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Human Rights

SEMESTER VI

POLITICAL SCIENCE

BLOCK : 1

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POLITICAL SCIENCE
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COURSE INTRODUCTION

The third course in Political Science of the BA Sixth Semester Programme of KKHSOU is titled "Human Rights". It is designed to help the learners to have an understanding of the concept of human rights. The concept of human rights has become an important subject of study in the contemporary period. Human Rights are inalienable and inherent rights of every human being which enable a person to lead a dignified life. Human rights are very important for the all-round development of all individuals. Accordingly, the first unit of the course makes the learners familiar with the meaning, nature, sources and various types of human rights. The concept of human rights has assumed its present shape by way of its evolution through various stages from the ancient period to the present time. The evolution of human rights is also discussed in the first unit. The concept of human rights has been looked upon differently by different approaches and different perspectives. The second and third units deal with various approaches and perspectives on human rights, such as Universalistic Approach, Relativist Approach, Marxist Perspective, Feminist Perspective, Thirld World Perspective and Gandhian Perspective on human rights. The United Nations has played a very important role in protecting and promoting human rights and fundamental freedoms. The Universal Declaration of Human Rights(UDHR) adopted by the UN is said to be the major landmark in codifying human rights. The UDHR has also influenced the Constitution of India in terms of inclusion of certain provisions relating to the protection of human rights. The fourth unit therefore deals with the role of the UN in protecting and promoting human rights and fundamental freedoms across the world. In this unit focus has been made on various declarations and conventions adopted by the UN. The impact of the UDHR on the Constitution of India has also been discussed in this unit.The fifth unit discusses two major Covenants adopted by the United Nations, such as - the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In India the concept of human rights has assumed utmost importance in the contemporary time. In India human rights have assumed the present shape by passing through various phases right from the ancient period to the post independent period. Accordingly in the sixth unit we shall discuss the evolution of human rights movement in India and the role of the Constituent Assembly in this regard. The seventh unit discusses the provisions of human rights as incorporated in the Indian Constitution with special reference to the Preamble of the Constitution of India, Fundamental Rights, Fundamental Duties and the Directive Principles of State Policy. The unit also focuses on the legislative provisions for the protection of human rights in India, such as National Human Rights Commission, State Human Rights Commission, National Commission for Schedule Caste and Schedule Tribes and various other Acts. All of us know that rights constitute an important element in the lives of human being without which individual cannot develop themselves. But in our society, some sections of people are considered to be vulnerable sections because their rights are often violated. Because of gross violation

of human rights, these sections people need some special rights to take care of their special requirements in life. Accordingly the eighth, ninth, tenth, eleventh, twelveth, thirteenth units discuss the rights of the vulnerable groups such as- women, children, specially-abled persons, refugees, elderly persons, indigenous people respectively. International efforts to protect the rights of these groups have also been discussed in these units. The fourteenth unit deals with one of the very important concepts, i.e Human Rights Education which is very important for developing human personality, promoting fraternity and maintaining peace in the society. In this unit effort to promote human rights education at the international and Indian level have also been discussed. The last unit of this course discusses the role of NGOs in protection and spreading of human rights awareness across the world with special reference to the Amnesty International and Human Rights Watch.

The course “Human Rights” is divided into two blocks - Block 1 and Block 2. Block 1 contains seven units (Unit 1-7) and Block 2 contains eight units (Unit 8-15).

INTRODUCTION TO BLOCK 1

This is the first block of the third course or paper of Krishna Kanta Handiqui State Open University's B.A. Sixth Semester Programme in Political Science. The third course or paper of the BA Sixth Semester Programme in Political Science is titled "Human Rights". The first block of this course contains seven units- (Units 1-7).

The First Unit introduces the learners to the very basic concept o f human rights, such as- its meaning, nature, various kinds, sources and evolution of human rights.

The Second Unit discusses two important approaches of human rights, those are- universalistic and relativist approaches.

The Third Unit focuses on various perspectives on human rights, such as - Marxist, Feminist, Third World and Gandhian Perspectives.

The Fourth Unit discusses the role of the United Nations in protection and promotion of human rights with special reference to the Universal Declaration of Human Rights.

The Fifth Unit discusses two important international documents related to protection and promotion of human rights adopted by the United Nations, those are - International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) .

The Sixth Unit discusses the evolution of human rights movement in India from the ancient period to the post independent period.

The Seventh Unit focuses on various constitutional and legislative provisions related to protection and promotion of human rights in India.

While going through the units of the block, you will find that unit is further divided into certain sections and sub-sections, wherever necessary, for your better understanding. Again, the units carry certain activities after a particular section where needed. These "ACTIVITIES" will provide you the opportunity to practically apply your own thoughts based on the knowledge gained from reading the text in a particular section. Besides, in order to give you additional information on certain relevant topics, you will find a category called "LET US KNOW" after the sections in each unit. Another category that has been included at the end of each section of a particular unit is "CHECK YOUR PROGRESS". The purpose of this category is to help you to asses for yourself as to how thoroughly you have understood a particular section. You may then match your answers with "ANSWERS TO CHECK YOUR PROGRESS" given at the end of each unit. The section "FURTHER READING" in each unit contains the names of a few books which you might want to consult if you are intereted in learning more elaborately about the concepts discussed in a particular unit. Furthermore, the category called "MODEL QUESTIONS" is intended to give you a hint of the type of questions you are likely to get in the examination.

UNIT 1: HUMAN RIGHTS

UNIT STRUCTURE

1.1 Learning Objectives

1.2 Introduction

1.3 Meaning of Human Rights

1.4 Nature and Characteristics of Human Rights

1.5 Various kinds of Human Rights

1.6 Sources of Human Rights

1.7 Evolution of Human Rights: Three Generations of Rights

1.8 Let Us Sum Up

1.9 Further Reading

1.10 Answers to Check Your Progress

1.11 Model Questions

1.1 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.

1.2 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.

1.3 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 live a life with dignity. These rights are essential for them as the rights 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 that 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.

1.4 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 on 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.

.....

.....

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

.....

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

.....

.....

1.5 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 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.

.....

.....

1.6 SOURCES OF HUMAN RIGHTS

In the contemporary time, the main source of human rights is the Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly in 1948. The UDHR is regarded as the yardstick for achieving human rights by all the countries. It contains 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.

1.7 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 were 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.



Magna Carta: It was a Charter which restricted the powers of the king of England while extending rights and privileges to the feudal lords or barons

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 people 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 differences between first generation of rights and second generation of rights.

.....

.....

.....



CHECK YOUR PROGRESS

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

.....

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

Q.10: Discuss the Three Generations of Rights.

.....

.....

.....



1.8 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.



1.9 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 & Upadhayay, Archana (2004). *Human Rights*. New Delhi: Akansha Publishing House.

1.10 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: Human rights are "those rights which are inherent in our nature and without which we cannot live as human being".

Ans. to Q. No. 2: True

Ans. to 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.

Ans. to 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.

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

Ans. to Q. No. 6: social equality and social justice

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

Ans. to Q. No. 8: 1215

Ans. to Q. No. 9: 10 December 1948

Ans. to 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.



1.11 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 sources of human rights.

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.

*** ***** ***

UNIT 2: APPROACHES TO HUMAN RIGHTS

UNIT STRUCTURE

2.1 Learning Objectives

2.2 Introduction

2.3 Universalistic Approach to Human Rights

2.4 Relativist Approach to Human Rights

2.5 Let Us Sum Up

2.6 Further Reading

2.7 Answers to Check Your Progress

2.8 Model Questions

2.1 LEARNING OBJECTIVES

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

- describe the universalistic approach to human rights
- examine the relativist approach to human rights.

2.2 INTRODUCTION

The concept of human rights has been a dynamic one. The notion of human rights has evolved with the changing times. Interpretation of human rights is integrally linked up with the respective historical background and the social environment of a community. However, despite variations in the interpretation of human rights, certain rights such as the right to life and freedom are universal in nature and applicable to all human societies. Moreover, ideological issues and the feminist perspective have also determined the nature of human rights to a great extent. Accordingly, in this unit, we shall learn about the various approaches to the study of human rights including the universalistic approach and relativist approach.

2.3 UNIVERSALISTIC APPROACH TO HUMAN RIGHTS

The Universalistic approach to human rights holds that human rights are universal. It means that human rights are universally applicable to all

human beings. Each and every individual of this world is entitled to human rights without any kind of discrimination of sex, race, caste, class, culture or any other condition. With the establishment of the United Nations, the concept of human rights got a universal approach. The Charter of the UN recognises the universal nature of the human rights and proclaims "Universal respect for and observance of human rights and fundamental freedom for all without distinction as to race, sex, language or religion". Besides this a number of initiatives on the part of the UN like the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Social, Cultural and Economic Rights also universally recognise that rights are inseparable parts of human lives. The existence of rights also implies that every individual and state has a duty to safeguard the rights of others. Along with this there is an enormous endeavour at the regional level also to protect the rights of individuals. We can mention here the names of regional instruments like- Rights and Fundamental Freedoms 1950, the American Convention on Human Rights, 1960, and the African Charter on Human and People's Right, 1981. The existence and implementation of the instruments of human rights clearly indicate two things- the process of political acceptance and the legal codification of human rights. All these endeavours have universalised the concept of human rights and are now accepted by all countries, big and small, irrespective of their historical, social, economic and cultural differences. These rights embrace all civil, political, economic, social and cultural rights.

The universalistic approach to human rights has been criticized on a number of grounds. More particularly the advocates of the relativist approach to human rights have put forward a number of arguments against the universalistic approach. They have stated that human rights are not universal, they differ from society to society. They argue that human rights are based on moral values of the society and each society differs from the other one in regards of values. And accordingly human rights also vary from place to place. On the basis of socio, political, cultural and

historical conditions of the society, nature of human rights also differs. So all human rights cannot be universally and identically implemented in all societies.



CHECK YOUR PROGRESS

Q.1: According to the Universalistic approach, human rights are applicable to all universally without any discrimination. (True/False)

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Q.2: Mention the names of any three regional documents related to human rights.

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Q.3: Mention the basic argument of the Universalistic approach regarding human rights.

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Q.4: State one criticism against the universalistic approach to human rights.

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2.4 RELATIVIST APPROACH TO HUMAN RIGHTS

The Relativists believe that human right is a dynamic concept varying across generation, time and situation. The concept of human rights is in the state of constant evolution to meet the needs of changing generations, times and situations. The issues of human rights depend upon certain conditions and cannot be applied universally to all. They argue that the

universalisation of rights does not fit well with the sovereign nation states, rather it suits more to the cosmopolitan global political community where individuals are regarded as citizens of the world. There are three competing Relativist models in international relations-

- Traditional Statist Model holds that state has an upper hand in implementing the human rights and human rights solely remain in the jurisdiction of sovereign nations. It is a peripheral concern for International relations.
- The Cosmopolitan Model maintains that along with international organizations, individuals and NGOs also can put substantive intervention in the gross violation of human rights.
- The International Model stresses on the evolving consensus among state and non-state actors alike on international human rights norms. International human rights activity is permissible only to the extent when authorised by formal and informal norms of international society of states.

The exponents of the Relativist approach believe that human rights are governed by some moral values, which are culture and history specific, rather than universal. As such they divide the world view on human rights into three groups- the First world or the western approach that emphasises civil, political and property rights; the Second world or socialist approach that emphasises social and economic rights and the Third world approach that emphasises self determination right and developmental rights. The relativist approach believes that issues of human rights are determined by several factors, such as history, economy and culture and these factors vary from society to society and time to time. And in such a varied contexts the universal notion of human rights is not applicable at all.

The relativist approach to human right is also criticized by scholars. Many scholars opine that the relativist approach is self-contradictory. On the one hand, it regards that the only source of moral validity are universal cultures and on the other hand, it does not accept any consistent universal moral judgement. Some scholars have also argued that unless there is a

collective learning about what should be in the best interest of all human beings all over the world, there cannot be human rights in the true sense. The concept of human rights should absorb cultural differences. Human rights should be common for all.



CHECK YOUR PROGRESS

Q.5: Mention the basic argument of the Relativist approach regarding human rights.

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Q.6: State the names of three Relativist models of international relations.

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Q.7: Write briefly about the relativist's classification of world view on human rights.

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Q.8: State one criticism against the relativist approach to human rights.

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2.5 LET US SUM UP

- Human rights nurture human dignity. Human rights enable one to respect the rights of others. In this sense human rights do not connote

only the rights which are requested or demanded but also rights which are respected and responsible for dignified life of individuals.

=There are various approaches of human rights, such as Universalistic approach, Relativist approach etc.

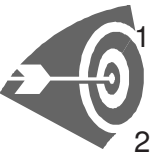
- The Universalistic approach to human rights holds that human rights are universal. It means that human rights are universally applicable to all human beings. Each and every individual of this world is entitled to human rights without any kind of discrimination of sex, race, caste, class, culture or any other conditions.
- The United Nations has played an important role in universalising the concept of human rights. It has adopted various documents like- Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Social, Cultural and Economic Rights to universally recognise that rights are inseparable parts of human lives.
- The Universalistic approach to human rights has been criticized on a number of grounds. More particularly the advocates of the relativist approach to human rights have put forward a number of arguments against the universalistic approach. They have stated that human rights are not universal, they differ from society to society. They argue that human rights are based on moral values of the society and each society differs from the other one in regards of values. And accordingly human rights also vary from place to place. On the basis of socio, political, cultural and historical conditions of the society nature of human rights also differ. So all human rights cannot be universally and identically implemented in all societies.
- The Relativist approach argues issues of human rights cannot be applied universally to all. Human right is a dynamic concept varying across generation, time and situation. The concept of human rights is in the state of constant evolution to meet the needs of changing generations, time and situation.
- There are three competing Relativist model in international relations,

such as- Traditional Statist Model, Cosmopolitan Model and International Model.

