

**Institute of Distance and Open Learning  
Gauhati University**

**MA in Political Science  
Semester 4**

**Paper 16  
Human Rights in India**



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- Block I : Theoretical Issues**
- Block II : Protection of Human Right**
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- Block IV : Areas of Human Rights**

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## **Paper Introduction**

### **Human Rights in India**

Human rights are the inherent rights of one individual without which no one can develop their personality fully and live with dignity. The situation of human rights is a complex one due to the differentiation in culture, tradition and political system. In India due to its large size, tremendous social and political diversity make the condition of human rights very critical and promotion and protection of human rights becomes a major topic of concern in recent times. In this paper we are going to present different aspects of human rights and prevailing conditions of human rights in India. The paper is designed to make a comprehensive study of Indian human rights situations and various Acts deals with the protection and promotion of human rights of Indian citizens. To study the various aspects of existing human rights condition in India we have divided the paper into four blocks.

#### **Block I: Theoretical Issues**

Before discussing the condition of human rights in one nation it is evident to know the history of its origin. Therefore the first block of this paper will give you an idea about the origin and development of human rights in modern world. The block consists of two units as follows:

**Unit I: Human Rights: Evolution** of the concept deals with the origin of human rights in the modern world. The unit is designed to provide a clear idea about the history of human rights. An attempt is also made to examine the history of the origin of human rights in India.

**Unit II: Approaches to Human Rights: Three Generations Rights, Universalism, Relativism** deals with various approaches that examine human rights properly. In this unit an attempt is made to examine the various divisions of human rights and various issues related with it. An attempt is also made to analyse human rights on basis of some modern

Approaches like Universalism and Relativism which further help you to examine the concept of human right properly.

#### **Block II: Protection of Human Right**

The second block of this paper deals with the issue of human right protection. Protection and promotion of human right now becomes a major topic of

concern for the world community. In two units we will also discuss the measures taken by the world community in protecting human rights.

**Unit I: The UN Charter, Covenants and Optional Protocol** deals with the measures taken by the United nations in protecting human rights. It needs mention here that since the establishment of UN in 1945 it is working for the promotion and protection of human rights. This unit will give you a clear idea about the efforts of international community in protecting human rights.

**The Second Unit: UDHR and other Declaration, Amnesty International, International Court of Justice** simply deals with the role of non-governmental organisations in protecting and promoting human rights in the world Among the non-governmental organisations Amnesty International occupies an important position in the modern world. Therefore the unit is designed to introduce you with all such organisations, and related matters deals with the promotion and protection of human rights in the world.

### **Block III: Protection of Human Rights in India**

The Constitution of India provides for Fundamental rights, which include freedom of religion, Freedom of Speech and assured that no can deprive of his/her inborn and constitutional rights on basis of ones sex, colour, religion etc. In this block we are going to discuss the various measures taken by the Indian government to protect the rights of its individuals in two units.

**Unit I: Constitutional Framework of Human Rights in India** deals with those constitutional provisions which are dealing with the promotion and protection of human rights. The constitution of India provides a wide range of rights to its citizens and makes its judiciary as the protector of these rights. This unit is designed to introduce you with the constitutional checks upon Indian government and provisions regarding the issue of human rights.

**Unit II: Protection of Human Rights in India** deals with the extra constitution measure in protecting human rights in India. Apart from constructional provisions acknowledging the urgent needs of the issue of human rights protection Indian government initiated various measures to protect the rights of its citizens.

### **Block IV: Areas of Human Rights**

The last block of this unit addresses various areas of human rights in India and protective measures taken by the Indian government regarding these



issues. Basically this block deals with the rights of women, children and other weaker section of the society. Environmental rights are also considered as a major topic of concern. The block is divided into two units as follows:

**Unit I: Human Rights: Women and Children** deal with two most vulnerable groups of the Indian society who are the easy victim of human rights violation cases. In this unit we shall discuss the government initiatives the role of various laws in protecting women and children rights as it is seen that despite having many laws still India has more than 50 lakh child labour. Thus this unit is designed to introduce you with the status of women and child rights in India.

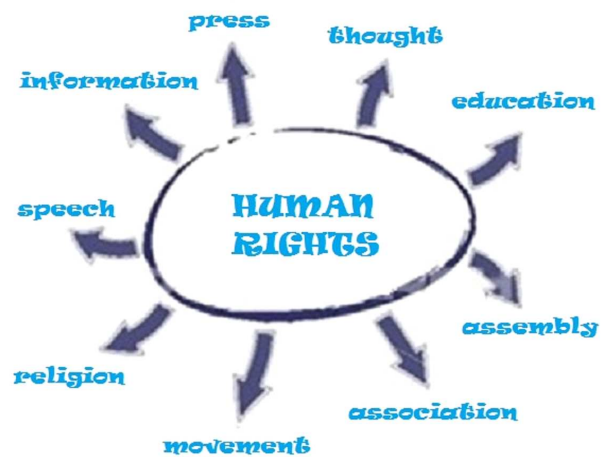
**Unit II: Human Rights: Differently Abled, Refugees, IDPs and Environmental Rights** deal with some important issues of modern times. It needs mention here that the above mentioned groups are the vulnerable groups of the society so special care should be taken to protect and promote their interests. Therefore in this unit an attempt is made to address such issues and to bring awareness for the protection of their rights.



**BLOCK I**  
**Theoretical Issues**

**Unit I : Human Rights: Evolution of The Concept**

**UNIT II : Approaches to Human Rights: Three Generations rights,  
Universalism, Relativism**





## **Block I : Theoretical issues**

### **Unit I**

#### **Human Rights: Evolution of the Concept**

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##### **1.1 Introduction**

Nature has endowed the human beings with certain dormant inner faculties or potentialities. These inner potentialities find its fullest development only in the presence of certain basic rights. So, the enjoyment of human rights is very essential or necessary for all-round personality development of the individuals. These rights can be enjoyed by all human beings irrespective of any artificial discrimination based on sex, caste, creed, colour, race etc. these rights are necessary for sheer survival of humanity. Otherwise, in the absence of human rights, human beings will be degraded to the status of animals. Human rights, are thus, in consonance with human dignity and respect. It needs mention here that Doctrine of Natural Rights, Magna Carta 1215, Petition of Rights 1625, Habeas Corpus Act 1679, Declaration of American Independence 1776, Human Rights Declaration of French Revolution 1789, and American Bill of Rights, 1791 have contributed much to the development of human rights.

In this unit, we will study in details about the different parameters of the concept of 'Human Rights'. In this unit we shall also discuss the evolution of human rights and international concern for the promotion of human rights.

## 1.2 Objectives

This unit deals with the concept of human rights in details. After reading this unit, you will be able to :

- *understand* the concept and meaning of human rights
- *trace* about the evolution of this concept
- *evaluate* the steps taken at domestic and international sphere so as to protect these rights.

## 1.3 Meaning of Human Rights

“Rights are those conditions of social life without which no man can seek to be himself at his best” – Harold J. Laski.

From the above saying, it is clear that rights are the basic facilities necessary for the development and progress of human beings. Human rights are those basic rights which help human beings to lead a dignified life. The concept of human rights is actually based on the very basic assumption that human beings are born equal in dignity and rights. These rights are nothing, but the moral claims which are inalienable and inherent in all human beings by virtue of their humanity alone. Thus, human rights are those minimum rights which are essential for human happiness and physical and mental upliftment of the human race. In the absence of these rights, no civilized life is possible. From the above discussion, it is clear that the doctrine of human rights is closely interlinked with human dignity. Chief Justice of India J.S. Verma has rightly stated that ‘human dignity is the quintessence of human rights’.

The concept of ‘Human Rights’ is actually articulated properly only after 2<sup>nd</sup> World War. During the Second World War, there was large scale violation of human rights. After the devastation of Second World War it was increasingly felt all over the world that human rights must be protected under all circumstances. Though the concept has been articulated properly only after the Second World War, but, in reality even prior to the Second World War the concept of human rights was in vogue. In ancient time, the concept of ‘natural rights’ was in vogue. It was believed that nature has bestowed mankind with certain basic rights, which need not be earned, bought or inherited, nor are they created by any contractual authority. This

concept of 'natural rights', in course of time, gave rise to the concept of 'Human Rights'. Natural law notion was reflected in the writings of Aristotle, Cicero etc.

Thus, 'Human Rights' is a generic term which embraces within its domain different categories of rights like – civil rights, social rights, economic rights, cultural rights and political rights. The World Conference on Human Rights held in 1993 in Vienna, stated in the 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. These rights are based on elementary human needs as imperatives, and always provides protection to the individuals against arbitrary exercise of powers by the government. (The 2<sup>nd</sup> World Conference on Human Rights commonly known as Vienna Conference held at Vienna on June, 1993. The Conference was held 25 years after the International Conference on Human Rights held in Tehran.)

Some of the widely accepted definitions of human rights are as follows:

- D.D. Basu defines human rights as those minimum rights which every individual must have enjoy against the state or other public authority by virtue of his being a member of human family, irrespective of any other consideration. (*Human Rights in Constitutional Law*, 1994).
- 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 beings".
- For Kim, human rights represent 'claims and demands essential to the protection of human life and the enhancement of human dignity, and should therefore enjoy full social and political sanctions'.
- Nickel characterizes human rights as 'norms which are definite, high priority, universal and existing and valid independently of recognition or implementation in the customs or legal systems of particular countries'.

From the above definitions, the following characteristics of human rights are evident:

- It is a right of an individual or a group of individuals.
- These rights are inalienable and human beings are entitled to them by birth.

- It is a universal and legal concept.
- These rights are meant to uphold human dignity and equality and to set forth liberty and fraternity to all without any kind of discrimination.
- These rights are the basic minimum requirement for survival of human beings in society.
- These rights can be executed only within the society and are protected and enforced by the authority of the state at all levels.

#### **1.4 Evolution of the Concept of Human Rights**

It is pertinent for us to trace the historical origin of the concept of human rights in order to understand the concept in its entirety. The subject of human rights is one of the most important issues of modern human life. Generally, it is believed that the concept emerged after the Second World War, with the founding of the United Nations. But, if we look back into the history, we can find out that the subject of human rights is an old one. Its origin can be traced from the ancient *vedic* literature of ancient India, where all the aspects of human life used to be governed on the basis of '*Dharma*'. The teachings of Lao and Confucius of ancient China too incorporated the principles of human rights. The city states of ancient Greece too recognized the existence of human rights. Similarly, the laws of ancient Babylonia, civil laws of Roman Jurisprudence and the law of Nations or Jus Gentium incorporated the human rights. The following points will help you trace the brief history and evolution of the concept of 'human rights':

- (1) The roots for the protection of the Rights of Men may be traced back to the Babylonian laws, Assyrian laws etc. Writings of Plato and other Greek and Roman philosophers also clamour for the protection of human rights.
- (2) The concept of human rights can also be traced to the period of the Renaissance and afterwards to the period of The Enlightenment.
- (3) The Magna Carta (1215) is considered as the foundation of liberties of Englishmen. It guaranteed the citizens the freedom from arbitrary imprisonment or from dispossession of property.



- (4) The Bill of Rights (1689) in England conferred some important rights on the British Parliament and also declared many actions of King James II illegal.
- (5) The American Declaration of Independence (July 4, 1776) declared the enjoyment of rights of life, liberty and the pursuit of happiness by the individuals.
- (6) The French Revolution (1789) proclaimed the slogans of liberty, equality and fraternity.
- (7) The League of Nations, set up in 1920, was entrusted with the duty of protection of rights, but it failed in its mission. World War II (1939-1945) was the most destructive war in human history. UNO was established in 1945 after the Second World War. Its Charter contains a number of articles related to human rights protection. Articles 1(3), 13(16), 55C, 62(2), 68 of UNO Charter contains provisions relating to the protection and promotion of human rights. The Charter of the United Nations Organisation (UNO) in its preamble declared 'We the peoples of the United Nations determine to reaffirm faith in the fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of the Nations large and small. . . . .'. The Charter also declared that the purpose of the United Nations is 'to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for Human Rights and for Fundamental Freedoms for all without distinction as to race, sex, language or religion.'

Thus, from the above discussion, it is clear that the evolution and crystallization of the concept of human rights took a long time. The new phrase "human rights" was adopted only in the 20<sup>th</sup> century from the previous expression as "natural rights" of men. Initially, there was confusion between the natural rights propounded by political philosophers in the bygone ages and the concept of human rights.

## **STOP TO CONSIDER**

### **Economic Foundations of Human Rights**

In 1944 Franklin Roosevelt argued that: basic essential to peace is a decent standard of living for all individual men and women and children in all nations. Freedom from fear is eternally linked with freedom from want. . .

We must realize the fact that true individual freedom cannot exist without economic security and independence. Necessitous men are not free men. The right to life, the foremost human right, cannot co-exist with extreme starvation or dreadful destitution. From this perspective, a transformation of the social order is a condition for the enjoyment of human rights. A new hunger-free human order alone can bring peace, security and freedom.

### **1.5 International Human Rights Instruments**

The UNO Charter has various provisions for the protection and promotion of Human Rights. Apart from these provisions various efforts have been taken under the auspices of UNO to promote Human Rights. Some of these international human rights instruments are as follows :

(1) The Universal Declaration of Human Rights, Dec. 10, 1948.

This Declaration contained various civil, political, economic, social rights. But, it was not legally binding. So, ultimately two other covenants were adopted which were legally binding on signatory states. These are:

(2) International Covenant on Civil and Political Rights (ICCPR), 1966.

(3) International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.

The ICESCR, The ICCPR and the Optional Protocol to the latter Covenant were adopted unanimously by the General Assembly on 16<sup>th</sup> December 1966. These instruments, along with the Declaration itself and a second Optional Protocol adopted in 1989, make up what is now widely known as the *International Bill of Human Rights*. The Covenants, unlike the Universal Declaration, are legally binding treaties for those states which are parties to them and they are thus obliged to respect the procedures for their implementation, including the submission of periodic reports on their

compliance with their obligations under the covenants. We shall discuss the provisions of these covenants and protocols in the successive units.

A number of Conventions have been adopted under the auspices of UNO to prevent violation of Human Rights. Some of them are like:

- (1) The General Assembly on December 1948 adopted the Convention on the Prevention and Punishment of Genocide, which came into force on January 1951. [The term 'Genocide' has been derived from the Greek term 'genos' (race) and the Latin word 'cide' (killing).]
- (2) International Convention on the Suppression and Punishment of Crime of Apartheid on November 1973, which came into force on July, 1976.
- (3) The Convention against Torture and other Cruel, Inhuman or Degrading Treatment , adopted by the General Assembly on December 10, 1984. (Regional Conventions have also been concluded for the prevention of torture.)
- (4) International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly on December 1965.
- (5) The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on 18 December 1979, and entered into force on Sept. 1981. The Declaration on the Elimination of Violence Against Women, adopted by the United Nations General Assembly in 1993, calls on all states to take measures to prevent and punish violence against women.
- (6) The Convention on the Rights of the Child, adopted by the UN General Assembly on 20 Nov. 1989, came into force in September 1990.

Also, the UN Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance was held from August 31<sup>st</sup> to September 7, 2001 in Durban (South Africa), for eradication of these problems.

Apart from the above discussed Conventions, UNO has also taken various steps for the protection and promotion of human rights of vulnerable groups like migrant workers, refugees etc.

For the protection of human rights, International Conference on Human Rights was held at Tehran (Iran) in 1968, and, World Conference on Human Rights was held at Vienna in 1993.

## **STOP TO CONSIDER**

### **Basic Parameters of Human Rights**

(1) *Everlasting peace*: Peace is one of the parameters of human rights. Humanity needs peace as the first condition of liberty and promotion of human rights as war is the greatest enemy of human rights.

(2) *Freedom from economic want*: Starvation is another enemy of human rights. So, it is another pre-condition for protection of human rights.

(3) *Unfragmented planet* : A fragmented planet, can never be serene, secure or stable. So, unfragmented planet is an important criterion for protection of human rights.

(4) *Moral values* : Erosion of values has resulted in growing number of crimes, thereby nullifying the concept of human rights.

(5) *Proper utilization of the resources*: It is also essential for the protection and promotion of human rights.

### **1.6 Human Rights as International Concern**

Earlier, it was believed that the protection of human rights is actually an intra-national concern. It is the duty of every nation to protect human rights of all the people within its jurisdiction. Thus, the whole subject-matter of protection and preservation of human rights was actually confined to the domestic sphere of affairs. International human rights was considered as an attack upon the concept of state sovereignty.

But, since 1940s, the concept of human rights protection underwent tremendous change due to crimes committed during the Second World War against the humanity and defence of unrestricted state sovereignty was challenged and questioned. It was argued by many thinkers that restoration of human rights was essential for the preservation and promotion of international peace and security. Thereby, it was felt that protection of human rights was not only intra-national, but inter-national concern also. If it is not well protected within the domestic level, it is well and good, otherwise comes the role of international human rights law. Thus, today, protection of human rights has become a global concern, thereby becoming both intra-national and inter-national in its scope. Human rights as inter-national concern focus on the fact that it checks arbitrariness on the part of state and government.

The UN Charter ushers in a new international law of human rights. The new law buries the old dogma that the individual is not a subject of international politics and law and that a government's behaviour towards its own nationals is a matter of domestic, not international concern. It penetrated national frontiers and the veil of sovereignty, thereby giving individual a part in international politics and rights in international law, independently of his government. It must be noted here that the international law of human rights parallels and supplements the national law, superseding and supplying the deficiencies of national constitutions and laws. The international human rights instruments do not legislate human rights, they simply recognize them. International human rights imply rights of the individual against society, but they are not seen as against the interests of the society. Thus, the international human rights law and institutions are designed to induce states to remedy the inadequacies of their national laws and institutions so that human rights are well respected and protected. The individual must pursue his rights through his own laws and institutions when the international law and institutions cannot provide those rights, they can only press the state to provide them. Thus, international human rights law confirm the concept of human rights and gives it status and value in the international system.

Thus, from the above discussion it is evident that the human rights are rights to be enjoyed by individuals in their own societies and implemented and enforced under their laws and institutions. International undertakings are designed to help assure that the national societies in fact respect the human rights of their inhabitants.

**SAQ:**

Do you think that human rights as international concern has widened the scope of enjoyment of human rights at the international forum. (50 words)

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## 1.7 Human Rights Issues in India

The notion of protection of human rights in India is very old. The *Vedas*, *epics* of ancient India deal with the protection of human rights. Also, ancient Indian rulers like Akbar, Ashoka etc. took various steps for the promotion of peace. Mahatma Gandhi, who led the struggle for independence, battled for the freedom of the Indians. According to E.F. Schumacher, Gandhi's economic 'dharma', is an appropriate technology where man mattered and the draining of the wealth of villages was arrested. On the whole, the national struggle was nothing but the struggle for protection of human rights of Indians. Indian Constitution came into force on January 1950. The Preamble, Fundamental Rights and Directive Principles of State Policy – all together constituted the Bill of Rights for Indian masses. The Preamble to the Indian Constitution contains all the lofty ideals and Part III containing with the Fundamental Rights deals with civil and political rights and Part IV containing with the Directive Principles deals with social and economic rights. Part III is justiciable in nature, whereas, Part IV is non-justiciable. For example, Article 14, 15, 16, 19, 21, 23, 24 etc. of Part III and Article 39, 45 etc. of Part IV deal with the various provisions for the protection and promotion of human rights of Indians.

Various laws have been passed from time to time to protect the human rights of Indians, like – Domestic Violence Act, 2005, the Child Labour (Prohibition and Regulation) Act of 1986, Dowry Prohibition Act etc are instrumental in protect the human rights. Apart from these laws, Indian Judiciary has also played a very vital role in the protection and promotion of human rights of Indians. Through the weapons of 'Judicial Review' and 'judicial Activism', Indian Judiciary has taken steps for the protection of human rights. Through PIL (Public Interest Litigation), Indian Judiciary has passed many landmark judgements in this regard. For example, in M.C. Mehta cases, the judiciary has tried its best to protect the rights of different segments of population in India. Likewise, in cases like *Vishaka* and others v/s State of Rajasthan, the Supreme Court has tried to protect women rights. In *People's Union for Democratic Rights v/s Union of India*, Supreme Court has tried to protect child rights. Thus, from the above discussion it is clear that whenever the judiciary has seen that the Fundamental Rights as well as other rights of the Indians has been violated, it has taken adequate steps to protect and promote the basic human rights.

Thus, in India, the constitutional provisions, different pieces of legislation as well as the efforts of the court are the important safeguards to protect the human rights of Indians. The above discussion makes it clear that there is no dearth of provisions for the protection of human rights both under the domestic and international laws, but, whenever we scan through the newspapers, T.V. Channels, magazines, we come across the news of large scale violation of these rights. It is strange that despite the presence of so many laws in the domestic and international level these rights are constantly violated. Instances of child trafficking, violation of women rights, custodial death under police custody etc. are increasing day by day. The more the world is showing concern about human rights protection, its violation are also becoming more rampant.

In a developing country like India where the majority of the people cannot procure even the daily necessities of life and large number of people live below the poverty line, talking about human rights appears to be more or less a myth. In the absence of basic amenities of life, talking about socio-economic, cultural and political rights appears to be a cruel joke for them. For example, when a person is really struggling hard for the right to life in the absence of food, clothing and shelter, in that situation the right to education does not make any sense. Again, when people are not getting employment opportunities, equal pay for equal work appears to be irrelevant.

So, when we look at the overall situation in India, we find gross violation of human rights in general, and women and child rights in particular. In case of violation of women rights, many women succumb to death, failing to meet the dowry demands of in-laws. Even the stringent laws have also failed to check these crimes and social menace. Another aspect of human rights violation is criminalization of politics, where at times, we see the close nexus of politicians-public servants-criminals. Thus, what we see in practice today, are far from theoretical ideology which were dreamt of by the founder fathers of our Constitution. Our founding fathers of Constitution wanted the services to be independent, fearless and upright in tendering advice to the government. It was expected that a civil servant should be independent, fair, reasonable and non-political. With that intention, Constitutional safeguards for the civil servants has been provided under Article 311 of the Indian Constitution. So, in India, the minister-civil servants relationship was

supposed to be guided by the concept of neutrality of civil service. Thus, we see that today the civil service, like the society, is in turmoil. However, it must be noted here that it is a mixed bag of experience.

As we know, the problem of child labour is rampant in India. Child rape and child prostitution also lead to the violation of child rights and dignity. In India, it is estimated that about a million babies, out of 21 million born every year, are abandoned after birth due to the various socio-economic pressures. (UNICEF, New Delhi, International Year of the Child, 1979.) The White Collar Crimes, like the Satyam case also prevails in India. Moreover, there are communal violence also aggravate the problem. From the above discussion, it is clear that despite the printed Constitutional Ciphers, the social homicide, bride burning, communal riots, insurgencies, violence, ongoing violation of women and child rights have characterized Indian life. Amnesty International (a leading NGO in the field of Human Rights protection), 1992 Report on India entitled, - 'INDIA TORTURE, RAPE AND DEATH IN CUSTODY' – has published records of exclusively the custodial crimes. The Amnesty Report, 1990, entitled 'INDIA OPERATION BLUEBIRD' has also cited many other cases of human rights violation.

Pt. Nehru voiced the hopes of the millions of Indian masses when he said: "I trust that the Constitution itself will lead us to real freedom that we have clamoured for and real freedom in turn will bring food to our starving people, clothing for them, housing for them and all manners of opportunities of progress".

Thus, a cursory look at the whole situation will certainly lead to disappointment and everything will appear to be a mirage. It is to be understood here that the socio-economic environment is intrinsically related to the question of human rights protection. Respect and observance of human rights are always conditional upon economic condition of respective states. The NGOs are now playing a vital role in human rights protection. It must be admitted here that the case of human rights violation are so massive that no single group can tackle the problem. There is a need for a global forum.



