



**U.P. Rajarshi Tandon Open  
University, Prayagraj**

**AECHRD**

**Human Rights-Society  
and Development**

**Block**

**1**

## **UNDERSTANDING HUMAN RIGHTS**

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# UNIT 1 HUMAN RIGHTS — WHAT AND WHY?

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## Structure

- 1.0 Objectives
  - 1.1 Introduction
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    - 1.2.1 Civil and Political Rights
    - 1.2.2 Economic, Social and Cultural Rights
  - 1.3 Human Rights Through The Ages
  - 1.4 How Can All Humans Achieve Their Rights?
  - 1.5 Responsibilities With Rights
  - 1.6 Let Us Sum Up
  - 1.7 Key Words
  - 1.8 Answers to Check Your Progress Exercises
- 

## 1.0 OBJECTIVES

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After studying this unit, you should be able to

- explain what a human right is;
  - briefly describe the history of the struggle for achieving human rights;
  - list the stages that a person can go through to achieve her/his rights; and
  - describe the importance of handling our rights responsibly.
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## 1.1 INTRODUCTION

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Starting from October, 1998, the UN has declared that the world would devote a year to the cause of the aged. What compelled such a declaration? Could it be because most of us normally ignore the needs and comforts of the old people around us? How many of us recognise their right to live a dignified life of dignity? In this Unit, we have tried to contemplate such questions of general human importance.

We begin the unit by trying to understand what a human right is. Then we go on to discuss why it is important to think and talk about human rights.

In the next section, i.e., Sec.1.3, we will elucidate some efforts through the centuries help people achieve such rights. Our aim in this section is to expose you to the important steps taken by the world community from time to time for safeguarding human rights.

In Sec.1.4, we will try and see what practical help individuals and groups obtain their rights.

And, finally, in Sec.1.5, we aim to spur you to tackle about the other side of the question, that is, the responsibilities that go with rights. Most people try and ignore this aspect, because it is easier to do so.

As you may have realised, this Unit simply aims to prepare you for a detailed study of the course material to follow. It gives you only a brief glimpse of the entire course. We hope it will get you started on considering some critical issues relating to your interaction with your family, the

society you live in, and the world at large.

While going through this Unit, you will find several CYP, i.e., **Check Your Progress** exercises. A CYP is meant to help **you** judge how far **you** have grasped the discussion that has gone before it. Therefore, if you really want to take up a proper study of the Unit, you must try every CYP as you come to it.

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## 1.2 WHAT IS A HUMAN RIGHT?

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Bani had just got back home after a very tiring day at her workplace. As she entered the door her husband screamed at her: "**What** do you mean by not coming earlier? **Who** do you think is going to feed me and the children?", etc. punctuated with a lot of abuse.

How often have you come across such a situation where a person is deprived of the dignity and the care that each human being has a right to? Such a right, which is basic to a human being's existence, is a human right. More specifically, **human rights are what each human being is entitled to; to allow her/his the freedom to live a dignified, secure life of her/his choice.** They include rights related to the safety of the person; the right to be free from coercion by other individuals, groups or governments; the right to social benefits, rest and leisure; and the right to a good basic education. There are many more such rights. But, why don't you pause for a moment now and try this question ?

While answering the question above, did you include the right to life and liberty? And what about the right not to be tortured or subjected to cruel, inhuman or degrading treatment? None of these human rights pertaining to our security should ever be violated, even in a state of national emergency.

Now, look closely at your surroundings. Do you find that the rights mentioned above are not violated? What about children being slapped or abused? This continues to happen to a "weaker" person till a "stronger" person or group protests and protects them.

So, though we talk about fundamental rights that we must have, we find that people need help from various "powerful" groups to ensure that they **really have** these rights.

Trying the following questions may enlighten you to think more about the points discussed so far.

Have you noticed that equality is important for effective enjoyment of human rights ? This means that all the citizens should be treated as equals, that all should get equal protection of law without any discrimination, and all should get equal opportunities to pursue employment in public offices. It is the duty of the state to provide free legal aid to an aggrieved party for seeking justice in the court of law.

In the same way, on the macro level, all states should be treated as equals. In the absence of equality, a powerful country may oppress a weak nation.

You must have heard and read in your news paper how small countries are being treated by stronger countries of the world.

## Check Your Progress 1

- 1) From your own experience, add five rights that you would consider 'human rights' to our list in the paragraph above.  
.....  
.....  
.....
- 2) An advertisement in India for a skin cream for women shows a man rejecting a prospective wife because she is dark-skinned. How does such an advertisement affect a person's human rights?  
.....  
.....  
.....
- 3) Write down 5 major and minor violations of human rights due to people's prejudices. Give a reason for picking these. (For instance, did you find these being violated very frequently? Or, were these examples of your own rights beings taken away from you?)  
.....  
.....  
.....
- 4) Give two examples each of 'inequality' in practice in India and abroad.  
.....  
.....  
.....

There have been movements of every magnitude to protect two broad categories of human rights. Let us consider these categories and the movements, in brief.

### 1.2.1 Civil and Political Rights

As the names suggest, civil and political rights are the entitlements relating to fair and equal treatment, to justice and political freedom and to general security. Some of them are

- Freedom from slavery and torture.
- The right to life, liberty and security of person.
- Equality before the law.
- Protection against arbitrary arrest, detention or exile.
- Right to a fair trial.
- Right to own property.
- Right to privacy, family, home and marriage.
- Right to seek asylum in another country.
- Right to nationality.
- Freedom of religion.
- Freedom of expression.

The International Covenant on Civil and Political Rights (ICCPR) of 1966 protects these rights in normal times. This means that some of these rights can be suspended in times of 'public emergency, which threatens the life of the nation'. Of course, some of these rights, like the right to life, can never be suspended.



You will have an opportunity to study civil and political rights in more detail in some of the other units of the course.

Let us now consider the other category of human rights.

### 1.2.2 Economic, Social and Cultural Rights

Balu is a slightly mentally retarded adult. When his family tries to find him a job, they are told to forget it because even completely normal graduates are wandering about jobless. Aren't Balu and the others entitled to earn a decent living?

The rights to employment and to a reasonable standard of living are what economic rights. They include access to good nutrition, health and education. In fact, these rights also include

- Right to work;
- Equal pay for equal work; and
- Right to form and join trade unions.

Another closely linked category of rights is the right to an equal social and cultural status that a person or community has. To see what this means, you may like to try the following questions.

#### Check Your Progress 2

- 1) Consider a Hindu male in his late twenties. His parents want him to marry a particular lady. Who is expected to bring in a large dowry. Are his and her civil rights being protected? How, or how not?  
.....  
.....  
.....
- 2) Is the right to vote a human right? If so, why are children not allowed to vote?  
.....  
.....  
.....
- 3) A wanderer, Alpha, from the so-called civilised world comes across a tribe in the interior of the Jungle. Alpha is an extremely caring and courteous person, who manages to charm the tribe with interesting stories, actions and gifts. After going back, he returns with other people from his country, again and again. Soon, the tribals start adopting the "more short ways". The tribals who don't want to change are put under great social pressure.  
In the situation above, do you see any human rights being violated? If so, which ones? What would you do if you were a member of the tribe? What would you do if you were a friend of Alpha's nation?  
.....  
.....
- 4) Look at the newspapers of the week around you. Pick out from them what you think are examples of violations of human rights. Explain why you consider them to be so.  
.....  
.....  
.....

We must remember that all our claims are not necessarily human rights. Often the term 'rights' is used loosely. We may say things like "I have a right to own a car" or "I have a right to buy a dress". The point is that you can have both of these if you have money, but they are **not** your human rights. As you have seen and will see, human rights are protected by the law of the country, International Bill of Rights and various other national and international charters, codes, statutes, etc.

But, let us not forget that right to travel or right to clothing is a basic human right. Now that you have considered what human rights are, you must have realised **why they are important** for a dignified and humane existence. As you must have seen around you, and through this unit, people have had to struggle to secure such an existence. Let us have a quick look at the history of these struggles.

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### 1.3 HUMAN RIGHTS THROUGH THE AGES

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Looking at any particular period of human existence, can you think of even one example where all the people of **even** one community were considered equal in the eyes of the law? Hasn't some section or the other had the feeling of injustice and unfairness? This has led to struggles for equality throughout the world from time immemorial. (You will come across some details of such struggles in other units of the course.)

In India, there have been several social movements for improving the condition of women, dalits, children and other oppressed groups. However, the written laws pertaining to such changes are traceable only from the 19<sup>th</sup> century onwards. On the other hand, the struggles for rights of human beings in Western nations have been slowly transformed into written social norms over several centuries. Let us list some important landmarks in the evolution of human rights up to recent times.

1. **Magna Carta (1215)**  
This was a treaty between King John of England and the English noblemen/who fought and got some concessions from the crown.
2. **The English Bill of Rights (1689)**  
This bill was instrumental in the that introduction and enforcement of the common principles of law like Habeas Corpus, Due Process of Law, etc.
3. **The French Declaration of the Rights of Man and of the Citizen (1789)**
4. **The American Bill of Rights (1791)**
5. **The Abolition of Sati Act (1833)**  
Raja Ram Mohan Roy generated public opinion in favour of this act in India.
6. **International Slavery Convention (1926)**  
In this Convention, the members of the League of Nations agreed on a definition of slavery and pledged themselves to a complete abolition of slavery in all its forms. Forced or compulsory labour, it was agreed, can be exacted only for public purposes. It was subsequently adopted by the UN General Assembly in December, 1953. **India** is a signatory of this Convention.