- The relativist approach to human right is also criticized by scholars. Many scholars state that the relativist approach is self-contradictory. On the one hand, it regards that the only source of moral validity are universal cultures and on the other hand, it does not accept any consistent universal moral judgement. Some scholars have also argued that unless there is a collective learning about what should be in the best interest of all human beings all over the world, there cannot be human rights in the true sense. The concept of human rights should absorb cultural differences. Human rights should be common for all.



2.6 FURTHER READING



1. Agarwal, H.O. (2006). *Human Rights*. Allahabad: Central Law Publications.
2. Dhiman, O.P. (2011). *Understanding Human Rights: An Overview*. Delhi: Kalpaz Publications.
3. Stephen, R.M. (2002). H*uman Rights: Concepts and Perspectives*. New Delhi : Concept Publishing Company.
4. Syed, M.H. (2003). *Human Rights: The New Era*. New Delhi: Kilaso Books.
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2.7 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: True

Ans. to Q. No. 2: Rights and Fundamental Freedoms 1950, the American Convention on Human Rights, 1960, and the African Charter on Human and People's Right, 1981.

Ans. to Q. No. 3: The Universalistic approach to human rights holds that human rights are universal. It means that human rights are universally applicable to all human beings. Each and every individual of this world is entitled to human rights without any kind of discrimination of sex, race, caste, class, culture or any other conditions.

Ans. to Q. No. 4: The advocates of the relativist approach to human rights have put forward a number of arguments against the universalistic approach. They have stated that human rights are not universal, they differ from society to society. They argue that human rights are based on moral values of the society and each society differs from the other one in regards of values. And accordingly human rights also vary from place to place.

Ans. to Q. No. 5: The basic argument of the Relativist approach is that human rights are not universal. Human right is a dynamic concept varying across generation, time and situation. The concept of human rights is in the state of constant evolution to meet the needs of changing generations, time and situation. The issues of human rights depend upon certain condition and cannot be applied universally to all.

Ans. to Q. No. 6: Traditional Statist Model, Cosmopolitan Model and International Model

Ans. to Q. No. 7: The exponents of the Relativist approach believe that human rights are governed by some moral values, which are culture and history specific, rather than universal. As such they divide the world view on human rights into three groups- the First world or the western approach that emphasises civil, political and property rights; the Second world or socialist approach that emphasises social and economic rights and the Third world approach that emphasises self determination right and developmental rights. The relativist approach believes that issues of human rights are determined by several factors, such as history, economy and culture and these

factors vary from society to society and time to time. And in such a varied contexts the universal notion of human rights is not applicable at all.

Ans. to Q. No. 8: Many scholars state that the relativist approach is self-contradictory. On the one hand, it regards that the only source of moral validity are universal cultures and on the other hand, it does not accept any consistent universal moral judgement.



2.8 MODEL QUESTIONS

A) Very Short Questions

Q. 1: Mention the names of the documents adopted by the United Nations to universalise the concept of human rights.

Q. 2: Mention the names of two regional documents related to human rights.

Q. 3: What do you mean by universalisation of human rights?

B) Short Questions (Answer each question within 150 words)

Q. 1: Explain three Relativist models of international relations.

Q. 2: Write about the role of the United Nations in universalising human rights.

C) Long Questions (Answer each question within 300-500 words)

Q. 1: Critically discuss the relativist approach to human rights.

Q. 2: Discuss the universalistic approach to human rights.

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UNIT 3: PERSPECTIVES ON HUMAN RIGHTS: MARXIST, FEMINIST, GANDHIAN AND THIRD WORLD PERSPECTIVES

UNIT STRUCTURE

3.1 Learning Objectives

3.2 Introduction

3.3 Perspectives on Human Rights

- 3.3.1 Marxist Perspective on Human Rights
- 3.3.2 Feminist Perspective on Human Rights
- 3.3.3 Third World Perspective on Human Rights
- 3.3.4 Gandhian Perspective on Human Rights

3.4 Let Us Sum Up

3.5 Further Reading

3.6 Answers to Check Your Progress

3.7 Model Questions

3.1 LEARNING OBJECTIVES

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

- explain the Marxist perspective on human rights
- explain the feminist perspective on human rights
- discuss the third world perspective on human rights
- examine the Gandhian perspective on human rights.

3.2 INTRODUCTION

There are various approaches and perspectives on human rights. Viewpoints of these approaches and perspectives differ from each other. In this unit we shall discuss the Marxist perspective, feminist perspective, third world perspective and the Gandhian perspective on human rights.

3.3 PERSPECTIVES ON HUMAN RIGHTS

The concept of human rights has become a very important subject of study in the present context. There are a number of perspectives to examine the issues of human rights. These are discussed below:

3.3.1 Marxist Perspective on Human Rights

The Marxist perspective on rights is well manifested in the writings of Karl Marx, Engels, Lenin and others belonging to the School of Marxist thought. They make a critique on the liberalised thinkers' notion of atomized concept of individual rights. They say that rights are the creation of capitalist society so as to uplift the lives of the 'haves' at the cost of the 'have-nots'. This school views individual rights as instruments of bourgeois exploitation over the common masses.

The Marxist school of thought predicts withering away of the state and establishment of communism. Development of individuals' potentialities to the greatest possible extent can occur only within the society, and in this context this perspective gives importance on community or social rights rather than on individual rights. Again as there is no class in communist society, the Marxists thinkers make it clear that there is no need to have a long list of rights in that society. The very existence of human life is rotating round the society, and as such the Marxists emphasise on social rights. As rights are derived from economic relationship, the Marxists believe that economic and social rights precede civil and political rights. The neo-Marxists view human rights as a possible way for the better livelihood of the marginalised groups of society. In simple words, it can be said that the Marxist perspective of rights has focused on socio-economic freedom and equality for all people without any discrimination of class, caste etc.

The Marxist perspective on human rights is criticised by many scholars. More particularly liberal scholars have criticised the views of Marxist perspective regarding their over emphasis on community or social rights rather than on individual rights. According to the liberals, individuals are the most important elements of the society. Therefore individuals must be entitled to rights and freedom. Without the development of individuals, development of the society is also not possible.

3.3.2 Feminist Perspective on Human Rights

Though the concept of human rights started growing for centuries in the past, the issue of women's rights did not get any recognition till the Vienna Conference of 1993. Both the UN World Conference on Human Rights in Vienna in 1993 and UN World Conference on Women in Beijing in 1995 reoriented the concept of human rights by categorically declaring that 'women's rights are human rights'. Article 18 of the Vienna Declaration states, "the human rights of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community". This is the result of the incessant attempts by the feminist movement that criticises the international doctrine on human rights on the ground that it reinforces the division between public world and private life. According to the feminist thinkers, international law never touches the private sphere of life. They criticise the traditional concept of human rights which while protecting women from state sanctioned violence and abuse, does not address the private sphere where violation of women's rights takes place more frequently. Due to this drawback of the traditional concept of human rights, male

domination and exploitation of women in the private sphere remains a sensitive issue. The increasing dichotomy between the private and public sphere keeps the private sphere out from the human rights intervention. They even feel that the nation-state, whether liberal or totalitarian, does not play its necessary role in upholding women's rights. In the name of 'minimalist state, the liberal state washes its hands from any intervention in the private life of people. In the same way, the totalitarian state in the name of collectivism keeps itself away from the affairs of people.

In such circumstances the feminist thinkers want to end the prevailing male-biased concept of human rights and so they focus on two areas- to draw the attention of the world towards the rights of women and also to sensitize gender specific rights specially meant for women. The feminist perspective emphasizes that the human rights doctrine must recognise women's concerns, and violation of women's rights must be treated as human rights violation. Today the women movement has to a great extent much sensitized the world and now there are a number of ***Women's lobbies*** within the UN to raise voice to protect the rights of women. These are -



Women's lobby: The women's lobby is formed out of the international coalition of women's groups that address women related issues.

- Humanitarian Women's lobby tries to address the problems of violence stimulating from armed conflict in different parts of the world.
- The Asian and African Women's lobby seeks to deal with the problem of women related to some customary practices as well as problems related to health issues.
- The North American, European and Latin American Women lobby is concerned with issues related to domestic violence, rape and other kinds of sexual harassment.
- The lobby of Women living under Muslim Laws deals with the cases of violence of human rights arising primarily from religious extremism.

- The lobby from Southeast and East Asia deals with the issue of women trafficking and forced prostitution.

The feminist perspective on rights has challenged the notion of public-private division and established the fact that equality between men and women in all aspects is a basic element of human rights issues. This perspective on rights, to a large extent, has made the world responsive towards women's issues.

CHECK YOUR PROGRESS

Q.1: The Marxist perspective on human rights gives emphasis on ..... rights rather than on individuals rights. (Fill in the blank).

Q.2: Mention the names of any two Women's lobbies working within the UN system for protecting the rights of women.

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Q.3: Briefly write about the Feminist perspective on human rights.

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3.3.3 Third World Perspective on Human Rights

'Third world' refers to all those states of Asia, Africa and Latin America that have got independence from the colonial rule. There is a vast difference in the socio-cultural matrix of these developing and underdeveloped countries, which do not allow them to deal human rights in a thorough and unified way. The concept of human rights, as has developed in the west, cannot be suitably incorporated in the third world because of their historical development, socio-economic and cultural differences, and intensified emphasis on state building along with economic

reconstruction, and inter-group and intra group conflict. In the third world, the governments while dealing with problems like underdevelopment, poverty and illiteracy have failed to show respect to the rights and liberties of people. As against the liberal democratic states of the west, three different categories of political systems have emerged in the third world- the autocratic states, one party rule system and democratic system. The first category of state is absolutely autocratic state and does not show any regard towards the promotion and protection of human rights. The second category comprises of all countries with progressive regimes that want to bring rapid socio-economic development under one-party rule. Under these regimes also, people's rights have been violated by the governments in order to suppress challenges from different quarters against the one-party rule through strong measures. The third category state, i.e. the democratic governments try to protect and promote human rights, but fail to provide adequate safeguards to the rights of the people mainly because of the prevailing massive backwardness. Here, human rights violation is a common feature due to criminalization of politics and lack of accountability.

The third world perspective on human rights is criticised by many western scholars. According to them, the very basic notion of human rights is that these rights must be universally applicable to all. So the third world countries also have to implement these rights universally.

3.3.4 Gandhian Perspective on Human Rights

Mahatma Gandhi's concept of human rights is a part of his overall philosophy of life. The coherent view of Gandhian thought is reflected in two aspects of his thought- in the critique of modern civilisation and in his search for an alternative to the present structure of the state, technology and property. He strongly criticises a culture solely based on materialism leading to exploitation of the poor. Gandhi wants spiritualization of politics, sociology and economics

through non-violence. As such he connotes a spiritual aspect to rights. In fact his concept of rights is based on his idea of humanism and non-violence. Thus his concept of rights is well connected with his fight against imperialism, communalism and untouchability. Mahatma Gandhi is a moral individualist and this is reflected well when he says "no society can possibly be built on a denial of individual freedom." He believes in the dignity and conscience of the individual. He opines that fundamental freedoms and equality of rights should be granted to all without any kind of discrimination of race, religion, language or sex. He again contends that individual freedom can alone make a man voluntarily surrender himself completely to the service of society. For ensuring the freedom of individuals, Gandhi emphasises on decentralisation of power through Panchayati Raj System, where people from the grassroots level can participate in the affairs of the state. According to Gandhi, decentralisation of power is an important way through which autonomy of individuals can be maintained and oppression by bureaucrats can be prevented. For Gandhi, freedom rests in the coherent moral purpose and actions. Hence a person who obtains freedom over his/her own passion will not tolerate social and economic exploitation of others. Gandhi emphasises the right to education for all. According to him, education is one of the important ways through which one can attain self-sufficiency. Rights of minorities also constitute an important part of Gandhiji's concern. He strongly emphasises that human rights must promote welfare of all without any kind of discrimination. Gandhiji considers violation of human rights as a social evil. He believes in dealing with the violator of human rights through non-violent ways, such as strike, picketing, non-payment of taxes, hartal, boycott, non-cooperation, fasting and civil-disobedience.

Gandhiji's idea of dealing with the violators of human rights through non-violent means is criticised by certain sections of

Marxists. According to them depending on the situation sometimes violent measures also have to be adopted to deal with the human rights violators.



ACTIVITY 3.1

Try to find out the causes that lead to the violation of human rights in India.

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CHECK YOUR PROGRESS

Q.4: What are the three categories of political system that have emerged in the third world?

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Q.5: Gandhian concept of rights is based on the ideas of humanism and non-violence. (True/False)

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Q.6: Write briefly about various problems faced by the third world countries.

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Q.7: State Gandhiji's views about decentralisation of power.

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3.4 LET US SUM UP

- There are various perspectives to study the concept of human rights, such as Marxist perspective, Feminist perspective, Third World perspective, Gandhian perspective etc.
- The Marxist perspective on rights is manifested in the writings of Karl Marx, Engels, Lenin and other persons belong to the School of Marxist thought. They make a critique on the liberalised thinkers' notion of atomized concept of individual rights. This perspective considers individual right as instrument of bourgeois exploitation over common mass.
- The Marxist school of thought predicts withering away of the state and establishment of communism. Development of individuals' potentialities to the greatest possible extent can occur only within the society, and in this context this perspective gives importance on community or social rights rather than on individual rights.
- The neo-Marxists view human rights as a possible way for the better livelihood of the marginalised groups of society. In simple words, it can be said that the Marxist perspective of rights has focused on socio-economic freedom and equality for all people without any discrimination of class, caste etc.
- The feminist perspective emphasises on equality between men and women in all perspectives. Two important Conferences which emphasises on the rights of women are- the UN World Conference on Human Rights in Vienna in 1993 and UN World Conference on Women in Beijing in 1995. The Beijing Conference declares that 'women rights are human rights'. The Feminist perspective strongly opines that women's rights are also human rights and any gender specific violence against women must be considered as violation of women's rights.