**SAQ:**

It is often criticized by the critics that the Directive Principles of State Policy have been transformed into ‘Decorative Principles of State Policy.’ Discuss. (60 words)

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**1.8 Science and Human Rights**

General Assembly Resolution No. 3384 (XXX) of 10<sup>th</sup> November 1975, contains the Declaration on the use of Scientific and Technological Progress in the interest of peace and for the benefit of mankind. It must be admitted here that the industries are very much essential for economic development of a nation. But, safety measures must be adopted, so that the establishment of industries does not hamper in any way the surrounding environment. Otherwise, environmental pollution will adversely affect the people. Ozone layer, which protects us from the harmful ultra-violet radiation from the sun, is getting destroyed slowly and increase in UV radiation on the earth’s surface may increase skin cancer and other such harmful diseases. Thus, efforts must be taken to get sustainable development i.e., economic development and ecological development must go hand in hand. Now-a-days, human beings are exposed to electrical pollution 24 hours a day. This type of pollution in the form of technological and advancement, like electricity, nuclear energy etc. should be used for the betterment of mankind. But, in reality, these are used for destructive purpose, which directly violates human rights.

**STOP TO CONSIDER**

**Judicial Response to Violation of Human Rights**

Writings of John Locke, Hugo Grotius and Rousseau depicts the fact that men were living in the state of nature in ancient time, governed by laws of nature to protect them. These natural rights given to men by natural laws are now-a-days

known as human rights. Slowly, people started depending on government for the protection of their rights. It must be noted that the proper enjoyment of human rights depends on the quality of laws of State. But, in the name of protection of human rights, the state should not cross its limits. In such a complex situation, it is the judiciary which protects human rights. For example, in Maneka Gandhi case, the Supreme Court held that an unreasonable, unfair and arbitrary procedure is no procedure at all. Moreover, judicial laws has civilized our prisons. In Sunil Batra v/s. Delhi Administration case, prison reform was emphasized by V.R. Krishna Iyer.

The General Assembly in its Resolution 45/111 of 14<sup>th</sup> December 1990 has also highlighted the key principle that 'all prisoners shall be treated with the respect due to their inherent dignity and value as human beings'.

In Mohammed Giasuddin v/s. State of Andhra Pradesh, the Supreme Court dwelt at length on the mode of treatment of criminals in prisons, the principles of punishment and other allied matters. In Sunil Batra I and Sunil Batra II, the court had occasion to discuss in depth the rights of the prisoners.

### **CHECK YOUR PROGRESS**

- Q.1. Discuss the meaning and evolution of the concept of Human Rights.
- Q.2. Discuss the different human rights instruments at the international level.
- Q.3. Discuss the protection of human rights as an international concern.

### **1.9 Summing Up**

After reading this unit now you are in a position to discuss the different parameters of the concept of human rights. It is evident from the above discussion that human rights protection today is both intra-national as well as inter-national concern. Although globalization can bring prosperity to the nations, but it does not always ensure the protection of human rights. So, people must become conscious about their rights and duties to make realize the goal of complete protection of human rights. In this unit we have also discussed the constitutional provisions for the protection of human rights. Although enshrined in the constitution these rights have remain mere paper aspirations and reality there is a wide gap between the theory and practice.

Only theoretical provisions are not enough to protect human rights, the urgent need of the hour is to make the public conscious about the fact. Human rights can be protected in real sense of the term only when the public at large will become conscious about their human rights protection. Otherwise, the gap between the theory and practice will keep on widening leading to serious consequences.

### **1.10 References and Suggested Readings**

*Human Rights in a Global Perspective*, L.N. Basu. Aavishkar Publishers Distributors, Jaipur (Rajasthan) (2007)

*Human Rights in International Perspective*, A. Natarajan. Aavishkar Publishers, Jaipur (Raj) (2006)

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## UNIT II

### **Approaches to Human Rights: Three Generations rights, Universalism, Relativism**

#### **Contents:**

- 2.1 Introduction
- 2.2 Objectives
- 2.3 Three Generations of Human Rights
- 2.4 Approaches to the Study of Human Rights
- 2.5 Summing Up
- 2.6 References and Suggested Readings

#### **2.1 Introduction**

From the preceding unit, you all have already understood the fact that human rights are those very basic and minimal rights, without which no individual can develop his/her personality. These are the very basic rights, necessary to ensure the dignity of every person as a human being irrespective of one's race, religion, nationality, language, sex or any other factor. It is very pertinent for all of us to understand the different approaches to the study of Human Rights, as well as the three generations of these rights. This unit will introduce you to the different approaches of Human Rights and will also help you to understand the concept of three generations of human rights.

#### **2.2 Objectives**

This unit deals with the approaches as well as the concept of three generations of Human Rights. After reading this unit, you will be able to:

- *understand* different approaches to the study of Human Rights
- *evaluate* the concept of three generations of Human Rights
- *understand* different perspectives of the concept of Human Rights

### **2.3 Three Generations of Human Rights:**

The division of human rights into three generations was initially proposed in 1979 by the Czech jurist Karel Vasak at the International Institute of Human Rights in Strasbourg. He used the term as early as November 1977. Karel Vasak is of the opinion that there are three generations of Human Rights: - first generation – civil and political rights (right to life and political participation), second generation – economic, social and cultural rights (right to subsistence) and third generation – solidarity rights (right to peace, right to clean environment). Out of these generations, the third generation is the most debated and lacks both legal and political recognition. His divisions follow the three watchwords of the French Revolution:-liberty, equality, fraternity. These three generations rights are reflected in the various international documents containing human rights. The UDHR, for example, includes rights that are thought of as second as well as first generation ones, but it does not make the distinction in itself. Now, let us discuss these three generations of Human Rights in detail :

#### **First-Generation Human Rights:-**

First-Generation Human Rights, often called “blue” rights, deal essentially with liberty and participation in political life. These rights are fundamentally civil and political in nature, as well as strongly individualistic. This generation consists of civil and political rights and derives primarily from the 17<sup>th</sup> and 18<sup>th</sup> century political theories, which are associated with the English, American and French Revolutions. First-generation rights include, among other things, freedom of speech, the right to a fair trial, freedom of religion and voting rights. They were pioneered by the United States Bill of Rights and in France by the Declaration of the Rights of Men and of the Citizen in the 18<sup>th</sup> century. They were first enshrined at the global level by the 1948 Universal Declaration of Human Rights, given status in international law in Articles 3-21, and in the International Covenant on Civil and Political Rights. Thus, the first generation of human rights is those which originated in Europe in the 18<sup>th</sup> century. These rights were aimed at securing the citizen’s liberty from arbitrary action by the state. These rights were meant to impose ‘negative obligations on governments to desist from interfering with the exercise of individual liberties’. Thus, these rights were among the major concerns of all liberal and democratic movements since the 19<sup>th</sup> century.

## **Second-Generation Human Rights**

Second-generation Human Rights are related to equality and began to be recognized by the governments after World War II. This view originates primarily in the socialist traditions of Marx and Lenin. These rights are fundamentally economic, social and cultural in nature. They guarantee different members of the citizenry equal conditions and treatment. They include the right to social security, the right to work, the right to a standard of living adequate for the health and well-being of self and family, right to education. Secondary rights would include a right to be employed, rights to housing and health care, as well as social security and unemployment benefits. Like 1<sup>st</sup> generation rights, these rights were also covered by the UDHR, and the International Covenant on Economic, Social and Cultural rights. These rights are sometimes referred to as 'red' rights. These rights impose upon the government the duty to respect and promote and fulfill them, but this depends on the availability of resources. These rights actually emerged in the 19<sup>th</sup> century out of the political and economic struggles of the emergent working class and included political and economic demands like the right to participate in the exercise of political power, the right to universal adult franchise; the right to fixed hours of work; the right to minimum wages; the right to form unions and so on. These rights are also said to be 'security-oriented' as it provides for social, economic and cultural security. These rights are regarded as positive in nature for they make it the duty of the state to ensure that these rights are realized.

## **Third-Generation Human Rights**

The third generation of 'solidarity rights' emerged in the 20<sup>th</sup> century. These rights are a response to the phenomenon of global interdependence and these rights are of relatively recent origin. These rights go beyond the mere civil, and social, as expressed in many progressive documents of international law, including the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, the 1992 Rio Declaration on Environment and Development. These rights include environmental, cultural and developmental rights. These rights are concerned with the rights of groups and peoples rather than of individuals and include such rights as the right of self-determination and the right to development. The third generation rights covers a broad spectrum of rights like, group and collective rights,

right to self-determination, right to economic and social development, right to a healthy environment, right to natural resources, right to communicate and communication rights, right to participation in cultural heritage, right to intergenerational equity and sustainability. Some countries have constitutional mechanisms for safeguarding these rights. These rights are sometimes referred to as 'green' rights. The Declaration on the Right to Development adopted by the UN General Assembly in 1986 is the most important example of these rights.

Thus, we discussed above the concept of three generations of Human Rights. From the above discussion, it is clear that compared to the first and second generations of human rights, the third generation rights are of recent origin.

The first generation of human rights was largely of negative character, as it had deterred the State or the government from denying the political rights and freedoms to the individuals, but the second generation of human rights is essentially of positive character, as the State has been placed under one form of obligation or another including the international obligation to provide for economic, social and cultural rights to the individuals. In the UNESCO vocabulary, the 3<sup>rd</sup> generation of rights or the Solidarity rights constitute the collective or, group rights like the right to environment, right to development, right of nations to self-determination, and right to common heritage of mankind, among others. The contemporary human rights concern has been sufficiently enlarged considering the intensity, expanse and expediency of the third generation of human rights, some of which rights are yet to be fully conceptualized. The 3<sup>rd</sup> World is apparently much more concerned with the 3<sup>rd</sup> generation of human rights.

It must be noted here that between the 18<sup>th</sup> century and the present century, the changing perceptions of human rights led to changes in the nomenclature as well as shifts in the nature and scope of the rights. The 18<sup>th</sup> century notion of rights leaned heavily in favour of the theory of natural rights, which regarded rights as inherent in the human nature and therefore, unalterable and inalienable. There was a belief at that time that nature has endowed mankind with certain basic rights which cannot be taken away from them.

In the 19<sup>th</sup> century, there was a shift in the notion of rights – from natural rights to civil liberties, from personal rights to the rights of participation. It



was realized that a better and fuller enjoyment of rights was possible by more effective participation in the civil and political life. The nineteenth century saw a number of “humanitarian interventions” by the big powers, through diplomacy and sometimes through force, to protest, end or prevent massacres, and other atrocities. They were sharp deviations from the international political system’s assumption that in principle how a State treated its own citizens was its own business.

In the 20<sup>th</sup> century, President Roosevelt’s War time proclamation of the 4 freedoms represented a further shift in the concept of the human rights. The 4 freedoms were a concise and refined version of natural rights and civil liberties of the earlier times plus a new package. The 20<sup>th</sup> century, therefore, gave human rights an economic content.

Thus, from the above discussion, it is clear to all of us that in the evolutionary process, rights which began as a self-assertive variety, became transformed into rights of a self-participatory nature and finally resulted in self-developing rights. All the three dimensions of rights have found its expression in the UDHR adopted by the UN in 1948. 18<sup>th</sup> century notions of natural rights suffered the onslaughts of legal positivism in the 19<sup>th</sup> and early 20<sup>th</sup> centuries, but human rights now are attended by resurgent “neo-natural-rights” theories, and are finding a prominent place in the contemporary scenario. Today it is ‘human rights’ that claims the mantle of the earlier ‘natural law’.

**SAQ :**

Do you think that the third generation Human Rights are very important for the developing countries. Explain. (50 words).

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**STOP TO CONSIDER**

**CONTRIBUTIONS OF HOBBEAS, LOCKE AND ROUSSEAU :**

Thomas Hobbeas (1588-1679), in his masterpiece the Leviathan in 1651, wrote about the state of nature and why men ultimately choose to enter into a human

agreement. For Hobbes, Natural Laws are “counsels of prudence”. Man, who is born free, solitary and in intellectual and moral isolation, voluntarily accepts limitation of sovereignty to achieve something else. He composes a society by human agreement.

John Locke’s (1632-1704), two very notable works are his Essay Concerning Human Understanding and his Essays on Civil Government. Locke pointed out that in a state of nature, men were equal and free to act. From the natural law, men derived certain natural rights. Natural law not only accords man rights, it also imposes duties upon him. Although it is not a state of war, it is a state in which peace was not secure. So, to get out of the state of nature, according to Locke, men make a contract to enter into a civil society. Locke laid down the essential theses of liberalism – that people are the source of all political power.

Jean Jacques Rousseau (1712-1778), has been described both as an extreme individualist and an extreme absolutist. His famous book is Discourse on the Origin and Foundation of Inequality, where Rousseau put forward his ideas. Rousseau believed that only where the General Will reigned there only men’s nature can be developed. Thus, Rousseau’s work is the reassertion of the Aristotelian view that man is a political animal whose nature can be fulfilled only in the state.

## **2.4 Approaches to the Study of Human Rights**

We have already discussed in the first unit the meaning and concept of human rights. So, you all know that Human Rights are those very basic and inherent rights which are essential for human being development. These rights are in consonance with the concept of human dignity. It is to be noted here that there are different approaches to the study of Human Rights. Let us discuss these approaches in details :

### **1. Universalistic Approach:**

This approach believes in the universality of human rights. According to this approach, the human rights are universal and accepted by all states, regardless of their historical, economic, social and cultural differences or ideological persuasions. Earlier, the concept of human rights were narrow in their scope and application. On account of the convergence of several historical factors, by the middle of the 20<sup>th</sup> century, a concept of human rights universal in its approach and comprehensive in its content emerged. For the first time, the

international concern for human rights found expression in the Charter of the United Nations. It proclaimed universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion. The UN Charter thus ushered in a new international law of human rights. Until then, the question of human rights was considered to be a matter between state and individuals within its territory. As such it was beyond the reach of international community. In December 1948, the UN General Assembly proclaimed the Universal Declaration of Human Rights, which defines specific rights – civil and political as well as economic, social and cultural – all in a common framework. The Universal Declaration was not conceived as law but as a “common standard of achievement” for all peoples of all nations. It stirred the moral consciousness as well as the political assertiveness of people in various countries. Though the Declaration has a worldwide significance, the Declaration carries no legal sanction to compel states to meet the obligation of ensuring observance and implementation of human rights enshrined in the Declaration. So, the General Assembly promulgated in December 1966, two Covenants i.e., International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights. Humanitarian intervention at the international level may be considered as an indication of international concern for human rights. Thus, from the time of the establishment of the United Nations, there has been a tremendous surge in the development of international concern for human rights. This approach believes the fact that it is the obligation of the states to respect, protect and implement human rights as internationally agreed upon. The fact that human rights require a set of corresponding duties to the community is also given due acknowledgement. It is believed that rights without emphasis on the duties could prove to be counterproductive. Thus, the UDHR states that everyone has duties to the community in which alone the free and full development of his personality is possible. Thus, a global human rights regime has started with this approach.

From the above discussion, it is clear that the internationalization and universalization of human rights has its significance in the fact that for the first time in the history of mankind, every individual can enjoy certain rights, irrespective of his origin, religion, race, colour and nationality. These rights are universal and accepted by all the states, regardless of their historical,

economic, social and cultural differences or ideological persuasions. These rights are civil, political, economic, social and cultural, thereby covering every facets of human life.

## **2. Relativist Approach:**

The concept of Human Rights varies from generation to generation and changes with the changing circumstances. Even within the same society, perception of what human rights are, may vary from state to state. It is contended by this approach that the universality of human rights does not fit very comfortably in every political order. We can mention here about three competing theoretical models of human rights in international relations, each with its own conception of the international community and its role in international human rights.

(a) The traditional statist model sees human rights as principally a matter of sovereign national jurisdiction. However, the contemporary statist consider the fact that human rights are no longer the exclusive preserve of states. Nonetheless, statist insist that human rights remain principally a matter of sovereign national jurisdiction and a largely peripheral concern of international relations.

(b) The cosmopolitan model starts with individuals rather than states. This model focuses on the challenges to the state and its powers both from below, by individuals and non-government organizations, and not merely international organizations and other groupings of states. They often see international organizations, and even some NGOs as representatives of an inchoate global community of humankind above the society of states.

(c) The internationalist model lays stress on the evolving consensus among states and nonstate actors alike on international human rights norms. The internationalists focus attention on the international society of states. International human rights activity is permissible only to the extent authorized by the formal or informal norms of the international society of states.

Thus, the exponents of this approach lays stress on the point that the moral values are historically and culturally specific rather than universal. So, there are variety of distinctive and defensible conceptions of human rights, which deserve respect. The First World or the “Western” approach emphasizes in civil and political rights and the right to private property. The Second

World or the “Socialist” approach emphasizes in economic and social rights. The Third World approach emphasizes in self-determination and economic development.

Thus this approach holds the notion that human rights are determined by history, culture, economics or some other independent social force and is best seen as a matter of degree.

### **3. Feminist Approach on Human Rights:**

According to this approach, women’s rights are given much importance in the field of international humanitarian laws. Earlier, there were general human rights laws, but there was no mention of specific human rights concerning women. But, both in Vienna at the UN World Conference on Human Rights in 1993 and in Beijing at the UN World Conference on Women in 1995, women’s rights were recognized as important aspect of human rights. The growth of the women’s movement is an important factor in international politics today. It has resulted in the reinterpretation of human rights from the gender perspective by making mainstream human rights responsive to women’s concerns. However, relative to other fields, women’s rights are more fragile, have weaker implementation procedures and suffer from inadequate financial support from the United Nations. But, still, it is to be noted here that now-a-days, women’s rights have been catapulted on to the human rights agenda, with speed and determination. There are two aspects to this process : first, the attempt to make mainstream human rights responsive to women’s concerns; and, second, the conceptualization of certain gender-specific violations as human rights violations. The growing importance of women’s rights has transformed the basic tenets of international law. It is often said that civil and political rights are the first generation of human rights; economic, social and cultural rights are the second generation; and group rights as the third generation rights. It is also said now-a-days that women’s rights are considered the fourth generation. It is believed that women’s experiences are different and women’s rights should learn to respect these differences without resorting to male privilege. Thus, this approach focuses its attention on a vast array of rights, which are essential to protect women’s dignity and status.

### **4. Marxist Approach on Human Rights :**

This approach is focused in the writings of Karl Marx, F. Engels, V.I. Lenin and a host of other thinkers broadly belonging to the Marxist school of thought. This concept of human rights puts emphasis on social rights rather than individual rights. Dominated by the writings of Marx, this approach believes that the full realization of an individual's self is possible only within the context of a society. In as much as an individual should be concerned with his development, the society has an interest in facilitating the advancement of individuals. Thus, in Marxist-Leninist doctrine, rights comes from law, which comes from government and which reflects the underlying economic relationships in any society. Marx depicted Communism as the fulfillment of the individualistic goals which liberalism had proclaimed but had been unable to realize. Thus, Marx believed that the alienation of man could end only with the establishment of Communism – when classes have been eliminated, exploitation has ceased and the state has withered away. Thus, according to this approach, it was the nature of the community that determined the rights and fate of man. Thus, this approach asserts the fact that rights can be best enjoyed in a classless order of society.

### **5. Third World Approach on Human Rights:**

The third world or the developing countries face a host of problems, which are peculiar to these countries, because these countries were under colonial exploitation for a long span of time. So, these countries face problems like malnutrition, poverty, illiteracy, unemployment etc. and due to this reason, Human Rights appears to be illusory to large sections of population of these countries. Human rights violation is a common feature in most of the developing world where criminalization of politics and lack of accountability has become the order of the day. We all know that there are lot many international declarations for protection and promotion of human rights, but, still it is very difficult to arrive at a common concept of human rights in these developing countries. Nor is there a common framework of action.

So, from the above discussion, it is clear that the diverse socio-cultural conditions of the Third World countries do not permit them to approach the promotion and protection of human rights in a unified manner. Nor can they be guided by the western style ideology and thinking on the protection of human rights on account of the differences in culture and socio-economic realities. It is very difficult for them to adopt the western style due to the following reasons:

- First, the incorporation of western theories of human rights would amount to the continuation of the colonial heritage.
- Secondly, any kind of incorporation of the human rights regime determined by the west would be either inappropriate or too rigid for these countries.
- Thirdly, the politicization of human rights has made the ruling elite's of the third world highly suspicious of the western notion of human rights.

The wave of liberalizations and democratizations throughout the Third World countries have further changed the concept of human rights in these countries. All these countries, soon after their independence, have embarked upon the path of development and economic reconstruction. So, these countries at times feel being in dilemma as to how to protect human rights. Even within the Third World, there remains a sharp disagreement on the exact scope and nature of basic human rights, on the treatment of substantive human rights, economic issues and the methodology of protection of these human rights. However, for a balanced approach, it is imperative that the issues of human rights in these countries are viewed in the broader context.

#### **6. Gandhian Approach to Human Rights:**

Gandhiji's view of human rights was a part and parcel of his overall philosophy of life. Gandhiji gave a spiritual orientation to the concept of human rights. The evils against which Gandhiji fought were racialism, imperialism, communalism, untouchability etc. Gandhiji fought for the protection and promotion of Indian's rights during the British rule. Gandhiji believed in the twin doctrines of truth and non-violence and believed that human rights can be best enjoyed in peaceful situations. Gandhiji launched a vigorous attack on the concentration of power in the state. He believed that rights can be best enjoyed in a decentralized polity, where power is genuinely decentralized. Gandhiji was against centralization of power and he believed that in centralized polity, no one can enjoy his rights properly. It is only in Swaraj that enjoyment of rights and freedom gets maximized. Gandhiji wanted to establish a really egalitarian society, based on mutual active love and harmony, where everybody will be able to enjoy human rights properly.

Thus, we have discussed above the leading approaches to the study of human rights. Apart from these approaches, there are certain theories of human rights. These theories of human rights can be placed under two categories : the Classical Liberal Theories and the Modern International Theories of human rights.

**Classical Liberal Theory of Human Rights:** the genesis of the concept of human rights can be traced to the emergence of classical liberalism. Classical Liberalism stands for principles like, competitive individualism, private property and market ethics. It cherished the notion of realization of individual's liberty. The 17<sup>th</sup> and 18<sup>th</sup> century school of political liberalism supported the ideas of the rule of law, limited government and individualism. This theory is the earliest theory of rights, which came to the fore in the 17<sup>th</sup> century and popularized the idea that all men possess certain rights by nature irrespective of particular political, social or legal institutions. The supporters of this theory believed that the individual had some natural, inalienable, fundamental, inherent, absolute and sacred rights by birth. These rights were independent of society and the State. According to the exponents of this theory, these natural rights are pre-political and pre-social. Thus, the Liberal-Individualist Theory of Natural Rights is the earliest theory of rights which gained distinct recognition from the authors of the Social Contract theory – Hobbes, Locke and Rousseau.

**Modern theories of human rights:** the modern theories of human rights are a product of the 20<sup>th</sup> century and has asserted the promotion of the establishment of human living conditions and the overall development of the human personality. These theories have come to the fore either as a reaction against the old theories or as refinement of the prevalent theories. The names of scholars like, John Rawls, Nozick, Modougal and Dworkin are associated with these theories.

The modern theories of human rights can be broadly placed under the following categories :

- ▶ Theories based on Core Rights;
- ▶ Theories based on the value of Utility;
- ▶ Theories based on justice;
- ▶ Theories based on a revisited State of Nature and the Minimalist State;



- ▶ Theories based on Dignity;
- ▶ Theories based on Equality.

The main contentions of these theories are like:

- ▶ The validity of the human rights is established by specific legislation, which receive an extended treatment by two branches of law i.e., Constitutional and International law.
- ▶ Human rights are vested in all the individuals and a human being enjoys his or her rights both as an individual and a citizen;
- ▶ The human rights concept remains immutably valid where ever human beings live a collective life.