7. **Charter of the United Nations (signed on 26 June, 1945)**  
This came into force on 24 October, 1945, which is observed as the UN Day. It seeks to strengthen universal peace through "promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language and religion." According to Article 56 of the Charter, all the member states (India included) must provide their nationals with a higher standard of living, and with opportunities for social development. It also provides for cultural and educational co-operation.
8. **Universal Declaration of Human Rights (UDHR)** (passed by the General Assembly on 10 December, 1948)
9. **The Geneva Red Cross Conventions (1949) and Protocols (1977)**  
These include four major international treaties dealing with improving the conditions of the wounded and sick members of the armed forces in the battle zone, treatment of prisoners of war (POWs) and protection of civilians in times of war.
10. **The Convention Relating to the Status of Refugees (1951)**
11. **International Convention on the Elimination of all Forms of Racial Discrimination (CERD) (1965)**
12. **International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966).**
13. **International Covenant on Civil and Political Rights (ICCPR) (1966)**  
This Covenant, along with ICESCR, make the 1948 Declaration legally binding on the signatory states. These states are required to open the doors for international monitoring of human rights. The ICCPR has been signed by 121 states, and ICESCR by 123 states. The Indian Government has ratified both these covenants in 1979.  
**Note:** 8, 12 and 13 form the **International Bill of Rights (IBR).**
14. **Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)**  
The signatories to the Convention agreed to pursue policies aimed at elimination of discrimination against women. To this end, the states will take necessary legislative and other measures to establish equality between men and women, and will repeal all such laws as tend to discriminate against women.
15. **Convention Against Torture (CAT) (1984)**  
This came into force on 26 June, 1987. The basic idea is to protect a person against any pain or suffering (except those that are part of lawful punishments), since individual dignity is considered most important. There is a Committee Against Torture which monitors implementation of this Convention. This committee obliges every country to take effective legislative, administrative and other measures to prevent acts of torture. India signed this convention in 1998.
16. **International Convention on the Rights of the Child (1989)**
17. **The Earth Summit at Rio (1992)**
18. **The World Conference on Human Rights at Vienna (1993)**  
In this conference, 171 states reaffirmed that the Universal Declaration constitutes a



“common standard of achievement for all people and all nations . . . they also accepted that “it is the duty of all States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

#### 19. The Human Rights Protection Act (1993)

The Indian Government passed this act. It simultaneously created the National Human Rights Commission which monitors the observance and violations pertaining to our rights.

The list above includes only crucial events which influenced the scope and direction of human rights protection. Going through the list right-up to the present times, you may have noticed that the focus of the movement is gradually becoming more specialised to include specific social groups (child, women, refugees, etc). You may also have observed that the issues relating to development (environment, population, social development, housing, etc.) are being taken up seriously.

How seriously all the nations of the world treat the issue of human rights can be judged by the fact that all the human rights agreements registered with the UN are signed by **most** of the members of the UN. Such universal acceptance is rarely visible on other issues.

Now, an opportunity for you to sit back and consider the long list you have just looked at.

### Check Your Progress 3

- 1) Are the two categories of rights discussed in 1.2.1 and 1.2.2 inter-linked? If so, in what way?  
.....  
.....  
.....
- 2) Which of the following claims is/are not a human right ? Give reasons for your answer.
  - a) Right to practice your own religion.
  - b) Right to have a home.
  - c) Right to travel by air.
  - d) A girl's right to study.  
.....  
.....  
.....  
.....
- 3) Can you think of some other claims which are not human rights?  
.....  
.....  
.....
- 4) In the list above, you would have come across some covenants and some declarations. What is the difference between the two? Can you give analogous examples of such agreements between several persons instead of several states?  
.....  
.....  
.....



As you may have realised, since covenants are legally binding agreements, they would contain **"measures of implementation"**. This, of course, leads us to the vital question: are all these legal and moral treaties enough to achieve equality?

---

## 1.4 HOW CAN ALL HUMANS ACHIEVE THEIR RIGHTS?

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Ayesha lives in a city slum. Her parents are daily wagers. She has a brother and the two of them study in a primary school nearby. Every time their parents require help in their work, Ayesha has to stay away from school. Is this fair to Ayesha?

Now consider Ravi's situation. He runs a newspaper in a small town. He is now in jail because he had the courage to publish the truth about the misdeeds of the local 'benefactor'. Has Ravi been treated fairly?

Both these situations, and many others from your own experience, may help you apprehend more clearly how useful local social norms and a state's laws are for ensuring human rights.

So, when these formal and informal enforcement agencies don't work, who can a person appeal to? Can a person then complain against his/her State about violation of rights given in the Covenants?

The answer is yes if

- (a) the rights violated are of a civil or political kind,
- (b) the country concerned has signed the ICCPR, and
- (c) the victim concerned has exhausted all legal means of redressal inside the country without success.

A person can, then, complain to the Human Rights Committee (at Geneva) under the Optional Protocol to the ICCPR. The Committee takes up the matter with the country concerned. The country's official comments are also sent to the aggrieved person. The Committee reports annually to the UN General Assembly on its activities carried out under this Protocol. Regrettably, India has not signed this Optional Protocol (April, 1999) rendering us unable to seek protection under this Protocol.

**But then, what happens after the UN gets the report ? Can it order a country to comply with its human rights obligations ?**

The UN can, and does, intervene in certain cases. For example, if a country does not allow its people the right of self-determination, political rights of participation for a democratic government, right to nationality, security of foreign nationals, etc., the UN does intervene.

The UN's intervention can be in the form of applying moral, legal or military pressure on the defaulting nation. But there are two major problems that come up.

Firstly, since the issues are so highly political, it can lead to extremely nasty and unfair treatment of different nations. This is because the intervening nations are the five holders of veto power in the Security Council. They are the only ones who are authorised to define grounds for military intervention. They often have double standards. For instance, they have not taken action against the role of Great Britain in Northern Ireland or of China in Tibet. But they have twisted the arms of Iraq, Somalia and Haiti.

Due to this factor, intervention is seen as an arbitrary action by a powerful state to increase its sphere of influence. Therefore, the pressure of the world public opinion, which used to be a great restraint on the states, has lost much of its strength.

Another problem in curtailing the violation of human rights is the acceptance of a right as such. Some people and nations argue that the rights are relative to one's own culture and tradition. What is considered human rights abuse in one view, may be accepted by some nations as law. For example, the death penalty that is still prescribed by law for some crimes in many nations is a violation of the right to life according to western liberal and most other human rights activists.

In Units 2 and 3 you shall read more about this.

In spite of the problems mentioned in this section, you have studied about some consensus having been achieved in the world about human rights. Of course, the struggle continues.

Let us now consider an aspect of human rights that is as important as achieving our rights.

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## 1.5 RESPONSIBILITIES WITH RIGHTS

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Throughout this unit, you have read about our basic entitlements and how we need to fight for them. But, what if a man comes up to you, and slaps you hard, saying that it is **his right** to do so – freedom of expression? This brings us to the other side of the question, which is equally, if not more, important. **Do we have the maturity to handle our rights responsibly?** Do we have the tolerance and honesty to allow **everybody** a fair deal? I do have the right to property, but not to steal somebody else's. I have the right to my beliefs, but not to harm another person for their beliefs.

So, if you believe that you are entitled to basic human rights, then so is each individual. Fighting and getting my human rights also means that I must be fair to others in my family, in my community, in the world.

Being fair to others, and tolerant of others, is not at all easy, as you must have seen from your own experience. This is true at so many levels. How often have you wanted to tape the mouth of a person who disagrees with you? At another level, what do you do if your child wants to marry a person from another caste or religion? The following exercise will help you go deeper into the issue.

**Check Your Progress 4**

- 1) Give an example of what one group considers a human right violation and another group disagrees.  
.....  
.....  
.....
- 2) What are cultural rights? And how are they protected.  
.....  
.....  
.....

- 3) Discuss the situations given below in terms of rights and responsibilities:
- i) Mala lives in a remote village. The panchayat won't allow her to divorce her husband who beats her and the children regularly.
- .....
- .....
- .....
- ii) Ramu is a 12 year old worker in the fields of Aslam Khan. He is not paid any wages. So, he is unable to help his family to pay off a debt, though he has a room to stay in and gets two meals a day.
- .....
- .....
- .....

If you've thought over the contents of this section, you would agree that there needs to be a proper balance between rights and responsibilities. This could happen if each of us, and our communities, tries to accept and understand each others' needs and points of view. We shall study in detail the points raised in this unit in the rest of the course. For now, let us take a brief look at the issues touched upon in this unit.

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## 1.6 LET US SUM UP

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In this unit, we have covered the following points:

1. The meaning of 'human right'.
2. What civil, political, economic, social and cultural rights are, with several examples of each.
3. A brief look at human right movements in the last thousand years. We have particularly stressed on important developments in the world since 1945.
4. What measures individuals and groups can take recourse to for achieving their rights.
5. The importance of responsibly handling our rights.

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## 1.7 KEY WORDS

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<b>Civil</b>	Pertaining to the private relations among citizens.
<b>Covenant</b>	A mutual agreement.
<b>Declaration</b>	A written affirmation, which is morally but not legally binding on the signatories.
<b>Convention</b>	An agreement between the signatories that is legally binding on them.
<b>Protocol</b>	A treaty that revises or adds to the provisions of an earlier treaty.