- The feminist thinkers wants to end the prevailing male-biased concept of human rights and so they focus on two areas- to draw the attention of the world towards the rights of women and also to sensitize gender specific rights specially meant for women.
- Within the UN system there are a number of Women's lobbies working for rights of women, such as, Humanitarian Women's lobby, Asian and African Women's lobby, North American, European and Latin American Women lobby and lobby from Southeast and East Asia etc.
- The third world perspective on human rights holds that the concept of human rights as has developed in the West is not suitable to the countries of the third world because of their historical development, socio-economic and cultural differences, and intensified emphasis on state building along with economic reconstruction, and inter-group and intra group conflict.
- The third world countries are facing a number of problems such as economic stagnation, illiteracy, poverty, ethnic conflicts, etc. As against the liberal democratic states of the west, three different categories of political systems have emerged in the third world- the autocratic states, one party rule system and democratic system. The first category of states don't show any respect to human rights and freedom. All these factors have led to greater violation of human rights. The governments of these countries have also failed to protect human rights of people.
- Gandhian perspective on human rights is based on Mahatma Gandhi's idea of humanism and non-violence. He believes in the dignity and conscience of the individual. He opines that fundamental freedoms and equality of rights should be granted to all without any kind of discrimination.
- According to Gandhi, decentralisation of power is an important way through which autonomy of individuals can be maintained and oppression by bureaucrats can be prevented. Gandhiji emphasises on right to education for all, rights of minorities etc. Gandhiji considers violation of human rights as a social evil and violators of human rights should be dealt with through non-violent ways.



3.5 FURTHER READING

1. Agarwal, H.O. (2006). *Human Rights*. Allahabad: Central Law Publications.
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5. Yasin, Adil-ul. & Upadhayay, Archana. (2004). *Human Rights*. New Delhi: Akansha Publishing House.

3.6 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: Social Rights

Ans. to Q. No. 2: The Asian and African Women's lobby and the North American, European and Latin American Women lobby.

Ans. to Q. No. 3: The feminist perspective on rights has challenged the notion of public-private division and established the fact that equality between men and women in all aspects is a basic element of human rights issues. This perspective on rights, to the greatest possible extent, has made the world responsive towards women's issues. The feminist perspective holds that full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex should be prior objectives of the international community.

Ans. to Q. No. 4: Autocratic states, One party rule system and Democratic system

Ans. to Q. No. 5: True

Ans. to Q. No. 6: In the present time the third world countries are facing a number of problems, such as- inter-group and intra group conflict, underdevelopment, poverty and illiteracy etc.

Ans. to Q. No. 7: For ensuring the freedom of individuals, Gandhi emphasises on decentralisation of power through Panchayati Raj System, where people from the grassroots level can participate in the affairs of the state. According to Gandhi, decentralisation of power is an important way through which autonomy of individuals can be maintained and oppression by bureaucrats can be prevented.



3.7 MODEL QUESTIONS

A) Very Short Questions

Q. 1: Which World Conference declared that 'women's rights are human rights'?

Q. 2: Mention the view of neo-Marxists regarding human rights.

Q. 3: What does third world refer to?

B) Short Questions (Answer each question within 150 words)

Q. 1: Explain Gandhian perspective on human rights.

Q. 2: Write about the three different categories of political systems that have emerged in the third world.

Q. 3: Write about the various Women's lobbies working within the UN to raise voice to protect the rights of women.

C) Long Questions (Answer each question within 300-500 words)

Q. 1: Critically discuss the Feminist perspective on human rights.

Q. 2: Discuss Marxist perspective on human rights.

Q. 3: Explain third world perspective on human rights.

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UNIT 4: UNITED NATIONS AND HUMAN RIGHTS: UNIVERSAL DECLARATION OF HUMAN RIGHTS

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 United Nations and Human Rights

4.4 Universal Declaration of Human Rights (UDHR)

- 4.4.1 Historical Development of the UDHR
- 4.4.2 Major Contents of the UDHR
- 4.4.3 Significance of the UDHR
- 4.4.4 Criticisms against the UDHR

4.5 UDHR and the Indian Constitution

4.6 Other important International Instruments pertaining to Human Rights

4.7 Let Us Sum Up

4.8 Further Reading

4.9 Answers to Check Your Progress

4.10 Model Questions

4.1 LEARNING OBJECTIVES

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

- discuss the growth and development of the concept of human rights at international forum.
- explain various provisions under the Charter of the United Nations for the protection of human rights
- elaborate the ideas inherent in the UDHR
- examine the loopholes of the UDHR
- compare the rights guaranteed under the Indian Constitution with that of the UDHR.

4.2 INTRODUCTION

With the increasing violation of human rights, particularly during the second half of the 20th century, it was realised that the international community should take steps for the protection and promotion of human rights. As a result of this, the United Nations which represents the nations of the world, contains a number of provisions regarding protection of human rights. It has also adopted various documents in this aspect. In this unit, effort has been made to examine the role of the United Nations in protecting and promoting the rights of the people across the world.

4.3 UNITED NATIONS AND HUMAN RIGHTS

The concept of human rights got universalized and legal recognition through various initiatives of the United Nations. In its various Declarations, Covenants and Conferences, the United Nations reflects an ambitious zeal to protect the rights of the people. The UN Charter in its Preamble mentions that " ….We the people of the United Nations determined to reaffirm 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….". Beside this, there are many other provisions in the UN Charter that intend to promote human rights, such as Article 1 which states that achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction of race, sex, language or religion shall be one of the purposes of the United Nations. Article 13 empowers the General Assembly and Article 62 authorises the Economic and Social Council to make studies and recommendations for protecting and promoting human rights of all without any discrimination. Article 55 provides that UN shall promote economic, social and cultural development, find solutions for economic, social and health related problems and promote cultural and educational cooperation at the international level. This article also states that the UN shall promote universal respect for and observance of human

rights and fundamental freedoms. Article 56 appeals to all the member states of the United Nations to take joint or separate action in cooperation with the UN for the achievement of the purpose as set forth in Article 55 of the Charter. According to Article 68, the Economic and Social Council can set up Commissions in economic and social fields and for the protection and promotion of human rights. Article 76 states that one of the basic objectives of the trusteeship system is to encourage respect for human rights and fundamental freedoms for all without any distinction. Thus the Charter of the United Nations has incorporated various provisions relating to human rights which reflect the strong and determined commitment of the Organisation towards upholding rights and freedoms for all.

For better protection and promotion of human rights, the Economic and Social Council of the UN appointed the UN Commission on Human Rights which was duly approved by the General Assembly in 1946. This commission drafted the Universal Declaration of Human Rights (UDHR) which was adopted by the General Assembly in the year 1948. Under the framework of the UDHR, two important Covenants were prepared by it in 1966 so as to guarantee the rights enshrined in the UDHR itself. Those two Covenants are- International Covenant on Civil and Political Rights and International Covenant on Social, Cultural and Economic Rights, adopted only in 1976. Besides this, the UN has taken extraordinary measures for protecting the rights of some vulnerable groups of people like women, children, minorities, migrants, refugees, internally displaced people. In 1993 the United Nations High Commissioner for Human Rights was constituted by the General Assembly to protect and promote the effective enjoyment of all civil, political, economic, cultural and social rights. By 1997, the UNHCHR was consolidated with another United Nations' set up, the Centre for Human Rights and that is now known as the Office of the United Nations High Commissioner for Human Rights.

Within the UN system there are six Committees to monitor the implementation of the provisions of the United Nations' initiatives regarding human rights. They are-

- The Committee on the Elimination of Racial Discrimination
- The Human Rights Committee
- The Committee on Economic, Social and Cultural Rights
- The Committee against Torture
- The Committee on the Elimination of Discrimination against Women
- The Committee on the Rights of the Child



CHECK YOUR PROGRESS

Q.1: State any two provisions regarding the promotion and protection of human rights as mentioned in the United Nations' Charter.

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.....

Q.2: In which year was the United Nations High Commissioner for Human Rights constituted?

.....

Q.3: Mention the names of any three committees within the UN system involved in monitoring the implementation of human rights.

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4.4 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.

4.4.1 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.



LET US KNOW

The International Bill of Rights consists of the following five instruments taken by the United Nations:

1. Universal Declaration of Human Rights of 1948
2. International Covenant on Civil and Political Rights of 1966
3. International Covenant on Economic, Social and Cultural Rights of 1966
4. Optional Protocol to the ICCPR, allowing complaints to be made by individuals for violation of their rights of 1966
5. Optional Protocol to ICCPR, aiming to abolish death penalty of 1989.

4.4.2 Major Contents of the UDHR

The Universal Declaration of Human Rights (UDHR) is the most comprehensive document that encompasses all kinds of rights like civil and political rights, economic rights, social rights and cultural rights. The UDHR consists of a Preamble and 30 Articles. Article 1 of the Declaration states that "all human beings are born equal in dignity and rights and are entitled to all the rights and freedom set forth in the Declaration". The rights guaranteed under the UDHR can be mentioned in the following ways-

- **Civil and Political Rights**

Articles 2 to 21 deal with the civil and political rights which can be mentioned as follows-

- Right to life, liberty and security of persons (Article 3)
- Freedom from slavery or servitude (Article 4)
- Prohibition against torture, inhuman or degrading treatment or punishment (Article 5)
- Recognition as a person before the law (Article 6)
- Equality before law and equal protection of the law without any discrimination (Article 7)

- Effective remedy before the national tribunal (Article 8)
- Freedom from arbitrary arrest, detention or exile (Article 9)
- Right to a fair and public hearing by an independent and impartial tribunal (Article 10)
- Presumption of innocence until proved guilty in a public trial with all guarantees necessary for defence in criminal cases, freedom from ex-post facto laws (Article 11)
- Right to privacy, family, home and correspondence (Article 12)
- Right to freedom of movement and residence within the borders of a State (Article 13, Para 1)
- Right to leave any country, including his own and to return to his country (Article 13, Para 2)
- Right to seek and to enjoy in other countries asylum from persecution (Article 14)
- Right to a nationality (Article 15)
- Right to marry and to found a family (Article 16)
- Right to own property (Article 17)
- Right to freedom of thought, conscience and religion (Article 18)
- Right to freedom of opinion and expression (Article 19)
- Right to freedom of peaceful assembly and association (Article 20)
- Right to participate in the government of his/her country (Article 21)

➢ **Economic, Social and Cultural rights**

Article 22-27 of the UDHR extensively deal with the Economic, Social and Cultural Rights which can be enumerated as follows-

- Right to social security (Article 22)
- Right to work and free choice of employment (Article 23)

- Right to rest and leisure (Article 24)
- Right to a standard of living adequate for the health of himself/herself and of his/her family (Article 25)
- Right to education (Article 26)
- Right to participate in cultural life (Article 27)
- Right to good social and international order (Article28)

Besides this wide coverage of rights through these Articles, Article 29 puts some limitation on these rights by providing that everyone has duties to the community to which he/she belongs. Again it mentions that rights shall be provided to the individuals only on the just requirement of morality, public order and general welfare in a democratic society.

4.4.3 Significance of the UDHR

The Universal Declaration of Human Rights adopted by the United Nations is one of the greatest instruments for the protection and promotion of human rights for every individual and for every nation in this world. But this comprehensive document is not legally binding upon any individual State or nation. In this sense it is not absolute and its implementation depends very much on the will of the State itself. Still the significance of this document cannot be undermined and this can be well analysed in the following points-

- The UDHR is the first of its kind in the history of international organisation. It has been serving as a yardstick to assess the progress of the States in the field of human rights.
- The UDHR has acquired some political and moral authority that has received wide acceptance at all levels of society.
- The UDHR has been used by the United Nations on many occasions to reinforce its actions against certain States on the ground that the violation of some human rights ultimately

hampers the friendly relation among States. Various provisions of this Declaration have been frequently used in the resolutions of the General Assembly as justifications for actions taken by the UN.

- Besides influencing various Declarations and Conventions signed under the auspices of the UN, it has enormously influenced various regional conventions for protection of human rights like American Conventions on human Rights, African Charter of Human Rights etc.
- The UDHR has highly influenced the constitutions of many new States like India, Indonesia, Bulgaria, Syria, Jordan and many new countries. These countries have borrowed much from the Universal Declaration. In India the UDHR has also been referred to in the decisions of the Supreme Court and High Courts.

4.4.4 Criticisms against the UDHR

Though the UDHR is a well credited instrument for the protection of rights of the people, it suffers from three critical loopholes. These loopholes may be mentioned in the following way-

- The provisions of the UDHR are just like some recommendations of the UN directed to the States. It is not legally binding on the States.
- Many of the provisions of the Declaration are general in nature. For example, Article 3 of the UDHR provides “everyone has the right to life, liberty and security of person”.
- The Declaration has not mentioned anywhere any measures regarding implementation of the provisions of the document and it relies on the goodwill of the States. That means that its implementation solely depends on the State concerned.



CHECK YOUR PROGRESS

Q.4: The Universal Declaration of Human Rights was adopted on ..... (Fill in the blank)

Q.5: Which organ of the United Nations was entrusted with the responsibility to formulate the International Bill of Human Rights?

.....

Q.6: Mention any four civil and political rights provided by the Universal Declaration of Human Rights.

.....

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.....