We must deal here with the ideas or views of John Rawls' in order to understand properly the modern theories of human rights. John Rawls is regarded as a very important advocate of the theory of liberty and he tried to reconcile the liberal ideal of political obligation with a redistributionist conception of social justice. Rawls is an egalitarian and an advocator of justified inequality. In his 'Theory of Justice' (1971), he attempts to portray the liberal idea of political obligation. Thus, Rawls conception of justice has deep roots in the liberal democratic tradition. Like the traditional theory of social contract, Rawls referred to a hypothetical situation to construct his theory of justice. Two principles of justice emerge from Rawls notion of justice which guarantees:

- ▶ Equality of political rights as citizens in a democratic country.
- ▶ Fair treatment in the distribution of social and economic values.

The first principle implies that every body should have an equal share of liberty in the society, along with other individuals. The basic liberties of citizens are political liberty together with freedom of speech and assembly, liberty of conscience and freedom of thought, right to hold property and freedom from arbitrary arrest. Under the second principle, inequalities in wealth and income cannot be justified. Income and wealth would have to be equally distributed among the citizens. Rawls believes that basic liberties are essential for the individuals if a society has to move towards perfection.

**CHECK YOUR PROGRESS:**

Q.1. Discuss in detail about the three generations of Human Rights.

Q.2. Discuss the different theories and approaches to the study of Human Rights.

Q.3. Discuss the contributions of John Rawls in the field of human rights.

**2.5 Summing Up**

Thus we have discussed above the different approaches to the study of human rights. We have also discussed the concept of three generations of human rights. From the above discussion, it is clear to all of us that different approaches views human rights from different perspectives. However, the basic idea underlying the concept that these are a vast array of basic, inherent and inalienable rights remain unchanged.

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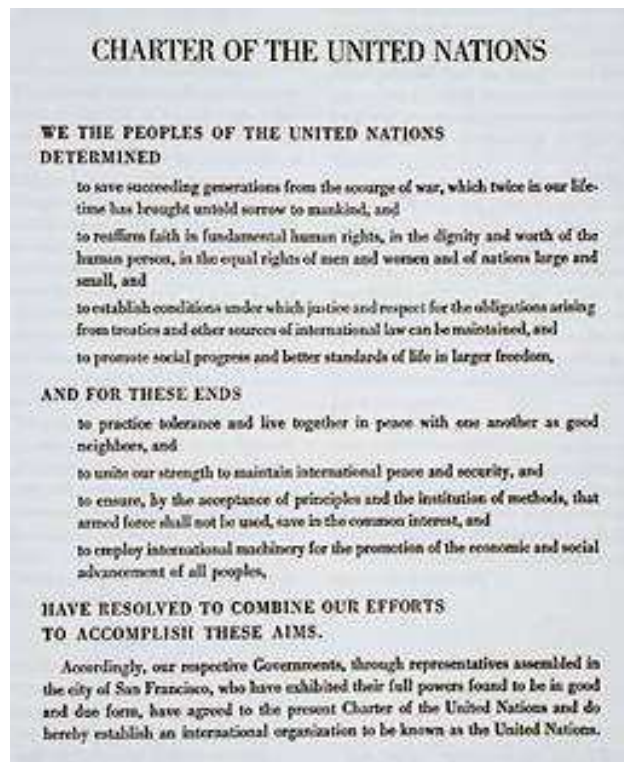
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## BLOCK II

### Protection of Human Rights

**Unit I : The UN Charter, Covenants and Optional Protocol**

**Unit II : UDHR and other Declarations, Amnesty International,  
International Court of Justice**



## **Unit I**

### **The UN Charter, Covenants and Optional Protocol**

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- 1.2 Objectives
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#### **1.1 Introduction**

The study of human rights is important in the contemporary world. In short we can say that human rights are of universal importance. The use of the term human rights dates back to the French Declaration of the Rights of Man and of the Citizen (1789)—‘les droits de l’homme’), but it gained wide currency only in the middle of the twentieth century. We can define human rights as the inherent rights of an individual which are common to all

regardless of caste, class, colour, religion, race, sex etc. It needs mention here that Human rights are always natural. So these need to be protected for peaceful existence of human life. The present political environment shows the vertical erosion in the standards of fundamental human rights. Thus, here arises the need to protect the human rights. It is a good sign for us that many international organisations and non governmental organizations have come forward to protect these rights and they are working for bringing awareness among the people. It is believed that awareness is the best protector of ones rights. In this context we must acknowledge the efforts of United Nations Organisations (UNO) towards the protection of human rights. Here in this unit we are going to discuss UN's charter and its various protocols. The unit mainly deals with the role of UN charter and its initiative along with the conventions and protocols of UN towards the protection of human rights.

## **1.2 Objectives**

Due to the efforts of UN all the countries around the world strive hard to safe guard human rights through their constitution and as per the provisions of UN. After going through this unit you will be able to

- *discuss* the role of international laws in protecting human rights
- *analyse* the role of UN charter in protecting human rights
- *examine* the importance of international protocols, conventions and covenants
- *describe* the role of UN protocols and conventions in protecting human rights

## **1.3 The UN Charter and Human Rights**

We know that UN is an international organisation and rules and regulations made by it are applicable to all its member states. So, before discussing the role of UN we have to know the meaning of international law. International law implies a set of legal agreements, treaties, and traditions that is supposed to regulate the conduct of nations toward each other and toward their citizens. In the latter sense international law has the most relevance for human rights.

The history of international law began with the agreements between nations and groups of nations, but it got popularised and began to regulate the behaviour of states toward individuals. Hence we can say that in the 19<sup>th</sup> century internationally agreed upon doctrine of human rights come into being only in the nineteenth century. Regarding human rights the first substantive agreements issues were the Geneva Conventions of 1864. The convention mainly dealt with the conduct of wars. It has discussed the manners how to treat war prisoners, citizens of enemy nations and soldiers in time of war. In 1949 more than 150 nations were agreed to the provisions of Geneva Convention to respect the human rights of enemy soldiers and civilians. With the establishment of UN in the year 1945 remarkable progress was made in the protection of Human rights. An attempt of UN to make sure that the horrors of World War II would never be repeated, oversaw passage of a series of international agreements designed to make the defence of human rights a part of international law and leading to the Universal Declaration of Human Rights. The UN charter also deals with the protection of human rights. The charter of UN is dedicated to the welfare of human being across the world. Let us discuss the provisions of UN charter which basically deal with the protection of human rights.

### **1.3.1 Charter of UN**

We know that from the initial stages of the Second World War people were assured through various meetings, conferences and declarations that some kind of world organisation would be established after the final victory of the allies. Finally the charter was signed at the San Francisco Conference on 26<sup>th</sup> June 1945 by 51 nations. The UN charter contains a preamble, 111 articles and 19 Chapter.

#### **STOP TO CONSIDER**

##### **Preamble of UN charter**

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and 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, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS. Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

From a close analysis of UN charter we come to know that it is dedicated to ensure individual freedom. The preamble also declares its aims and objectives and its dedication towards the welfare of mankind. The charter gives due importance to the aim of promoting human rights and fundamental freedoms. The basic goal of the charter is to achieve international corporation in promoting and encouraging respect for human rights.

Chapter IX (Article 55-56) of the charter declares that UN will try to promote a high standard of living, full employment to create conditions of economic and social progress and development, promotion of universal respect for observance of human rights and fundamental freedom. Let us now have a look at Articles 55 and 56

#### **Article 55**

With a view to the creation of conditions of stability and wellbeing which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

### **Article 56**

All Members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55.

Again, Article 62 (Chapter X), provides for setting up one Human Rights Commission for the promotion of human rights.

Accordingly one Human Rights Commission was set up in 1946 under the chairmanship of Mrs. Eleanor Roosevelt and at present it has 53 members. The Commission is the policy making body to deal with human rights violation cases. It needs mention here that under the guidance of this Commission The Universal Declaration of Human Rights and Fundamental Freedoms was adopted on 10<sup>th</sup> December 1948. The Declaration was adopted as a common standard of achievement for all people and all nations.

### **Article 62 states**

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Thus we have seen that the promotion and protection of human rights has been a major preoccupation for UN since its establishment. Over the years a whole network of organisations have been developed to ensure the



primacy of human rights and to confront their violations. It is worth mentioning that the application of laws and rules made by the UN depends on the will of the concerned nation. In other words we can say that UN laws regarding human rights will be achieved through the acceptance of such laws by the member states.

### **CHECK YOUR PROGRESS**

1. What do you mean by international law?
2. Discuss the provisions that dealing with human rights of UN charter.
3. Write a note on role of UN in protecting human rights.
4. Fill in the blanks
  - a. The Charter of UN has \_\_\_\_\_ Article and \_\_\_\_\_  
— Chapter.
  - b. \_\_\_\_\_ was the first chairman of UN Human Rights Commission.

### **STOP TO CONSIDER**

#### **World Human Rights Day:**

On 10<sup>th</sup> December, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights (UDHR). The UDHR signifies the rights which belongs equally to every individual. It envisages that all human beings are born free, equal in dignity & rights and are entitled to enjoy all rights. The declaration also talks about various civil, political, economic, social and cultural rights.

Since 1948 World Human Rights Day is celebrated all over the world. This day was also declared to raise awareness among those who are deprived of their rights. ([www.orissa.gov.in](http://www.orissa.gov.in))

### **1.3.2 The Universal Declaration of Human Rights**

As we have mentioned earlier, on December 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal

Declaration of Human Rights. Following this historic Act the Assembly called upon all member countries to publicize the text of the Declaration and “to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories.” In other words we can say that the declaration was the milestone in the history of protection and promotion of human rights. According to the General Assembly of UN, “this Universal Declaration Of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”.

The Declaration has 30 Articles and it was first and foremost a Declaration of the basic principles to serve as a common standard for all nations. It was considered as the international Magna Carta of all Mankind.

Some important Articles of the Declaration are quoted below:

**Article 1**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 3**

Everyone has the rights to life, liberty and security of person.

**Article 6**

Everyone has the rights to recognition everywhere as a person before the law.

**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law.

**Article 18**

Everyone has the rights to freedom of thought, conscience and religion; this rights includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any rights to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Thus it is seen that the UDHR of UN is dedicated to the protection and promotion of human rights of all people across the globe. The most important thing is that no discrimination is made on the basis of one’s social and political status. According to the Declaration all people are equal and equipped with some inherent natural rights and we have to give due respect to them regardless of their class, caste, gender, race etc. No discrimination should be made on the basis of economic condition. The Human Rights Commission of UN is responsible for the implementation of the provisions of the Declaration.

**SAQ:**

Do you think without people’s participation helps to achieve the goals of UDHR? (50 words)

.....

.....

.....

.....

## **1.4 International Covenants on Human Rights**

Since the establishment of UN, it was in favour of promoting human rights and developing an awareness programme on human rights. For this purpose during the San Francisco Conference of 1945 a proposal was put forward to embody an International Bill of Rights in UN charter which was ratified by the General Assembly in January 1946. Again in 1947 the Human Rights Commission of UN has decided that the Bill should consist of the 'Declaration', the Convention, and the measures of Implementation. After getting consent of UN General Assembly in 1952, two great International Covenants, one on Civil and Political Rights Covenant (ICCPR) and other on Economic, Social and Cultural Rights Covenant (ICESCR) was adopted on 16 December 1966 but came into effect from 1977. Let us discuss these two international Covenants briefly:

### **1.4.1 The International Covenant on Civil and Political Rights**

The ICCPR came into force on 23<sup>rd</sup> March 1976 together with its Optional Protocol. The prime aim of this Covenant is to provide the rights of self determination, rights to life, abolition of slavery and suppression of slave trade, rights to liberty, rights of prisoners to be treated with humanity, rights of not to be imprisoned arbitrary, rights of every one to leave any country including his own and to return to his country, rights to equality in the administration of justice, rights to provide legal assistance etc. The Covenant consists of a Preamble and 53 Articles. It has the provision to check violation of human rights and implement human rights. In order to implement human rights there is a provision to establish an international organ known as Human Rights Committee. Some important Articles of this Covenant are as follows:

#### **Article 1**

1. All peoples have the rights of self-determination. By virtue of that rights they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and

international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the rights of self-determination, and shall respect that rights, in conformity with the provisions of the Charter of the United

### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### **Article 6**

Everyone has the inherent rights to life and this rights shall be protected by law. No one has the rights to interfere in the rights of one's life.

### **Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

### **Human rights Committee and measure of Implementation:**

As we have mentioned earlier, the ICCPR has provided for the establishment of a Human Rights Committee consists of 18 members as nodal agency for the implementation of the provision of the covenant. The committee follows four different ways of procedure in implementing human rights as provided in the Covenant. They are

1. Meetings: usually held in Geneva where officials are elected for 2 years tenure. It establishes its own rules and its decisions are to be made accordingly.

2. Reporting: Under the provision of Article 40 the state parties should submit reports with in one year of the entry into force of the covenant and also whenever they are requested to do so by the committee. Such reports are submitted to the Secretary general of UN and he will send it to the committee for the further action.

3. Inter State Communication system: Under article 41 the convention argued for bilateral settlement between the concerned states. And,

4. Conciliation: such Conciliation committee is formed when the committee is not able to find out a solution.

But it needs mention here that the concerned parties are free to accept or reject the views submitted by the committee. It means the application of the provisions greatly relies on the apathy of concerned parties. Again it is to be noted that there are certain limitations imposed upon the rights enumerated in the convent and during the emergency they are subject to derogation.

#### **1.4.2 The International Covenant on Economic, Social and Cultural Rights**

175 member states became the signatories of this covenant including India. A country that ratifies the covenant acknowledges its responsibility to promote better living conditions of its people. All the signatory members have extended their full support to the provisions of the convent. The Covenant helps the state parties to develop friendly relations among them. The Covenant also aims at bringing awareness among the people to know their responsibilities and duties for himself, others and for the society. To achieve the goals of the convent it is necessary for the parties to take steps either individually or through international assistance and co-operation, especially in the field of economic and technical and helps them to utilise maximum available resources.

The covenant mainly deals with the every one's rights to work, to fair wages, to social security, to adequate standards of living and freedom from hunger

and to health and education. The covenant also seeks to ensure the rights of everyone to form and join trade unions and for this purpose the parties are expected to adopt legislative measures. The covenant consists of a preamble and 31 Articles. Let us look at some important Articles of this covenant.

## **STOP TO CONSIDER**

### **Preamble of ICESCR**

*The States Parties to the Present Covenant,*

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person,

Again, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

## **Part I**

### **Article 1**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **Part II**

### **Article 2**

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

## **Part III**

### **Article 6**

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance



and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

### **Article 7**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

### **Article 9**

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

### **Article 10**

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

#### **Article 14**

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

#### **Part IV**

#### **Article 19**

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

#### **Article 23**

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

## **Article 24**

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

## **Part V**

### **Article 28**

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

It needs mention here that Part V of the covenant deals with the provision that the covenant should be implemented in all parts of Free states and it would be put into force after three months from the date of ratification.

For the implementation of the convent, it provides for a system of periodic reports by the member states. The member states undertake to submit reports to the Economic and Social Council (ECOSOC) of UN on the measure adopted and the progress made in this field. But like all other convents and international laws the adaptability and application relies on the apathy of its member states.

### **1.4.3 Convention on the Prevention and Punishment of the Crime of Genocide**

The convent on the Prevention and Punishment of the Crime of Genocide was Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 and has entered into force on 12 January 1951, in accordance with article XIII. The un has of the view that now genocide is a punishable crime and crust on human civilisation. Therefore to reduce such crimes and to promote humanity UN General Assembly adopted this convention with the view to promote greater integration in this filed. The covenant consists of 19 Articles. Some important Articles are :

### **Article 1**

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

### **Article 2**

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

### **Article 3**

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

### **Article 4**

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

### **Article 5**

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective

penalties for persons guilty of genocide or any of the other acts enumerated in article III.

#### **Article 7**

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

#### **Article 9**

Disputes between the contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

#### **Article 11**

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 19**

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

#### **1.4.4 International Convention on the Elimination of all Forms of Racial Discrimination**

This convention was adopted by the UN General Assembly on 21<sup>st</sup> December 1965 and came into force from 4<sup>th</sup> January 1969. The prime aim behind the adoption of this convention is to ensure that the principles of individual dignity and equality would be considered as inherent rights of individual and would be implemented through joint cooperation by its member states. Apart from this, UN also encouraged the member states to promote universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

The members of the convention convinced that any law based on racial differentiation is fruitless and unscientific and morally condemnable. According to the convention such laws bring injustice to the society and dangerous for the mankind. Hence according to this convention there is no justification for racial discrimination, in theory or in practice, anywhere and such racial barriers is repugnant to the ideals of any human society. The convention consists of 25 articles. Some of the important articles are as follows:

##### **Article 1**

1. In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or 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.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

### **Article 3**

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

### **Article 6**

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

### **Article 8**

There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

### **Article 10**

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.

4. The meetings of the Committee shall normally be held at United Nations Headquarters.

### **STOP TO CONSIDER**

#### **Convention on the Elimination of all Forms of Discrimination Against Women**

Adopted and opened for signature, ratification and accession by General Assembly resolution of 18 December 1979 and entered into force from 3<sup>rd</sup> September 1981. Article 1 of this convention made the statement that, for the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Again the state parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

### **CHECK YOUR PROGRESS**

1. Discuss the role of International Covenants and conventions on Human Rights in promoting human rights.
2. Discuss the role of ICCPR and what kinds of measures are taken for the implementation of its provisions.
3. Discuss the role of ICESCR in protecting and promotion of human rights.
4. What do you mean by racial discrimination? What kinds of measures are taken by the international community to prohibit racial discrimination?

### **1.5 Optional Protocols**

As we have mentioned earlier UN general Assembly unanimously adopted two major conventions and to supplement these two conventions a separate



instrument called the optional Protocol to the Civil and Political Rights Covenant was adopted in 1966. the basic aim of to adopt this protocol is to regulate implementation arrangements. Here in this section we are going to discuss two optional protocols briefly.

### **1.5.1 First Optional Protocol to the International Covenant on Civil and Political Rights**

Though this protocol is a separate instrument and applied for regulating implementation arrangements, but it is related to the International Covenants of Civil and Political Rights. Because, only the members to the Covenant can become the member to the protocol. Again, both the protocol and the covenant came into force simultaneously on 23<sup>rd</sup> march 1976 and aimed at the protection and promotion of human rights. Thus it is seen that since the inception of UN, the individual becomes the nucleus of international law. The protocol provides an opportunity to the member states to send any notification to the Secretary General of UN. According to this protocol, The States Parties “*Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant*”.

It needs mention here that the signatory country of the covenant as well as the protocol undertakes to protect its people by law against cruel, inhuman or degrading treatment. The protocol recognises the rights of every individual being to life, liberty, privacy and security of a person.

The Protocol consists of 14 Articles. Let us look at some important articles of this Protocol

### **Article 1**

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

### **Article 2**

Subject to the provisions of Article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

### **Article 3**

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the rights of submission of such communications or to be incompatible with the provisions of the Covenant.

### **Article 4**

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

### **Article 7**

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the rights of petition granted to these peoples by the Charter of

the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

### **Article 10**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

### **1.5.2 Second Optional Protocol to the International Covenant on Civil and Political Rights**

The Second International Protocol to the International Covenant on Civil and Political Rights has entered into force from 11<sup>th</sup> July, 1991. The protocol mainly aimed at abolition of the death penalty. The sanctioned behind this protocol was that the signatory members had believed that abolition of the death penalty can contribute to enhancement of human dignity and progressive development of human rights. Again, all members recognised that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the rights to life. The protocol consists of 11 Articles. Some of the important Articles are quoted below:

#### **Article 1**

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

#### **Article 2**

No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

#### **Article 3**

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

## **Article 6**

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.

2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the rights guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

## **Article 9**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Thus it is seen that International Community with the help of UN is trying to protect human rights through adopting various covenant, conventions and protocols. The protocols are supplementary to the international covenants. Apart from these in order to prosecute future human rights crimes on a less ad hoc basis, the United Nations, in 1996, voted to create an International Criminal Court (ICC). The ICC was authorized to try crimes against humanity, including genocide, war crimes, slavery, mass rape, torture, and racism. However, despite such efforts of international community, still human rights violation cases are increasing day by day. Protection of ones human rights demands everyone's participation and awareness. Again application of international laws relies on the apathy of member states of UN.

### **CHECK YOUR PROGRESS**

1. Discuss the role of International protocols in protecting human rights.
2. Why should we abolish death penalty?
3. Discuss the measures taken by the international community to abolish death penalty?

### **SAQ:**

Do you think that International protocols are supplementary to the International Convents.

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### **1.6 Summing Up**

After going through this unit now you are in a position to examine the efforts of international community in the promotion and protection of human rights. In this unit you have learnt that, the United Nations always tries to protect human rights and it wants to make sure that the horrors of War would never be repeated. Therefore a series of international agreements designed to make the defence of human rights. The central document in these international agreements was the United Nations Universal Declaration of Human Rights passed in 1948.

### **1.7 References and Suggested Readings**

Lewis, J & Kutsch, C, *Human Rights Encyclopaedia*, Vol-3, Sharpe Reference, New York, 1992

Campbell, Tom, David Goldberg, Sheila McLean, and Tom Mullen, eds. *Human Rights: From Rhetoric To Reality*. New York: Basil Blackwell, 1986.

Claude, Richard Pierre, and Burns H. Weston, *Human Rights in the World Community*. Philadelphia, PA: University of Pennsylvania Press, 1992.

Jayapalan. N, *Human Rights*, APD, New Delhi, 2000

### **Report and Conventions:**

- UN Charter
- UDHR
- All Convents and Protocols as depicted in the Unit

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## **Unit II**

### **UDHR and other declarations, Amnesty International, International Court of Justice**

#### **Contents:**

- 2.1 Introduction
- 2.2 Objectives
- 2.3 Universal Declaration of Human Rights
  - 2.3.1 Salient features of the Declaration
  - 2.3.2 Provisions of the Declaration
  - 2.3.3 India and the Declaration
- 2.4 Other Declarations and Covenants on Human Rights
- 2.5 Amnesty International and International Court of Justice
- 2.6 Summing Up
- 2.7 References and Suggested Readings

#### **2.1 Introduction**

We have discussed (in the earlier) units the meaning and evolution of the concept of Human Rights. From that discussion, we are clear about the fact that human rights are basic for development of human race. In the absence of these very basic rights, human dignity and status cannot be protected. So these rights are very important for development of individual personality. Since the end of the First World War, there has been a growing belief that human rights require international guarantees. The Second World War brought about massive abuse of human rights. Thus, it became clear that international instruments were needed to codify and protect human rights. Thereby, the United Nations Charter contains provisions for the protection of human rights. Article 1 of the Charter states that one of the aims of the UNO is to achieve international co-operation in promoting and encouraging

respect for human rights and ensuring fundamental freedoms to all without distinction as to race, sex, language or religion. But, in course of time, need was felt for an International Bill of Human Rights, dealing with certain specific rights. Thereafter, the Universal Declaration of Human Rights (UDHR) was adopted on December 10, 1948. Thus, concerning human rights protection, the most important step was undertaken by the UN General Assembly on Dec. 10, 1948, while adopting the UDHR. Apart from this, there are some other Declarations concerning promotion and protection of human rights. This unit will help you to understand the significance of UDHR as well as other Declarations, Amnesty International and International Court of Justice.

## **2.2 Objectives**

This unit deals with UDHR, other Declarations on human rights, Amnesty International and International Court of Justice. After reading this unit, you will be able to :

- *understand* the significance of UDHR
- *discuss* other Declarations on human rights
- *evaluate* the contribution of Amnesty International and International Court of Justice in the protection and promotion of human rights.

## **2.3 Universal Declaration of Human Rights**

The task of drawing up an International Bill of Human Rights, defining the human rights and freedoms referred to in the Charter of UN was entrusted to the Commission on Human Rights, established in 1945, 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 efforts, the Commission drafted a Universal Declaration of Human Rights. The Declaration was approved by the General Assembly of the United Nations on December 10, 1948 'as a common standard of achievement for all peoples and nations'. The Declaration is comprehensive, covering variety of rights. The basic aim of the Declaration is to ameliorate and develop the lives of all human beings and it truly desires to free mankind from fear, poverty, unemployment, wants, ignorance, superstitions etc.