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## 1.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

- 1) For example, the right to vote. You can think of several other rights if you look at your situation and that of your society.
- 2) Does it discriminate on the ground of colour of the skin? Also, note that the right to marry and found a family is a human right (Art. 16 of the UDHR). Find out, where else in the covenants (in the next block) the right to marry is mentioned. What happens to the dignity of the girl?



- 3) Some major ones are untouchability and gender-based discriminations (like women being paid lower wages), which you should add to this list. Think for yourself how these social evils represent denial of human rights. An example of a minor violation could be being rude to your family members. For other minor violations, look around you in your family, neighbourhood, workplace, cultural meetings. Of course, this doesn't mean that major violations don't take place in one's home or neighbourhood.
- 4) In India: untouchability, female infanticide.  
Abroad: racial discrimination (black and white), and nuclear inequality (haves and have-nots). There are several others that you could add.

### Check Your Progress 2

- 1) The common practice of **giving and receiving** dowry is a punishable offence under the Dowry Prohibition Act. Even then, as many as 2435 dowry-related crimes were registered in 1994, according to Crimes India Data. Depending on the nature of the crime, the criminals receive punishment. But the Orissa High Court struck down the circular of the Govt. of Orissa which asked for handcuffing the mothers-in-law and leg-shackling the sisters-in-law in dowry death cases, in its decision in May 1995 on the petition filed by the Orissa branch of the People's Union for Civil Liberties. Why? Because such practices also amount to torture which cannot be inflicted even on the prisoners. The latter have a right to freedom from torture (ICCPR7).
- 2) Yes, according to various provisions in the International Bill of Rights encouraging political participation. Voting is meant for the adults; in India for the adults 18 years of age or more. Children below that age therefore cannot vote. Why do you think this is so?
- 3) If Alpha is not resorting to any inhuman or coercive methods, there is nothing wrong in his encouraging the tribals to reform themselves. The tribals, on the other hand, are only improving their human right conditions by adopting the 'more civilized' ways. Both Alpha and the tribals are gaining by such moves. The tribals, who are not willing to change, must not, however, be brought under coercive pressure.
- 4) We come across stories of wife-beating and forced child-labour in the news papers quite frequently. Both of these are cases of human rights violation. It is so because the beating of a wife robs her of her dignity as a woman, as a human being. Remember our Constitution does not discriminate between two persons on the basis of sex. In the case of a child (of 14 years or less) being forcibly engaged as labourer, he is being deprived of his right to education and a decent upbringing as a child.

### Check Your Progress 3

- 1) If you are a slave, can you rightfully claim equal wages? Since all human beings are equal, they have a right to draw equal wages – men or women. What happens to your right to health, housing, clothing etc. if your right to food is denied (all of them are social and economic rights)? Often, arrest of trade union leaders and subjecting them to inhuman punishments in jail violate a series of human rights. Build an argument in favour of the trade unionist's human rights to show how the civil (1.2.1) and social rights (1.2.2) are inter-dependent.
- 2) Why? Right to travel or move is a human right. It is recognized, and therefore enforceable by law. However, the claim to 'travel by air' does not have the same force and, therefore, it is not a human right as such. But when this claim to travel by air is denied on discriminatory grounds for arbitrary reasons, it becomes a case of human right violation.

Discrimination against an Indian citizen is prohibited on grounds of religion, race, caste, sex, desert, and place of birth.

- 3) They must not come under any category of human rights enshrined in the International Bill of Rights or Part III, Part IV and Part IV-A of the Indian Constitution and various court judgements pronounced on them. You will come to know about them later.
- 4) A 'covenant' is legally binding on the signatory states, whereas a 'declaration' is morally, but not legally binding on its signatories. Look for other examples.

#### Check Your Progress 4

- 1) For example, whereas Islam believes in punishing thieves with 'amputation of hand', western liberalism considers it an act of torture and against human rights endorsed by the world body.
- 2) In the expression "Economic, Social and Cultural Rights" (ICESCR), mostly the focus has been on the first two. Cultural rights are very seldom referred to. **Cultural Rights** refer to "creative, artistic and scientific activities" in a narrow sense and to the "totality of values, knowledge and practice" in a broad sense. Right to education, right to information, impact of globalization etc. are the topics which come under its scope. **Article 27** of the **UDHR** provides for "a right to participate freely in the cultural life of the community". United Nations Education and Social and Cultural Organization (**UNESCO**) is the concerned UN body which takes various initiatives in this field. Notable achievements in this field are the Universal Copyright Convention (1971), Convention against Discrimination in Education (1960), and Convention concerning the Protection of the World Cultural and Natural Heritage.
- 3)
  - (i) Is Panchayat encroaching upon Mala's right to divorce? Freedom from torture is more important than living together under a panchayat in such degrading conditions of existence.
  - (ii) Is Ramu getting a wage according to the minimum wages Act? Is his salary on par with (i) the work extracted from him and (ii) the wages drawn by others doing the same work elsewhere? Is he also free to leave Aslam Khan's fields for attractive jobs?

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# UNIT 2 ARE HUMAN RIGHTS UNIVERSAL?

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## Structure

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Cultural Differences
  - 2.2.1 The Right to Life
  - 2.2.2 Rights through Different Cultures
  - 2.2.3 The East Asian Challenge
  - 2.2.4 Use and Misuse of Culture Relativism
  - 2.2.5 How Universal are Human Rights?
- 2.3 Universality in Practice
- 2.4 Let Us Sum Up
- 2.5 Key Words
- 2.6 Answers to Check Your Progress Exercises

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## 2.0 OBJECTIVES

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After studying this unit, you should be able to

- explain the argument of cultural relativism;
- give examples of different definitions of human rights in different cultures;
- know that human rights are universal but cultural peculiarities need to be recognized in accepting their universality.

The group that argues that human rights are based on Western values are called cultural relativists.

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## 2.1 INTRODUCTION

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In the previous unit you studied about certain rights that a person is entitled to, by virtue of being a human. You also discovered that not everybody can take these rights for granted. One reason for this is that all countries may not agree as to which rights are human rights. In this unit we shall examine several arguments related to this issue.

We shall begin by seeing, through examples, whether people in different cultures have different views about what constitutes basic human rights. After that, we shall consider whether all human rights are practised in societies that accept the UDHR. By the end of this unit, we hope that you will have led you to question many of your acceptances and prejudices about the actions of various cultures.

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## 2.2 CULTURAL DIFFERENCES

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In the previous unit, you read about the Universal Declaration of Human Rights. It consists of 30 Articles, and about 180 of the 200 member nations have signed it. Does such a large acceptance really mean that it is universal? Do all the countries that have signed it accept all its Articles fully? Do the ones that haven't signed it reject all the Articles? If so, why? And, if not, why not? Let us think about this question.



Some countries believe that the statements in the UDHR are based on a very modern Western way of life and thinking. They go on to argue that other cultures, like ancient tribal cultures or Oriental cultures, have customs that may clash with the ideas and the Articles given in the Declaration. For example, let us consider Article 5. This says that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

**Article 7** of the International Covenant on Civil and Political Rights goes a step further since it includes the following clause: 'In the particular, no one shall be subjected without his free consent to medical or scientific experimentation.'

As you know, 'torture' is any planned cruel, inhuman, degrading physical or mental treatment. However, you will find that in certain cultures the punishment for a person found guilty of stealing is the removal of her/his right hand. This action is considered to be the right of the person whose goods have been stolen. So the people of that culture consider it a human right. But it is considered to be torture, and hence, unjust by the United Nations.

Take another example of what is accepted as torture by some and not by others, namely male and female circumcision. The Western world thinks that male circumcision is good for health related reasons. But many people in the Asian world do not agree. On the other hand, female circumcision is a cultural tradition (not on health grounds) in many African nations. This act is considered barbaric and reprehensible by the 'civilised' world. (Interestingly, in recent years, several African countries have passed laws against female circumcision.)

By presenting these examples, we are trying to show you that there is place for debate and argument in accepting some rights as universal. Trying to answer the following questions may make you more aware of these contradictions.

### **2.2.1 The Right to Life**

What you have just seen is that certain cultural traditions and practices are not in line with the views projected by the UDHR. At least, that is how it appears. But, there is a little known fact which is, however, of great importance. Before creating the UDHR, the UN appointed a committee to see which, if any, human rights were considered fundamental by the different cultures of the world. The committee sent a detailed questionnaire to philosophers, historians, politicians, and thinkers around the world. Replies came in describing what different cultures consider to be human rights. Now came the surprise! They found that the list of basic rights and values that they received from all these diverse cultures were essentially similar. For instance, the basic right to life is a value shared by all cultures. As you will see in **Block 2**, most of the rights stem from this right. So, all the cultures would agree that most of the rights listed in the UDHR are necessary for a decent, dignified way of life. It is only a question of how each cultural group interprets these rights. The difference lies in this aspect.

**The different human rights cannot be separated from each other. They form among themselves a harmonious whole. It is the universal harmony that ultimately counts.**

### **2.2.2 Rights through Different Cultures**

The 'culture-dependent' debate shows up in different ways. Sometimes it takes a religious garb (for example, that human rights are Christian values, and therefore not valid in Islamic states). Sometimes the debate is in the garb of Asian cultures versus European nations, as the following discussion shows.