Q.7: Mention any four economic and social rights provided by the Universal Declaration of Human Rights.

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Q.8: State any two criticisms against the Universal Declaration of Human Rights.

.....

.....

4.5 UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE INDIAN CONSTITUTION

The Indian Constitution was adopted by the Constituent Assembly on 26th November 1949 and came into force on 26th January, 1950. Thus the enactment of both the Indian Constitution and the Universal Declaration of Human Rights (UDHR) took place almost in the same period. India is a signatory of the UDHR. And strikingly enough, the contents of the UDHR are well reflected in the various provisions, especially in the Fundamental Rights enumerated in Part III of the Indian Constitution. The similarities of the provisions of the Indian Constitution and the UDHR can be summarised as shown in the following table-

Name of the Rights	UDHR	Indian Constitution
Equality before Law	Article 1 and Article 7	Article 14 and Article 21
Prohibition of Discrimination	Article 2	Article 15
Right to life	Article 3	Article 21
Prohibition of slavery and forced labour	Article 4	Article 23
Right to effective remedy the violation of rights	Article 8	Article 32 (1) , Article 32 for (2) and Article 226 Article 1 and Article 7
Public hearing and fair trial	Article 10	Article 39(1)
Freedom of movement	Article 13(1)	Article 19(1) (d)
Right to live and reside	Article 13 (2)	Article 19 (1) (e)
Right to property	Article 17	Article 300(A)
Right to religion and freedom of conscience	Article 18	Article 25 (1)
Freedom of Opinion and expression	Article 19	Article 19 (1) (a)
Freedom of peaceful assembly	Article 20 (1)	Article 19 (1) (b)
Freedom of peaceful association	Article 20(2)	Article 19(1) (c)
Equality of opportunity in public service	Article 21 (2)	Article 16 (1) and Article 16(2)
Social security	Article 22	Article 38(1)
Right to work	Article 23 (1)	Article 41
Right to Equal pay	Article 23 (2)	Article 39 (a)
Right to form and join Trade Unions	Article 23 (4)	Article 19 (1) (c)
Right to education	Article 26	Article 21 (A) and Article 45
Maintaining Social and International Order Duties	Article 28 Article 29	Article 51 Article 51 A

4.6 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 Punishment was 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 between 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 promote the 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.



CHECK YOUR PROGRESS

Q.9: Which Part of the Indian Constitution reflects the provisions of the Universal Declaration of Human Rights more specifically?

.....

Q.10: Mention the name of the international instrument adopted by the United Nations to protect the rights of the Minorities.

.....

Q.11: State the definition of racial discrimination as mentioned in the International Convention on the Elimination of All Forms of Racial Discrimination.

.....

.....

.....

Q.12: In which year was the United Nations High Commissioner for Refugees (UNHCR) established?

.....



4.7 LET US SUM UP

- With the adoption of the United Nations Charter, the concept of human rights got universal and legal recognition. The United Nations has included various provisions in its Charter relating to human rights. The United Nations has urged the states to adopt measures to protect and promote human rights.
- The United Nations adopted the Universal Declaration of Human Rights (UDHR) on 10 December 1948 “as a common standard of achievement for all people and nations”. The Universal declaration is neither a Treaty, nor an International Agreement but simply a Declaration of rights and freedom that serves as a common standard of achievement for all peoples of all nations. The Universal Declaration is also a foundation of equality, justice, peace and liberation of all people in this world. It has been working as a foundation from which other treaties, conventions, declarations are evolving out.
- The Universal Declaration of Human Rights (UDHR) consists of a Preamble and 30 Articles. Articles 2 to 21 deal with the civil and political rights and Article 22-27 deal with the Economic, Social and Cultural Rights.
- The provisions of the UDHR have become a common reference in human rights for all nations. It has profound influence on the constitution of various countries which have included various provisions on human rights and fundamental freedoms in their

Constitution. The UDHR has also immense impact on the Constitution of India and accordingly the Indian Constitution has inserted a number of articles relating to rights and freedoms of people.

- Though the UDHR has great significance, it has certain loopholes also. One such loophole is that it is not legally binding on the state. It has not provided any implementation procedure of the rights mentioned in it.
- Apart from the UDHR, the United Nations has adopted various other measures to protect and promote human rights and fundamental freedoms of people across the world. Some of these measures are- Convention on the Prevention and Punishment of the Crime of Genocide, Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Convention Relating to the Status of Refugees and the United Nations High Commissioner for Refugees.



4.8 FURTHER READING

1. Agarwal, H.O. (2006). *Human Rights*. Allahabad : Central Law Publications.
2. Gupta, D.C. (2010). *Indian Government and Politics*. Delhi : Vikas Publishing House Pvt. Ltd.
3. Rai, R. (2000). *Human Rights: UN Initiative*. Delhi : Authors Press Publication.
4. Sanajoaba, N. (1994). *Human Rights: Principles, Practices and Abuses*. New Delhi : Omsons Publication.

5. Syed, M.H. (2003). *Human Rights: The New Era*. New Delhi : Kilaso Books.
6. Yasin, Adil-ul. & Upadhayay, Archana. (2004). *Human Rights*. New Delhi: Akansha Publishing House.

4.9 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: (i) Article 1 states that achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion shall be one of the purposes of the United Nations.

(ii) Article 55 provides that UN shall promote economic, social and cultural development, find solution for economic, social and health related problems and promote cultural and educational cooperation at the international level.

Ans. to Q. No. 2: 1993

Ans. to Q. No. 3: The Committee on the Elimination of Racial Discrimination, the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights

Ans. to Q. No. 4: 10 December, 1948

Ans. to Q. No. 5: Economic and Social Council

Ans. to Q. No. 6: Right to life, liberty and security of persons, Freedom from slavery or servitude, Right to freedom of peaceful assembly and association, Right to participate in the government of his/her country

Ans. to Q. No. 7: Right to social security, Right to work and free choice of employment, Right to rest and leisure, Right to education

Ans. to Q. No. 8: (i) The provisions of the UDHR are just like some recommendations of the UN directed to the States, it is not legally binding on the States.

(ii) The Declaration has not mentioned any where how to implement the provisions of the document except for the goodwill of the States. That means that its implementation solely depends on the concerned State only.

Ans. to Q. No. 9: Part III (Fundamental Rights)

Ans. to Q. No. 10: Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Ans. to Q. No. 11: 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.

Ans. to Q. No. 12: 1951



4.10 MODEL QUESTIONS

A) Very Short Questions

Q. 1: In which year was the UN High Commission on Human Rights appointed?

Q. 2: Mention the name of the international document adopted by the United Nations to protect and promote the rights of women.

Q. 3: How many Articles does the Universal Declaration of Human Rights comprise of ?

B) Short Questions (Answer each question in about 150 words)

Q. 1: Briefly write about the provisions of the United Nations' Charter regarding human rights and fundamental freedom.

Q. 2: Make a comparative analysis of the provisions of rights enshrined in the Indian Constitution to that of the Universal Declaration of Human Rights.

Q. 3: Examine the criticisms against the Universal Declaration of Human Rights.

C) Long Questions (Answer each question in about 300-500 words)

Q. 1: Discuss the Universal Declaration of Human Rights as an instrument for promoting human rights and fundamental freedom.

Q. 2: Discuss the role of the United Nations in protecting and promoting the rights and freedoms of people across the globe.

*** ***** ***

UNIT 5: INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) AND INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 International Covenant on Civil and Political Rights (ICCPR)

5.4 International Covenant on Economic, Social and Cultural Rights (ICESCR)

5.5 Let Us Sum Up

5.6 Further Reading

5.7 Answers to Check Your Progress

5.8 Model Questions

5.1 LEARNING OBJECTIVES

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

- discuss the International Covenant on Civil and Political Rights (ICCPR)
- describe the International Covenant on Economic, Social and Cultural Rights (ICESCR).

5.2 INTRODUCTION

The role of the United Nations in protecting and promoting human rights is very significant. After the World War II, the U.N. took a pledge to protect the inalienable rights of all human beings all over the world keeping in mind the consequences after the war. The Universal Declaration of Human Rights was a bundle of rights given to the globe in 1948. Then afterwards

came the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR). In this unit we shall discuss these two Covenants in detail.

5.3 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

- **Historical background of the International Covenant on Civil and Political Rights:**

After the Wold War II, the world under the banner of the United Nations (UN) took pledge to save the world from another World War. The world community through this Organisation expressed its obligation to protect and promote human rights of the world population. Respect for rights of persons also finds place in the Charter of the UN.

As a part of the UN's effort to protect and promote human rights, a Commission on Human Rights was established in 1945 and it was given the task of drawing up an International Bill of Human Rights. The Commission on Human Rights is a subsidiary body of the Economic and Social Council (ECOSOC), one of the principal organs of the United Nations.

After two and a half years of tremendous efforts the Commission under the Chairmanship of Eleanor Roosevelt drafted a Universal Declaration of Human Rights which was approved by the General Assembly of the United Nations on Dec 10, 1948. The Universal Declaration of Human Rights (UDHR) provided the basis for the formulation of United Nations' covenants, conventions, declarations and recommendations regarding human rights. The rights proclaimed in the UDHR can be broadly divided into two kinds: - the civil and political rights and the economic, social and cultural rights.

The two broad sets of Human Rights affirmed in the Universal Declaration i.e. civil and political rights, and economic, social and cultural rights were elaborated and divided into two Covenants- the International Covenant on Civil and Political Rights and the International Covenant on

Economic, Social and Cultural Rights. The three documents- the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and the two Protocols constitute the International Bill of Human Rights.

The Universal Declaration of Human Rights was the first part of the objective, the other parts, designed to elaborate the content of the provisions of the Declaration, took many years to complete. It was on 16 December 1966, the General Assembly of the United Nations adopted the two covenants - the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and an Optional Protocol to the ICCPR allowing the individuals to make complaints on violations of their rights embodied in the covenants. In December 1989, the Second Optional Protocol to the ICCPR, aimed at abolishing the death penalty was adopted by the General Assembly. The Covenants are legally binding treaties for those states which are parties to it and they are obliged to give periodic reports to Human Rights Committee every five years.

- **Major contents of the International Covenant on Civil and Political Rights (ICCPR):**

The International Covenant on Civil and Political Rights (ICCPR) elaborates the political and civil rights identified in the Universal Declaration. The major rights included in this Covenant are-

1) rights to life, privacy, fair trial;
2) freedom of religion;
3) freedom from torture ; and
4) equality before law

Some of the rights can be suspended in times of public emergency under Article 4 of ICCPR which threatens the life of the nation. But the derogation will not involve discrimination on grounds of race, colour, sex, language, religion or social origin.

Article 28 of the Covenant provides for the establishment of a Human Rights Committee consisting of eighteen independent experts, nominated and elected by State Parties to the Covenant, who serve in their personal capacities. The Human Rights Committee monitors the implementation of the Covenant.

- **Monitoring and implementing procedure of ICCPR**

The implementation procedure under the Covenant on Civil and Political Rights is carried on by the Human Rights Committee consisting of eighteen persons. The members are of high moral character and having recognised competence in the field of human rights. The State Parties are required to submit the reports within one year of the entry into force of the Covenant, and thereafter the reports should be submitted to the Secretary-General of the United Nations who shall transmit them to the Committee for consideration. The Committee shall study the reports and shall transmit its reports and such general comments as it may consider appropriate to the State Parties. The Committee may also transmit these comments to the Economic and Social Council along with the copies of the reports that it has received from the State Parties. The Human Rights Committee in accordance with Article 40(1)(b) of the Covenant at its thirteenth session adopted a decision that requires State Parties to submit its subsequent reports every five years.

- **Inter-State Communication Systems**

Violation of human rights provisions by one state is the concern of the whole world. If the provisions of the Covenant are not obliged by a state, the other states may make complaints regarding the violation before the Human Rights Committee and this is known as Inter-State Communication System. If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may bring the attention of the Committee and the communication is received by the Committee only after it has examined all the available domestic remedies has been exhausted by the State Parties in conformity with the generally recognised principles of international law.

- **Conciliation Procedure**

The conciliation procedure is adopted by the Human Rights Committee in those cases of Inter State communications where a matter referred to the Committee is not resolved to the satisfaction of the State Parties concerned and then the Committee can appoint an ad hoc Conciliation Commission with the prior consent of the States Parties for an amicable solution of the matter.

- **Individual's communication system**

Individuals have also been given a right to make petitions before the Human Rights Committee against the State violating any of the rights provided in the ICCPR. However, the right does not find place on the Covenant itself, but is mentioned in the Optional Protocol to the Covenant on Civil and Political Rights. But individual communication system has not been utilized by the State parties properly. Individuals' communication system has not been very successful because the Human Rights Committee devotes much of its time on States reports rather than on individual system. Lots of pending cases are there in the Committee regarding the individual system. The Committee should dispose them off promptly otherwise if it is delayed then the very purpose of its examination would fail.

- **Procedure for making communication**

The procedure for submitting the communication is also laid down in the Protocol. For instance, the communication should be submitted in writing; all available domestic remedies should have been exhausted; and the same matter is not being examined under another procedure of international investigation or settlement. The State is required to submit to the Committee within a period of six months written explanations or statements clarifying the matter and the remedy. The Committee considers communications received under the protocol in the light of all written information made by the individual members and the State Party concerned.

- **Competence of the Human Rights Committee**

The Human Rights Committee to which the petitions are submitted under the Optional Protocol is the same committee consisting of 18

members provided under the Article 28 of the Covenant on Civil and Political Rights. The Committee is not restricted to the elected members of the State party concerned, but have members from other nations as well who served in their personal capacity. They are persons of 'high moral character'. So the competence of the Committee cannot be disregarded by the state party concerned. The Protocol under Article 1 expressly laid down that no communication shall be received by the Committee if it concerns that a State Party to the Covenant is not a Party to the Protocol.