The UDHR recognized the dignity and equality of human beings as the foundation of freedom, justice and peace in the world, Contempt and disregard of human dignity had resulted into barbarous acts outraging the conscience of mankind. The Declaration has no binding legal value, but it has great political and moral authority and a definite impact on the thinking and practice of the United Nations and governments, in the context of problems relating to human rights. The Declaration has worked as a political stimulant, an educator and a moulder of conscience. Many countries all over the world used the Declaration for their political reconstruction, embodying the provisions of the Declaration in their own national constitutions. For example, the constitution of India, Nigeria, West Germany.

### **2.3.1 Salient Features of the Declaration**

The Declaration is a remarkable juncture of political-civil and economic-social rights, with equality and freedom from discrimination as the principal and recurrent theme. The UDHR containing 30 articles. Articles 1 and 2 of the Declaration state that all human beings are born equal in dignity and rights and are entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The UDHR provided the basis for the formulation by the United Nations of covenant and conventions, declarations and recommendations on specific aspects. The rights proclaimed in the Declaration can be broadly divided into two kinds. The first refer to civil and political rights, like, the right to life, liberty, and security of person; freedom from slavery and torture; equality before law etc. The second category of rights includes economic, social and cultural rights which relate to the right to work, equal pay for equal work, the right to form and join trade unions, the right to education etc.

The two broad sets of human rights affirmed in the UDHR – civil and political rights, and, economic, social and cultural rights were elaborated and divided into two covenants – the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. These three documents – the UDHR, the International Covenant on Civil



and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), along with the two Protocols – the Optional Protocol on the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty – constitute the International Bill of Human Rights. The adoption of these two Covenants endorsed the General Assembly Resolution of 1950 that the enjoyment of civil and political rights and economic, social and cultural rights are interconnected and interdependent. Now let us have a look at the basic provisions of these declarations

### **2.3.2 Provisions of the Declaration**

As stated earlier, Articles 3 to 21 of the Declaration contain the following civil and political rights to which all human beings are entitled:

- the right to life, liberty and security of person;
- freedom from slavery and servitude;
- freedom from torture or cruel, inhuman or degrading treatment or punishment;
- the right to recognition everywhere as a person before the law; the right to an effective judicial remedy; freedom from arbitrary arrest, detention or exile; the right to a fair trial and public hearing by an independent and impartial tribunal; the right to be presumed innocent until proved guilty;
- freedom from arbitrary interference with privacy, family, home or correspondence; freedom from attacks upon honour and reputation; the right to protection of the law against such attacks;
- freedom of movement, the right to seek and to enjoy in other countries asylum, the right to a nationality;
- the right to marry and to have a family, the right to own property;
- right to freedom of thought, conscience and religion, right to freedom of opinion and expression;
- the right to peaceful assembly and association;

- the right to take part in government and to equal access to public service.

Articles 22-27 of the Declaration deals with the following economic, social and cultural rights:

- the right to social security;
- the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment;
- the right to equal pay for equal work, the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity;
- the right to form and join trade unions; the right to rest and leisure;
- the right to a standard of living adequate for health and well-being;
- the right to education, which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, and shall further the activities of the United Nations for the maintenance of peace;
- the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

The concluding Articles are Articles 28-30. Article 28 declared that everyone is entitled to a social and international order in which the rights and freedoms stated in this Declaration can be fully realized. Under Article 29 of this Declaration, it is also stated that everyone has duties to the community in which alone the free and full development of his personality is possible. Moreover, Article 29(2) further states that in the exercise of his rights and freedoms everyone shall be subject only to limitations determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Article 30 states that nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any

act aimed at the destruction of any of the rights and freedoms set forth herein.

**SAQ:**

UDHR is just a beginning, not an end in the protection of human rights –  
Elaborate the statement. (50 words).

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**Significance of the Declaration**

Although the UDHR is not legally binding, it must be admitted that it has great significance and importance all over the world. A number of legally binding international covenants and congresses on human rights have incorporated direct reference to the Declaration. Many new African states as well as a number of states in other parts of the world include references to the Declaration and its provisions in their Constitutions. European Convention on Human Rights, 1950, closely resembles the Declaration. To make this Declaration as the basis the Latin American countries adopted the American Convention on Human Rights, 1969. Similarly its influence is visible in the constitutions of the various countries framed immediately after the Second World War. The Declaration has clearly inspired human rights provisions in the constitutions of a number of African states and new non-African states like Cyprus, Jamaica and Trinidad and Tobago. Even the national courts have frequently made reference to the Declaration. Mr. Roosevelt opined, while commending the Universal Declaration of Human Rights to the General Assembly of the United Nations in 1948, that it might well become the international *Magna Carta* of all mankind. Today, the saying has become a truth because most of the countries all over the world have adhered to the provisions of the Declaration. Moreover, the UDHR is explicit and covers a wide range of rights and value affirmations. Particularly important is its affirmation of “human dignity, equality and the right to freedom

from discrimination and exploitation”, “the right to social security, to an adequate standard of life and to the opportunity for the free and full development of the individual’s personality”. It also refers to the duties of the individual to his community, in which alone the free and full development of his personality can take place. Thus, from the above discussion, it is clear to us that the Declaration has a vital place of importance. The Declaration has become a common reference in human rights for all nations. The significance of the Declaration may be discussed under the following points:

- The Declaration was not legally binding on the member states, but it provided a yardstick of measurement to all the nations by which the progress of the states and people in the field of human rights could be assessed.
- The Declaration of Human Rights was the first of its kind in the history of international organization. The Declaration was a sort of statement of rights considered essential for human development all over the world.
- The Declaration became one of the most remarkable developments in the law of the nations. Although it is not binding on the nations, still it has developed itself as a source of law.
- The Declaration has acquired a political and moral authority. No other international instrument has ever received the same acceptance from all nations.
- Even at the level of international relations, the Declaration has served a very useful purpose. It has often been cited in support of human rights. Whenever a particular country has violated human rights, it has been criticized on the ground that the country has blatantly violated the letter and spirit of the Declaration.
- The Declaration has exercised profound influence on the constitutions of several new nations and regional agreements. The Constitutions of countries like India, Nigeria, Indonesia, Syria, Haiti, Libya, Jordan etc. have borrowed from the Declaration. Even in various treaties and regional agreements the influence of the Declaration is quite visible.

Thus, we have discussed above the importance and significance of the Declaration. It is evident from the above discussion that though the Declaration is not legally binding, yet it serves as a standard guideline for all the nations regarding protection of human rights.

### **2.3.4 India and the Declaration**

As stated above, Indian Constitution is influenced by the provisions of the UDHR. The third part of the Indian Constitution concerning Fundamental Rights shows a close resemblance with the Declaration. Every Article of the UDHR is reflected in the Indian Constitution, adopted by the Constituent Assembly on 26<sup>th</sup> November 1949.

Now, let us examine the influence of UDHR on Indian constitution

- Article 1 of UDHR that all men are born free and are equal in dignity and in rights, finds expression in Indian constitution under Article 14.
- Article 2 of the Declaration states that no discrimination on the ground of race, colour, sex, language, religion and birth, finds expression in Indian constitution under Article 15.
- Article 3 of the Declaration dealing with right to life finds expression under Indian constitution under Article 21.
- Article 4 of the Declaration on no slavery is found under Article 23 of Indian constitution.
- Article 5 of the Declaration dealing with no torture, cruelty, inhuman degrading treatment finds expression under Indian constitution in Article 21, as elaborated by different court judgments.
- Article 7 of the Declaration dealing with equality before law finds expression in Article 14 of Indian constitution.
- Article 8 of the Declaration on right to effective remedy finds itself under Indian constitution in Article 32 and 226.
- Article 9 of the Declaration finds itself under Article 22 of the constitution.
- Article 13 of the Declaration finds itself under Article 19 of the constitution.

- Article 17 of the Declaration on right to property is covered under Article 300A of Indian constitution.
- Article 19 and 20 of the Declaration finds expression under Article 19 of Indian constitution.
- Article 22 of the Declaration finds itself under Article 38 of Indian constitution.
- Article 23 of the Declaration dealing with right to work, right to equal pay etc. finds expression under Articles 41, 39(a), 43 of Indian constitution.
- Article 25 of the Declaration finds itself under Article 47 of the constitution.
- Article 26 of the Declaration on right to education also finds itself under Indian constitution.
- Also, Article 27 and 28 of the Declaration finds itself under Article 51, 38 of Indian constitution.
- Article 29 of the Declaration on duties found expression under Article 51A of Indian constitution, dealing with duties of Indian citizens.

Thus, from the above discussion, it is clear that Indian Constitution was profoundly influenced by the provisions of UDHR.

### **STOP TO CONSIDER**

#### **Some Facts About the Protection of Human Rights at the International Forum:**

(1) Human rights began to be an issue of international politics in the 19th century. However, it was only after World War II that comprehensive efforts were taken to build a body of international law dealing with human rights. These efforts culminated in the UDHR, 1948.

(2) Ultimately, since UDHR was not legally binding in nature, so, two Covenants – ICCPR and ICESCR- were adopted in 1966, which were legally binding on the signatories.

(3) Following are some regional instruments for protection of human rights:

- The European Convention, 1950.
- The American Convention, 1969.
- The African Charter of Human Rights, 1987

## **2.4 Other Declarations and Covenants on Human Rights**

As stated earlier, following the adoption of UDHR, two international Covenants on Human Rights – one on economic, social and cultural rights and the other on civil and political rights – were adopted to legalise the rights proclaimed in the Declaration. The International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocols to the latter Covenant were adopted unanimously by the General Assembly on 16 Dec. 1966. These instruments, along with the Declaration itself and a Second Optional Protocol adopted in 1989, make up what is widely known as the International Bill of Human Rights. Besides these, there are also a large number of conventions, declarations and recommendations adopted by the General Assembly and other legislative bodies of the United Nations, which tried to protect the human rights. Some of the important conventions, declarations are:

- The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly in December 1948. Genocide is defined as a crime against humanity.
- The International Convention on the Elimination of all forms of Racial Discrimination came into force in 1969.
- The Convention on the Elimination of all forms of Discrimination against Women was adopted by the United Nations General Assembly on Dec. 1979, and entered into force on September 1981. The Declaration on the Elimination of Violence Against Women, adopted by the UN General Assembly in 1993 suggests all states to take measures to prevent and punish violence against women.
- The Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly of the UN on 10 Dec. 1984 and came in force on June 1987.
- The Convention on the Rights of the Child came into force in September 1990, after it had been adopted by the UN General Assembly on November 1989.
- The Declaration on the Rights of Person Belonging to National or Ethnic, Religious and Linguistic Minorities is the most comprehensive UN human rights instrument devoted solely to minority rights.

- The human rights of the refugees are protected by the Convention relating to the Status of Refugees (1951) and its Protocol (1966).
- The Vienna Declaration and Programme of Action (1993) recognized the need for adopting the United Nations machinery for the promotion and protection of human rights to current and future needs and recommended considering the establishment of a High Commissioner for Human Rights.
- The Declaration on the Right to Development was adopted by the General Assembly of the UN on December 1986, which is particularly significant for its importance to the developing countries.
- International Convention on the Suppression and Punishment of Crime of Apartheid was established on November 1973, and it came into force on July 1976.

Thus, from the above discussion, it is clear to all of us that various Conventions and Declarations were adopted under the auspices of UNO so as to protect and promote human rights. These international documents are beacon lights, showing the path of justice and humanity to the Nations.

## **2.5 Amnesty International and International Court of Justice**

Now-a-days, the role of NGOs in standard setting the standard in human rights and building awareness is taking new heights and becoming increasingly important. In its report on 'torture in the 1980s', the Amnesty International presented evidence that prisoners had been tortured or cruelly treated in one third of the countries of the world in recent years. 'America Watch' established in 1981 monitors human rights abuses in central and south America and the Caribbeans. 'Asia watch', was set up to function in the Asian continent. Thus, various NGOs have been rendering human service by focusing world wide, the various forms of abuses being inflicted on human rights.

The Amnesty International devotes itself to very specific objectives – reminding the world of what most governments do to those of their citizens who step out of line on matters of conscience, finding out who are being held as prisoners of conscience, and trying to do something to improve their lot. Its task is, in other words, to tell us that there are certain rights basic to all human beings, and work towards the restoration of those rights



to citizens who have been deprived of them. Amnesty International has published its Report for 1982 on abuses and violations of human rights. The 367 page Report covers 121 countries and is based on the information collected for the year 1981 by the Amnesty. Amnesty's founder Peter Benenson was a Londoner, interested in defending the victims of oppression. Launched in May 1961, Amnesty proved the effectiveness of moral indignation linked with mass publicity. The organization has campaigned for the release of some 1360 political prisoners and some 330 were freed.

In general terms the findings of Amnesty International are:

- The political killings by governments in many countries continued unabated till 1981.
- The techniques of repression and human rights violation varied from country to country.
- Thousands of men and women were in prison because of their beliefs, many were still held after years without charge or trial.
- Prisoners were subject to torture, and people had been executed or were under sentence of death in various countries, often for politically-related offences.
- In many countries men, women and children remained unaccounted for after being taken into custody, often violently by security forces or abducted by agents acting with the complicity of governments. They had "disappeared" and their families and friends could get no information about their fate or whereabouts.

Thus, from the above discussion, it is clear to us that Amnesty International has been instrumental in promoting and protecting the human rights world wide.

### **International Court of Justice:**

The International Court of Justice is the principal judicial organ of the United Nations. It works according to a statute which forms an integral part of the UN Charter. The Court consists of 15 judges elected by the General Assembly and Security Council, voting independently. The judges are elected for a term of nine years. However, they are eligible for re-election. The

Court has its permanent seat at Hague. The Court enjoys powers like, settlement of disputes and rendering of advisory opinion. It also hears all the cases involving sovereign States which have accepted the Statute of the Court. The other states can also take their disputes to the Court on fulfilment of conditions laid down by the Security Council. The Court decides the cases referred to it in accordance with international law, international covenants, and the general principles of law recognized by civilized nations. The International Court of Justice also enjoys the power to give advisory opinion to the General Assembly, the Security Council and other specialized agencies of the United Nations, on legal questions. The Court does not render advisory opinion on its own. Further, the advice of the Court is not binding on the organ seeking it. In fact, the opinion given by the court is more like an advice rather than a decision.

Since the inauguration of the Court in 1946, many cases have been handled and solved by the Court. The Court has also played a vital role in settlement of disputes through its advisory opinions. It must be admitted here that the Court through its judgements has contributed a lot to the growth of international law and contributed to the establishment of more lawful world community in which mutual obligations are recognized. Thus, it must be noted here that the Court has contributed a lot in preserving world peace, justice and security.

**SAQ:**

Do you think that respect and observance of human rights are always conditional upon economic conditions of respective states? Discuss. (80 words)

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### **CHECK YOUR PROGRESS**

1. Discuss the significance of UDHR.
2. Discuss the impact of UDHR on different constitutions of the world.
3. Discuss the importance of Amnesty International and International Court of Justice in preserving human rights.
4. Evaluate the importance of different Covenants and Declarations in the protection of human rights.

## **2.6 Summing Up**

In this unit, we have discussed UDHR Amnesty International and International Court of Justice. After reading this unit now you are in a position to analyse the importance of UDHR in international scenario. It is regarded as a yardstick of measurement in the context of human rights protection and promotion. Amnesty International and International Court of Justice have also protect and promote human rights all over the world. It is also seen that various Conventions, Declarations and Covenants were adopted under the auspices of UNO for protecting human rights. However, despite the efforts of world community, a United Nations study in April 1993 reported that at least half of the world's population have been suffering from violation or deprivation of human rights of one kind or other. It must be admitted that the international community got some success in the field of protection and promotion of human rights.

## **2.7 References and Suggested Readings**

*International Relations*, Prakash Chander and Prem Arora (20<sup>th</sup> edition), cosmos Bookhive pvt. Ltd., New Delhi.

*Human Rights Concepts, Issues and Laws*, S.C. Joshi. Akansha Publishing House, New Delhi. (2006).

*Human Rights*, Adil-ul-Yasin and Archana Upadhyay. Akansha Publishing House, New Delhi (2006).

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### BLOCK III

#### Protection of Human Rights in India

Unit I: Constitutional Framework of Human Rights in India

Unit II: Protection of Human Rights in India



## **Unit I**

### **Constitutional Framework of Human Rights in India**

#### **Contents**

- 1.1 Introduction
- 1.2 Objectives
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- 1.4 Statutory Provisions of Human Rights in India
- 1.5 Enforcement of Fundamental Rights under Indian Constitution
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- 1.7 References and Suggested Readings

#### **1.1 Introduction**

In a developing country like India, there is an air of unreality about the protection of human rights was under colonial regimes for a long span of time and faced tremendous exploitation. When the developing countries attained independence, they faced various problems like, poverty, malnutrition, illiteracy, unemployment etc. The benefits of development were not available to the poor mass and the grand plans and projects made practically no dent in the volume of poverty in these countries. In a world of rapid change, poverty remained basic problem in the developing nations. In this critical juncture, how can the people assert their human rights? Thus, it was increasingly felt all over the world that the basic human rights in these developing countries need to be well protected by the Constitution itself. The Constitution being the basic or fundamental law of the land protects against the violation of human rights through the Constitutional provisions. This view has received considerable popularity and support.

When India attained independence, the Constitution of independent India enumerated within itself lots of provisions for human rights protection. The Constitutional framework of human rights in India are those provisions which arise from the Constitution itself. In this unit, we will study the various Constitutional provisions in India for the protection and promotion of human rights.

## 1.2 Objectives

This unit deals with the constitutional provisions for the protection and promotion of human rights in India. After reading this unit, you will be able to:

- *understand* the various Constitutional provisions for the protection of human rights in India
- *discuss* the need for such constitutional framework
- *analyse* the statutory provisions for human rights protection.

## 1.3 Constitutional Provisions of Human Rights in India

Since time immemorial, man has longed for freedom, equality and fundamental human rights. In the present times, a majority of states have inscribed these ideals in their constitutions. Indian Constitution, in tune with international endeavours has provided many provisions for the protection and promotion of human rights.

In ancient India, Vedas and other sacred scriptures provided the basis of human rights. The ancient law of Dharma used to govern the social order in ancient times. The basis of ancient human rights was Dharma which aimed at the establishment of a socio-legal order free from traces of conflicts, exploitation and miseries. The prime importance of human rights was also contained in the rich Indian legacy of “*Vashudhaiva-Kutumbakam*”. There were references in the *Rigveda* of three civil rights, that of *Tana* (body), *Skridhi* (dwelling place) and *Jibhasi* (life). The ancient lawgiver Manu laid down elaborate rules for the guidance of the king. Also, Kautilya, in his *Arthashastra* elaborated different rights of citizens. Thus, the *Vedas*, *Puranas*, and the epics like *Ramayana* and *Mahabharata* provided the

basis of human rights. But, the philosophy of human rights in the modern sense took shape during British rule. It was during the nationalist movement or struggle, there was continuous demand for fundamental freedoms and civil and political rights for the people of India. Thereafter, when India attained independence, the Constitution incorporated different provisions for the protection of human rights.

### **1.3.1 Preamble of Indian Constitution**

In the Constitution of India, there are certain important provisions for the protection and promotion of human rights. These provisions are contained in : the Preamble, Part III dealing with Fundamental Rights, Part IV dealing with the Directive Principles of State Policy, Part IVA dealing with the Fundamental Duties and various other articles like, Articles 226, 300A, 325, 326 etc. These provisions reflect the basic principles of the Universal Declaration of Human Rights, and the Covenants on Civil and Political Rights, and Economic, Social and Cultural rights. The Constitutional protection of rights in India have overriding authority because the judiciary has the power to declare unconstitutional the legislations or other actions of the state which conflict with the terms of the Constitution. Now, let us discuss in detail the constitutional framework of human rights in India :

The Preamble of the Indian Constitution has set forth the basic objectives to be achieved by the Constitution. The Preamble promises to all its citizens – Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; Fraternity assuring the dignity of the individual and the unity and integrity of the Nation. Thus, the Preamble itself is very clear about the protection of human rights. Hence we can say that, human rights may be regarded to be the offspring of the Preamble.

### **1.3.2 Part III of Indian Constitution**

Next, Part III of the Indian Constitution dealing with the Fundamental Rights also protects various human rights. Throughout Indian nationalist movement, opinion was definitely in favour of a bill of rights for the Indians. Therefore, when India attained independence, the framers of the Constitution adopted

Fundamental Rights to safeguard individual liberty and also for ensuring (together with the Directive Principles) social, economic and political justice for every member of the community. So, the Constitution of India has embodied a number of Fundamental Rights in Part III of the Constitution, which are (subject to exceptions) to act as limitations not only upon the powers of the executive but also upon the powers of the legislature. Human Rights as enumerated in the Constitution as Fundamental Rights are :

#### **1.3.2.1 (1) Right to Equality (Articles 14-18)**

- ▶ Equality before law.
- ▶ prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.
- ▶ Equality of opportunity in the matters of public employment.
- ▶ Abolition of Untouchability.
- ▶ Abolition of titles.

#### **(2) Right to Freedom (Articles 19-22)**

- ▶ protection of certain rights pertaining to freedom.
- ▶ protection in respect of conviction for offences.
- ▶ protection of life and personal liberty.
- ▶ protection against arrest and detention in certain cases.

#### **(3) Right against exploitation (Articles 23-24)**

- ▶ prohibition of traffic in human beings and forced labour.
- ▶ prohibition of employment of children in factories etc.

#### **(4) Right to freedom of religion (Articles 25-28)**

- ▶ freedom of conscience and free profession, practice and propagation of Religion.
- ▶ freedom to manage religious affairs.
- ▶ Freedom as to payment of taxes for promotion of any particular religion.
- ▶ Freedom as to attendance at religious instruction or religious worship in certain educational institutions.



## **(5) Cultural and Educational Rights (Articles 29-30)**

- ▶ protection of interests of minorities
- ▶ right of minorities to establish and administer educational institutions.

## **(6) Right to Constitutional Remedies (Article 32)**

Now, let us discuss these rights in detail so as to understand properly the Constitutional framework of human rights in India :

Article 14 of the Constitution provides – The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

It must be noted here that prima facie, the expressions ‘equality before the law’ and ‘equal protection of the laws’ may seem to be identical, but, in fact they mean different things. Equality before the law means, that no man is above the law of the land and that every person is subject to the ordinary law and amenable to the jurisdiction of the ordinary tribunals. On the other hand, equal protection of the laws means that among equals, the law should be equal and equally administered, and that the like should be treated alike. Thus, the guarantee of ‘equal protection’ is a guarantee of equal treatment of persons in ‘equal circumstances’ permitting differentiation in different circumstances.

Article 15 of the Constitution provides –

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) no citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the state from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.

It is clear from the above discussion that the scope of this article is very wide. While the prohibition in clause (1) is levelled against state action, the prohibition in clause (2) is leveled against individuals as well.

Article 16 says that – (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the state.

Article 17 runs as follows: Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ‘untouchability’ shall be an offence punishable in accordance with law.

The Parliament has enacted the Untouchability (Offences) Act, 1955, which has been amended and renamed (in 1976) as the Protection of Civil Rights Act, 1955. Thus, the sweep of the Act has been enlarged in 1976.

Article 18 provided for the abolition of titles. It is to be noted here that – (a) the ban operates only against the State. It does not prevent other public institutions, such as Universities, to confer titles or honors.

(b) The State is not debarred from awarding military or academic distinctions.

(c) The State is not prevented from conferring any distinction or award, for social service, which cannot be used as a title.