In Hindu philosophy, 'dharma' is perhaps the closest word to 'human rights'. Actually, *dharma* has many levels of meaning: law, norms of conduct, truth, right, ritual, justice, morality, destiny, religion, and more. '**Vasudhaib kutumbakam**' (the world is our family) is the underlying philosophy. In particular, this philosophy says that **rights are not confined to humans alone; animals and plants also have such rights.** (In fact, this is part of the Jain philosophy too.)

**Human rights are not rights only; they are also duties, and both are inter-dependent** (as we have discussed in Unit 1).

As you can see, Hindu philosophy looks at society and the universe as a whole. This differs from the Western view of the 'individual-based' notion of human rights. In fact, most Asian societies reject the individualistic approach to human rights. The Buddhist doctrine, for example, does not accept the concept of life based on the self or ego. It emphasises the holistic nature of things.

If you look at studies of African and Latin American cultures, you will find the same stress on group rights rather than the rights of individuals. Another source of major differences involving community rights versus individuals rights is the right to own private property. The UDHR has listed this as an individual's right. This has met with strong opposition from societies in which property belongs to the community as a whole. According to them, the Western world is trying to impose free enterprise and capitalism on the rest of the world by calling property ownership a fundamental human right.

In fact, there is a very strong feeling in all these cultures that it is more important to improve the quality of life of the social group as a whole, rather than that of individuals. Giving priority to individuals is thought of as creating a selfish, aggressive and competitive society.

What you have just read is a cross-section of views on human rights in different cultures and traditions. Would you agree that the **Third World's** views are clearly against human rights based on aggressive individualism? Think about this, and then try and answer the following question

### Check Your Progress 1

- 1) According to the Hindu laws of inheritance, a daughter is not entitled to any share in ancestral wealth, while a son is. So, in effect, when a man dies it can and does happen that a daughter inherits only a third or less of what a son gets. In what ways does this situation violate the rights we have mentioned in Unit 1?  
.....  
.....  
.....
- 2) Consider some practices (based on social customs) of your community. Which of them are not in agreement with the rights given in Unit 1, and why?  
.....  
.....  
.....
- 3) 'Asian cultures are not opposed to the notion of rights.' Elaborate on this statement by giving suitable examples from their beliefs.  
.....  
.....  
.....

- 4) 'One should not, and cannot, think of the human rights standard and models of certain countries as the only proper ones and demand that all countries comply with them.' Do you agree or disagree with this statement? Why?

While answering the last question, the following comment by a famous American historian, **Arthur Schlesinger Jr.**, should prove both refreshing and instructive.

As a historian, I confess to a certain amusement when I hear the Judeo-Christian tradition praised as the source of our (Western) concern for human rights. In fact, the great religious ages were notable for their indifference to human rights in the contemporary sense. They were notorious not only for acquiescence in poverty, inequality, exploitation and oppression, but for enthusiastic justifications of slavery, persecution, abandonment of small children, fortune, genocide.

### 2.2.3 The East Asian Challenge

The opposition to the UDHR discussed above has gained force in recent years. It is known as the 'Asian Values Debate' or the 'East Asian Challenge' because the arguments are mainly put forward by China, Indonesia, Malaysia, North Korea, Iran and Singapore. In fact, the **Bangkok Meet of the NGOs** on the eve of the Vienna Conference, and their Declaration on Human Rights in 1993, is usually considered to be the beginning of the East Asian challenge.

Extending the debate **Prof. Panikkar**, a human rights philosopher, argues that the notion of human rights is a Western concept. Yet he also argues that these human rights are very necessary for a decent life in the modern world. What he and other scholars believe is that these rights need to be adopted and adapted to different cultures. Regarding this matter, the **Bangkok NGO Declaration** stresses that the world can learn from different cultures and draw lessons from the humanity of these cultures to deepen respect for (universal) human rights. Different cultures should be allowed to co-exist and their positive aspects must be respected by all. But, the Declaration goes on to insist, those cultural practices which go against universally accepted human rights, including women's rights, must not be tolerated.

As an example of adaptation, the Islamic Council of Europe (London) prepared a document called the Universal Islamic Declaration of Human Rights (UIDHR). This is based on the values and principles of the Quran and the Sunnah. Like the UDHR, the UIDHR also recognises the right to privacy, the right to freedom of movement and residence, the right to use one's own culture and the right to freedom of religion. In this context, it is interesting to learn what **Mohammed Kamali** gathered from a brief survey. He found that 'even though Muslim jurists never articulated a precise definition of human rights, Islamic law was not only cognisant of these rights (*haqq*) but it even developed other more comprehensive and precise concepts such as *hukkm* (order or legal decisions of God) which subsumed the former.'

Here is a question for you to ponder over:

In the following section you will have the opportunity to learn a little more about ancient traditions and what they have to say about such humanitarian objectives. (The major points highlighted below have been taken from **Prof. B.K. Roy Burmon's research**.)

- The rock edicts of Ashoka (in the 3rd century BC) proclaim the emperor's concern for the well being of the hill-dwellers. This line of thinking which shows concern for the disadvantaged people runs through all the ages and has produced bold advocates like Jyotiba Phule, Periyar and Ambedkar in the recent years. Manusamhita forbade the king from misbehaving with the wife of the defeated enemy.
- In various chapters of the Quran, female infanticide has been condemned, and freeing a slave has been praised as an act of great merit. In fact, the Prophet himself had hundreds of slaves freed and allowed, after conquest, Christians and Jews too pursue their own faith.
- In China, Confucius laid the foundation of ethics in social relations. Chinese cultural traditions emphasized the importance of living together with dignity and happiness.
- Ancient Roman laws required minimum 'horror of the sword' to be used to conquer enemy. Christian churches in early days 'prohibited the use of cross-bow in war as it was deadly and odious to god'.
- In tribal societies, even today, rape of women is unheard of.

#### 2.2.4 Use and Misuse of Culture Relativism

Let us now go back to the cultural relativists. There is one important aspect of the issue that we have not yet discussed. Can this argument be misused by people for their own ends? For instance if we are talking of Asian values, who was upholding these values when the Chinese government shot down hundreds of students demonstrating for democratic rights in Beijing? Were the students less Chinese than the rulers? Often ruling classes indulge in their power games under the guise of culture. **People in power** use the cultural-relativism argument to justify political repression and restriction of rights.

Of course, this is not always so. **In Japan** the people choose to exercise their political rights according to their culture, and opt for a one-party system without any force by the government or by law.

It should now be clear that there are various dimensions of cultural relativism and for a better understanding deserves close examination. Here is a question that may help you to do so.

#### 2.2.5 How Universal are Human Rights?

So far, we have discussed examples of how people of various cultures who do not accept the UDHR definitions protect certain rights in their own way. The question now arises whether the countries that do accept the concept and history of human rights, as given in the UDHR, follow them in practice. This is what we shall consider in the next section. But before that let us try to answer the question asked in the title of this unit: Are human rights universal?

The answer without doubt is yes. Nevertheless, the following factors and implications should be noted:

Both the UN sponsored international conferences on Human Rights at **Tehran** (1968) and at **Vienna** (1993) have underlined the universality of the human rights. The Vienna Declaration, coming after 25 years, represents a global consensus on the nature of human rights. This is an agreed opinion of the world.



The **first paragraph** of the **Vienna Declaration** states without ambiguity: 'The universal nature of these rights and freedoms is beyond question.'

The whole of the **fifth** paragraph is devoted to this question which, in the words of the Declaration, states:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

These provisions of the **Vienna Declaration** lead to the following conclusions:

- They state once and for all that **dignity** is the common basis of all human rights.
- They proclaim the universal character of those rights.
- However, important to note is a need for taking note of national and regional peculiarities and of various historical, cultural and religious heritages as we accept the universal nature of the human rights.

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## 2.3 UNIVERSALITY IN PRACTICE

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In 1998, the world celebrated **50 years** of the **UDHR**. Many conferences and campaigns were organised. Most nations passed resolutions to improve the conditions of people in their country and to help people get their basic civil, political and economic rights. But how much of this is actually practised?

Let us look at our own country first. **India** passed the **Protection of Human Rights Act in 1993**. In spite of this and the fact that India has signed the **IBR**, people of a particular caste or religious community in India are being killed by people of other groups. Almost every week you can read about such incidents in the newspapers. We leave it to you to decide whether the government has done much to prevent them.

What can a country, especially one that has signed the **ICCPR** or the **ICESCR**, do to make these universal rights available to its people? The economic rights, of course, would depend on the resources that a nation can muster. But what about the civil and political rights? According to the **Vienna Declaration**, poverty and backwardness cannot be offered as reasons for not subscribing to the universal nature of human rights.

**Check Your Progress 2**

- 1) Ramesh is a police constable. His superior in the police station orders him to thrash a thief soundly. He feels bad about it, but follows the orders given to him. Does he follow orders because his culture teaches him to do so? How would you react if you were in Ramesh's place, and why?

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

- 2) Can you give an example of a custom from your culture which should not be tolerated according to the Bangkok NGO Declaration?  
.....  
.....  
.....
- 3) India is one nation that consists of several cultures. How should the government enact laws so that the different cultures could adapt human rights to their situations? Take specific laws and cultures of some different regions to illustrate your answer.  
.....  
.....  
.....
- 4) Poland is part of the European Union. The Union wanted to help Polish women who were trying to escape domestic violence by providing them with shelters. The Polish Minister for Family Welfare blocked this move, saying that giving this help could encourage family break-ups! Discuss this situation in the context of the practice of human rights.  
.....  
.....  
.....