- **Views of the Committee**

The Committee, after consideration of the communications, is required to forward its 'views' to the State Party concerned and to the individual. It can only recommend and suggest its views to the General Assembly through the Economic and Social Council. The Committee is not empowered even to monitor the implementation of its views. The Committee admits in its Report of 1983 that the Committee has no executive power enabling it to enforce its 'views'. So a question would arise that if the Committee has no executive values of its 'views' and its views are not binding on the State concerned or are not enforceable what is the significance of the Committee.

There is a persuasive value derived from the examination of reports in public. The governments are very sensitive to public exposure to their human rights performance. Moreover, the principle objective of the Committee is to develop a constructive dialogue with Reporting States and to comply the states with the provisions of the Covenant.

- **Optional Protocols of International Covenant on Civil and Political Rights (ICCPR)**

There are two protocols of the International Covenant on Civil and Political Rights. On December 1966, the United Nations' General Assembly along with the International Covenant on Civil and Political Rights (ICCPR) also adopted an Optional Protocol to the ICCPR, allowing for complaints to

be made by individuals on violation of their rights embodied in the Covenant. Again, it was in December 1989 that the Second Optional Protocol of ICCPR, aimed at abolishing the death penalty, was adopted by the General Assembly. The Second Optional Protocol was adopted because the United Nations believed that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights.

- **Significance of the International Covenant on Civil and Political Rights**

The significance of the International Covenant on Civil and Political Rights can be upheld on the Constitution of India. Many rights enshrined in the International Covenant on Civil and Political Rights have been recognized specifically in the Indian Constitution as 'Fundamental Rights'. These include - Rights like prohibition of forced labour has been enshrined in Article 8(3) of the International Covenant on Civil and Political Rights and the same have been enshrined in Article 23 of Indian Constitution. Equality before law has been enshrined in Article 14(1) of ICCPR and Article 14 of Indian Constitution. So as freedom of expression, protection in respect of conviction for offences, right to move freely within the territory of a State, freedom of conscience and religion and many more.

The significance of the Human Rights Committee of the International Covenant on Civil and Political Rights is also recommendable. The Human Rights Committee is an independent body. It does not form part of the United Nations, though it is processed by the UN Secretariat. For the smooth functioning of the Committee the State Parties are required to co-operate with the Committee. The Committee in its supervisory capacity has been entrusted with the important responsibility of affirming, strengthening and developing the basic standards of human rights law. It is hoped that the Committee would perform its functions effectively to uplift the International Covenant on Civil and Political Rights and also promote and protect Human Rights.



CHECK YOUR PROGRESS

Q.1: In which year was the International Covenant on Civil and Political Rights adopted?

.....

Q.2: Mention any two rights included in the International Covenant on Civil and Political Rights.

.....

.....

Q.3: Write briefly about individual communication system in the context of the International Covenant on Civil and Political Rights.

.....

.....

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.....

5.4 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

The Universal Declaration of Human Rights provided the basis for the formulation of covenant and conventions, declarations by the United Nations. The rights proclaimed in the Universal Declaration can be broadly divided into two kinds. The first refers to civil and political rights, which includes - right of life, liberty, and security of persons; freedom from slavery and torture; equality before the law; protection against arbitrary arrest, detention or exile; the right to fair trial; and many more which are of civil and political nature. The second are economic, social and cultural rights, that include- right to work; equal pay for equal work; the right to form and join trade unions; the right to participate freely in cultural life and many more which emphasize on economic and cultural development.

The Universal Declaration of Human Rights was the first part of the objective; the other part designed to elaborate the contents of the Declaration took a very long period to complete. On December 1966, the United Nations General Assembly adopted the two Covenants - the

International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

- **Major Contents of International Covenant on Economic, Social and Cultural Rights (ICESCR):**

  Some of the major rights incorporated in the Covenant are-

  1) Right to work in just and favourable conditions;
  2) Right to social protection, to an adequate standard of living and to the highest attainable standards of physical and mental well being ;
  3) Right to education and the enjoyment of benefits of cultural freedom and scientific progress etc.

  The Covenant provides these rights without any discrimination of any kind and these rights cannot be suspended.

- **Monitoring and implementation procedure of the International Covenant on Economic, Social and Cultural Rights (ICESCR)**

  The Covenant breaks new ground in international treaty-making by linking the advancement of human rights directly to government policies to promote economic, social and cultural development and adopting technical co-operation programmes. One of the principal aims of the ICESCR is to ensure economic and social development and enhancement of enjoyment of human rights.

  The Covenant provides not only for monitoring the implementation of its provisions through a system of State reporting but also through reporting by United Nations specialized agencies such as ILO, UNESCO, WHO, FAO. The Covenant entrusted the Economic and Social Council (ECOSOC) with the task of considering reports which the State Parties are expected to provide regularly to the United Nations regarding the steps taken by the State parties to promote and progress made in the enjoyment and protection of economic, social and cultural rights. The reporting system now in force provides for each state party to submit an initial report within

two years of ratifying or acceding to the Covenant, and thereafter to make reports at five-yearly intervals.

In 1978, the Economic and Social Council established a 15 member sessional working group to assist it in considering the reports submitted by state parties. The group was composed of representatives of State members of the Council which were also States parties to the Covenant. The working group, appointed a chairperson of ECOSOC, and became an elected body of governmental human rights experts in 1982. In 1985, the working group was transformed into the Committee on Economic, Social and Cultural Rights, with 18 members experts in the field of human rights, who serve in their personal capacity. Apart from considering the reports submitted by States parties, the Committee may make general recommendations to the Economic and Social Council based on its study of these reports and of those it receives from United Nations' specialised agencies. The discussions on each report by a state party are summarized in the Committee's annual report to the Economic and Social Council.

- **Significance of the Committee on Economic, Social and Cultural Rights**

The Committee on Economic, Social and Cultural Rights makes general comments on the Covenant and the issues it raises. The intention is to help the States parties in their task of implementing the Covenant, as well as to bring to their attention deficiencies in the reports they submit and to suggest improvements in the reporting procedure. The Committee's comments are designed to accelerate action by the States parties, various international organizations and United Nations specialized agencies which will ultimately lead to enjoyment of economic, social and cultural rights.

Each State party should use the opportunity offered by the preparation of a report to set national goals in critical areas such as the reduction of infant mortality, vaccination of children, or to intake of calories per person. Reporting also serves as a way of identifying the obstacles for the realization of rights and creates a better understanding of the common problems faced by the States Parties and the measures which include international assistance to overcome the obstacles.



CHECK YOUR PROGRESS

Q.4: In which year was the Committee on Economic, Social and Cultural Rights established?

.....

Q.5: Mention any two rights incorporated in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

.....

.....

Q.6: Which organ of the UN is entrusted with the task of considering the report of the state parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR)?

.....



5.5 LET US SUM UP

- The role of the United Nations in protecting and promoting human rights is very significant. After the World War II the U.N. took a pledge to protect the inalienable rights of all human beings all over the world keeping in mind the consequences after the war. The three documents adopted by the UN - the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and the two Protocols constitute the International Bill of Human Rights.
- On 16 December 1966, the General Assembly of the United Nations adopted the two covenants - the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and an optional Protocol to the ICCPR. In December 1989, the second optional protocol to the ICCPR aimed at abolishing the death penalty was adopted by the General Assembly. The Covenants are legally binding treaties for those states which are parties to it and they are obliged to

give periodic reports to Human Rights Committee every five years.

- The implementation procedure under the Covenant on Civil and Political Rights is carried on by the Human Rights Committee. The State Parties are required to submit the reports within one year of the entry into force of the Covenant, and thereafter the reports should be submitted to the Secretary-General of the United Nations who shall transmit them to the Committee for consideration. The Committee may also transmit these comments to the Economic and Social Council along with the copies of the reports that it has received from the States Parties.
- The monitoring procedure of the International Covenant on Civil and Political Rights includes- Inter-State Communication System, Conciliation Procedure, Individual's Communication System, Procedure for Making Communication.
- The International Covenant on Economic, Social and Cultural Rights entrusts the Economic and Social Council (ECOSOC) with the task of considering reports which the State Parties are expected to provide regularly to the United Nations regarding the steps taken by the State parties to promote and progress made in the enjoyment and protection of economic, social and cultural rights. In 1978, the Economic and Social Council established a 15 member sessional working group to assist it in considering the reports submitted by state parties. In 1985, the working group was transformed into the Committee on Economic, Social and Cultural Rights.



5.6 FURTHER READING

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2. Dhiman, O.P. (2011). *Understanding Human Rights: An Overview*. Delhi: Kalpaz Publications.
3. Stephen, R.M. (2002). *Human Rights: Concept and Perspectives*. New Delhi: Concept Publishing Company.

4. Syed, M.H. (2003). *Human Rights: The New Era*. New Delhi: Kilaso Books.
5. Yasin, Adil-ul & Upadhayay, Archana. (2006). *Human Rights*. New Delhi: Akansha Publishing House.

5.7 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: 1966

Ans. to Q. No. 2: Right to life, freedom of religion.

Ans. to Q. No. 3: Individuals have also been given a right to make petitions before the Human Rights Committee against the State violating any of the rights provided in the International Covenant on Civil and Political Rights. However, the right does not find place on the Covenant itself, but is mentioned in the Optional Protocol to the Covenant on Civil and Political Rights. But individual communication system has not been utilized by the State parties properly. Individuals' communication system has not been very successful because the Human Rights Committee devotes much of its time on States reports rather than on individual system. Lots of pending cases are there in the Committee regarding the individual system. The Committee should dispose them off promptly otherwise if it is delayed then the very purpose of its examination would failed.

Ans. to Q. No. 4: 1985

Ans. to Q. No. 5: Right to work in just and favourable conditions; Right to social protection.

Ans. to Q. No. 6: Economic and Social Council

5.8 MODEL QUESTIONS

A) Very Short Questions

Q. 1: Which Documents constitute the International Bill of Rights?

Q. 2: In which year was the International Covenant on Economic, Social and Cultural Rights adopted?

Q. 3: What is the aim of the Second Optional Protocol to the International Covenant on Civil and Political Rights?

B) Short Questions (answer each question with 150 words)

Q. 1: Write briefly about the rights included in the International Covenant on Civil and Political Rights.

Q. 2: Write briefly about the rights included in the International Covenant on Economic, Social and Cultural Rights.

Q. 3: Explain the historical background of the adoption of the two International Covenants by the UN.

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

Q. 1: Discuss the implementation and monitoring procedure of the International Covenant on Civil and Political Rights.

Q. 2: Describe the implementation and monitoring procedure of the International Covenant on Economic, Social and Cultural Rights.

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UNIT 6: EVOLUTION OF HUMAN RIGHTS MOVEMENT IN INDIA

UNIT STRUCTURE

6.1 Introduction

6.2 Learning Objectives

6.3 Concept of Human Rights in Ancient India

6.4 Human Rights during early Mughal Period

6.5 Human Rights during British Period

6.6 Constituent Assembly and Human Rights

6.7 Let Us Sum Up

6.8 Further Reading

6.9 Answers To Check Your Progress

6.10 Model Questions

6.1 LEARNING OBJECTIVES

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

- explain the status of human rights in ancient India
- describe the human rights situation in India during Mughal period
- discuss the movement for human rights in India during British period with special reference to the Constituent Assembly.

6.2 INTRODUCTION

India, being one of the larger democratic countries of the world, has tremendous responsibility towards protection and promotion of human rights of its people. The Universal Declaration of Human Rights adopted by the United Nations in 1948 is regarded as the universal yardstick for measuring states' efforts regarding human rights. As a responsible member of United Nations, India strives to follow all the human rights norms enshrined in the Declaration. Framers of the Indian Constitution incorporated a number

of provisions in the Constitution for the promotion and protection of human rights. Infact, we can say that in India respect for rights and freedom of individual can be traced back right from the ancient period. In this unit we shall discuss human rights movement in India.

6.3 CONCEPT OF HUMAN RIGHTS IN ANCIENT INDIA

Although the terminology of Human Rights is recent in origin, the idea of Human Rights is as old as the history of human civilization. The concept presently known as Human Rights is previously known as 'Natural Rights' and 'Rights of Man'. Human Rights can be termed as a twentieth century name for what has been traditionally known as natural rights or the rights of men. The term rights of men have been the concern of all civilization from time immemorial.

In Vedic period, the Dharma was the hidden instrument for protection of Rights of men. The great Roman Jurist Cicero told us that the Greek stoics, around 200-300 years B.C. developed what we now consider as basic human Rights. Moreover in ancient scriptures there had been references to the basic human rights, though they were not referred to by that name. The rich legacy of historical tradition and culture of India occupied human rights jurisprudence. India had embedded the human rights in its deep-rooted tradition since time immemorial whereas the term has been discovered by west in recent times.

Ancient India had a rich heritage of noble thinking. About 5000 years ago, ancient Indian philosophers and thinkers expounded a theory of higher moral law over and above positive law embodying certain values of universal validity like Dharma (righteousness), Artha (wealth), Karma (desires) and Moksha (salvation) with a view to establish a harmonious social order by striking a balanced social aspects of life. Many of ancient Indian legal philosophers were universalists, rationalists and above all moralists who evolved a system of legal theory which was based on higher values and ideals, i.e. on their conception of Dharma. In ancient days, every aspects of life was regulated by the principle of Dharma. Since, Vedic ages, it is Dharma that impelled men to strive for righteousness.

It is praiseworthy to say that the ancient Indians were not indifferent or unaware of the concept of human rights. Society as well as people evolved centering around Dharma which was a model for the universal legal order.