### **1.3.2.2 Article 19**

Article 19, provides six Fundamental Rights in the nature of ‘freedom’. In the original Constitution, there were 7 freedoms in Article 19(1), but ‘the right to acquire, hold and dispose of property’ has been omitted by the constitutional 44<sup>th</sup> Amendment Act, 1978, leaving only 6 freedoms in that article, like: freedom of speech and expression, freedom of assembly, freedom of association, freedom of movement, freedom of residence and

settlement and freedom of profession, occupation, trade or business. But, it is to be noted here that India is a welfare State, and in a welfare state, absolute individual rights cannot be guaranteed. Therefore, the framer of our constitution specified the permissible limitations in clauses (2) to (6) of Article 19 itself, in order to protect the larger interests of the community.

Article 20 guarantees protection in certain respects against conviction for offences, by prohibiting –

- (a) Retrospective criminal legislation, commonly known as ex post facto legislation.
- (b) Punishment for the same offence more than once.
- (c) Compulsion to give self-incriminating evidence.

Article 20(1) runs as follows: No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

Article 20(2) runs as follows: No person shall be prosecuted and punished for the same offence more than once.

Article 20(3) says: No person accused of any offence shall be compelled to be a witness against himself.

Article 21 of our Constitution provides that – No person shall be deprived of his life or personal liberty except according to the procedure established by law. The scope of this article has been extended by various judicial interpretations of the Supreme Court from time to time.

Article 22(1) of the Constitution lays down that the arrested person shall be informed of the reasons for his arrest. Article 22(2) enjoins that the arrested person shall be produced before a magistrate within 24 hours. Thus, the procedural safeguards against arbitrary arrest and detention have been provided in clauses (1) and (2) of Article 22.

### **1.3.2.3 Article 23**

Article 23 says: (1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article 24 says : No child below the age of fourteen years, shall be employed to work in any factory or mine or engaged in any other hazardous employment.

It is to be noted here that the prohibition imposed by this article is absolute and does not admit of any exception.

### **1.3.2.4 Articles 25-32**

We all know that India is a secular State, i.e., a State which observes an attitude of neutrality and impartiality towards all religions. This attitude of impartiality towards all religions is secured by the Constitution through Articles 25-28.

Article 29 lays down that any section of the citizens of India having a distinct language, script and culture has the right to conserve the same. This right is not subject to restrictions. Because of the existence of this right in the Constitution, the majority cannot thrust its language, script and culture upon the minority. Article 30 of the Constitution provides that all minorities based on religion or language have the right to establish and administer educational institutions of their choice. The State cannot discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language, while granting aid to educational institutions. Article 30(1A) says that full compensation has to be paid if the State seeks to acquire the property of a minority educational institution.

Article 32 of the Constitution of India is very important. Abstract declarations of fundamental rights in the Constitution are useless, unless there is the means to make them effective. Art. 32 provides an effective machinery for the protection and enforcement of the fundamental rights. Art. 32 is thus the cornerstone of the entire edifice set up by the Constitution. Commenting on this article, in the Constituent Assembly, Dr. Ambedkar said – “If I was asked to name any particular article of the Constitution as the most important – an article without which this Constitution would be a nullity – I would not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it.”

The relevant provisions in clauses (1) and (2) of Article 32 are :

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, whichever may be appropriate for the enforcement of any of the rights conferred by this Part.

Thus, the Supreme Court has been assigned by the Constitution a special role as the protector and guarantor of fundamental rights by Article 32. It must be noted here that the power of the High Courts to issue these writs is wider than that of the Supreme Court in as much as under Article 32 of the Constitution, the Supreme Court has the power to issue these writs only for the purpose of enforcement of the Fundamental Rights whereas under Article 226, a High Court can issue these writs not only for the purpose of enforcement of Fundamental Rights, but also for the redress of any other injury or illegality, owing to contravention of the ordinary law.

Thus, from the above discussion, it is clear that the Indian Constitution lays down the following provisions for the enforcement of the Fundamental Rights:

- (a) The Fundamental Rights are guaranteed by the Constitution not only against the action of the executive but also against that of the legislature. Any act of the executive or of the legislature which takes away or abridges any of these rights shall be void and the courts are empowered to declare it as void. [Article 13].

(b) Apart from the power to treat a law as void for being in contravention of the provisions of the Constitution guaranteeing the fundamental rights, the Judiciary has been armed with the power to issue the above mentioned writs, as mentioned above. The power to issue these writs for the enforcement of the fundamental rights is given by the Constitution to the Supreme Court and High Courts [Article 32 and 226].

(c) The rights so guaranteed shall not be suspended except during a proclamation of emergency – in the manner laid down by the Constitution [Article 359].

### **STOP TO CONSIDER**

#### **Indian Laws Relating to Human Rights**

Various laws were enacted from time to time in India for the protection and promotion of human rights:

1. Protection of Human Rights Act, 1993.
2. National Commission for Minorities Act, 1992.
3. National Commission for Women Act, 1990.
4. Protection of Civil Rights Act, 1955.
5. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
6. Immoral Traffic (Prevention) Act, 1956.
7. Indecent Representation of Women (Prohibition) Act, 1986.
8. Dowry Prohibition Act, 1961.
9. Maternity Benefit Act, 1961.
10. Child Marriage Restraint Act, 1929.
11. Children Act, 1960.
12. Child Labour (Prohibition and Regulation) Act, 1986.
13. Juvenile Justice Act, 1986.
14. Bonded Labour (System) Abolition Act, 1976.
15. Medical Termination of Pregnancy Act, 1971.
16. Environmental Protection Act, 1986.
17. Industrial Disputes Act, 1947.
18. Workmen's Compensation Act, 1923.

19. Factories Act, 1948.
20. Employees State Insurance Act, 1948.
21. Minimum Wages Act, 1948.
22. Apprentices Act, 1961.
23. Equal Remuneration Act, 1976.
24. Payment of Wages Act, 1936.
25. Weekly Holidays Act, 1942.

The above discussed are some of the important enactments for the protection and promotion of human rights in India.

### **1.3.3 Part IV of Indian Constitution**

The Directive Principles of State Policy are included in Part IV of the Indian Constitution (Articles 36-51). Article 37 of the Constitution of India says that the Directive Principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

The Directive Principles are nothing but the restatement of the ideals as laid down in the Preamble to the Constitution of India. These principles are like instructions issued to the State. Part IV of the Constitution of India is regarded as the sister part of Part III, dealing with the fundamental rights. The objectives of the Directive Principles of State Policy have come out very clearly in the statement of M.C. Setalvad. Setalvad says : “Although the Directive Principles of State Policy confer no legal rights and create no legal remedies, they appear to be like an instrument of instructions, or general recommendations addressed to all authorities in the union reminding them of the basic principles of the new social and economic order which the Constitution aims at building. These fundamental axioms of State Policy, though of no legal effect, have served as useful beacon-lights to courts.” The Directive Principles may be classified into four categories on the basis of their objectives. These are: Economic principles, Social principles, Gandhian principles and principles for international peace and security. Now, let us discuss these principles in detail.

- (1) Economic Principles: adequate means of livelihood for the citizens; equitable distribution of the ownership and control of the material resources of the community keeping in view the common good; equal

pay for equal work to both men and women; protection of children and youth against exploitation and against moral and material abandonment; provision of public assistance in cases of unemployment, old age, sickness and disablement; that living wages, just and human conditions of work, and a decent standard of life are given; that inequalities of income is minimized etc.

- (2) The Social principles are like: promoting educational and economic interests of the weaker sections of the society; providing a uniform civil code; separating judiciary from the executive etc.
- (3) Gandhian principles are like : establishment of village panchayats as units of self-government (Article 40); promotion of cottage industries on an individual and co-operative basis in rural areas (Article 43); raising the level of nutrition, the standard of living of its people and the improvement of public health (Article 47); prohibiting consumption of intoxicating drinks and drugs except for medicinal purposes; organizing agriculture and animal husbandry on modern and scientific lines; prohibiting slaughter of cows, calves and other milch and draught cattle (Article 48); the State shall protect, preserve and maintain places of national and historical importance; etc.
- (4) In the international field, India shall strive : to promote international peace and security; to maintain just and honourable relations between nations; to foster respect for international law and treaty obligations; to encourage settlement of international disputes by arbitration.

The 42<sup>nd</sup> Amendment Act inserted new directives so as to accentuate the socialistic basis of the Constitution:

- (i) Article 39A has been inserted to enjoin the State to provide free legal aid to the poor and to take other suitable steps to ensure equal justice to all, which is offered by the Preamble.
- (ii) Article 43A has been inserted in order to direct the State to ensure the participation of workers in the management of industry and other undertakings.

The 44<sup>th</sup> Amendment Act, 1978, inserted Clause (2) in Article 38 : (2) the State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not



only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Thus, from the above discussion, we come to know that the founding fathers of the Indian Constitution hoped that through the Directive Principles of State Policy, Human Rights would be protected and preserved.

In course of time, it was increasingly recognized that rights and duties go hand in hand. Exercise or enjoyment of rights on the part of one individual means discharge of duties on the part of another individual. Thus, Fundamental Duties have been incorporated in Article 51A [Part IVA] by the 42<sup>nd</sup> Amendment Act, 1976. Under this Article, it shall be the duty of every citizen of India –

- (i) to abide by the Constitution and respect the National Flag and the National Anthem;
- (ii) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (iii) to protect the sovereignty, unity and integrity of India;
- (iv) to defend the country;
- (v) to promote the spirit of common brotherhood amongst all the people of India;
- (vi) to preserve the rich heritage of our composite culture;
- (vii) to protect and improve the natural environment;
- (viii) to develop the scientific temper and spirit of inquiry;
- (ix) to safeguard public property;
- (x) to strive towards excellence in all spheres of individual and collective activity.

### **1.3.4 Some Other Provisions**

Apart from the above discussed provisions, there are some other Constitutional provisions which have a direct bearing on Human Rights protection. These are like :

- Article 300A which states that no person shall be deprived of his property save by authority of law.
- Article 325 which states that no person shall be ineligible for inclusion in, or claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.
- Article 326 which states that elections to the House of People and to the Legislative Assemblies of States will be on the basis of adult suffrage.
- Article 335 enjoins that the claims of the members of the scheduled castes and the scheduled tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.
- Article 311 provides protection to civil servants.

**SAQ :**

Do you think that the reasonable restrictions imposed on the enjoyment of fundamental rights make these rights meaningless? Discuss. (80 words).

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**1.4 Statutory provisions of Human Rights in India**

Apart from the constitutional provisions, there are also the statutory provisions for the protection and promotion of human rights in India. Some of the important Statutory provisions are like:

- Protection of Human Rights Act, 1993.
- National Commission for Scheduled Castes and Scheduled Tribes.
- National Commission for Minorities Act, 1992.
- National Commission for Women Act, 1990.
- Protection of Civil Rights Act, 1955.
- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- Immoral Traffic (Prevention) Act, 1956.
- Indecent Representation of Women (Prohibition) Act, 1986.
- Dowry Prohibition Act, 1961.
- Commission of Sati (Prevention) Act, 1987.
- Maternity Benefit Act, 1961.
- Child Marriage Restraint Act, 1929.
- Children Act, 1960.
- Child Labour (Prohibition and Regulation) Act, 1986.
- Caste Disabilities Removal Act, 1950.
- Mental Health Act, 1987.
- Bonded Labour (System) Abolition Act, 1976.

The above mentioned Acts are some of the important statutory provisions or Acts for the protection of human rights in India. The constitutional framework, the statutory provisions as well as the landmark judicial pronouncements from time to time has done a lot to protect the fundamental human rights in India.

**SAQ:**

Do you think that the Constitutional as well as the Statutory provisions are able to safeguard the basic human rights of Indians to the fullest extent? Discuss. (60 words)

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### **1.5 Enforcement of Fundamental Rights under Indian Constitution**

Thus, from the above discussion, it is clear to that the enumerated and guaranteed Fundamental Rights would be no more than paper tigers, if the right to enforce Fundamental Rights is not made a fundamental right itself. Thus, it is the remedial Fundamental Right which gives teeth to all the Fundamental Rights. Article 32, which enshrines the remedial fundamental right, has been described as the cornerstone of the democratic edifice, as the protector and guarantor of Fundamental Rights. Article 32 guarantees the right to moving to the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights guaranteed by Part III of the Constitution. Article 32(4) lays down that this fundamental right cannot be suspended except as otherwise provided by the Constitution. Articles 358 and 359 provide for the suspension of certain fundamental rights during the period of promulgation of emergency. Under Article 226 also, the fundamental rights can be enforced by moving the High Courts. Under Article 32, the Supreme Court has very wide jurisdiction. Any order, direction or writ issued by the Supreme Court under Article 32 can be issued not merely anywhere in India, but also beyond the territorial limits of India to all those authorities which are functioning inside or outside India under the control of the Union Government. Article 32(2) specifically mentions five types of directions, orders, writs like, Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. The Supreme Court has the power to issue any one of these writs, which it may consider appropriate in a particular case. The existence of the concurrent jurisdiction of the High Court under Art. 226 does not bar a person who alleges violation of a fundamental right to approach the Supreme Court directly. The Supreme Court has repeatedly held that the existence of an alternative remedy did not bar the jurisdiction of the court to grant relief under Article 32.

Now, let us discuss these writs in short, so as to understand properly the enforcement of fundamental rights under Indian Constitution. These are like:

- (1) Habeas Corpus:** It is a remedy against wrongful detention of a person. By using this writ, illegal detention of a person can be prevented by the court.
- (2) Mandamus:** It is an order given by the court to some subordinate authority to perform an act which falls within its jurisdiction. By issuing

this writ, the court commands a public body or an official to perform a public duty.

**(3) Prohibition:** This writ is issued by a superior court to a subordinate court, thereby preventing that court to deal with a matter over which it has no jurisdiction.

**(4) Quo-Warranto:** By issuing this writ, the court may prevent a person from acting in a public office to which he is not entitled.

**(5) Certiorari:** By issuing this writ, the superior court may ask a court subordinate to it to submit the record of a case pending before it for its proper consideration.

Thus, from the above discussion, it is clear to us that the right to constitutional remedies is very important for the citizens of India. Without this basic right, all other rights will be meaningless. The right guaranteed under Article 32 cannot be suspended except as otherwise provided for by the Constitution of India.

#### **CHECK YOUR PROGRESS**

Q.1. Explain the importance of Fundamental Rights in promoting the concept of human rights protection.

Q.2. Why the rights laid down in Part III of the Constitution of India called 'fundamental'?

Q.3. Explain the various writs for the enforcement of Fundamental Rights.

Q.4. Discuss the Constitutional significance of the Directive Principles.

### **1.6 Summing Up**

We have discussed above the various Constitutional framework as well as statutory measures to protect the human rights in India. It is clear from the above discussions that the founding fathers of Indian Constitution have taken various to promote and protect the fundamental human rights of Indians. The Fundamental Rights guaranteed by the Constitution of India have been lauded as the bed-rock of Indian democracy. Without these rights democracy

in India would have been meaningless. These rights have the foundation of secularism in India. Adequate steps have been taken to safeguard the interest of the minorities and improve the condition of the socially deprived sections of the society. The Fundamental Duties are also important because the courts are expected to be guided by the fundamental duties while interpreting the Constitution. The Directive Principles are also of great constitutional importance. Other provisions incorporated in the Constitution also help in protecting and promoting the human rights of Indians.

### **1.7 References and Suggested Readings**

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## **Unit II**

### **Protection of Human Rights in India**

#### **Contents:**

- 2.1 Introduction
- 2.2 Objectives
- 2.3 Status of Human Rights in India
- 2.4 Protection of Human Rights in India
- 2.5 Summing Up
- 2.6 References and Suggested Readings

#### **2.1 Introduction**

In the previous unit of this block you have learnt about the constitutional provision of human rights in India. You have learnt that India is a key member of UN's all conventions and protocols which are dedicated to protect human rights. We know that with more than 655 million registered voters out of its one billion populations, India is world's largest democracy and second largest populous country after China. So it is very difficult for the Indian policy makers to protect each and everyone's rights. Hence, the framers of the Indian constitution placed various provisions in the constitution to protect individual rights. Part III of the constitution deals with the fundamental rights which borne the essential freedoms of the Indian people. Here in this unit we are going to discuss the measures taken for the promotion and protection of human rights in India.

#### **2.2 Objectives**

India's constitution, the source of ultimate authority provides the legal framework for the guarantee of human rights through its Fundamental Rights and Directive Principles. Again the establishment of National Human Rights Commission boost up the process. After going through this unit you will be able to

- *discuss* the status of human rights in India
- *examine* the measures taken by the Indian constitution to protect and promote human rights
- *analyse* the extra constitutional measures taken by the Indian government to protect human rights
- *discuss* the role of National Human Rights Commission

### **2.3 Status of Human Rights in India**

In India, the last quarter of the 20<sup>th</sup> century has witnessed to a growing recognition of the place and relevance of human rights. It is axiomatic that this interest in human rights is rooted in the denial of life and liberty that was a pervasive aspect of the Emergency (1975-77).

Though India is a key member of UN and it has shown its firm belief for the protection and promotion of human rights, still human rights violation cases are increasing day by day. Now government sponsored human right violation cases become major topics of concern. For example, despite signing the protocol on civil and political rights death penalty still prevails in India. Armed Force Special Power Act also violates the rights of individual. Now in India major human rights problems included reported extra-judicial killings of persons in custody, killings of protesters, and torture and rape by security forces, dowry etc. Again, poor prison conditions and lengthy detentions are significant problems in India. Separatist insurgents and terrorists activities committed numerous serious abuses, including killing armed forces personnel, police, government officials, and civilians. However, the number of such cases has declined but still these pose a serious threat to individual liberty.

It is seen that there were numerous reports that the government and its agents committed arbitrary or unlawful killings, including extra-judicial killings of suspected criminals and insurgents, especially in areas of conflict such as Jammu and Kashmir, the Northeastern States, and the Naxalite belt, where non-governmental forces also committed such killings According to the Institute for Conflict Management, as of October 17, 2010, there were 1,616 fatalities in the country including members of security forces, individuals classified by the government as terrorists, and civilians. But in 2009 it was 2231.



In case of refugees' rights, there is no clear policy in India. When all most all the members of UN have agreed to set up a common law under the provision of 1951 Convention relating to the Status of Refugees or the 1967 Protocol relating to the Status of Refugees, India has not signed this agreement, though, India has adopted a Foreigners Act in 1946. The term refugee was absent and the word "foreigner" is used, placing refugees, migrants, and tourists in the same category. However, the Government of India, has provided protection against the expulsion or return of refugees to countries where their lives or liberty would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

**SAQ:**

Do you think that the Indian policy for the protection of foreigners is adequate? Give reasons. (60 words)

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Thus it is seen despite being a signatory to several international instruments protecting individuals from arbitrary or improper treatment under antiterrorism and other security laws, including the International Covenant on Civil and Political Rights, the International Convention on the Prevention and Punishment of the Crime of Genocide, and the International Convention on the Elimination of All Forms of Racial Discrimination, and the four Geneva Conventions, still human rights violation is in an alarming stage in India. Basically women and children rights are violated in every parts of Indian continent. A report revealed that nearly 50 lakh children are still engaged as labourers across the nation. However the number was nearly 90 lakh in 2004.

Again, still Indian women are fighting for their survival. Though India has adopted Prevention of Domestic Violence Act in 2005 the scenario has not

changed. The “State of Indian Women Report 2001-02” released by the Union Ministry of Human Resource Development, revealed that the crime rate against women is even higher than the all-India average. In 1999, crimes against women including rape, molestation, sexual harassment, abduction, dowry deaths and cruelty at home were 127 cases per million persons at the all-India level but, in Assam it was 138 cases per million persons.

Hence it can be said that Indian government does not provide enough opportunity to its people to enjoy their rights. In other words we can say that despite having a democratic set up due to the absence of proper machinery Indian government miserably failed to protect human rights. However in last few years we have seen that government of India is working for proper utilization of rule of laws. Now civil society and government take a firm stand for this purpose and many laws and commissions are established. Among them we can put forward the example of Union Human Rights Commission, Protection of Domestic Violent Act etc. Here in this unit we are going to discuss the measures taken by the Indian government and the role of NHRC in protecting human rights.

#### **2.4 Protection of Human Rights in India**

It is well known that Indian culture and society always respect the dignity of an individual and strive for peace and harmony. After independence India has adopted democratic governmental system and we know that the greatest protection of human rights emanates from a democratic framework grounded in the rule of law. Indian constitution provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections based on universal suffrage, which indicates India’s respects for political rights. Apart from these, Indian constitution also provides various provisions to protect human rights. For example, Article 22 of Indian constitution provides protection against arrest and detention in certain cases. Again, as a U.N. member state, India is bound by the U.N. Charter, which pledges member states to “promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion,” and by the Universal Declaration of Human Rights, which protects the rights to liberty, freedom of expression and opinion, peaceful assembly, an effective remedy for acts

violating fundamental rights, and a “fair and public hearing by an independent and impartial tribunal. (U.N. Charter Articles. 1(3), 55-56; Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3rd Sess., Pt. I, Resolutions, at 71, U.N. Doc. A/810, Arts. 19, 21 (Dec. 10, 1948))

### **Constitutional Protection of Human Rights**

Indian constitution has created various provisions for protecting human rights. We find this intention in the preamble which dedicated Indian constitution to its people and said acclaimed that protection of individual liberty or freedom is one of the most important goals of Indian constitution. In other words we can say that, in India people are the ultimate source of power and the constitution is the supreme law of the nation. From the preamble we can clearly find out the aims of Indian constitution as follows:

In the second part of the preamble the objectives of India constitution are spelled out as securing justice, liberty, equality and fraternity to all citizens of India. Again, the const of India wants to provide economic, social and political justice to all Indian. Moreover the part III of the Indian constitution deals with fundamental rights of Indian citizens which more or less similar to the rights depicted in the UDHR and other international, covenants, convents and protocols. Now let us look at some measures taken by the Indian government to protect human rights under the provisions of its constitution:

Article 21 of Indian constitution said that no person shall be deprived of his life or personal liberty except according to procedure of established law. Recently Article 21 (1) was added which deals with the right to education. Thus it is seen that Indian constitution acknowledging the provisions of UDHR and other conventions provides right to life and liberty to its citizens as well as foreigners. And to protect these rights there is provision of right to constitutional remedies under the provision of Article 32. Article 32 occupies the most important position in Indian political system. The article is the protector of the rights of Indian citizens. Under the provision of this article one can file case against the government or individual if they violate his/her rights. In other words we can say that Indian constitution provides rights as well as measures to protect these rights. Apart from these the

fundamental rights are justifiable in nature. It means one can protest against the violation of these rights in court. It needs mention here that during the proclamation of emergency some rights are curtailed.

Part IV of Indian constitution deals with Directive Principles of State Policies, which are regarded as a noble feature directed towards the achievement of socio-political and economic equality. Article 36 to 51 deals with such principles. Though these principles are justifiable like the fundamental rights, they are providing a base to the state government to maintain justice, equality, in the society. These principles act as directions to the state government to ensure individual dignity and freedom. For example, Article 39 stated that the state shall direct its policy towards securing the citizens, men and women equally have the right to an adequate means of livelihood. Article 46 sets down that the state shall promote with special care the educational and economic interest of the weaker sections of the society and particularly of the SCs and STs and shall protect them from social injustice in all forms of exploitation.

Apart from these provisions Indian constitution made the Judiciary independent to the Executive and Legislature and equipped it with the power of judicial review. Through this power judiciary can review any law passed by the executive and legislature, if something found wrong judiciary can nullify that law. In other words we can say that the government of India has to pass laws in accordance to the provisions of the constitution. Above all constitution placed judiciary as the protector of fundamental rights of the citizens. It needs mention here that India has not signed the Optional Protocol to the ICCPR, which permits individuals to bring complaints of violations before the Human Rights Committee of UN.

Thus it is seen that the basic objective of Indian constitution is human rights protection to uphold the dignity of every individual and to ensure that the voices of the weakest are also heard. Its core values –freedom, equality, fraternity, accommodation of diversity and the assurance of justice underpin the norms of human rights as well.