You are now aware that there are many cultures which, under the guise of tradition, violate basic human rights. But such practices are not restricted to 'traditional' societies alone. Even the so-called liberal and developed Western societies are not completely blameless. Switzerland did not grant women the right to vote until 1971. The United States formally and legally started trying to integrate the Afro-Americans into mainstream society only since 1964. Extremist groups like the Ku Klux Klan, infamous for behaving violent towards the Afro-Americans in Southern States of America, are still active. Most countries that have signed the UDHR allow capital punishment to be given for certain crimes.

It is now time for you to consider other violations of basic rights.

From the preceding discussion you may have got the impression that human rights is more talk and less or no action. Fortunately, this is not true. Much effort is being made, as you will see while studying this course as well as by observing and reflecting on events around you and the globe.

Nevertheless, we do need to see what more can be done, particularly in our own cultural context. The next question should help you focus more clearly on this issue.

### Check Your Progress 3

- 1) List one instance each of social, political and economic human rights abuse being done in our country. (Note that India has signed the IBR.)  
.....  
.....  
.....
- 2) 'India believes in freedom of expression, but many Indians do not.' Give instances to support this statement.  
.....  
.....  
.....

- 3) The UDHR says that it is a human's right to move freely between nations. Then why does every country in the world have restrictive immigration laws?
- .....
- .....
- .....

- 4) List 5 things that you can do to improve the human rights record of your home.
- .....
- .....
- .....

We can look at the culture relative argument thusly:

Human rights represent an emerging modern phenomenon, a continuing struggle to fulfil a universal aspiration arising largely from innate human values. These values are (i) respect for human dignity, and (ii) an awareness that we all belong to the human species without discrimination or exclusion.

But we cannot forget that human society is a composite whole made up of diverse cultures and communities. Universality of human rights must, therefore, take into account the cultural differences of human society. However, such cultural peculiarities are neither absolute nor static. It is not surprising, therefore, that international law and behaviour are increasingly recognizing the importance of the struggles for protection and promotion of human rights all over the world.

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## 2.4 LET US SUM UP

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In this unit, we have made the following points about the practice of human rights:

1. When it is said that human rights are universal in character, it means that they should be applied throughout the world.
2. We need to anchor any discussion and understanding of human rights within the tradition of the people concerned. As the noted Islamic scholar **Abdullah Ahmed An-Naim** says, a group needs to take the International Bill of Rights as the point of reference, go back to its traditions and try to adapt the 'existing human rights standards' in reference to those traditions.
3. The cultural difference in defining what basic human rights are can be used positively or misused.
4. Even developed nations, on whose philosophical and political beliefs the UDHR has been framed, do not have a clean record of upholding human rights.
5. Human rights are universal. They, however, become meaningful in the course of recognizing cultural peculiarities to the extent that they express universal aspirations for human dignity and do not seek to impose their versions on others.



## 2.5 KEY WORDS

<b>Universal</b>	which is applied throughout the world.
<b>Cultural relativism</b>	the principle that argues that human rights are based on western values.
<b>Holistic</b>	one who believes that the fundamental principle of the universe is the creation of wholes, or complete systems.
<b>Circumcision</b>	the act of cutting off the foreskin.
<b>East Asian Challenge</b>	so known because the arguments are mainly put forward by China, Indonesia, Malaysia, North Korea, Iran and Singapore.

## 2.6 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

### Check Your Progress 1

- 1) 'Mitakshara' and 'Dayabhaga' are two (major) legal doctrines which have governed property inheritance practice in India. Though they are dated around 12th century AD, their influence can be noticed in actual practice even today.

According to these doctrines, a daughter cannot be a coparcener (a joint heir with her brother/s) in ancestral wealth. This discrimination in property rights continues despite the contrary provisions of the Hindu Succession Act of 1956 which enables sons and daughters to enjoy equal inheritance rights. The proverbial gap between the 'written words and the actual practice' is the basis for growing gender inequalities in the country. Some states (Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka) have introduced progressive amendments to check this social evil, but denial of equal rights to Hindu women in property inheritance is rampant. It is a major source of related human rights violations of women and girl-children in traditional family set-ups.

- 2) The above case is one example. Other areas where social customs and practices conflict with the fundamental rights given in the Indian Constitution are untouchability, child labour, varied forms of gender inequalities, etc. Choose one area and develop the argument to show the contrast.
- 3) Most Asian cultures, as well as non-Asian ones, seek to promote moral education which embeds human rights education. These precepts teach love for humanity based on trust and innate goodness. The basic objective is the betterment of humanity. In so far as they are not based on dogmas and doctrines, every religion also aims towards this goal. Moral education and religious education seek to introduce learners to moral principles and ideals 'which are alien to none and native to entire humanity'. They in turn are formalized into certain codes of conduct which have been incorporated into tribal and societal law.

Analyse your belief system and check for yourself whether some beliefs are not conversant with the humanitarian principle noted above. It is possible that some beliefs do not really agree and in these cases, one can afford to be flexible in adhering to them. Some cultures may condone the practice(s) of slavery, torture, bonded labour, polygamy, Sati, dowry, etc; but would you support those traditions even if they are yours?

- 4) The guiding code of conduct of most cultures/traditions are the moral/religious principles of love, mutual trust and co-existence. It is therefore imperative that we follow the tenet 'live and let live,' only making sure that all people enjoy human dignity. As Sir Arthur



Schlesinger Jr points out, no culture (or religion, for that matter) is inherently superior to others.

## Check Your Progress 2

- 1) There should actually be no dilemma involved here; any 'torture' or 'degrading punishment' is a clear denial of human right whatever the social customs or professional culture may be.

The following path-breaking decision was made in the case of **Filartiga Vs Pena** in which a US court ruled against a military commander (Pen-Irala) for torturing and murdering a high school student (J. Filartiga) in Paraguay:

'Official torture is now prohibited by the law of nations. This prohibition is clear and unambiguous and admits no distinction between treatment of aliens and citizens. This prohibition has become part of customary international law, as evidenced and defined by the Universal Declaration of Human Rights.'

According to the '**Filartiga principle**' which evolved out of the above decision and has been sanctified by worldwide practice, torture is universally prohibited in all circumstances.

- 2) Some common examples belong to practices which affect dignity of women. To note a few: dowry, denial of education, lower wages, discrimination on basis of gender, etc.
- 3) Here again, the dilemma (between the nation-state and the composing cultures) can best be resolved through the following means:
  - a) Drive out (through a ruthless process, if need be) all those dogmas and doctrines which promote sectarian demands, while at the same time;
  - b) Remain respectful to, and create space, if needed, for accommodation of free social and cultural practices, by struggling social groups.

In a more unitary than a federal set up like ours, rigidities at the centre may have to bow to the pressures of humanitarian forces and establish minimum standards and social security necessary for the people to enjoy their basic human rights. In an economically weak nation like ours, socio-economic and cultural rights are as, if not more, important than civil and political rights. Human miseries are caused more by poverty, unemployment and various other social maladies like communalism, caste violence, etc than by political repression and authoritarian misrule, though both are inter-connected and inter-dependent, as can be testified by evidences from developing countries.

- 4) Hint: Women here are victims of domestic violence, their dignity compromised, free space (to exercise their right) denied to them owing to 'societal' violence. The European Union offers to provide help. Is this development not more welcome than the decision of a Minister (who is an influential product of that same society responsible for generation of violence) to block the move on the grounds of breaking up of a traditional institution like a family? While the family is the foundational building-block of society, if this traditional institution is exposed to negative pressures, the responsibility for such a situation as well as the need to rectify it belongs to the political rulers.

### Check Your Progress 3

- 1) Social: Family and domestic violence  
Political: Forcibly preventing voters from casting their ballots  
Economic: Protection against unemployment
- 2) Human rights violations in this sector of 'freedom of expression' have a vast range and variety. It begins with one's family and school where opinion-sharing on an equal basis of participation is seldom encouraged. At the other end, global flow of information is highly one-way, mostly from the North to South. Many of us in the developing and dependent countries may be using information manufactured elsewhere. More direct cases can be found in press censorship imposed by the political class as well as the press owners. India's National Emergency of 1975 is notorious for gagging the press.
- 3) To the extent that this statement is true, one can say that states are sovereign and they feel more concerned about their own people and national groups than for the international community. But countries with vast natural resources and less population are more lax on immigration e.g. Australia, Canada, etc. This, however, is not a direct indicator of these countries becoming more international than national. Truth lies in the unpleasant phenomenon that trade and economic development occupy distinctly top priority over the shibboleths of human rights, as can be seen in the trade relations of the USA with Peoples' Republic of China. Many, therefore, have been complaining, and rightly, that human rights has become a convenient plank for foreign policy (see section 4 of Unit 1 for further discussion).
- 4) In inter-active behaviour,
  - no recourse to repression of opinion, particularly of women folk and girl-children
  - respect differences of opinion
  - no beating of women, children or servant (s)
  - no engagement of domestic help, certainly not of child labour
  - respect for the elderly members.