6.4 HUMAN RIGHTS DURING EARLY MUGHAL PERIOD

Mughal emperor was established by Babar in the early 16th century i.e. 1526 AD and it controlled much of the Indian sub-continent till early 18th century. With the Mughal rulers, specially with Akbar a new era began in the Mughal history in the field of human rights as a result of policy of "universal reconciliation and tolerance". Prime motto of Akbar was the welfare of his subjects. The European travelers who visited the Mughal emperor of that time highly appreciated Akbar's passionate regard for rights and justice. His justice loving tradition was followed by his son Jahangir too. This trend initiated by Akbar came to be reversed by Aurangzeb, though the Marathans and the Sikhs opposed and fought the fanaticism of Aurangzeb. During this period principle of equality and justice were not given much importance. In this context, the thought of human rights entered into the minds of the non-Muslims which led to the emergence of Bhakti Movement in India. It revived and regenerated the old Indian value of truth, righteousness, justice and morality. Many great thinkers of India reinterpreted the Vedic Dharma to reestablish the supremacy of Indian Vedic values.



CHECK YOUR PROGRESS

Q.1: Write briefly about some values of universal validity prevalent during Vedic period.

.....

.....

Q.2: State the policy adopted by Akbar in the context of human dignity and welfare.

.....

6.5 HUMAN RIGHTS DURING BRITISH PERIOD

In India, during colonial period increasing exploitation and dominance by the colonialists created a situation of violation of rights of the Indian people. The fundamental freedom of the people was in danger during the time of colonialism. This compelled the Indian people to think seriously in terms of promoting and protecting their rights. The Indian leaders as well as the people of India sought some accommodation between western nations of individual rights and good elements of Hindu tradition. Raja Ram Mohon Roy, founder of the Brahmo Samaj movement, advocated equality for all persons regardless of caste, class, sex. Swami Vivekananda, leader of the Ramakrishna Movement, supported equality on the basis of Vedanta thought. Legendary poet Kabiguru Rabindra Nath Tagore is another influential name in the human rights movement in India.

It is true that the modern version of human rights jurisprudence had taken birth in India during the British Rule. During the British rule human rights and democracy were totally demolished. People had no right to demand something for their needs even in democratic way. British rule debarred entry of Indians into high offices and deprived them of their political, social and economic rights. The role of courts was discriminatory, judges were not impartial regarding Indians. During the British period resistance to foreign rule was manifested in the form of demand for freedom, civil and political rights for the Indians. The colonial ruler took many repressive measures on Indian people which encouraged the fight for civil-liberties and the demand for constitutional guarantees for some fundamental rights.

With the formation of the Indian National Congress in 1885, freedom movement and the demand for the rights of Indian got accelerated. The demand for fundamental rights of the Indian people found place in the Constitution of India Bill, 1895 which was known as "Home Rule Document". This Bill spoke about freedom of speech, right to privacy, rights to franchise etc. Amongst all the demands, only the

demand for fundamental right of equality of opportunity in the public services regardless of race or religion were considered in the Government of India Act 1915. Although, all the proposals of this Bill were not granted, it was one of the courageous stands taken by the Indian National Congress on behalf of the people of India. Apart from this a series of resolutions were taken in hand by the Indian National Congress between 1917 and 1919 which also repeated the demand for civil rights and equality of status for Indians with the British people in India. The Indian National Congress at its special session held in Bombay in 1918 adopted a declaration of rights and presented it to the British government with a view that these rights would be incorporated in the new Constitution. In the year 1925 at the Kanpur Convention, demands were raised for civil, political, social and cultural rights such as freedom of speech, expression and assemble, free primary education, freedom of conscience and religion, gender equality etc. In 1927 the Madras Session of the Indian National Congress demanded incorporation of a declaration of fundamental rights in any future constitutional framework in India. The Nehru Committee under Motilal Nehru, in 1928, in its report clearly indicated that the first concern of the people of India was to secure fundamental rights. Later on, the Constitution of free India incorporated ten fundamental rights out of nineteen enumerated in the Motilal Nehru report. The Karachi session of the Indian National Congress in 1931 adopted a comprehensive resolution on the theme of "Fundamental Rights and Duties and Economic and Social Change". In 1945 Sir Tej Bahadur Sapru Committee also submitted its report recommending that the Fundamental Rights 'must' be included in the Constitution of India.



LET US KNOW

The rights emphasized by the Motilal Nehru Committee report were :

1. Personal liberty, inviolability of dwelling place and property;

2.Freedom of conscience and of profession and practice of religion subject to public order and morality;

3. Right of free expression of opinion and to assemble peacefully and without arms and to form association and unions subject to public order and morality;

4. Right to free elementary education - maintained and aided by the state without distinction of caste and creed;

5. Equality for all citizens before the law and in civil rights;

6. Right of every citizen to the writ of habeas corpus;

7. Protection in respect of punishment under ex-post factor law;

8. No discrimination against any person on grounds of religion, caste or creeds etc;

9. Equality of right to all citizens in the matter of access to, and use of public roads and other resorts;

10. Freedom of combination and association for the maintenance and implementation of labour and economic conditions;

11. Right to keep and bear arms in accordance with regulations; and

12. Equality of rights to men and women as citizen.

6.6 CONSTITUENT ASSEMBLY AND HUMAN RIGHTS

The struggle of the Indians ultimately succeeded and in 1946 British Government announced that India would get freedom. Hence the process for making of the Constitution for free India was in progress. Under the Cabinet Mission Plan of 1946, elections were held for the constitution of the Constituent Assembly. Total 389 members were elected where 292 members represented the states and 93 represented the princely states and four were from the chief commissioner provinces. The Constituent Assembly first met in December 1946. Division of India into two countries, i. e - India and Pakistan decreased the total number of members to 299.

The Constituent Assembly appointed a total of 22 Committees to deal with the process of framing the Constitution. There were 8 major Committees and others were minor Committees. Amongst these

Committees there was an Advisory Committee of Fundamental Rights, Minorities and Tribal and Excluded Areas headed by Vallabhbhai Patel. The Sub-Committees to deal with the issue of fundamental rights were - Fundamental Rights Sub Committee headed by J.B. Kripalani, Minorities Sub-Committee headed by Harendra Coomar Mookerjee etc. The Advisory Committee of Fundamental Rights started its task of framing fundamental rights with reference to the Constitutions of Ireland and USA. They discussed the rights like justiciable and non justiciable. The final intent of the Advisory Committee was to provide as much freedom to individuals as it was possible in the light of circumstances of the country.

The framers of the Constitution of India covered up the matters relating to rights and others after thorough discussion in the Constituent Assembly. More or less the member of the Constituent Assembly were influenced by the thinking of Mahatma Gandhi, the father of the nation. The framers of the Indian Constitution tried to assure the people in general and the different sections of the society in particular of a fair deal. They made the Constitution not only as a mechanism for governing the country, but also as an instrument for social change. A code of human rights was the centre topic of debate in the Constituent Assembly. The major sources of debate on human rights were the Bill of Rights of 1688, American Declaration of Independence of 1776, French Declaration of Independence of 1789, Universal Declaration of Human Rights of 1948. After prolonged discussion, the Constituent Assembly deliberately adopted a formal declaration of fundamental rights in the Constitution of India. The Constituent Assembly rightly guaranteed to all the people of India justice - social, economic and political; equality of status of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subjects to law a public morality and where in proper safeguards would be provided for the backward and minorities and tribal areas and depressed and other classes. The framers intended to make Indian Constitution available mandate of the Indian people's salvation, and to secure all persons' basic human rights. In Part III of the Indian Constitution,

a list of Fundamental Rights for Indian people is inserted which are justiciable. Again in Part IV some rights are incorporated in the form of Directive Principles of State Policy which are non-justiciable.

So the promulgation of the Constitution by the people of India in January 1950 is watershed in the history of India. The Preamble, Fundamental Rights and Directive Principles of State Policy together provide the basic human rights for the people of India.



CHECK YOUR PROGRESS

Q.3: Who was the founder of the Brahmo Samaj movement?

.....

Q.4: Mention any two rights incorporated in the "Home Rule Document".

.....

.....

Q.5: In which year the Indian National Congress adopted a comprehensive resolution on the theme of "Fundamental Rights and Duties and Economic and Social Change"?

.....

Q.6: Who was the chairperson of the Advisory Committee of Fundamental Rights, Minorities and Tribal and Excluded Areas?

.....

Q.7: The Directive Principles of State Policy are included in Part ……. of the Indian Constitution. (Fill in the blank)



6.7 LET US SUM UP

- Although the terminology of Human Rights is a recent in origin, the idea of Human Rights is as old as the history of human civilization. The concept of presently known Human Rights is previously known

as 'Natural Rights' and 'Rights of Man'. Human Rights can be termed as a twentieth century name for what has been traditionally known as natural rights or the rights of men.

- Ancient India had a rich heritage of noble thinking. About 5000 years ago, ancient Indian philosophers and thinkers expounded a theory of higher moral law over and above positive law embodying certain values of universal validity like Dharma (righteousness), Artha (wealth), Karma (desires) and Moksha (salvation) with a view to establish a harmonious social order by striking a balance social aspects of life.
- Many of ancient Indian legal philosophers were universalists, rationalists and above all moralists who evolved a system of legal theory which was based on higher values and ideals, i.e. on their conception of Dharma. In ancient days, every aspect of life was regulated by the principle of Dharma. Since, Vedic ages, it is Dharma that impelled men to strive for righteousness.
- During Mughal period, specially during the rule of Akbar a new era began in the Mughal history in the field of human rights as a result of policy of "universal reconciliation and tolerance". Prime motto of Akbar was the welfare of his subjects. His justice loving tradition was followed by his son Jahangir too.
- However during the period of Aurangzeb the trend initiated by Akbar was reversed. During this period principle of equality and justice were not given much importance.
- In this context the thought of human rights entered into the minds of the non-Muslims which led to the emergence of Bhakti Movement in India. It revived and regenerated the old Indian value of truth, righteousness, justice and morality. Many great thinkers of India reinterpreted the Vedic Dharma to reestablish the supremacy of Indian vedic values.
- In India, during colonial period increasing exploitation and dominance by the colonialists created a situation of violation of rights of the Indian people. The fundamental freedom of the people was in danger during

the time of colonialism. This compelled the Indian people to think seriously in terms of promoting and protecting their rights.

- With the formation of the Indian National Congress in 1885, freedom movement and the demand for the rights of Indian got accelerated. The role of the Indian National Congress in the human rights movement in India is very significant. The Indian National Congress through its various sessions, resolutions and committees raised the voice of the Indian people for rights and freedom.
- With the formation of the Constituent Assembly the process of framing the Indian Constitution started. The Constituent Assembly emphasized the incorporation of rights and freedoms for the people of India in the Constitution.
- A code of human rights was the centre topic of debate in the Constituent Assembly. The major sources of debate on human rights were the Bill of Rights of 1688, American Declaration of Independence of 1776, French Declaration of Independence of 1789, Universal Declaration of Human Rights of 1948. After prolonged discussion, the Constituent Assembly deliberately adopted a formal declaration of fundamental rights in the Constitution of India.
- The Constituent Assembly rightly guaranteed to all the people of India justice - social, economic and political; equality of status of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subjects to law a public morality and where in proper safeguards would be provided for the backward and minorities and tribal areas and depressed and other classes. The Preamble of the Constitution, Fundamental Rights and Directive Principles of State Policy together provide the basic human rights for the people of India.



6.8 FURTHER READING

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6.9 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: During Vedic period Indian philosophers and thinkers expounded a theory of higher moral law over and above positive law embodying certain values of universal validity like Dharma (righteousness), Artha (wealth), Karma (desires) and Moksha (salvation) with a view to establish a harmonious social order by striking a balanced social aspects of life.



Ans. to Q. No. 2: Policy of "universal reconciliation and tolerance".

Ans. to Q. No. 3: Raja Ram Mohon Roy

Ans. to Q. No. 4: Freedom of speech, right to privacy.

Ans. to Q. No. 5: 1931

Ans. to Q. No. 6: Vallabhbhai Patel

Ans. to Q. No. 7: IV

6.10 MODEL QUESTIONS

A) Very Short Questions

Q. 1: Who was the chairperson of the Fundamental Rights Sub Committee?

Q. 2: Write briefly about the Home Rule Document.

Q. 3: Mention any four rights included in the Nehru Report.

B) Short Questions (answer each question with 150 words)

Q. 1: Write briefly about the concept of human rights during ancient India.

Q. 2: Write briefly about the situation of human rights in India during Mughal period.

Q. 3: Explain the role of the Constituent Assembly in the human rights movement in India.

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

Q. 1: Discuss the role of the Indian National Congress in the human rights movement in India.

Q. 2: Describe the various phases of human rights movement in India during colonial period.

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UNIT 7: CONSTITUTIONAL AND LEGAL FRAMEWORK OF HUMAN RIGHTS IN INDIA

UNIT STRUCTURE

7.1 Learning Objectives

7.2 Introduction

7.3 Historical Background leading to the inclusion of Constitutional Provisions and Formulation of Legal Provisions of Human Rights in India

7.4 Constitutional Framework of Human Rights in India

- 7.4.1 Preamble of the Indian Constitution
- 7.4.2 Fundamental Rights in the Indian Constitution
- 7.4.3 Directive Principles of State Policy in the Indian Constitution
- 7.4.4 Fundamental Duties of the Indian Constitution

7.5 Legal Framework of Human Rights in India

- 7.5.1 Protection of Human Rights Act, 1993
- 7.5.2 National Human Rights Commission (NHRC)
- 7.5.3 State Human Rights Commission
- 7.5.4 National Commission for Scheduled Caste and Scheduled Tribes, 2004

7.6 Let Us Sum Up

7.7 Further Reading

7.8 Answers to Check Your Progress

7.9 Model Questions

7.1 LEARNING OBJECTIVES

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

- describe the historical background that leads to include Human Rights provisions in the Constitution of India

- explain the provisions which are included in the Indian Constitution leading to the upliftment of Human Rights and Fundamental Freedom of the people of India
- examine the various Acts relating to the protection and promotion of human rights in India
- examine the role of the National Human Rights Commission (NHRC), State Human Rights Commission, National Commission for Scheduled Castes and Scheduled Tribes, 2004 in protecting rights of the Indian people.