Now let us look at some other provisions which are made to protect and promote Human Rights in India:

## **THE CHILD LABOUR (PROHIBITION AND REGUALTION) ACT, 1986 AND RULES**

As we have mentioned earlier child labour is a major thereat to Indian society. Almost 50 lakh children are still working across India. So, to protect child's rights and to eradicate child labour the parliament of India enacted a law called The Child Labour (Prohibition And Regualtion) Act, 1986 And Rules in 1986. The Act aimed at the creation of Social and beneficial legislation to protect the interest of a class of society who, because of their economic conditions, deserves such protection. According to this act "child means a person who has not completed fourteenth year of age. Before fourteen years no one can employ child as labour. Basically the Act barred child to work in the establishments includes, a shop, commercial establishment, work-shop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment".

PART II, Article 3 stated that no child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on. Again, part IV article 14 stated that whoever employs any child or permits any child to work in contravention of the provisions of Section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both. Thus it is seen that Indian government prohibits child labour as well as provides penalty if someone found guilty. In consonance with the above approach, a National Policy on Child Labour was formulated in 1987. The Policy seeks to adopt a gradual and sequential approach with a focus on rehabilitation of children working in hazardous occupations and processes in the first instance.

### **STOP TO CONSIDER**

#### **Strategy for the elimination of Child Labour under the 10th Plan, 2001**

During the 10<sup>th</sup> Five Year Plan, the government of India devised the strategy for implementing the scheme to prohibit Child Labour. The strategy aimed at greater

convergence with the other developmental schemes and bringing qualitative changes in the Scheme. Some of the salient points of the 10<sup>th</sup> Plan Strategy are as follows:

1. It focused and reinforced action to eliminate child labour in the hazardous occupations by the end of the Plan period.
2. It tried to expand National Child Labour Projects to additional 150 districts.
3. Through Sarva Shiksha Abhiyan an attempt will be made to ensure that children in the age group of 5-8 years get directly admitted to regular schools and that the older working children are mainstreamed to the formal education system through special schools functioning.

### **THE PROTECTION OF HUMAN RIGHTS ACT 1993**

In order to make sure that none could be denied from his/her inborn rights, an Act was introduced and adopted by the Parliament of India in 1993, known as the Protection of Human Rights Act, 1993. The Act aimed at establishment of a machinery as a nodal body to protect Human Rights. In accordance to the provisions of UDHR and other international, Covenants, Conventions and Protocols National Human Rights Commission was established in India and State Human Rights Commissions were established for each state. According to this Act ‘human rights’ means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. Chapter II, Article 3 of the Act deals with the establishment of National Human Rights Commission. Regarding NHRC the Act stated that the central government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it under this Act.

### **NATIONAL HUMAN RIGHTS COMMISSION**

We have mentioned earlier that under the provision of Human Rights Protection Act, 1993, then central government had established a commission known as national Human Rights Commission (NHRC) in 1993. According to this Act the Commission consist of:

**1.**

(a) a Chairperson who has been a Chief Justice of the Supreme Court; one Member who is or has been, a Judge of the Supreme Court

(c) one Member who is, or has been the Chief Justice of a High Court

(d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

2. The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission.

3. There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise and discharge commission's powers and functions.

4. The headquarters of the Commission shall be at Delhi and the Commission may with the previous approval of the Central Government, establish offices at other places in India.

Regarding the tenure of office the Act stated that:

1. A person appointed as Chairperson shall hold office for a term of five years from the date of which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years.

The Act also provided that no Member shall hold office after he has attained the age of seventy years.

**Power, Function and Role of NHRC**

The government of India acknowledging the needs of protection of human rights had established an independent body for promotion and protection of human rights, which reflects its commitment for effective implementation of human rights provisions under national and international instruments. It

needs mention here that Indian NHRC is the first of its kind among the South Asian nations and also few among the NHRC institutions, which were established, in early 1990s.

The Human Rights Protection Act, 1993 endowed NHRC with numerous powers and functions. The powers and functions of the Commission were listed under section 12 of the Act. The paragraph (a) of section 12 provides, that the Commission can enquire *suo motu* action against any public servant against whom a complaint has been registered for violation of human rights. Section 12(b) provides that the Commission can intervene in any proceeding involving any allegation of a violation of human rights pending before a Court with the approval of such Court. Section 12(c) empowers the Commission to visit any jail or other institution without prior intimation to the State Government, for the purpose of mainly monitoring prison or custodial jurisprudence. The Commission can make recommendations to State Governments on the basis of such visits. The Commission after visiting many jails found that pathetic conditions prevailed in jails in which prisoners are forced to live. In its view this is not due to lack of ideas but due to apathy and lack of priority accorded to prison conditions and the rights of prisoners and under trials. The Commission has already initiated action to improve prison conditions in India, and started studying all prevailing reports related with prisons. The Commission has recommended the preparation of a new All India Jail Manual and also suggested the revision of the old Indian Prison Act of 1894. The Commission sought help from all who believe that human dignity must not be left when a person enters the gates of a prison. (National Human Rights Commission Report, Second Annual Report, 1994-1995)

Again, the Act also empowers the commission with the power to review the safeguards provided under the Constitution or any law for the time being in force for the protection of human rights and also to recommend measures for their effective implementation under section 12(d). Section 12 (g) provides for promotion of research in the field of human rights. Section 12(h) empowers the Commission to spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publication, the media, seminars and other available means. Section 12(i) empowers the Commission



to encourage the efforts of Non- governmental organisations (NGOs) working in the field of human rights. (*Role of the National Human Rights Commission of India in Protection of Human Rights*, Manoj Kumar Sinha, 1997)

Thus it is seen that in accordance to the norms of UN sponsored Paris Principles, 1991 Indian government recognised the growing importance of strengthening national human rights institution. Finally India had established NHRC in 1993. Government of India provides numerous powers and functions to the Commission. The Commission came into effect on 12 October 1993. The Commission was established for better protection of human rights and for matters connected therewith or incidental thereto.

It is seen that within a short span of time NHRC got popularised due to its easily accessible nature. Again advancement of technology also made it easier for the common people to approach. Now anyone can approach NHRC through telephone, letter, application, mobile phone or even through internet. Through its own website one can easily find out any records of the commission, which brings awareness among the people. Even the status of one's complaint is also available through website. The popularity and trust on NHRC is quite evident from the fact that while it had registered only 496 complaints in 1993-94, in 2004-05 the total number of cases were 74,401.

**SAQ:**

Do you think that establishment of NHRC is the last resort to protect human right. (50 words)

.....  
.....  
.....

**STATE HUMAN RIGHTS COMMISSION**

For the better realisation of Human Rights apart from the establishment of NHRC, the Human Rights Protection Act also provides for the establishment of State Human Rights Commission (SHRC). According to this Act, each

state in India may constitute a body to be called as SHRC to exercise its powers on human rights. The SHRC consists of

- a. A Chairperson who has been a Chief Justice of the High Court; one Member who is or has been, a Judge of the High Court
- c. One Member who is, or has been judge of High Court
- d. Another member who is/has been a district judge
- e. Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The SHRC may inquire into the matters concerned with List II and III of 7<sup>th</sup> Schedule of Indian constitution. It needs mention here that the Chairperson and other members of SHRC are appointed by the governor, while in case of NHRC they are appointed by the President.

### **STOP TO CONSIDER**

#### **SHRC and NGO**

The responsibility entrusted to the Human Rights Commission under the Act of 1993 cannot be adequately fulfilled without the development of close ties between the Commission and NGOs. For the Commission, it is not just a matter of Statutory obligation under Section 12(i) of the Act. The Commission recognised that the cause of human rights has much to gain both from the practical help and from the constructive criticism that NGOs and the Commission can bring to bear in their mutual interaction and growing relationship. The Commission from the very beginning associated NGOs with the inquiry of complaints. In several places, during visits by the Commission, NGOs have boldly come forward with evidence of wrong-doing in relation to specific complaints addressed to the Commission. (National Human Rights Commission Report, First and Second Annual Report)

### **HUMAN RIGHTS COURTS**

It is seen that now violation of human right has become quite common and the increasing number of such cases and for speedy trial of these offences paved the way for the establishment of Human Rights Court at district level. The state government by notification specifies for each district a court known

as HRC to try the violation of the human rights. The court is responsible for speedy trial of offences arising out of violation of human right.

### **The Role of Judiciary in Protection of Human Rights**

Indian constitution placed the judiciary independent to the executive and legislature. With the power of judicial review it can review any law passed by these two organs. As a signatory member of many national and international conventions the Indian judiciary has acted as the protector of human rights of Indian citizens. For the effective utilisation of constitution provisions and to promote and protect human right the law requires more propensity and effect. But in recent years it is seen that the working of Indian judicial system specially the criminal justice system bitterly criticised due to delays. The whole judicial system requires to be reformed.

However recently introduced Public Interest Litigation system has brought a drastic change to Indian society. In other words we can say that PIL has brought a revolution to the field of human rights protection. The core behind the PIL is that Court relaxed the strict rule of *locus standi*. It was welcomed by the all section of people and the non-governmental organisations. Due to PIL now NGOs can knock the doors for the cause of those who are unable to do so. Again any one can now file cases of human rights violations on behalf of others. Such system ensures the dignity of those people who are unable to reach the door of judiciary.

### **PROTECTION OF MINORITY RIGHTS**

The term “minority” is a very broad and complex term. Still there is debate going on and no consensus has been reached as to what it pertains to and is broad for it incorporates diverse groups which have ethnic, religious or linguistic features. Various attempts were made internationally to protect the rights of minority, which is the weaker section of the society. In India the constitution also seeks to protect the rights of minorities. It can be said that the goals of democracy should be best realised if each and everyone’s rights are protected properly. The Constitution of India realised the fact that no legal guarantee of human rights can be effective unless the minority group has its own share in the political fate of the country. Therefore, it is necessary to recognize the minority nationalities a proportional possibility

of having their word in the destiny of their country through what is called proportional representation (Duchacek, 1970:101). Indian Constitution through Article 29 defines the protection of interest of minorities as

1) Any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have right to conserve the same.

2) No citizen shall be denied admission into any educational institution maintained by the State receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Again, article 15 protects all citizens against discrimination generally but article 29(2) is a protection against a particular species of wrong, namely, denial of admission into educational institutions maintained or aided by the state. Finally, the specific grounds on which discrimination is prohibited are not the same in two articles. 'Place of birth' and 'sex' do not occur in article 29(2), while 'language' is not mentioned in article 15.

## **PROTECTION OF WOMEN RIGHTS**

Since the inception of human civilisation women are treated as second class citizen and deprived from public sphere. Though Indian culture depicted a pride history of women still domestic violence becomes a threat for their identity. Indian constitution also take into account the principle of gender equality placed in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. But, we have seen that women are the easy victim of violence activities. So, there is an urgent need for the Indian government to enact an Act to provide more effective protection to women guaranteed top protect them from violence within or outside the family under the Constitution

Therefore the Parliament of India adopted "The Protection of Women From Domestic Violence Act", 2005, keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Indian Constitution to redress women grievances under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Article 1 of this Act stated that "this law governs the

rights of individuals having suffered from domestic violence, the protection measures, and the procedure applicable to the imposition of such measures”. Hence it is seen that Indian government moves forward to protect the human rights of weaker sections of the society.

### **STOP TO CONSIDER**

#### **“Protection” under the Protection of Women From Domestic Violence Act”, 2005:**

“Protection” under the Protection of Women From Domestic Violence Act”, 2005 may be sought by any individual having suffered from domestic violence applied by:

1. A spouse or former spouse;
2. A person with whom that individual cohabits or has co-habited;
3. A person with whom that individual has a child;
4. An ascendant;
5. A descendant;
6. A sibling;
7. A relative by affinity up to the second degree;
8. A guardian or foster parent.

### **CHECK YOUR PROGRESS**

1. Discuss the powers and functions of NHRC.
2. What measures are taken for the protection of Human Rights in India?
3. How rights of women are protected in India?
4. Is there any provision in Indian constitution to protect and promote human right? Discuss
5. Discuss the role of Judiciary in the protection of human rights.
6. Write a note on the status of Human rights in India.

### **Critical Appreciation**

Despite having a democratic set up and firm belief on UN’s measures to protect human right still the position of human right protection in India is not

developed fully. Though Indian constitution guaranteed various fundamental rights which are similar to the rights of UDHR due to lack of lack of proper implementing machinery and awareness among the people these are not utilised properly. We know that in accordance to the norms of UDHR and the Paris principle NHRS was established in India as nodal agency to protect human right, but the working of NHRC is not impressive. The major criticism levelled against the NHRC is that it is only an investigative and recommendatory body. It does not have power of prosecution. Again the laws passed by the legislature does not get due recognition due to the lack of awareness among the people. For the best realisation of human rights first we have to provide human rights education at all level of educational system. One should be equipped with human rights educations since his child hood. Only then we can achieve the goals of human rights protection.

However, these constitutional freedoms are not absolute. In other words we can say that the government can impose ban upon them. It means that the government of India in some circumstances can curtail the freedom of individual; it is against the norms of democracy and hampered one to enjoy his/her inherent rights. For example, during the proclamation of emergency the freedoms depicted in the Article 19 automatically remain suspended. Another major weakness of Indian efforts in the protection of human right is that there is no provision to investigate human right violation cases committed by armed forces, BSF or any other para-military forces.

Again, apart from emergency conditions, in normal situation some acts like Armed Force Special Powers Act now becomes a threat to the enjoyment of ones human rights. Specially in Manipur the Act is in operation, under which armed force get the power to take custody anyone on the ground of suspect, even they have the power to shoot. It indicates that human right are violated by the government agencies.

Apart form these India is not ratified many international conventions or mechanisms like: the

- UN Convention against Torture and Other Cruel,
- Inhuman or Degrading Treatment or Punishment,

- the Convention on the Status of Refugees,
- Optional Protocols to the ICCPR and
- the Protocol relating to the status of refugees.
- The UN Code of Conduct for Law Enforcement Officials,

Nevertheless, India made a remarkable progress in the field of human right protection. It is a good sign for Indian citizens that the judiciary has also shown the willingness in protecting Human Rights. The reflection of the Human Rights perspective and quest for the protection and promotion of Human Rights can be clearly seen through various Acts that India enacted in the last few years. Now it is seen that all the legislations in India are being enacted keeping in mind the goal of human right protection. For example, the Equal Remuneration Act aims at ensuring equality in the amount of wages paid to male and female worker for the same kind of job done.

## **2.5 Summing Up**

After going through this unit now you are in a position to examine the status of human rights in India and Indian efforts in the promotion and protection of human rights. In this unit you have learnt that India has shown its firm belief on UN and other international conventions and protocols regarding the issue of protecting human right. Now it can be said that India is moving towards the goal of 'Protection of Human Rights for All'. It is good sign that both the Legislature and Judiciary are playing major roles, in their own way, in achieving the aforesaid goal. But on the other hand, it is also true that all these efforts are still lacking in one or the other respect which is quite evident from the amount of literature arguing the point more forcefully opposite to that.

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**BLOCK IV**  
**Areas of Human Rights**

**Unit I : Human Rights: Women and Children**

**Unit II : Human Rights: Refugees, IDPs, Environmental Rights**



# **Unit I**

## **Human Rights: Women and Children**

### **Contents**

- 1.1 Introduction
- 1.2 Objectives
- 1.3 Meaning of Child Rights
- 1.4 Issues Violating Child Rights in India
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  - 1.5.1 Constitutional Provisions
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- 1.8 Constitutional and Legal Provision for Guaranteeing Women Rights in India
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  - 1.8.2 Legal Provisions
  - 1.8.3 Special Initiatives
- 1.9 Summing Up
- 1.10 References and Suggested Readings

### **1.1. Introduction**

Child rights and women rights basically refer to the human rights of children and women. We all know that women and children constitute weaker section of society. Rights of children help them to live a healthy and free life. The children's rights cover a wide range including civil, cultural, economic, social and political rights.

Here in this unit we are going to discuss the meaning of child rights as well as women rights. Emphasis will also be given on the factors leading to the violation of these rights. These factors includes child abuse, child marriage, child labour, child prostitution, child and women trafficking, sexual

harassment, dowry, female infanticide, sex selective abortion, domestic violence etc. We shall also study the constitutional and legal provisions for protecting these rights.

## 1.2. Objectives

Child rights and women rights are the two important aspects of human rights. After reading this unit you will be able to

- *understand* the meaning of child and women rights
- *analyse* the issues violating these rights in India
- *explain* the constitutional and legal provisions for protecting these rights

## 1.3. Meaning of Child Rights

Age is the main criteria on the basis of which we can differentiate between a child and an adult. The laws do not permit the children to take decisions on their own as they are considered as minors. Though a child has rights, he/she becomes unable to enjoy these rights due to age constraints. These rights are basically exercised by family, society and state. But it is noticeable here that these agencies are mainly responsible for violating child rights. On the other hand, non- governmental agencies play an important role in protecting and promoting these rights.

It is important to remember here that by child rights we imply the human rights of the children. These rights include the right to association with both biological parents, basic need for food, state paid education, health care and criminal laws etc. These rights also allow the children to take autonomous action as well as guarantees that children will be free from any kind of abuses.

It is noteworthy that there is no universal definition of children's rights. Thomas Spencer's publication *Rights of Infants* (1796) can be regarded as one of the earliest assertion of children's right. In broad sense, the rights of the children can be grouped into two broad categories i. e. rights acknowledging children as autonomous persons known as right of empowerment and secondly, rights which protects the dependent children known as right to protection.

According to Canadian Organisation there are three types of rights for children. These are-

- *Provision-* It is the right of the children to have an adequate standard of living, health care, education and services and play and recreation. They are entitled to a balanced diet, a warm bed to sleep in and access to schooling.
- *Protection-* It is the right of the children to be protected from abuse, negligence, exploitation and discrimination.
- *Participation-* This right entitles the children to participate in library and community programmes, youth voice activities etc.

Again, the Child Rights Information Network (CRIN) has categorized the rights of the children into two groups. These are-

- *Economic, Social and Cultural Rights-* These include basic human rights like right to education, adequate housing, food, water, highest attainable health care, right to work, rights at work and cultural rights as well.
- *Environmental, Cultural and Developmental Rights-* These are also called the third generation rights which include the right to live in safe and healthy environment, and development.

The General Assembly of United Nations adopted the UN Convention on the Right of The Child(UNCRC) on 20<sup>th</sup> November, 1989. It is in December 1992, India ratified this convention. This convention declares that a child as an individual possesses different kinds of economic, civil, social, political and cultural rights. This convention guarantees certain rights to the children. These are-

- *Right to Survival-* Right to life, best attainable standards of health, nutrition, adequate standard of living and the right to registration of birth, name and nationality consist the right to survival.
- *Right to Protection-* This right refers to the freedom from all forms of exploitation, abuse, inhuman and degrading treatment. It also includes the right to special protection in the situation of emergency and armed conflict. It also includes protection against, drug abuse, disease and disability.

- *Right to Development*- This right consists of several rights like right to education, right to receive support for development, right to social security as well as the right to leisure, recreation and cultural activities.
- *Right to Participation*- It implies freedom of thought and expression, conscience and religion.

In general, we can say that there are some rights which help the children to grow up healthy and free. These rights includes- freedom of speech, freedom of thought, freedom from fear, freedom of choice and the right to make decisions and ownership over one's body and all people under the age of 18 are entitled to rights guaranteed for children.

#### **1.4 Issues Violating Child Rights in India**

It is important to mention here that there are several issues which violate the basic rights of children. Now let us discuss some of these issues.

- ***Child Sexual Abuse.-***

It refers to child abuse by the adult or other adolescent for sexual stimulation. 'Study on Child Abuse: India 2007', a Report published by the Ministry of Women and Child Development states that the greatest number of child abuse cases takes place in states like Assam, Bihar, Andhra Pradesh and Delhi. In most of the cases of child abuse, it has been noticed that the abuser is known to the child. This offence is becoming a large problem due to the absence of any effective law. Moreover, the abused child also tends to keep quiet about these incidences. In India it is hard to find any specific definition of child abuse.

- ***Child Marriage.-***

Child marriage is a practice in which young girls and boys (usually below the age of 15 years) are married. In most of the cases, the young girl is married to an adult. Child marriage leads to premature pregnancy which may affect the health of the child bride. This can be termed as violation of human rights.

- ***Child Labour.-***

Child labour refers to engagement of children in livelihood for different industries. These child labourers are mostly found working barehanded in

factories like carpet making, glass blowing unit and firework making factories. In the carpet industries the child labourers are paid very less wages and they have to work in an unhygienic condition for long hours. Poverty and over population can be regarded as the two most important reasons of child labour in India. The parents are compelled to send their children for working in such factories due to economic reason. Child labour is harmful to the mental and physical development of the child.

### **STOP TO CONSIDER**

#### **The Noida Killing**

The Pandher case in Noida can be cited as one of the greatest examples of violation of human rights in India where 11 children were killed along with a 20 years girl. The Noida serial murder took place in the house of the businessman Moninder Singh Pandher in Nithari. He was helped by his servant Surender Koli. Mr Koli confessed that he murdered six children along with a 20 years old girl after sexually assaulting them. Mr Pandher was the mastermind behind all these.

#### • ***Child Prostitution.-***

Unlike the other countries, child prostitution has very less connection to do with sexual tourism. It is more of a kind of religious beliefs. Origin of child prostitution can be traced back to the religious practice of *devadasi* system. In this system, the young girls are married to god and she becomes a religious prostitute. Poverty is another reason which compels some parent to sell their girl in the brothel.

#### • ***Child Trafficking.-***

Children trafficking is a major problem violating children's rights in India. The trafficked children are engaged in forced labour or sexual activities. Again they are also forced to work as factory workers, domestic servants, beggars, and agricultural workers. Trafficking of a child violates his/ her right to grow up in family environment.

#### • ***Corporal Punishment in Schools.-***

Corporal punishment refers to physical torture in schools. It covers punishments like beating, canning, thrashing etc. But gradually pinching,

slapping, making a student stand or kneel down for hours, etc. under the coverage of corporal punishment. Extreme level of physical punishment may adversely affect the psychology of a child and it also goes against the dignity of the children which is a violation of their rights.

## **1.5 Constitutional and Legal Provision for Guaranteeing Child Rights in India**

Under the Commission for Protection of Child Rights Act, 2005, The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007. It tries to make sure that all the laws, programmes and policies are in accordance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the rights of the child.

### **1.5.1 Constitutional Provisions**

It needs mention here that at the time of the framing of the constitution of India, the concept of child's rights was not that popular. But, the framers of the constitution regarded, children as the assets of the nation and thought of their protection. The Constitution of India guarantees certain rights for all children. These are-

- Article 14- (Right to equality) This right guarantees equality in every sphere including equality before law. It states that no one shall be discriminated on the basis of their caste, creed, colour, sex, gender, religion or place of birth.
- Article 15- (Right against discrimination) According to this article, everyone should have equal access to public places like public parks, museums, wells, bathing ghats and temples etc. and should not be discriminated on any ground.
- Article 21- (Right to personal liberty) This article implies that no person shall be denied of his life and personal liberty except when he/ she commits a crime.
- Article 21 A- Article 21 A inserted by 86th Amendment provides for the right to education to all children between the age group of 6- 14

years. It provides for free and compulsory education for this age group.

- Article 23- Right to being protected from being trafficked and forced into bonded labour
- Article 24- Right to be protected from any hazardous employment till the age of 14 years. This article provides that children should not be employed in any factory, mine or any other hazardous occupation.
- Article 39 (e)- Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength. It also directs the states to frame policy in such a manner so that the tender age of children does not get abused.
- Article 39 (f)- Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment. It also provides for protection against moral and material desertion of child as well as giving ample opportunity for their development.
- Article 46- Right of weaker sections of the people to be protected from social injustice and all forms of exploitation.

### **CHECK YOUR PROGRESS**

1. Discuss the constitutional provisions deals with the protection of child rights in India.
2. Examine the status of child right in India.
3. Write a note on Right to Education Act.