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## **UNIT 3 VIENNA DECLARATION & PROGRAMME OF ACTION**

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### **Structure**

- 3.0 Objectives
- 3.1 Introduction
- 3.2 The Need to Think and Act
- 3.3 The World Congress
  - 3.3.1 Significance of the VDPA
- 3.4 Preparatory Work for World Congress
  - 3.4.1 Guiding principles of the Vienna Congress
  - 3.4.2 Implementing the Plan
- 3.5 Vienna Declaration
  - 3.5.1 Part I
  - 3.5.2 Part II
- 3.6 Follow-up to the World Congress on Human Rights
- 3.7 Let Us Sum Up
- 3.8 Key Words
- 3.9 Answers to Check Your Progress Exercises

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### **3.0 OBJECTIVES**

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After studying this unit, you should be able to :

- learn the developments in the international relations in the background of which the World Conference on Human Rights took place at Vienna, in 1993;
- know various provisions of the Vienna Declaration and Programme of Action which represented a consensus reached at the global level;
- appreciate limitations of this global endeavour; and
- clarify for yourself, distinct contributions of the World Congress to the promotion of the cause of human rights.

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### **3.1 INTRODUCTION**

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In the earlier units you read about what human rights are. We looked at several examples and found how difficult it is to ensure that people are allowed to live with these rights. You would have cited examples of violations in different cultures. You would also have thought about various ways in which the basic rights can be ensured to human beings. As you might have seen, the problem of ensuring human rights is common to all cultures, all nations, all societies. So, it seems reasonable to expect that all the nations in the world unite together to take some common action and solve this problem. This unit looks at the outcome of the foremost world strategy for a global consensus on human rights.

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## 3.2 THE NEED TO THINK AND ACT

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Read the following poems and try to understand:

### Poem I

Am I a bonded labourer ?  
Am I to be sold daily  
Only for this house ?  
Work, work and more work  
From morning till night  
Tell me,  
Is there nothing else  
To life ?

(From "Dilemma" by Bidyut Prabha, translated from Oriya by S. Mohanty).

### Poem II

The sweetest  
And best  
Of all symphonies is not  
Songs of mehfil  
Nor the streams  
Which flow through hills  
And seas  
Nor through cuckoo  
It's the symphony of laughter  
Anywhere, of everyone  
Fetters and shackles of the wrist  
This is the symphony of those fetters and shackles  
Breaking down.

("The Joy of Freedom" from "Child labour in India" by Lakshmidhar Mishra)

The strong feeling of pain and despair expressed in Poem I above is common to all the groups of the under-privileged. There is a sense of deep frustration. People ask themselves and others if there is any hope, if anyone will act to build a better society. All these voices, over a period of centuries have made an impact (slowly though) on national and international bodies.

Do you hear the sound of "fetters and shackles" breaking down in Poem II? There is hope. There is joy of freedom waiting in the wings for everyone of us. We only need to act. There are Human Rights. Know them, defend and promote them.

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## 3.3 THE WORLD CONGRESS

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After the Second World War, international relations followed the logic of power politics. This was the age of Cold War and the world was divided into two major blocs. One group of countries was allied to the United States. While the other block was allied to the USSR. Both USA and USSR were regarded as super powers and were competing for dominance in the international arena. This was a divided international system, described as bi-polar, and a large number of countries of the developing world did not want to align themselves either with the USA or the USSR. They wished to retain their independence. They remained non-aligned, and formed



themselves into Non-aligned Movement (NAM). As you know, India is a leading member of the NAM.

One of the major international developments of the 90's was the collapse of the Soviet Union, after which, the world became dominated by a single centre of power, namely the United States of America. The world now became 'unipolar'. As the competition for hegemony was over, the way now opened for contemplating other issues of global interest and concern. It was in this context that the need to promote awareness about human rights, and effective mechanisms for their implementation were felt necessary. Human Rights thus came to occupy a prominent place in the international agenda.

The first World Conference on Human Rights was held in Tehran in 1968. Though the Tehran Conference affirmed the principles contained in the Universal Declaration of Human Rights, 1948 (about which we read in the previous units), it was not until World Conference on Human Rights at Vienna in 1993 that human rights assumed an authoritative meaning and force of implementation. A World Plan of Action was prepared. The VIENNA DECLARATION AND PROGRAMME OF ACTION (VDPA), as it was called, represented the outcome of a grand consensus among some 7000 participants including government delegates, NGOs, journalists, scholars, women and children's groups. They met in Vienna from 14 to 25 June, 1993 to (i) assess the progress made since the adoption of UDHR in 1948, and (ii) to explore ways of improving human rights conditions everywhere and for all.

### 3.3.1 Significance of the VDPA

The significance of the VDPA derives from the following features which have characterized it:

- a) Representatives of 171 governments signed the agreement which included nearly all the UN members; *no voting* was required, which reflected a grand *consensus* of the international community on the nature, content, scope and importance of human rights.
- b) The VDPA is now the *most current statement on human rights* by the international community. The countries which participated "*hold some 99 percent of the world's population* and include virtually every race, culture, religion and political system in existence at this time on the planet."
- c) For the first time in the United Nations' history, "NGOs (about 1300) held activities parallel to the World Conference at the Conference site itself. Another milestone was reached when the results of the **NGO Forum** were presented in the form of a report – *All Human Rights for All* – were presented in a formal meeting of the Drafting Committee.

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## 3.4 PREPARATORY WORK FOR WORLD CONGRESS

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At the end of the Cold War, the General Assembly called, in 1989, for a world meeting "to consider afresh the full range of urgent human rights concerns". Vienna Congress was thus preceded by a negotiating process which involved efforts to create a consensus on contentious issues relating to human rights. A link was perceived between development and democracy. Similarly, inter-dependence between economic, social and cultural rights, and the civil and political rights was emphasized. The preparatory activities before the Conference were undertaken to frame an agenda for the final Plan of Action. The United Nations established a Preparatory Committee coordinating these activities and reconciling opposed points of view. Three large

preparatory meetings were held in different regions of the world: at Tunis (Africa) in 1992, San Jose (Latin America) in 1993 and Bangkok (Thailand) in 1993.

At these region level meetings particularly in Bangkok, the ideas of *universality* and *indivisibility* attached to human rights standards opened up a Pandora's box. So far the trend had been to hold individual freedom above collective good, rights above duties, self-interest above social responsibility, and civil and political rights above economic and social rights. Now it became the prime focus of an international debate. In the Bangkok meeting the problem was identified, as diverse views on human rights were expressed reflecting cultural, religious and historic specificities. The debate that was aptly summed up by the Iranian Deputy Foreign Minister: "to enhance the universality of human rights and relevant instruments it is imperative to be cognisant of the cultural diversity of the human family and respect the values of various cultures. This would provide the best site for their universal observance."

The issues at stake and the significance of the Vienna Congress were in every way exceptional. They represented new points of departure from the set definition of human rights. At the same time, they provided the opportunity to reaffirm the equality and interdependence of all human rights. The preparatory meetings examined the issue of human rights with the following questions in mind –

- 1) What sort of progress has been made in the field of human rights since 1948?
- 2) What are the obstacles and how are they to be overcome?
- 3) How can the implementation of human rights be improved?
- 4) How effective are the methods and mechanisms established by the UN?
- 5) What financial resources should be allocated for UN action to promote human rights?

Finally, it examined the issue of link between development and the enjoyment of social, cultural, civil and political rights.

### 3.4.1 Guiding Principles of the Vienna Congress

The guiding principle behind the efforts of the Vienna Congress was that human rights constituted "quint-essential values" of the human community. These words were used by **Boutros Boutros-Ghali** in his opening address to the Conference. According to him, such a definition of human rights should be subject to three important principles viz., *universality*, *guarantees* and *democratization*.

- (i) **Universality** – All human societies show concern for the value of human life. They show a concern for truth, and esteem the values of cooperation, common good, obligation, and justice-seeking among the members in a specific group. Universality is the basic moral requirement to evaluate human rights standards. As UN Secretary General **Kofi Annan** said:

"You do not need to explain the meaning of human rights to an Asian mother or an African father whose son or daughter has been tortured or killed. They understand it – tragically – far better than we ever will. What they need, and what we must offer, is a vision of human rights that is foreign to no one and native to all."

Though it is true that human rights are a product of a particular history and people keep adding their rich perspectives to this treasure trove of humanity, few will disagree with famous American educationist, **Prof. I.L. Kandel**:

".....There is no national culture which does not owe far more than is usually admitted to the influence of cultural heritage of man of all races and of all ages. It is upon this foundation that the true concept of humanism as an end in education can be developed."

As the General assembly has proclaimed, UDHR represents "a common standard of achievement for all peoples and all nations."

- (ii) **Guarantees** – All efforts to safeguard human rights will remain a dead letter unless there are guarantees against their frequent violations. Human Rights should therefore be covered by effective mechanisms and procedures to guarantee and protect them.
- (iii) **Democratization** – Democracy within states and within the community of states is a true guarantee of human rights. It is through democracy that rights of individuals and groups are reconciled. This is because in a democracy everyone is free to act according to their choice. This freedom, however, is not unlimited; it is based on respect for the freedom of others in an equal measure. In this sense, it incorporates the core principle of universality of human rights and guarantees human rights too.

These three principles are inter-related and add force to the idea of human rights.

### 3.4.2 Implementing the plan

With the promotion and protection of human rights as its main consideration, the Vienna Congress afforded a unique opportunity to carry out comprehensive analysis of the international human rights system, allowing a fuller observance of those rights. The Congress, prominently recognised that all human rights derive from the human beings. Therefore, all human beings should actively participate in the realization of their basic rights. This should be done without any discrimination on the basis of race, sex, language or religion. The Congress expressed deep concern over various forms of discrimination and violence to which women all over the world are subjected. The member-nations expressed their determination to cooperate with each other to achieve progress in securing human rights. They also agreed to respect the value and diversity of their cultures and identities. The Congress took into account the declarations adopted by the three regional meetings at Tunis, San Jose and Bangkok as well as the suggestions made by Inter-Governmental Organizations (IGOs) and Non-Governmental Organizations (NGOs) with regard to human rights.