7.2 INTRODUCTION

Human Rights are the basic requirements of an individual for leading a dignified and civilised life. The founders of the Indian Constitution, realising this fact, laid great emphasis on insertion of provisions relating to human rights in the Constitution of the country. Inclusion of human rights provisions in the Indian Constitution is an expression of respect towards the human rights and fundamental freedom of every individual of the country. Along with this the Parliament of India has also formulated a number of legal provisions for promoting and protecting rights of the people.

7.3 HISTORICAL BACKGROUND LEADING TO THE INCLUSION OF CONSTITUTIONAL PROVISIONS AND FORMULATION OF LEGAL PROVISIONS OF HUMAN RIGHTS IN INDIA

In India awareness of people for their rights and freedoms assumed a revolutionary character throughout the freedom movement during the colonial rule. During this period the people of India demanded their rights along with their chief demand of freedom from foreign rule. Resistance to foreign rule was manifested in the form of demand for fundamental freedoms and civil and political rights for the people of India (Yasin and Upadhyay, 2004; 59). The first organised demand for rights and freedoms was made through the Constitution of India Bill, 1895 (which is also known as Home

Rule Document). This Bill emphasised on the freedom of expression and equality before law for the citizens of India. After that the Commonwealth of India Bill, 1925, the Nehru Report, 1928, the Karachi Session of Congress in 1931, the Government of India Act, 1935, the Tej Bahadur Sapru Committee, 1945- all these stressed on the inclusion of fundamental rights and freedoms in written form in the Constitution of India. Because of all these efforts during the freedom movement, the Constituent Assembly had decided to include provisions relating to rights and freedoms in the Constitution for the people of India. The Constitution of India through the Preamble, Fundamental Rights and the Directive Principles of State Policy provide the basic human rights and fundamental freedom for the people of India. Along with the Constitution, the Parliament of India has also expressed its commitment towards protecting and promoting human rights through various enactments and constitution of various statutory commissions. In a nutshell, we can say that in India human rights provisions have two dimensions - constitutional and legal provision.

7.4 CONSTITUTIONAL FRAMEWORK OF HUMAN RIGHTS IN INDIA

Constitutional provisions of human rights are those provisions which are included in the Constitution itself. The Constitution of India contains human rights provisions elaborately in a number of its Articles. The Constitution of India in its Preamble, Part III (which deals with Fundamental Rights), Part IV (deals with Directive Principles of State Policy), Part IV A (deals with Fundamental Duties) and Articles 226, 300A, 325 and 326 include the provisions related to human rights (Arjun Dev. Et.al(ed) (1996): Human Rights: A Source Book, New Delhi, NCERT).

7.4.1 Preamble of the Indian Constitution

The Preamble of the Indian Constitution is a declaration of rights and freedoms that India aims to secure for all its citizens. The Preamble of the Indian Constitution proclaims that the objectives of the Indian Constitution is to make India a country where justice

(social, economic and political), freedom, equality, fraternity will be achieved for all. So the Preamble of the Indian Constitution has laid down the foundation of human rights and fundamental freedom for the people of India. In this context it may be said that in India human rights may be regarded as the offspring of the Preamble.

7.4.2 Fundamental Rights in the Indian Constitution

Part III of the Indian Constitution which deals with the Fundamental Rights contains significant constitutional provisions dealing with human rights in India. These fundamental rights are enforceable or justiciable rights. This means that the citizens can approach the courts in India for getting justice in case of violation of their fundamental rights. Article 13 of the Indian Constitution mentions that the state shall ensure that no 'law' including orders, rules, regulations, notifications, ordinances, customs or usages is in violation of any fundamental rights. This indicates the true concern of the Indian constitution towards protection of fundamental rights. Human rights provisions as included in Part III are as follows-

Articles 14 -18 deal with the right to equality. Article 14 guarantees right to equality before the law and equal protection of the law to all persons. Article 15 provides that the state shall not make discrimination against an individual on the ground of religion, race, caste, sex or place of birth. Article 16 guarantees equality of opportunity in public employment for all citizens. Articles 17 and 18 provide for abolition of untouchability and titles respectively.

Articles 19-22 deal with the right to freedom. Article 19(1) guarantees six fundamental freedoms to the people of India. These freedoms are-

- Freedom of speech and expression
- Freedom to assemble peacefully without arms
- Freedom to form associations and unions
- Freedom of movement

- Freedom to reside and settle in any part of India
- Freedom to practice any profession or carry on any occupation, trade or business.

Right to Information forms an integral part of Article 19(1) (a) [i.e. right to freedom of speech and expression]. Article 20(2) states that an accused person cannot be prosecuted and punished for the same offence more than once. Article 21 guarantees all citizens and non-citizens protection of life and personal liberty. Article 21A provides right to education for all children from the age 6 to 14 years. Article 22 provides safeguards against arbitrary arrest and detention.

Articles 23-24 deal with the right against exploitation. Article 23 prohibits traffic in human beings, 'begar' and any other form of forced labour. Article 24 prohibits employment of children below 14 years of age in factories, mines and hazardous employment.

Articles 25-28 deal with the right to freedom of religion. Article 25 guarantees to every person in India the right to freedom of conscience and the right to profess, practice and propagate religion freely. Article 26 provides that all religious communities have the right to establish and maintain institutions for religious and charitable purposes and have the freedom to manage their own religious affairs. Article 27 states that no individual or organisation shall pay tax for the promotion of any particular religion. Article 28 prohibits religious instruction in state-aided educational institutions.

Articles 29-31 deal with the educational and cultural rights. Article 29(1) states that citizens with a distinct language, culture or script shall have the right to preserve the same. Article 29(2) states that no citizen shall be denied admission to a state owned or state-aided educational institution on ground of religion, race, caste or language. Article 30(1) provides for the right of minorities to establish and administer educational institutions. Article 30(2) provides that the state shall not make discrimination against any educational institution on the ground that it is under the management of a minority community.

Articles 32-34 deal with the right to constitutional remedies. These three Articles provide a guaranteed remedy for the enforcement of fundamental rights. Citizens can approach the Supreme Court if their rights are violated. The Supreme Court can issue writs, such as Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo- Warranto for this purpose. Article 35 empowers the Parliament to make laws for effective realisation of Fundamental Rights inserted in Part III of the Constitution.



LET US KNOW

Habeas Corpus is a writ through which the Supreme Court or the High Courts can direct a person, who is detaining another person to bring that detained person in his/her custody at a specified time to a specified place in order to provide liberty or to secure his/her release if it feels that person is confined without legal justification. Through the writ of Mandamus, the court can issue an order to a person or a body to do his/her or its duty. Certiorari is a writ which orders the removal of a suit from a subordinate court and to transfer to a superior court. The writ of Prohibition prevents a subordinate court from exceeding its jurisdiction, or from acting contrary to the rules of natural justice. Through the writ of Quo-Warranto the Supreme Court or the High Courts restrains a person from acting in an office to which he or she is not entitled.



CHECK YOUR PROGRESS

Q.1: The Indian Constitution contains Human Rights provisions in the ....., Fundamental Rights, Directive Principles of State Policies and Fundamental Duties. (Fill in the blank)

Q.2: The Fundamental Rights are justiciable rights. (True/False)

.....

Q.3: Mention the six freedoms guaranteed under Article 19(1) of the Constitution of India.

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Q.4: What are the rights to religious freedom as guaranteed by the Constitution of India?

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Q.5: Mention the writs available to the citizens of India for protecting their basic human rights and freedoms.

.....

7.4.3 Directive Principles of State Policy in the Indian Constitution

Directive Principles of State Policy (DPSP) included in Part IV containing Articles 36-51 also constitute an important part of the constitutional framework of Human Rights in India. These principles aim at achieving welfare for the people of India. DPSP, though not justiciable, aims to entrust a positive duty on the state in order to ensure social and economic justice and dignity of the individual. Some of these principles which have important human rights implications are as follows-

- According to Article 38, the State shall try to secure and protect a social order which stands for the welfare of the people.
- Article 39 states the techniques through which the State can achieve welfare for all the people of India. Some of the important goals which the state is expected to realise are-

i. Adequate means of livelihood for all citizens,

ii. Proper distribution of wealth to serve the common good,

iii. Equal pay for equal work for both men and women,

iv. The prevention of concentration of wealth so that it does not put obstacles in securing the common good,

v. Protection of childhood and youth against exploitation or moral and material abandonment

vi. Protection of the health and strength of the workers and protection of workers against entry into vocations which do not suit their age or strength.

- According to Article 41, the State shall within its capacity make effective provision for securing the right to work, right to education, public assistance in case of unemployment, old age or sickness.
- Article 42 provides that the State shall make provision for securing just and humane conditions of work and for maternity relief.
- According to Article 43 the State shall endeavour to secure humane conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.
- According to Article 45 the State shall endeavour to provide for free and compulsory provision to all children up to the age of 14 years. (This provision was initially for 10 years from the commencement of the Constitution, but has been retained by the Government continuously since then)
- According to Article 46, the State shall promote the educational and economic interest of the weaker sections of people especially of the Scheduled Caste and Scheduled Tribes with a view to protect them against social injustice and exploitation.
- According to Article 46, the State shall raise the level of nutrition and improve public health.

- According to Article 51, the State shall promote international peace and security, maintain just and honorable relations with other nations and encourage settlement of international disputes by arbitration.

7.4.4 Fundamental Duties of the Indian Constitution

It is a well recognised fact that human rights and duties are complementary to each other. To achieve the goal of fullest realisation of human rights we should have respect towards the rights of every individual in the society; and only then will be the rights of every person protected. With this view in mind the Parliament of India in 1976 included certain Fundamental Duties in Part IV(A) of the Constitution of India. Article 51A states that 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 forest, lakes, rivers and wildlife, 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 adjure 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 provide opportunities for education by the parents or the guardian to their child between the age of 6-14 (this fundamental duty was added by the 86th Constitution Amendment Act in 2002)

Apart from the above mentioned provisions, the Constitution of India also has other articles which deal with human rights. Some of these articles are-

(i) Article 226 provides the right for the Indian people to approach the High Courts for the protection of their fundamental rights. Under this provision the High Courts can issue certain writs like habeas corpus, mandamus, prohibition, quo-warranto and certiorari for protecting the rights of the people.

(ii) Article 300 (A) proclaims that no person can be unlawfully deprived of his/her property.

(iii) Article 325 states that no person shall be ineligible for inclusion in, or claim to be included in a special electoral roll on the grounds of religion, race, caste or sex. This provision guarantees the right to equality to hold public offices for the citizens of India.

(iv) Article 326 states that elections to the House of People and to the Legislative Assemblies of the States will be held on the basis of universal adult franchise. This provision guarantees to the citizens of India the right to vote without any kind of discrimination.



CHECK YOUR PROGRESS

Q.6: Directive Principles of State Policies are legally enforceable. (True/False)

.....

Q.7: In which year and through which amendment was the fundamental duty to provide education to the children between the age of 6-14 years included in the Constitution of India?

.....

Q.8: Directive Principles of State Policies aim to achieve..... of the people of India. (Fill in the blank)

Q.9: Mention the goals under Article 39 which the state is expected to achieve.

.....

7.5 LEGAL FRAMEWORK OF HUMAN RIGHTS IN INDIA

The legal provisions of Human Rights are those which have come out through various enactments of the Central and state legislatures for protecting the human rights of the Indian people. Some of those provisions are - Protection of Human Rights Act, 1993; Right to Information Act, 2005; National Rural Employment Guarantee Act, 2005; National Commission for Minorities Act, 1992; National Commission for Women Act, 1990; Protection of Civil Rights Act, 1955; Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Immoral Traffic (Prevention) Act, 1956; Indecent Representation of Women (Prohibition) Act, 1986; Juvenile Justice Act, 1986; Dowry Prohibition Act, 1961; Commission for Sati (Prevention) Act, 1987; Maternity Benefit Act, 1961; Children Act, 1960; Child Labour (Prohibition and Regulation) Act, 1986; Minimum Wages Act, 1986; Caste Disabilities Removal Act, 1950; Mental Health Act, 1987; Bonded Labour (System) Abolition Act, 1976 etc.

7.5.1 Protection of Human Rights Act, 1993

The Government of India with a view to establish a national institution relating to the protection and promotion of human rights, introduced the Human Rights Commission Bill in the Lok Sabha on May 14, 1992. The bill was referred to the Standing Committee of the Parliament on Home Affairs. However due to the urgent need of the time for having a human rights commission, the President of India on 27th September 1993 promulgated an Ordinance for the creation of a National Commission on Human Rights and Commissions at the state level. After having made certain amendments, the Protection of Human Rights Bill was passed by both the Houses of the Parliament to replace the ordinance. The Bill became an Act after it received the assent of the President on January 8, 1994, known as the Protection of Human Rights Act. With the enactment of the Protection of Human Rights Act, the establishment of a National Human Rights Commission, State Human Rights Commission in states and Human Rights Courts for the better protection of human rights in India became a reality.