### **1.5.2 Legal Provisions**

You have already learnt the provisions incorporated in the Constitution of India for safeguarding the rights of children. But you should remember here that it is only in Fifth Five Year Plan the government of India started taking some steps for children welfare through the promotion of basic minimum



services to the children. Consequently, the National Policy for Children was adopted in 1974. The National Policy for Children adopted in 1974 by the government of India declared children as the most precious asset of the nation.

- ***The Guardian and Wards Act 1890***- It was the only non- religious law regarding the guardianship of child. According to this law, the court has the supreme authority to decide who shall be the guardian of the child. The court may appoint someone as guardian or it may also remove someone from the guardianship.
- ***The Reformatory Schools Act 1897***- This Act is passed to amend the laws relating to reformatory schools. This law also makes provision for dealing with youthful offender.
- ***Child Marriage Restraint Act 1929***- This Act was passed on 28<sup>th</sup> September 1929. It was sponsored by Rai Sahib Har Bilas Sarda to the British government. Therefore this act is also known as Sarda Act. According to this Act, the age of marriage should be 18 years for girls and 21 years for the boys. On 1st April, 1930, this act came into effect. It prohibits marriage between child below this age and violation is a punishable offence.
- ***The Children (Pledging of Labour) Act 1933***- This act can be termed as first statutory enactment which deals with child labour. It aims at prohibiting the pledging of labour of children.
- ***The Factories Act 1948***- it was enacted in 1948 and came into force on 1st April 1949. It is related to the health of the worker.
- ***The Women and Children's Institutions (Licensing) Act 1956***- The Women And Children (Licensing) Act was enacted in 1956. The chief objective of this Act is to protect women and children from exploitation and inhuman condition prevailing in the institutions.
- ***The Hindu Minority and Guardianship Act 1956***- This Act is concerned with the natural guardian of a child. According to this Act, for a child below the age of 5 years, the mother will be the primary guardian while for a child above 5 years the father shall be the natural guardian. This Act also empowers the natural guardian to take action for the protection and promotion of the child.

- ***The Hindu Adoption and Maintenance Act 1956***- According to this Act, an adoption can be considered as valid if it fulfils the following criteria- the adopter has to be Hindu, he must be capable of maintaining the child, the child must be capable of being adopted etc.
- ***The Young Persons Harmful Publications Act 1956***- This Act prohibits the publication of certain things considered harmful for young people.
- ***The Probation of Offenders Act 1958***- According to this Act, the young offenders should be allowed to stay with their family to give an opportunity to improve their conduct. Sending them to imprisonment may make them more aggressive.
- ***The Mines Amendment Act 1983***- This Act is related to the regulation of labour and safety in mines. It also prohibits the employment of children who is below 18 years of age in mines.
- ***The Child Labour (Prohibition and Regulation) Act 1986***- Again the Child Labor Prohibition and Regulation Act was enacted in 1986. This Act aims at prohibiting the engagement of children in certain jobs and advocates regulation of work condition in workplace.
- ***The Immoral Traffic (Prevention) Act 1986***- This Act was formerly known as the All India Suppression of Immoral Traffic Act (SITA). The 1986 Amendment renamed it as the Immoral Traffic (Prevention) Act or PITA. This Act tries to limit and abolish prostitution in India. Again it also aims at gradually criminalizing various aspects of sex work. Though it does not make prostitution illegal, it mentioned that soliciting, brothels and pimps are illegal.
- ***The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act 1992***- This act formerly known as the Infant Milk Substitutes Act emphasizes promoting breast feeding and curtailing unethical promotion of other alternatives of breast milk. In the year 1992 it has been amended and renamed as the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act.
- ***The Juvenile Justice Act 2000***- This Act builds a framework for the protection, treatment and rehabilitation of children in the purview

of the juvenile justice system. This act also prohibits the publication of the names of juvenile children. It aims at providing fair and adequate rehabilitation for the child in criminal cases.

## **1.6 Meaning of Women's Rights**

The term human rights of women is the continuously evolving product of an international movement which aims at improving the status of women. The women's movement during 1980s and 90s aims at dealing with the problems faced by women. The human rights of women empower women to define, analyse and articulate their experiences of violence, degradation and marginality. It also provides a common platform to bring changes.

Looking back at history we find that the condition of women in Athens was derogatory. They were under the dominance of their male relatives till marriage. Once they are married, their husbands become their guardians. They were not considered as full citizens as they were given limited rights. They did not enjoy property rights. Moreover, they could not enter into any legal proceedings. But the case of Spartan women was different. They enjoyed status, power and respect in all spheres. Though they were not permitted to take part in military and political activities, yet they were given respect and status as mothers of Spartan soldiers. They were educated and given the property rights in the form of land ownership. While Plato and Aristotle did not want to give any rights to women, the Stoic philosophers demanded equality of sexes. In Rome, the philosophers influenced by the Stoic philosophers, advocated for equality of rights for man and woman. During the Medieval period, the English Common Law declares that the property of women was the possession of her husband once she is married. Though it does not permit the husband to transfer property without his wife's consent, yet he enjoys all the profits produced by that property. It is only in the year 1965, that the restrictions put on the French married women regarding legal capacity was removed. John Stuart Mill who was the greatest advocator of women's rights argued that the women should also be given the right to vote. It is only in the year 1893, that New Zealand became the first country to give voting rights to women. The women were denied property rights for a long period of time. But the beginning of 1840s witnessed a

change with the passing of the law the married women's property act in the British Parliament.

The National Organisation for Women was established in USA in the year 1966. The chief objective of this organisation was to bring equality for all women.

During the period, 1976- 85, which was declared as United Nations Decade for Women, women from different spheres organized themselves irrespective of religion, race, class, culture only to improve the status of women. The conferences held in Mexico, 1975, Copenhagen, 1980 and Nairobi 1985, sponsored by United Nations aimed at evaluating the status of women as well as take steps for their advancement.

Numerous attempts have been taken for the protection and upliftment of women. Among these steps, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which was adopted in 1979 is of utmost importance.

### **STOP TO CONSIDER**

#### **Birth Control and Reproductive Rights**

The birth control rights becomes major issue in the feminist movements. These right advocates for the use of contraceptives so that the women can avoid the fear of pregnancy. It also demands legalisation of abortion along with imparting education and campaigns on contraception.

The feminists views reproduction as a symbol of powerlessness of women. Therefore they advocated for birth control rights. The reproductive rights is an umbrella term as it is not recognised by the international human rights law. This right includes right to legal or safe abortion, the right to control one's reproductive functions etc. Though this right belongs both to men and women, yet it is primarily considered as women's rights.

But these rights got these confirmation in 1993, 45 years after the Universal Declaration of Human Rights was adopted, and eight years after CEDAW entered into force. The Vienna Conference confirms that these rights of women are human rights. This conference declares neglect of women rights

as human rights violation. It also tried to establish a relationship between gender and human rights violation.

Again, the International Conference on Population and Development held in Cairo in 1994 expresses that there is a relationship between advancement and fulfillment of rights and gender equality and equity. This Cairo Conference also dealt with the concepts like women's empowerment, gender equity reproductive health and rights. It also accepts that for sustainable development it is necessary to empower and give autonomy to women as well as to improve their political, social, economic and health status. The Fourth World Conference on Women held in Beijing in 1995, also undertaken goals to advance a wider range of women's rights. Moreover, the Millennium Development Goal has undertakes gender equality and women's empowerment as one of the eight Millennium Development Goals.

The 1998 International Criminal Tribunal for Rwanda which was established by the United Nations, declared that rape is a serious crime of genocide under international law.

Hence we can say that the rights of women generally includes the right to bodily integrity and autonomy, right to vote, right to hold public office, right to work, right to fair wages or equal pay, right to own property, right to education, right to be conscripted, right to enter into legal contracts, and to have marital, parental and religious rights. But it should be remembered here that women rights are not limited to these only.

### **1.7 Issues Violating Women Rights in India**

Although several laws are implementing to protect women, the crime against women is increasing at an alarming rate. We shall now discuss some of the issues violating women's rights in India.

#### **• Sexual Harassment**

In India in the 1990s most of the cases related to violation of women rights dealt with molestation and harassment at the workplace. Many scholars believe that the western culture has influenced the crime of sexual harassment against women. Moreover, women are commodified in the society as well as in the media advertisements. In the case of *Vishaka vs. State of Rajasthan*,

sexual harassment was defined as any unwelcome sexually determined behaviour (whether directly or by implication) which includes physical contact and advances, a demand or request for sexual favors, sexually-colored remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature. It violates the right to life and personal liberty.

- **Dowry**

Dowry refers to those gifts which are precondition for marriage. Dowry is considered to be a social evil. Many cases can be seen in which women are burnt to death by her husband and in laws because of dowry. Dowry simply refers to the property which the bride brings to the bridegrooms' house during her marriage. Initially, there was no element of compulsion on the part of brides family. But gradually the grooms' family started demanding dowry and brought the element of compulsion in it. It made the issue of dowry, a social problem. Thereby has lowering the status of Indian women to a great extent.

**STOP TO CONSIDER**

**Crimes Against Women identified under Indian Penal Code**

Some crimes are specially related to women. These are called 'Crime against Women'. The Crimes identified Under the Indian Penal Code (IPC)

- Rape (Sec. 376 IPC)
- Kidnapping & Abduction for different purposes ( Sec. 363-373)
- Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- Torture, both mental and physical (Sec. 498-A IPC)
- Molestation (Sec. 354 IPC)
- Sexual Harassment (Sec. 509 IPC)
- Importation of girls (up to 21 years of age)

- **Female Infanticides and Sex Selective Abortions**

Female infanticide refers to the direct or indirect killing of a girl child within one year of her birth. The infant girl can be killed directly or indirectly i. e.

either by neglecting to feed her. The amniocentesis and ultra sonography has made it possible to determine the sex of the unborn child. This leads to killing the unwanted female child before birth. This is called female foeticide or sex selective has led to low female- male ratio. Dowry problem has compelled the poor parents to indulge in female infanticides and foeticides.

- **Domestic Violence**

Domestic violence simply refers to violence within our homes. Domestic violence against women is the most common form of domestic violence. Though there are several reasons of domestic violence against women, two are the most important issues- dowry and alcoholism of partner is the most important reason. Young widows are also sufferers of this kind of violence.

- **Trafficking**

Though the Government of India passed the Immoral Traffic (Prevention) Act in 1956, yet there are cases of trafficking of young girls and women. These women are mostly forced to prostitution.

## **1.8 Constitutional and Legal Provisions for Guaranteeing Women Rights in India**

Before discussing the constitutional and legal provisions for guaranteeing the women rights in India, let us have a look at the position and status enjoyed by women before independence and framing of constitution. You should remember here that according to various scholars, the women in ancient India enjoyed equal status with man in every sphere. The women were educated and they had enjoyed the freedom to choose their life partner. Gargi, Maitreyi are some of the literate women during that period. The muslim intervention during medieval period lowered the status of women. the status further deteriorated with being sati, child marriage and widow remarriage becoming a part of Indian social life.

It needs mention here that though during that period the condition of women was derogatory yet there were some exceptions. In this context we can cite the example of Razia Sultana who was the only woman monarch to rule Delhi, Mughal Emperor Jehangir's wife Nur Jehan who was considered to be the real force behind mughal throne, the Mughal Princesses Jahanar and

Zebunnissa who excelled in the field of poetry, Shivaji's mother Jijabai who was a great administrator etc.

The Bhakti Movement tried to restore the lost pride and status of women. The advocates of Bhakti Movement preached for equality between man and woman.

It is important to mention here that during that period some evils were practised against women. These were purdah system, child marriage, sati system, jauhar, devdasi etc. In the sati system the widow of the dead husband is forced to immolate herself on her husband's funeral pyre. On the other hand, jauhar refers to the voluntary immolation of the wives and daughters of defeated soldiers. Again, purdah system has also deteriorated the position of women. In the devdasi system, the women are married to the temple and sexually exploited by the priests.

During the British rule many reformative movements were initiated by social workers like Raja Ram Mohan Roy, Dayanand Saraswati, Ishwar Chandra Vidya Sagar, Jyotirao Phule etc for the upliftment of status of women.

The first women's delegation met the secretary of state in 1917 to demand women's political rights. Again, in 1927, the All India Women's Education Conference was held in Pune. In 1929, Child Marriage Restraint Act was passed.

In India the Mathura Rape Case can be cited as the first case which led to the union of women together. The rape of a young girl Mathura gained national attention and the protest against this led to the amendment of Evidence Act, the Criminal Procedure Code and the Indian Penal Code. It also led to the inclusion of the category of custodial rape.

Most often alcoholism is also related to domestic violence. Therefore many women groups start protesting against liquor consumption. The Muslim women in India started criticising the triple talaq system under Sharia Law.

Though Government of India declared 2001 as the year of women's empowerment, and also passed the National Policy for Empowerment of Women.

2006 witnessed another rape case of Imrana who was raped by her own father-in-law. Though some Muslim scholars wanted Imrana to marry her father-in-law, at last he was imprisoned for 10 years.



The Womens Reservation Bill which ensures 33% reservation for women in parliament and state legislative bodies was passed on 9<sup>th</sup> march 2011, a day after the International Womens Day.

### **1.8.1 Constitutional Provisions**

The preamble, Fundamental Rights, Fundamental Duties and Directive Principles of Indian Constitution ensure the principle of gender equality. It ensures equality of women. Moreover, the Indian constitution also favours positive discrimination in favour of women. Different policies and plans are adopted by the government for the advancement of women in different spheres. Ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993 is an important step towards equality of women.

- Article 14- guarantees equality before law.
- Article 15(i)- describes that there should not be any discrimination against anyone on the basis of religion, race, caste, sex, place of birth or any of them.
- Article 15(3).- The constitution also empowers the state to make special provisions in favour of women under
- Article 16- guarantees the equality of opportunity for all citizens in matter of employment in any office under state.
- Again, article 39 (a)- ensures equal right to an adequate means of livelihood.
- Article 39 (d)- guarantees equal payment for equal work for both men and women.
- Article 39A- declares equal opportunity for securing justice.
- Article 42- directs the state to make provision for securing just and humane condition of work and maternity relief.
- Article 46- The state protects the weaker section from social injustice and exploitation as well as promote educational and economic interest.
- Article 47- directs the state to raise the level of nutrition and standard of living of its people.

- Article 51(A) (e) -renounces those practices which are labeled as derogatory to the dignity of women. Again this Article also promotes harmony and spirit of brotherhood amongst all the people.
- Article 243 D(3) declares that the one third of total number of seats in Panchayat election should be reserved for women. But it includes the seats allotted for scheduled caste ad scheduled tribes women as well.
- Article 243 D (4)- ensures that not less than one third of offices of Panchayat Chairperson should be reserved for women.
- Article 243 T (3)) declares that not less than one third of total number of seats should be reserved for women in Municipality. Again, it includes the seats allotted for scheduled caste ad scheduled tribes women as well.
- *Article 243 T (4) - Again the reservation of seats of Chairperson in Municipality should also be reserved for women*

## **STOP TO CONSIDER**

### **Land and Property Rights**

Though there are laws guaranting the women's share in property, yet in most cases she is deprived of any property right in her parental house. The women are given right to inheritance accordin to the Personal Laws of mid-1956s. But these laws are not free fom faults. While the sons have a share in ancestral property, the daughters are allowed to have some share from her fathers share. A father can easily disinherit a daughter from his property which is not possible in case of the son. Moreover, the married daughters are deprived of residential right in her fathers ancestral house.

The 1986 Shah Bano Case led to the enactment of Muslim Women's (Protection Of Rights Upon Divorce) Act. Some fundamentalist muslim opposed Supreme Court's decision that muslim woman Shah Bano is eligile for maintenance. Subsequently, the act has been passed by the union government.

Like this, all the chuches joined hand with womens organisations in 1994 to give women equal rights of divorce and succession consequently, they drew up a draft law known as Christian Marriage and Matrimonial Causes Bill. But the government has still not ammended the relevant laws.

## 1.8.2 Legal Provisions

To support the provisions in the constitution, the state government has initiated various laws for the protection and promotion of women.

Laws are not gender specific. Yet there are some laws which deal with safeguard of women. These are-

- ***The Employees State Insurance Act, 1948***- This act is a kind of social welfare legislation. The chief objective of this act is to provide certain benefits to employees in case of sickness, maternity and employment injury.
- ***The Plantation Labour Act, 1951***- This act aims at the welfare of labour involved in plantation. It also tries to regulate the conditions of service of labours and also covers maternity benefits.
- ***The Family Courts Act, 1954***- This act provides that the women involving in family disputes should get justice.
- ***The Special Marriage Act, 1954***- According to this Act, the women have equal rights with men in cases regarding inter-caste marriage, love marriage and registered marriage. It also provides for a minimum age for marriage- 18 years for girls and 21 years for boys.
- ***The Hindu Marriage Act, 1955***- This act prohibits polygamy, polyandry and child marriage. This act also empowers the women by providing them the right to divorce and remarry.
- ***The Hindu Succession Act, 1956***- This act gives the women the right to parental property. This act was amended in 2005.
- ***Immoral Traffic (Prevention) Act, 1956***- This law aims at limiting and abolishing prostitution. Though it did not mention about prostitution, yet it declares brothels and pimps as illegal.
- ***The Maternity Benefit Act, 1961 (Amended in 1995)***- This act advocates rights for women which include the payment of maternity benefit for total 12 weeks from the date of delivery. Moreover, this act also directs to exempt the pregnant women from work which requires long hours of standing.

- ***Dowry Prohibition Act, 1961***- This act declares dowry as an unlawful practice. It prohibits the request, payment or acceptance of dowry in any form. the dowry Prohibition Act was passed by the Government of India in the year 1961. this act made dowry demands are weddings illegal. But this has not affected the dowry related murders and suicides. The dowry prohibition rules were framed in the year 1985. these ules demamnded that the parents of the bride should maintain a list of the presents given to the bride and bridegroom at the time of their wedding. The list should contain the name of the item, its approximate value and the name of the person who gifted it. But theses rules are never enforced.
- ***The Medical Termination of Pregnancy Act, 1971***- This act empowers the women to go for abortion on physical and mental ground. It legalizes abortion.
- ***The Equal Remuneration Act, 1976***- this act prevents the discrimination against women in matters related to wages on the ground of sex. It provides for equal wages for both men and women for equal works.
- ***The Criminal Law (Amendment) Act, 1983***- This act aims at stopping the crimes against women.
- ***Indecent Representation of Women (Prohibition) Act, 1986***- This act tries to prohibit the vulgar representation of women in media as well as in any publication, writing, painting etc.
- ***The Protection of Women from Domestic Violence Act, 2005*** - This act came into force on 26<sup>th</sup> October, 2006. It mainly extends to the women who are living with the abuser sharing some relationship as well as common household. This Act emphasizes women's right of secure housing i.e. the women has the right to reside in the house irrespective of her rights in the house. In this Act Domestic violence is defiend as actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic as well as dowry related violence.

### **CHECK YOUR PROGRESS**

1. Discuss some factors which are responsible for the violation of women rights in India.
2. Analyse the status of women rights in India.
3. Discuss the constitutional and legal provisions for guaranteeing women rights in India.
4. Write a note on Dowry system of India.

### **1.8.3 SPECIAL INITIATIVES**

Besides the above mentioned constitutional and legal provisions, some special initiatives are also taken for ensuring the rights of women. They are:

- ***National Commission for Women***

*The government set up a statutory body in January 1993 known as the National Commission for Women. The chief objective of this body was to study and monitor all matters relating to the constitutional and legal safeguards provided for women. This body also aim sat reviewing the existing legislation to suggest amendments wherever necessary.*

- ***Reservation for Women in Local Self -Government***

*The 73<sup>rd</sup> Constitutional Amendment Act was passed in 1992. this act ensure the reservation of not less than one third seats for women in all the local self bodies in rural as well as urban areas.*

- ***The National Plan of Action for the Girl Child (1991-2000)***

The National Plan of Action for the Girl Child (1991-2000) is a plan of action which aims at ensuring survival, protection and development of girl child. This plan aims at building up a better future for the girl child.

- ***National Policy for the Empowerment of Women***

National Policy for the Empowerment of Women was prepared by The Department of Women & Child Development in the Ministry of Human Resource Development in the year 2001. The chef objective of this policy is to bring about the advancement, development and empowerment of women.

Though various rights are enacted to protect women, yet constant violation of these rights is a fact. Though some issues are handled newer issues are emerged like the feminization of the AIDS epidemic, feminization of migration, and increasing of trafficking on women which need to be more effectively addressed for a better society.

**SAQ:**

Do you think that the initiatives taken by the Indian government is sufficient to address the issue of women and child rights violation. (100 words)

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**1.9 Summing Up**

After reading this unit now you are in a position to understand the concept of child rights and women rights. You have also gathered some idea about the issues which violates these rights. Child marriage, child labour, child trafficking, child prostitution are some of the issues which affect the rights of the children. You have also learnt that there are some issues which adversely affect the rights of women in India. This unit also gave you an idea about the various constitutional and legal provisions to promote and protect these rights. The constitution of India incorporates several Articles which protect the rights of children and women. Again, several laws have also been enacted to protect these rights.

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## Unit-II

### Human Rights : Refugees, IDPS, Environmental Rights

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- 2.1 Introduction
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- 2.7 Summing Up
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#### 2.1 Introduction

Human Rights are the inherent and inalienable rights of human beings. These rights are basic rights which cannot be neglected. Every government must protect these human rights. In case of refugees we can say that refugees are those persons who cross the international border and are unable or unwilling to return to their own country. Unlike refugees and internally displaced person (IDP) is forced to flee from his or her own home but remains within their own countries. Though the IDPs are also referred as refugees but they do not fall within the legal definition of a refugee. It was



estimated that there were 24.5 million IDPs in some 52 countries. Now environment protection has emerged as an international concern. Environmental degradation has created a major threat to human life. So, the right to healthy environment is accepted as a basic human right.

This unit is an endeavour to introduce you to the concept of human rights in general, and human rights relating to the refugees and internally displaced persons and the relationship between human rights and environment.

## 2.2 Objectives

Human rights in the strict sense of entitlement can be defined as the rights one enjoys as his natural rights. In the present situation it is essential to know the rights of the refugees and IDPs. Though both the categories apparently seem similar, the first one crosses the international border while the later remains within the state boundary. So, after reading this unit you will be able to –

- *define* human rights
- *trace* the importance of the rights of the refugees and internally displaced persons
- *discuss* the international organizations and laws relating to the refugees and IDPs
- *trace* the relationship between environment and human rights

## 2.3 Meaning of Human Rights

We already know that human rights are inherent and inalienable rights enjoyed by individual by virtue of his/her being a human being. These rights are essential to every human being as without these rights the development of the individuality, personality and dignity of a person is impossible. The concept of human rights is based on the assumption that human beings are born equal in dignity and rights. These moral claims of every human being can be transformed to legal rights protected by the government and the state. Legal rights have the law as their source and humanity or human nature are the main sources of human rights which are found in every culture

and civilization. Discriminations on the basis of religion, race, sex, ignorance, caste, labour, social life, create inequality. Human rights are essential because through these rights the dignity and individuality of each and every human being will be protected and respected. These rights enable an individual to use their own talents, intelligence and conscience to satisfy their spiritual and other needs.

Human rights are not given to man by God and nature. Human rights is the social practice that aims to realize a particular vision of human potential through the institutionalization of basic rights.(Yadav 2009) There is a relationship between an individual and a state and this relationship is maintained through the practice of human rights. One cannot be denied the enjoyment of these rights. It is morally impossible to live without these rights as they are the very basis of human life, dignity and worth.

Many important written documents have contributed to the development of human rights, like the Magna Carta in England (1215), the American Declaration of Independence (1776), the French Declaration of Independence (1789), the Bolshevik Revolution in Russia (1917).