#### Check Your Progress 1

- 1) Name the three region-level Conferences preparatory to the World Conference at Vienna  
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.....
- 2) What made Vienna Congress declaration so global and unique?  
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.....  
.....



- 4) Identify True (T) and False (F) :
- i) Post-cold war World came to be characterized as 'unipolar'.
  - ii) For the first time in the UN history, NGOs participated in the formal proceedings of the World Conference on Human Rights.
  - iii) Each state and its people have a separate set of human rights to observe.
  - iv) It is through democracy that rights of individuals and groups are reconciled.

Now, we shall take up a detailed study of the Vienna Declaration, which proved a milestone in the history of the human rights achievements. We will have a close look at the salient features of the Vienna Declaration and consider how effective it has been in improving the human rights situation.

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### 3.5 VIENNA DECLARATION

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The Congress sought the attention of the member nations to the realities of our time and the challenge before humanity, and asked them to rededicate themselves to the global task of protecting and promoting Human Rights.

As a step forward in this direction, the Congress adopted the Vienna Declaration and Programme of Action (VDPA). This Declaration is divided into two parts:

#### 3.5.1 Part I

Part I of the Vienna Declaration incorporates a comprehensive Plan of Action (VDPA). It provides answers to many of the questions raised during the preparatory meetings. It effectively deals with the controversy over the right to development by proclaiming it to be an integral part of fundamental human rights (Article 10). Furthermore, it seeks to resolve the contentious issue of primacy in relation to economic, social, cultural rights on the one hand, and civil, and political rights on the other by anchoring the issue around development. The member states agreed to work together to remove the obstacles to development and to create a favorable economic environment at the international level. The World Congress called upon the international community to refrain from employing human rights as a tool for applying political pressure or creating obstacles in trade relations among states (Article 31). These factors helped remove doubts regarding human rights being essentially a western ploy or construct. The Plan deals with the progress made in the field of human rights since 1948 by re-examining the issues involved in the present day context. It also expands upon the issues included in the UN Charter, by incorporating new issues related to indigenous people, right to development, the linkage between democracy and development (Article 8), recognition of universality, interdependence and inter-relatedness of human rights (Article 5), definition of situations amounting to violation of human rights (Article 30). The Programme of Action was taken up as a continuing effort in the direction of human rights since the ratification of the UN Charter in 1948.

#### 3.5.2 Part II

The second and the concluding part of the VDPA is basically concerned with the establishment of methods and mechanisms by the UN to promote human rights observance. It is broadly divided into five sections:

##### (i) Increased Coordination on Human Rights within the UN system

All the UN organs and specialized agencies engaged in Human Rights activities are urged to

cooperate in order to strengthen rationalize and streamline their work. The World Congress on Human Rights stresses the importance of strengthening the UN Centre for Human Rights because it is crucial in coordinating system-wide attention for Human Rights. The Centre should, in particular, organize meetings at least once a year, and these must be open to all member states. The Centre for Human Rights should be provided sufficient human, financial and other resources so that it may carry out these activities efficiently. In order that a concerted effort be made to encourage universal acceptance of international Human Rights treaties, the World Congress also proposed the establishment of a UNHCHR (UN High Commissioner for Human Rights).

#### **(ii) Equality, Dignity and Tolerance**

UN organs and agencies should strengthen their efforts to implement a programme of action to combat racial discrimination, persecution of minorities, intolerance towards indigenous people in society, and the poor condition of migrant workers. Violence and discrimination against women in private and public life, disregard for the rights of the child, torture in times of internal and international conflict, and barriers in ensuring the rights for disabled persons should be their other targets. The World Congress urged all governments to develop strong policies. They were asked to take recourse to penal measures and establish national institutions to combat such phenomena. The World Congress welcomed the decision of the Commission on Human Rights to appoint a Special Rapporteur to deal with such cases. The Conference also invited all the states to put into practice the provisions of the declaration on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981).

#### **(iii) Cooperation, Development and Strengthening of Human Rights**

The World Congress on Human Rights gave priority to national and international action to promote democracy, development and Human Rights. Upon request from the interested governments, assistance should be provided by the Centre for Human Rights to national projects. These should be utilised for conducting free and fair elections, strengthening rule of law, promotion of justice, securing effective participation of the people in the decision-making processes, and training of lawyers, judges and security forces in Human Rights. In tune with the stress on right to development as a Human Right at the World Congress, the Commission on Human Rights appointed a Working Group. The group was assigned to formulate effective measures to eliminate obstacles in the realization of the Declaration on the Right to Development. The role of the NGO's and other grass-root organizations in cooperation with governments to focus on the importance of development was recognized at the Conference. All actors in the field of development were urged to uphold and promote the mutually reinforcing inter-relationship between development, democracy and Human Rights.

#### **(iv) Human Rights Education**

Human rights education, training and public information dissemination are considered essential for achieving harmonious relations among communities, and fostering mutual understanding and peace. For this, a two-pronged strategy has been advised viz., (a) widest human rights education and (b) dissemination of public information. This should help foster a culture of human rights. States must see that subjects such as human rights, humanitarian laws, democracy, rule of law, tolerance and peace are included in the curricula of all learning institutions in the formal and non-formal settings.

#### **(v) Implementation and Monitoring Methods**

The World Congress on Human Rights underlined the importance of preserving and strengthening

the system of special procedures, rapporteurs, representatives, experts and working groups of the Commission on Human Rights. This would enable them to promote human rights throughout the world. Their work should be systematized through periodic meetings. The UN should assume a more active role in ensuring full respect for international humanitarian law in all situations, in accordance with the principles of the Charter of UN. There must also be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels. While framing legislations at home, all governments should incorporate standards of international human rights instruments. They should strengthen national structures, institutions and organs of society, which act to promote and safeguard human rights.

Now, we shall consider the developments in the aftermath of the World Congress. Let us see how the fruits of such combined efforts of different nations are being exploited by the world community. We will also look into the various implications of the Congress. So, let us proceed.

### Check Your Progress 2

- 1) Identify the sheet anchor of the Vienna Declaration:
  - i) Right to Development.
  - ii) Indivisibility of Human Rights.
  - iii) Universality of Human Rights.
  - iv) All the above.
- 2) Which of the following is False:
  - i) All Human Rights are for all.
  - ii) Human rights are inter-dependent but hierarchical.
  - iii) The Vienna Congress recommended for UNHCR.
  - iv) State Governments should see that domestic laws conform to the standards of international human rights instruments.
- 3) Write three specific recommendations from Part I, and three from Part II of the VDPA.

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## 3.6 FOLLOW-UP TO THE WORLD CONGRESS ON HUMAN RIGHTS

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As a follow-up to the Congress, special attention was recommended for assessing the progress towards the goal of universal acceptance of international human rights treaties and protocols framed by the UN. The General Assembly, the Commission on Human Rights and other UN organs related to human rights should implement the recommendations of the Conference immediately. The Vienna Declaration also called for proclaiming a UN decade for Human Rights. The World Congress further recommended that the Commission of Human Rights should annually review progress made towards universal observance of human rights.

On 25<sup>th</sup> June 1993, the representatives of 171 states unanimously adopted by consensus, the Vienna Declaration and Programme of Action of the World Congress on Human Rights, thus successfully closing the 2-week World Congress. It presented to the international community a common plan for strengthening of human rights work around the world. It also marked the culmination of a long process of review and debate over the status of Human Rights in the world. The Vienna Declaration makes concrete recommendations for strengthening the monitoring



capacity of the UN system. As per its suggestions, a High Commissioner for Human Rights was appointed by the General Assembly on 20<sup>th</sup> December, 1993. Mr. Jose Ayala Lasso was nominated by the Secretary General for the post (currently, **Mary Robinson**, former Prime Minister of Ireland is the High Commissioner). Similarly, **the decade 1995-2004** was proclaimed as the **UN Decade for Human Rights Education**.

The Congress made an important beginning towards reconciliation of ideological confrontation between the developed nations and the developing ones over Human Rights. It sought to steer a way out of the conflict, leading towards a common commitment to a single standard of human rights. Also, the Congress succeeded in making the developed nations agree and accept that the people of the majority of the developing nations have a right to development. They also conceded that guarantees of basic economic and social rights are necessary if respect for civil and political rights is to be ensured. The developing countries too agreed that the pursuit of development requires a democratic society with its entire population of both men and women fully participating in making decisions affecting their lives.

While the most optimistic outcome of the Congress was in the strengthening of the idea of universality of human rights, it was also based on an uneasy consensus on core human rights principles. The Asian Countries contended that the idea of human rights was not a universal one but a developed world construct. The developed countries, it was feared, were using human rights to achieve global economic dominance over the poorer countries. The Vienna Declaration, however, failed in eliciting effective commitments from the opposing sides.

The attack on universalism of human rights by most participants was based on the argument that the world is made up of so many diverse cultures that common global standards of human rights are not possible. The most effective counter to this argument came from the NGO's. The World Congress was preceded by a three-day meeting of representatives from over 1,300 NGO's at Bangkok. While making country-specific interventions, it discussed several of issues of special interest. The aim was to formulate a common platform on them. However, NGO's were given only limited access to the all-important drafting of the Vienna Declaration. They were not allowed proper involvement in the World Congress. Consequently, the fundamental principle of universality of human rights as mentioned in the Declaration remained weak.