7.5.2 National Human Rights Commission (NHRC)

The National Human Rights Commission is an expression of India's concern for the protection and promotion of human rights. It came into being on 12th October 1993. Chapter II to IV of the Act deals with National Human Rights Commission.

- **Composition of the Commission**

  Chapter II of the Act deals with the constitution of National Human Rights Commission. Section 3 of the Act lays down that the Central government shall constitute a body to be known as the National Human Rights Commission. The Commission shall consist of-

  1. A Chairperson who has been the former Chief Justice of the Supreme Court.

2. One member who is or has been a judge of the Supreme Court.
3. One member who is or has been the Chief Justice of a High Court.
4. Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.
5. The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women are also to be appointed as members of National Human Rights Commission.

The Chairperson and the members of the Commission shall be appointed by the President on the recommendation of six-member committee headed by the Prime Minister as Chairperson. Other members of the committee are the Speaker of the House of People, Minister in charge of the Ministry of Home Affairs in the Govt. of India, Leader of the Opposition in the House of People, Leader of the Opposition in the Council of State, Deputy Chairman of the Council of State.

The Central Government shall make available to the Commission an Officer who shall be the Secretary General of the Commission and such police and investigative staff as may be necessary for the efficient performance of the Commission. The Commission shall have its headquarters in New Delhi and with the permission of the Central Govt. may establish offices in other parts of India.

- **Term of Office**

The Chairperson and the members of the Commission hold office for a term of 5 years. They are eligible for reappointment for another term. A person can serve at the commission until the age of 70 years. The Chairperson and any other member may be removed

from his or her office by an order of the President on the ground of proven misbehaviour or incapacity after the Supreme Court, on enquiry, reports that the chairperson or such other member ought to be removed.

➢ **Functions of the Commission**

The functions of the Commission are laid down under Section 12 of the Act, which are as follows-

(i) The Commission inquires suo motu (on its own) or on petition presented to it by a victim or any person on his behalf, into any compliant of-

(a) Violation of human rights or abetment thereof,

(b) Negligence in the prevention of such violation by a public servant.

(ii) The Commission may intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

(iii) It can visit, under intimation to the State Govt., any jail or any other institution under the control of the state govt., where persons are detained or lodged for the purpose of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon.

(iv) The Commission can 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.

(v) The Commission may review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.

(vi) It studies treaties and other international instrument on human rights and makes recommendation for their effective implementation.

(vii) It undertakes and promotes research in the field of human rights.

(viii) The Commission helps in spreading of human rights literacy among various sections of society and promotes awareness regarding the safeguards available for the protection of these rights, through publications, media, seminars and other available means.

(ix) It encourages the efforts of NGOs and institutions working in the field of human rights.

(x) The Commission also performs such other functions as it may consider necessary for the protection of human rights.

(xi) The Commission submits an annual report to the Central Govt. and to the State Govt. concerned and may at any time submit special reports on any matters which, in its opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report.

(xii) The Commission shall perform functions pursuant to the directions issued by the Supreme Court in the exercise of the jurisdiction under Article 32 of the Constitution.

- **Evaluation of Functioning of National Human Rights Commission in India:** The National Human Rights Commission in India has received more than 74,000 complaints from people with a hope of getting justice for violation of their rights. It has investigated a number of serious cases of human rights violation and has submitted reports to the Govt. suggesting measures to be taken to curb the human rights violation. But the commission has not been able to perform its task up to the most satisfactory level as it is simply an investigative and recommendatory body. It can recommend the appropriate authority to take action against violations or to provide interim relief to the victim of human rights violations. The Commission

does not have the power of prosecution. Further, the inquiry made by the Commission is not always impartial in view of the fact that the Commission is not equipped with an independent investigative agency.

7.5.3 State Human Rights Commission

The Protection of Human Rights Act, 1993 under Section 21 (Chapter V) lays down that the State Governments may constitute Human Rights Commission in their respective states. The State Human Rights Commission consists of one Chairperson who has been a Chief Justice of a High Court, one member who is or has been a Judge of a High Court, one member who is or has been a District Judge in that state, two members to be appointed from amongst persons having knowledge of or practical experiences in matters related to human rights. The Chairperson and other members of the State Commission are appointed by the Governor of that state as per the recommendation of a Committee consisting of the Chief Minister, Speaker of the Legislative Assembly, Minister in charge of the Department of Home of that state, Leader of the Opposition of the Legislative Assembly of that state. The term of all members of the Commission including the Chairperson is 5 years. However they may be removed from the office by the President of India on certain grounds. Some of the functions of the State Human Rights Commission are-

(a) The State Human Rights Commission inquires violation of human right cases in matters which are included in the State List and Concurrent List of the 7th Schedule of the Constitution. However if the NHRC is already investigating such cases, the State Commission shall not inquire those cases.

(b) The Commission submits an annual report to the respective State Government and special report at any time on any matters.



LET US KNOW

The Assam Human Rights Commission was constituted on 19th March, 1996. It is headed by one Chairperson and four other members and has its headquarters in Guwahati.



ACTIVITY 7.1

Try to find out the name of the present Chairperson of the National Human Rights Commission of India and Assam State Human Rights Commission.

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7.5.4 National Commission for Scheduled Caste and Scheduled Tribes, 2004

The Parliament of India enacted the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act in 1989 and this Act provided for the constitution of the National Commission for Scheduled Caste and Scheduled Tribes in 2004. The members of the Commission are appointed by the President of India. The Commission consists of one Chairperson, one Vice- Chairperson and three other members. The term of office of all the members of the Commission is three years. Some of the functions of the Commission are-

(a) The Commission investigates into all matters relating to the safeguard provided to the Scheduled Caste and Scheduled Tribes under the Act.

(b) The Commission also investigates into any special case related to the violation of rights and safeguards of the Scheduled Caste and Scheduled Tribes.

(c) The Commission also advises and participates in the planning process related to socio economic development of the Scheduled Caste and Scheduled Tribes and can evaluate the progress of the same process.

(d) The Commission also performs any other functions for the welfare of the Scheduled Caste and Scheduled Tribes.

(e) The Commission submits an annual report and special report at any time on any matter related to the rights of the Scheduled Caste and Scheduled Tribes to the President of India.



CHECK YOUR PROGRESS

Q.10: In India legal provisions of human rights were originally included in the Constitution of India. (True/ False)

.....

Q.11: In which year was the Protection of Human Rights Act enacted?

.....

Q.12: The Protection of Human Rights Act provided for the establishment of ..... (Fill in the blank)

Q.13: The National Commission for Scheduled Caste and Scheduled Tribes was established in the year …… (Fill in the blank)

Q.14: Mention any two functions of the National Human Rights Commission of India.

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Q.15: State two functions of the State Human Rights Commission.

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7.6 LET US SUM UP

- In India the entire jurisprudence of human rights is founded on the above mentioned constitutional and legal provisions. The strong will and determination for the promotion of human dignity and worth of India has been realised through these provisions.
- The Constitutional framework of human rights has found expression through the Preamble, Fundamental Rights, Directive Principles of State Policy and Fundamental Duties.
- In India the Parliament has also enacted a number of laws relating to the promotion and protection of human rights in India.
- One such important enactment is the Protection of Human Rights Act, 1993.In India the Protection of Human Rights Act, 1993 has led to the establishment of National Human Rights Commission, State Human Rights Commission in the states and Human Rights Courts at the district levels.
- The National Human Rights Commission has performed its tasks regarding protection of human rights with efficiency to a great extent. But some loopholes still remain in its performance procedure specially due to the lack of its implementation power and financial autonomy.
- The Protection of Human Rights Act, 1993 under Section 21 (Chapter V) lays down that the State Governments may constitute Human Rights Commission in their respective states.
- The Parliament of India enacted the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act in 1989 and this Act provided for the constitution of the National Commission for Scheduled Caste and Scheduled Tribes in 2004. This Commission performs a number of functions to protect the rights of the Scheduled Caste and Scheduled Tribes.



7.7 FURTHER READING

1. Agarwal. H.O. (2006). *Human Rights*. Allahabad: Central Law Publications.
2. Anuradh, K.P. (2010). *Human Rights Issues In India*. New Delhi: Adhyayan Publishers and Distributors.
3. Dev, Arjun. Et.al(ed). (1996). *Human Rights - A Source Book*. New Delhi: NCERT.
4. Gupta, D. C. (2010). *Indian Government and Politics*. Delhi: Vikas Publishing House Pvt. Ltd.
5. Saksena, K.P.(ed) (2003). *Human Rights and The Constitution- Vision and the Reality*. New Delhi: Gyan Publishing House.
6. Yasin, Adil-ul. and Upadhyay, Archana. (2004). *Human Rights*. New Delhi: Akansha Publishing House.

7.8 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: Preamble

Ans. to Q. No. 2: True

Ans. to Q. No. 3: (i) Freedom of speech and expression

(ii) Freedom to assemble peacefully without arms

(iii) Freedom to form association and union

(iv) Freedom of movement

(v) Freedom to reside and settle in any part of India

vi) Freedom to practice any profession or carry on any occupation, trade or business.

Ans. to Q. No. 4: Articles 25-28 of the Constitution of India deal with the right to freedom of religion. Article 25 guarantees to every person in India the right to freedom of conscience and the right to profess, practice and propagate religion freely. Article 26 provides that all religious communities have the right to establish and maintain

institution for religious and charitable purposes and have the freedom to manage their own religious affairs. Article 27 states that no individual or organization shall pay tax for the promotion of any particular religion. Article 28 prohibits religious instruction in state-aided educational institutions.

Ans. to Q. No. 5: Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo-Warranto

Ans. to Q. No. 6: False

Ans. to Q. No. 7: The 86th Constitution Amendment Act in 2002

Ans. to Q. No. 8: Welfare

Ans. to Q. No. 9: (i) Adequate means of livelihood for all citizens,

(ii) Proper distribution of wealth to serve the common good,

(iii) Equal pay for equal work for both men and women,

(iv) The prevention of concentration of wealth so that it does not put obstacles in common good,

(v) Protection of childhood and youth against exploitation or moral and material abandonment.

(vi) Protection of the health and strength of the workers and protection of workers against entry of vocations which do not suit their age or strength.

Ans. to Q. No. 10: False

Ans. to Q. No. 11: January 8, 1994

Ans. to Q. No. 12: National Human Rights Commission, State Human Rights Commission in states and Human Rights Courts in districts.

Ans. to Q. No. 13: 2004

Ans. to Q. No. 14: 1. The Commission inquires suo motu or on petition presented to it by a victim or any person on his behalf, into compliant of-

(a) Violation of human rights or abetment thereof,

(b) Negligence in the prevention of such violation by a public servant.

2. The Commission may intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

Ans. to Q. No. 15: (a)The State Human Rights Commission inquires violation of human right cases in matters which are included in the State List and Concurrent List of the 7th Schedule of the Constitution.
(b) The Commission submits an annual report to the respective State Govt. and special report at any time on any matters.



7.9 MODEL QUESTIONS

A) Very Short Questions

Q. 1: Under Article 226 of the Indian Constitution the people of India have the right to move to the Supreme Court for the protection of their fundamental rights. (True/False)

Q. 2: Who appoints the Chairperson and members of the National Human Rights Commission in India?

Q. 3: Mention two Acts relating to the protection and promotion of human rights.

B) Short Questions (Answer each question in about 150 words)

Q. 1: Write about the historical background that led to the inclusion of human rights provisions in the Constitution of India.

Q. 2: Write a short note on the functions of the National Human Rights Commission in India.

Q. 3: Write about the Right to Equality and Educational and Cultural rights as human rights provisions of the Indian Constitution.

Q. 4: Write briefly about the functions of the National Commission for Scheduled Caste and Scheduled Tribes.

Q. 5: Write briefly about the composition and functions of the State Human Rights Commission.

C) Long Questions (Answer each question in about 300-500 words)

Q. 1: Discuss the constitutional provisions of human rights in India.

Q. 2: Critically evaluate the performance of the National Human Rights Commission in India.

*** ***** ***

Name of the Paper: .....
Course Code: .....

Centre for Internal Quality Assurance (CIQA)
Krishna Kanta Handiqui State Open University
City Office: Housefed Complex, Guwahati-781006

Learner's Feedback on Course

Dear Learner,

Regarding the course as mentioned above, we would like to know your opinions and comments so as to improve the quality of self learning materials in future. Please respond to the following statements by ticking the number you feel most reflect your opinion. After completion of the additional comments, please detach the page and send/mail the same to us at the address given below.

The Director, Centre for Internal Quality Assurance, KKHandiqui State Open University
Housefed Complex, Dispur, Guwahati-781006
(E-mail id: ciqa@kkhsou.in)

1) Approximately how many hours did you spend for studying the units in the course? ☐☐☐

2) Please give your opinions (by ✓ mark) to the following items based on your reading of the block:

Sl. No.	Statements	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I)	The SLMs of the course fulfil the learning objectives set out in the beginning of each unit					
II)	The units of the SLM could satisfy my academic needs and expectations					
III)	The Unit writers have excellent knowledge about the course contents					
IV)	Language and contents of the units were presented at a level which I could readily understand					
V)	Ample opportunity for participation in the activities provided in the units					
VI)	Used enough Illustrations (Diagrams, tables etc.) for conceptual clarity					
VII)	Quality of content is engaging, relevant, and up-to-date					
VIII)	The self check questions are very helpful					
IX)	The Possible/model questions and the answers to check my progress have benefited me a lot					

Additional Comments: *(Please feel free to provide your open comments)*

1) Which aspects of the SLM, according to you, worked well?

.....

.....

2) What sort of changes/improvements do you feel KKHSOU could implement to improve the overall quality of the SLM?

.....

.....

Thank you for taking the time to complete this form.

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