain the UNDHR.

C) Long Questions (answer each question in around 300-500 words)

Q. 1: Explain the nature and characteristics of human rights.

Q. 2: Discuss the evolution of human rights.

Q 3: Discuss the role of the United Nations in protecting and promoting the rights and freedoms of people across the globe.

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