By the end of the eighteenth century, in Europe and North America, the concept of natural right was secularized. The concept of “right of man” has covered the civil and political rights. During the mid-nineteenth century, in Europe and North America, the trade union rights, rights of better wages and better working conditions were demanded. People demanded economic and social security in these countries while the rest of the world continued to be victims of colonial and imperialist exploitation. During the colonial era, people demanded the guarantee of human rights. Constant movement, struggle and demands for human rights had created wider awareness among the people under colonial rule.

However, it was only in the 20th century, particularly after the end of the Second World War, that human rights for all came to be recognized as one of the key objectives of our civilized life. (Ghai K.K. 2004). The concern for human rights is reflected in the Charter of the UN. It reaffirms “faith in fundamental human rights and in the dignity and worth of the human person, in the equal rights of men and women.” The UN Charter has tried to promote these rights and made it obligatory for the member states to take joint and

separate action for the promotion and achievement of these rights. The Human Rights Commission was formed in 1946 and the Universal Declaration of Human Rights was adopted on 10<sup>th</sup> December, 1948. Hence 10<sup>th</sup> December is regarded as the Human Rights Day. Some of the widely accepted definitions of human rights are as follows:

The United Nations Centre For Human Rights defines human rights, “as those rights which are inherent in own nature and without which we cannot live as human beings.” (Alston. P. 1992)

According to Nicket, human rights are those norms which are definite, high priority, universal and existing and valid independently of recognition or implementation in the customs or legal systems of particular countries. (Nicket J.W. 1987)

### **STOP TO CONSIDER**

#### **United Nation Centre for Human Rights:**

The United Nations Centre for Human Rights was created in 1982. The Centre which is located in Geneva with an office in New York, is headed by an Assistant Secretary- General. The main function of the Centre is to assist the United Nations Organs and bodies in the promotion of Human Rights and fundamental freedoms as mentioned by the Charter of the United Nations, Universal Declaration of Human Rights and the Internatinal Covenants on Human Rights.

## **2.4 Human Rights of Refugees**

Before discussing the rights of the refugees let us discuss the definitions of refugees-

The 1951 UN Convention on Refugees defines a refugee as a person who owing to a “well found fear of being persecuted for reasons of race, religion or nationality or political opinion, is outside the country of his nationality and is unable or unwilling to return because of such fears”.(Office of the UN High Commissioner of Refugees, 1990) The Organization of African Unity has included victims of aggression, occupation, foreign domination. Later the Cartagena Declaration of Refugees has included the victims of generalized violence, international conflict and serious disturbances to public peace.

International Refugee Law defines a refugee as a person who-

- i) is outside the country of his/her nationality.
- ii) suffers from well founded fear of persecution.
- iii) is unable or unwilling to return to the home country due to such fear.

#### **2.4.1 Problems of Refugees**

We all know that refugees face various problems after leaving their countries. In the following section, we will discuss the problems of refugees

##### **Exploitation**

The refugees are subject to different types of exploitations. Instances of human rights violations, child labour, mental and physical trauma, violence related trauma, sexual exploitation, especially of children and women are examples of problems of refugees. In the refugee camps, specially the women and children have to face different kinds of problems. They cannot maintain their privacy, there is no separate toilets, bathrooms for the women. The plight of the pregnant women is difficult to describe. In many refugee camps, young girls between 13 to 18 years of age are found to be exchanging sex for money. Most of them are forced to marry and they become pregnant before 20.

##### **Resettlement Problems**

The estimated number of refugees in the world is 11-12 million. Many of them are not getting any humanitarian protection and fall outside the mandates of the support structures offered by the government and non government organisations. Where refugees are not properly resettled they are subject to diseases, child soldier recruitment, terrorist recruitment, physical and sexual violence. Resettlement involves a number of difficulties. Language barriers also frequently pose a problem. Resettlement involves the following primary goals-

- i) securing human rights such as life, liberty, safety, health etc for refugees who are in the refugee camps.
- ii) providing a long term solution to the problems of displacement for large number of refugees.

A number of Third World Countries provide resettlement programmes for the refugees in cooperation with the UNHCR. The largest programmes are run by the USA, Canada and Australia. The USA resettled roughly 2 million refugees between 1945 and 1979. The NGOs assist the government in the resettlement programmes.

### **Problems of Identity**

The refugees live under the extreme poverty line. A refugee camp is a place built by the governments and NGOs to rehabilitate the refugees and provide emergency food and medical aid. The refugees often undergo extreme cultural transition which affects them leading to a sense of identity crisis. Many refugees going from under developed countries to developed countries face various problems related to the issue of identity as the process of social integration is difficult for them.

### **Problem of Right of return**

It is not a simple process for refugees to return home. The UN principles are guided by the idea that not only people have the right to return home, but also to the same property.

### **Medical problem**

The refugees develop different types of physical and mental problems. A large percentage of refugees develop depression when they confront a new environment and challenging situations. In the camps, they do not get the required medical assistance. They are also at high risk for suicide. Anxiety, sleeplessness, failing short term memory, anaemia, are some of the main problems of the refugees. They also develop different kinds of psychological problems.

## **2.4.2 Refugees in the South Asian Region**

The countries of the South Asian region face the problem of refugees. Pakistan, Bangladesh, Nepal, Bhutan, Sri Lanka, Myanmar, India- all these countries are facing the problem of refugees. India has around 20,000 Afghans and a large portion of Chakma refugees from Bangladesh. Around 30,000

Bhutanese refugees are living in India. Apart from these refugees, there are Sri Lankan Tamils, Sudanese, Iranis and Somalis refugees in India. The refugees in South Asia are protected by the national law and by the respective constitutions. India as a country helps rehabilitating the refugees through various measures.

During the partition of India in 1947, approximately 7 million Hindus and Sikhs from Bangladesh and Pakistan moved to India while approximately 7 million Muslims from India moved to Pakistan. Approximately one million muslims, Hindus and Sikhs died during this event.

In 1971 Bangladesh Liberation War took place. The Government of India allowed panic stricken Bangladeshis safe shelter in India. The government of West Bengal, Bihar, Assam, Meghalaya and Tripura established refugee camps. During the Bangladesh War of Independence, around 10 million Bangladeshis fled from the country to escape the killings and oppression of the Pakistani Army. Bangladeshi refugees are known as “Chakmas” in India.

There are more than 150,000 Tibetans in India. Many of them are settled in Dharamsala, Mysore and Nepal. Majority of the Tibetans born in India are still stateless and carry a document issued by the Indian government in lieu of a passport. But this document is rejected as a valid travel document by many customs and immigrants departments. Some of the Nepali refugees expelled from Bhutan now live in India.

India has not signed the UN Convention of 1951 relating to the status of refugees. India has acceded to the two 1966 Covenants on Civil and Political Rights and Economic, Social and Cultural rights. However, these are not incorporated in the municipal laws of the country. So, these are not enforceable in the court of law. Indian Constitution tries to protect the rights of every individual through the Fundamental Rights, like right to equality. Parliament has the exclusive power to enact laws relating to the aliens. Article 51 of the Indian Constitution encourages the state to endeavour to promote peace and security and foster respect for international laws and treaties obligation as well. Article 21 of the constitution also says that no person shall be deprived of life or personal liberty. This is applicable to refugees as well.

### **2.4.3 International Laws Regarding the Refugees**

UDHR along with Covenant on Civil and Political Rights has mentioned about the rights of the refugees. The refugee law has as its basis the UN Charter and UDHR. The 1951 Convention was drafted after the 1948 UDHR and was inspired by it. Articles 13 (2) and 14 (1) said about the right to leave any country and the right to seek and enjoy asylum from persecution in other countries. The UN Charter provides that all states should take steps to stop the problems on humanitarian concern. There are other international documents relating to the rights of the refugees. These are mentioned below-

- The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- The Convention on the Political Rights of Women
- The Declaration on the Rights of the Child
- The Convention on the Prevention And Punishment of the Crime of Genocide
- The Convention on the Non Applicability of Statutory Limitation to War Crimes and Crimes against Humanity
- The Agreement relating to Refugee Seaman (1957)
- The UN Declaration on Territorial Asylum (1967)
- The Convention of Stateless Person (1954)
- Regional Instruments like the Oau Convention of 1969.

### **UNHCR and the Right of Refugees**

In 1951 the United Nations High Commissioner For Refugees was established by the General Assembly of the UN. The main duty of UNHCR relating to the protection of the refugees are as follows-

- To promote the conclusion and ratification of international convention for the protection of refugees.
- To supervise the application of such conventions.

- To reduce the number of refugees.
- To promote the admission of refugees to the territories of state.
- To promote in signatory states the execution of measures to improve the position of refugees.
- To strive to obtain permission for refugees to transfer their assets that are essential for their resettlement.
- To obtain from the states reports concerning the number for refugees and legislative measures meant for refugees.
- To have contact with other private organisations that deal with refugees and to work for the welfare of refugees in cooperation with such private organizations.

Thus from the above discussion it is clear that refugees are facing different types of problems and the UNHCR tries to protect the rights of the refugees.

#### **CHECK YOUR PROGRESS**

1. Discuss the meaning of human rights.
2. Discuss the importance of human rights in today's world.
3. Discuss the problems of refugees with some important definitions of refugees.
4. Write a brief note on the refugees in South Asian region.
5. Discuss the main functions of the United Nations High Commissioner for Refugees relating to the protection of refugees.

### **2.5 Human Rights and Internally Displaced Persons**

We can define an internally displaced person as someone who is forced to flee his or her home but remains within the boundaries of their own countries. They are also referred as refugees but they do not fall within the legal definition of a refugee. According to the United Nations Guiding Principles on Internal Displacement, IDPs are defined as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of



habitual residence, in particular as a result of or in order to avoid the effects of conflict, situations of generalized violence, violation of human rights or natural or human made disasters and who have not crossed an internationally recognized state border.” You have already learnt that displacement can occur for three reasons.

- (i) Environment or natural
- (ii) Development
- (iii) Conflict induced displacement.

### **2.5.1 Conflict Induced Displacement**

In the present situation, the number of internally displaced persons has increased, because of the changing nature of warfare. Almost all the countries of the world are facing the problems arising out of ethnic, linguistic, religious, communal, racial, caste, separatist conflicts. Due to the conflicting situation, large number of people have to cut off from their own land and livelihood and are compelled to take shelter in the camps. Their lives and livelihood are disrupted. Homelessness, joblessness, make their lives miserable. They are vulnerable to acts of violence and human rights violations. Many IDPs are not found in the camps and seek out shelter where they have to struggle for natural and economic resources with other locals.

In Assam, the Santhal tea tribes are displaced in great numbers. Discriminatory and uncaring attitude of the government has led to the formation of militant outfits. The Adivasi Cobra Militant Force and Birsa Commando Force were formed by Santhals. Unfortunately, the centre has no national policy to respond to conflict induced displacement. The entire responsibility for protecting conflict induced displacement has generally been entrusted to the state government. Ethnic and political conflicts have caused innumerable deaths and massive displacement in the North-East India. The Maoist problem in West Bengal, Bihar, Chattishgrah, Orissa and now in Assam is responsible for the human rights violations as well as conflict induced displacement.

Laws to protect human rights, based on treaties or customary international laws, applicable both in times of peace and in situations of armed conflict,

provide important protection to IDPs. Such laws try to restrict and prohibit displacement and to ensure basic human rights. The prohibition on torture, cruel, inhuman or degrading treatment or punishment and the right to peaceful enjoyment of property, home and family life are important for the prevention of displacement. The civil, political, economic, cultural rights must be respected and protected. To reduce the number of IDPs humanitarian laws must be applicable to situation of non international conflicts. Article 3 of the Geneva Convention is the cornerstone for the protection of IDPs. Additional Protocol II of 1977 is also applicable to non international armed conflicts.

### **2.5.2 Development Induced Internal Displacement**

People who are forced to flee or leave due to natural disaster or conflict receive sympathy from other people. But people who are displaced due to development project, do not receive sympathy and aid. In the name of development, the vulnerable groups have to face different problems. World Bank has estimated that every year since 1990, roughly 10 million people worldwide have been displaced by infrastructural development projects. In India alone, during the last 50 years, an estimated 25 million have been displaced by development projects. A vast majority of indigenous tribal peoples are displaced by big projects. Unlike the refugees or the IDPs people displaced due to development have to face a different kind of problem. They do not cross a border and may not be considered to be in a 'refugee like circumstances' within their own country. They have been evicted from their own land, homes or places of habitual residence due to construction of development projects like big dams, water supply, transportation, energy (mining, power plants, oil exploration, pipelines), agricultural expansion etc. etc. Hence their situation is completely different from other groups.

Development is seen as a right to which everyone should have access. But in the name of development, if a vast majority of people is displaced it is really unfortunate. The right to development, also incorporated the right to be protected from development's negative impact. The right to use private property for the welfare and development of the whole society should be balanced and it should not be absolute. State must have to pay respect to a human being's right to home and property. Though government tries to convince its citizen that development is a process to ensure the protection

and welfare of its citizens but in real practice development creates displacement, injustice. The UN's IDP unit was set up in 2002 for the coordination of humanitarian affairs, so that it can give attention to the vulnerable groups displaced by development projects.

### **2.5.3 Natural Calamity Induced Displacement**

Million of men, women and children are forced to flee their homes due to natural disasters. People are affected by storms, floods and other types of natural hazards including earthquakes and volcanic eruption. In all countries, the poorest and most marginalized people are disproportionately affected by disasters and among all the groups of people, the women and children face a serious risk of abuse due to the disaster- induced displacement. The Guiding Principle on Internal Displacement states that all national authorities should take equal steps in case of treatment and protection of IDPs under international law.

IDPs have the right to be protected against violence. They have the right to receive humanitarian assistance, protection and to have access to basic service and justice. They have the right to acquire education, proper health care, to own land, home, property, etc. Now a days in many areas people are displaced due to natural disasters which include floods, droughts, famine, etc. Sudden disasters displaced at least 36 million people in 2008 alone. Global data shows that the number of natural induced displacements is on the rise. The largest disaster of 2009, floods and storms in India displaced at least five million people. Asia is a continent where the highest number of people are displaced every year for natural disaster. Global attention always falls on major disasters and on their impact, but smaller scale disasters donot find any attention. Due to the drought situation large scale of people are displaced. But it does not acquire more attention from the national and global authority.

### **2.5.4 Protection and Assistance**

Displacement has serious impact on the people. Principle 6 (six) of the Guiding Principle has stated that “every human being should have the right

to be protected against being arbitrarily displaced from his or her home or place of habitual residence.” The three types of displacements must be lawfully mandated and carried out. The government must guarantee compensation and provide provision for relocation. The authorities must take special care to protect (against displacement) indigenous peoples, minorities, peasants, women, children and other groups of people.

People who are displaced face various problems. Various barriers come to their enjoyment of rights, which may threaten their immediate safety. IDPs encounter discriminations and human rights violations. So, the protection and assistance programmes should not target the IDPs but should be based on their needs.

The problem of protecting and assisting IDPs is not a new issue. In the international law it is the responsibility of the government concerned to provide assistance and protection for the IDPs in their country. The people who are displaced search for conditions where their physical safety and integrity may be protected. According to the Guiding Principles- the IDPs have the right to be protected from violent attack on their lives, dignity, physical, mental and moral integrity. However, till to date, the IDPs have to face insecurity and violence. In many camps, women going out to collect water or firewood are victims of attacks and violence. In many countries, armed forces use the refugee camps to hide weapons.

### **Social, Economic And Cultural Rights**

Every people has the right to an adequate standard of living. Internally displaced persons have also the same right which cannot be overthrown by any person. They have the right to participate in economic opportunities. They have the right to work, rest, seek equal payment for equal amount of work. But in many cases, the IDPs are deprived of their economic, social and cultural rights. They lack access to livelihood and work opportunities. The violation of property right in case of IDPs is also a severe human right violation. The 1966 International Covenant mentioned that all people must enjoy the property rights. IDPs are deprived of their land, home and property as a result of destruction and looting. One of the principal barriers to return is the secondary occupation of houses, with little or no hope of recovering their lost property and rebuilding their lives in their native areas. IDPs have

to face severe crisis of cultural identity. They have to come into conflict with other groups of people for the preservation of cultural identity. They find it difficult to adjust themselves in the alien culture moreover other groups also find it very difficult to adjust with the IDPs.

### **Civil and Political Rights**

Free movements and free choice of residence of the IDPs are arbitrarily restricted. In India, a vast portion of IDPs are confined into the camps. The government tries to confine these IDPs to separate them from the host population for alleged security reasons. Whether they can enjoy their right to vote, right to criticize the government, right to form or dissolve the government are also doubtful questions. Access to personal documentation that has been lost in flight or become inaccessible is another problem. Such problem prohibited their enjoyment of the right to recognition before the law. IDPs have the right to food, shelter, education and access to work. But all these rights are affected. Without valid documentation IDPs are unable to enroll their children in schools, access health care services and welfare, pensions and claim their property. The denial of right to vote reflects the failure to ensure their participation in decision making process.

#### **2.5.5 IDPs in India**

There are an estimated 20-22 million people internally displaced by conflicts throughout the world. Migration to South Asia has taken place from Afghanistan, Tibet and Myanmar. Natural and man made disasters are wide spread in India.

In Jammu and Kashmir the minority community had to face different kinds of problems and were forced to flee from their original land when the region came under the control of many secessionist groups. Pandits were displaced due to the secret killings and wide spread anarchy . Many displaced pandits go to other regions for security region. Specially the pandits came under severe attack in Kashmir.

Northeast India also witnessed a large scale displacement Perhaps the region has generated the highest number of IDPs in India. Displacement due to development, environment and conflict, are seen in all the eight states of the

region. The people suffered from the degraded environment development project and violence caused by political conflict. Due to the river erosion, many people have to be displaced and the condition of the people is much more severe than the victims of flood.

Though Northeast is rich in resources, till today it is an underdeveloped region in India. The development projects that have taken place in the region during the post colonial periods caused massive displacement of population, particularly of the tribals.

Due to the ethnic conflicts, internal conflicts, separatist movements, identity movements, many people were displaced in the entire Northeast Region. Violence and conflicts have caused innumerable deaths and human rights violence in the region. From 1990s to 2011, around 800,000 million people were forced to flee from their homes due to ethnic violence in Assam, along the border between Assam and Meghalaya and in Tripura. Many of them are disabled to rebuild their lives. The uncaring attitude of the government has contributed to the formation of militant groups in the Northeast Region. The Santhals are displaced and the Adivasi Cobra Militant Force and Birsa Commando Force are formed by some Santhals. The centre is inattentive to the conflict induced displacement. The responsibility for protecting this population is entrusted to the state government. The issue of conflict induced IDPs does not find any place in the national policy as well as in the agenda for building peace and conflict resolution in the Northeast Region. Interestingly, most of the times the benefits and rehabilitation packages do not go to the victims. Reang tribals in Mizoram have to be displaced and suffered from persecution and threats to their life from the ethnic majority Mizos. They have taken shelter in North Tripura and Border villages in Assam.

#### **Role of NHRC (National Human Rights Commission):**

The NHRC has given few general recommendations to be followed in all instances of displacement-

- (i) Minimum non-negotiable human rights standards that should be adhered to for all especially for vulnerable and marginalized groups.
- (ii) As a part of relief and rehabilitation authorities provide food, potable water, clothing, shelter, basic health care, education etc.

- (iii) Need for central and state government to re-examine and amend laws, policies, plans, regulations and practices to maintain and integrate human rights concern on issues related to pre-displacement, relief and rehabilitation.

In case of development induced, natural and man made disasters, the commission has recommended the incorporation of principles in the National Relief and Rehabilitation Policy, in the Rehabilitation and Resettlement Bill, 2007. In case of development induced displacement, the Commission has taken suo moto cognizance of the case and asked the state government to place report regarding the case and send its investigative team to examine the case. Relating to conflict induced displacement the Commission would investigate the case.

## **2.6 Environment and Human Rights**

Environment protection has emerged as an international concern. Environmental degradation has created a major threat to human life. So, the right to healthy environment has been accepted as a human right.

Every human being is entitled to live in a healthy environment. The UN Conference on the Environment held at Stockholm in June 1972 proclaimed the right to a healthy environment. This is the first international effort to protect the environment. The main aim of the conference was to safeguard and preserve the natural resources for the benefit of the future generation. It tried to make a balance between the state's right to use its own natural resources and the duty to avoid damage to others.

Now the depletion of the ozone layer, global warming, deforestation, poisoning of the air, water and soil have created serious environmental crisis and these problems can be tackled at the global level. The London Dumping Convention of 1975 had prohibited the states to throw the industrial waste into the sea. The United Nations Convention on Law of the Sea of 1982 also stressed on the protection of marine environment.

The Food and Agriculture organization of the UNO (FAO) has also taken steps to protect the environment. It makes people aware of the safe and efficient use of pesticides to prevent their misuse. The right to environment

has become a basic human right. Many countries have introduced the topic of environmental protection in their constitutions. Indian Constitution has also emphasized the protection of environment. Part IV of the Indian constitution states that the state shall endeavour to protect and improve the environment by safeguarding the forest and wild life of the country. Article 51 (A) of the Fundamental Duties prescribes, “it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wild life and to have compassion for living creature”. The government has introduced the Water (Prevention and Control of Pollution) Act 1974, and Environment Protection Act 1986 to protect and safeguard the environment. Acts on explosive substances, preservation of forest wild life inflammable substances are some of the important acts adopted by the government to protect the environment.

Like India, Greek constitution has also made provision for the protection of environment. Article 24 of the Greek Constitution says, “protection of natural and cultural environment is a duty of the state.” Sri Lanka, China, Switzerland, US and some European countries have also followed the same guidelines relating to the protection of environment.

The concept of environmental security was mentioned for the first time in the International Conference on the Relationship between Disarmament and Development in 1987. The environmental degradation has posed a great threat to sustainable development. The report by the World Commission on Environment and Development known as ‘Our Common Future’ emphasised the effect and influence of environmental degradation on economy, health, life, the slow progress of a country and pose a great threat to the well being of people. Destruction of environment for political and military reasons lead to the losing of human life and consequently destructs the whole society. Pollution, throwing of industrial waste into the sea creates a huge problem for the environment. The 1992 Conference of Riode Janeiro of Environment formulated the link between human rights and environmental protection. The Convention on the Rights of Child, 1989, refers to aspects of environmental protection in respect to the child’s right to health. Article 24 provides that states parties shall take appropriate measures to combat disease and malnutrition through the provision of adequate food and clean drinking water, taking into consideration the dangers and risk of



environmental pollution. ILO Convention relating to indigenous and tribal people in independent countries, 1989; makes reference to the land resources and environment of indigenous people. It says that special steps should be taken to safeguard the environment of the indigenous people. The 1972 United Nations Conference on the Human Environment also emphasised the measures to stop environmental degradation.

All the states must take steps for the protection of environment. Environment is regarded as a basic human right. Human rights must be implemented in order to ensure environmental protection. The right to a safe healthy and ecologically balanced environment is a human right in itself. Environmental problems can be a source of political conflict between states and can contribute to violence and lead to the human rights violation.

### **CHECK YOUR PROGRESS**

1. Discuss the importance of environmental rights as human rights.
2. Discuss the factors responsible for the violation of the rights of the IDPs.
3. Discuss the role of the NHRC in protecting the rights of the IDPs.

## **2.7 Summing Up**

After reading this unit, now you are in a position to discuss human rights as the inherent and inalienable rights of human beings without which the development of individual personality and dignity is impossible. After reading this unit you are familiar with the problems faced by the refugees and IDPs. In this unit we have discussed the meaning, definitions and the human rights of refugees and IDPs. Moreover this unit also helps you to understand various types of displacement like development induced internal displacement, natural induced displacement, conflict induced displacement. India is trying to protect the rights of the refugees and internally displaced persons through various provisions. Along with the other countries, Indian constitution has also emphasised the protection of environment as a basic human rights. So, after reading this unit you are in a position to analyse and discuss the importance of human rights of the refugees and IDPs as well as the measures to safeguard these rights.

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