One of the most successful events of the NGO forum were the activities by the Women Global Network. It was a part of the highly organized women's lobby which was able to achieve tangible results by integrating women's concerns into all-UN operations. It called for strengthening of the Convention on **Elimination of All Forms of Discrimination against Women (CEDAW)**.

The Congress was positive as far as the rights of women and children were concerned. It also marked the presence and participation of a large number of NGO's working for the promotion and protection of human rights. Another high point of the World Congress was that the number of states endorsing the Vienna Declaration was three times and more as compared to the tally of just over 50 states which were party to the UDHR in 1948. Also the principle of consensus followed in the decision-making process made it possible to accommodate (to a large extent) pluralistic perspectives on human rights in the Declaration.

Now that you have gone through the whole Unit and also attempted the CYPs, you must have a clear idea of the VDPA – its salient features, and the merits and demerits. You are now expected to be well-versed in the workings of the World Congress, and the developments coming in the aftermath of it. Here, we are giving a brief summary for your convenience, so that the whole concept is refreshed for you.



### Check Your Progress 4

- 1) Attempt a critical assessment of the Vienna Declaration.  
.....  
.....  
.....
- 2) Identify any three concrete achievements of the World Congress.  
.....  
.....  
.....
- 3) Which one of the following statements is correct?
  - i) Universality of human rights is beyond question.
  - ii) Mary Robinson is currently the UN High Commissioner for Human Rights.
  - iii) The number of states which signed Vienna Declaration was three times and more than the figure for UDHR.
  - iv) All the above.

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### 3.7 LET US SUM UP

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It is crucial to recognize that the contents of an internationally acceptable set of human rights have been finalized and reconfirmed at Vienna. Let us briefly outline the seminal features of this package:

- 1) **The universal nature of human rights and freedom is beyond question.**  
The dissident Asian countries (China, Indonesia, Malaysia, Iran, North Korea but not India) could temper their opposition despite their acceptance of the human rights as universal. The Western Countries on the other hand, formally accepted the validity of economic and social rights and the right to development ( standard demand of the developing countries till now). The civil and political rights were already represented as the quintessence of human rights by the developed countries.
- 2) **The human rights as internationally declared and pledged to, by most of the countries do not admit of any hierarchy among them and, as such, are indivisible and inter-dependent.**
- 3) **Similarly, a new linkage** has also been forged. According to the Declaration, “**Democracy, development and respect for human rights and fundamental freedoms are inter-dependent and mutually reinforcing.**” An important new implication is: effective democratic practice and development planning are not possible without human rights observance.
- 4) **The right of the international community to be concerned with human rights practices in any country is now firmly stated.** This made a big dent on the exclusive domestic jurisdiction of the state as embodied in the legal norm of state sovereignty.
- 5) **States are now internationally accountable for domestic violence involving women and other societal violations like racism, ethnic cleansing, xenophobia, and others.**

Declaration called upon the international community and the national governments to mobilize institutionalized efforts to eradicate illiteracy and propagate human rights education and dissemination. Following the World Conference recommendations, the UN Decade for Human Rights Education (1995-2004) was proclaimed ending years of long debate. Appointment of the High Commissioner for Human Rights was finally approved and made. The High Commissioner has the overall (system-wide) responsibility for the UN human rights programmes.

- 7) Latest is: UN General Assembly adopted in 1996, a medium term plan for 1998-2001. Under this plan, the UN human rights programme would develop a strategy for implementation of Vienna Declaration by various UN agencies, human rights treaty bodies financial and development institutions, NGOs etc. One important evidence of further progress in this direction is the January 1998 policy document titled **"integrating Human Rights with sustainable Human Development – a UNDP Policy Document"**. This document outlines plans of the UN Development Programme to integrate human rights into activities for fighting *poverty*, promoting advancement of *women* protecting the *environment*, and developing the capacity for *good governance*.

### 3.8 KEYWORDS

Bi-polar	divided between two major powers.
Unipolar	concentrating in one power.
Consensus	agreement in opinion. Unanimity.
Opened up a Pandora's box	brought the evils into open.
Democratisation	making democratic.
Xenophobia	morbid dislike of foreigners.

### 3.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

#### Check Your Progress 1

- 1) (1992), San Jose (1993), Bangkok (1993).
- 2) Some new points of departure which made understanding of human rights more or less stable and definite.
- 3) Except (iii), all are true.

#### Check Your Progress 2

- 1) iv
- 2) ii.
- 3) Refer relevant portions.

#### Check Your Progress 3

- 1) Refer to 3.6.
- 2) Refer to 3.6.
- 3) iv.



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# **AECHRD**

**Human Rights-Society  
and Development**

Block

## **2**

### **UNITED NATIONS AND HUMAN RIGHTS**

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#### **UNIT 4**

**The UN Declaration of Human Rights:  
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**3**

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**Implementing Human Rights: The UN Machinery**

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## **UNIT 4 The UN Declaration of Human Rights: History, Importance and Objectives**

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### **Structure**

- 4.0 Objectives
- 4.1 Introduction
- 4.2 International Concern for the Individual
  - 4.2.1 The Beginning
  - 4.2.2 Developments in the 20th Century
  - 4.2.3 The Treaty of Versailles
- 4.3 The United Nations Framework of Human Rights
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- 4.4 The Universal Declaration of Human Rights
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  - 4.4.3 Importance
- 4.5 Let Us Sum Up
- 4.6 Key Words
- 4.7 Some Useful Books
- 4.8 Answers to Check Your Progress Exercises

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### **4.0 OBJECTIVES**

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After going through this unit, you should be able to:

- trace the expanding international concern for the individual leading to the passing of the Universal Declaration of Human Rights;
- describe the United Nations framework for human rights;
- identify the objectives of and the rights enumerated by the UDHR;
- explain the importance of the UDHR.

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### **4.1 INTRODUCTION**

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International concern for human rights, welfare and dignity has evolved along with the evolution of the state system and with of the process of organising the international system of states. Throughout history, human civilisation has shown its concern for human rights, even though powerful groups within each community sought to take benefit of their advantageous positions. Ancient civilisations such as the Indian have had a more composite view of human welfare. They thought of the entire world as a single large family and they sought peace and prosperity for all human beings of the universe.

In the course of time, the world became divided into political states. Each state had its own form of government such as monarchy, oligarchy, etc. In modern states, democratic form of government has become the norm. Irrespective of the form of government, states claimed sovereignty, that is, exclusive and supreme power over all individuals, resources and events that take place within its territory. Hence, it is not surprising that universal human rights which concern all human beings were not a subject of international law and action. Although some international concern for the individual has existed since the establishment of the modern state system, human rights emerged

as a proper subject of international action actually in the years following the Second World War. In this unit we will first trace the growing international concern for the individual and the restrictions that they brought to bear on the state actions. Later, we will examine the United Nations' framework within which human rights emerged as a legitimate subject of international action, particularly emphasising the Universal Declaration of Human Rights in 1948, its objectives and importance.

## 4.2 INTERNATIONAL CONCERN FOR THE INDIVIDUAL

State sovereignty traditionally meant that individuals were subjects of the state and hence were of exclusive concern of the state. Each state zealously guarded what it called 'domestic jurisdiction,' i.e. the authority to decide its own internal affairs. The individual and how she/he should be governed was an exclusive domain reserved for the state. Another state had no right to interfere, and if it did, it amounted to intervention, i.e. meddling in the internal matters of a sovereign state.

### 4.2.1 The Beginning

However, this claim of a state to exclusive jurisdiction over its individuals has, slowly, and imperceptibly, weakened over the past centuries. *The Peace of Westphalia of 1648*, which established the modern sovereign state system, itself recognised the need for a principle of tolerance. It recognised that Catholics and Protestants had their respective freedom of religion. This was the *first* recognition of human rights in Europe.

The *second* instance of international concern for individuals occurred after the Battle of Solferino in 1859. Although a little known battle in Europe, it resulted in a large number of deaths and the wounded. This moved Count Henry Dunant, a Swiss philanthropist, to establish the Red Cross Society. A voluntary organisation, the *Red Cross Society* worked for the improvement of the conditions of the sick and the wounded soldiers in the battlefield. Dunant's Red Cross movement was able to persuade states to accept some restrictions on war, for the protection and amelioration of the soldiers who were compelled to fight in the battles. The first international agreement containing such restrictions on war was adopted in 1864. These have been revised and expanded periodically, on the basis of experience of different wars, in 1899, 1907, 1929, 1949 and 1977. These rules, known as the 'humanitarian laws applicable in armed conflict,' or just '*humanitarian laws*' provide a code of behaviour for protecting the individuals who are caught in a war either as soldiers or as innocent civilians.

A *third* area of state sovereignty that opened up for international regulations was related to *slavery*. The European colonisation of North America, Africa, Asia and Oceania encouraged slave trade. The colonial powers such as the British and the Portuguese, slowly started recognising the evils of slavery, and entered into a number of treaties prohibiting slave trade. Although these attempts to ban slave trade came rather late in the day, they show some international concern about this evil practice.

A *fourth* area of slow evolution of international concern for human rights related to *colonies*. The spread of European colonialism to the Americas, Africa and Asia in the 16th to 19th centuries allowed the European colonial powers to exploit colonial territories for their own benefit. Their colonial policies, and the manner in which they administered their colonies were all matters of their domestic jurisdiction. The international community, if it existed outside these powers, had no authority even to show concern over their colonial practices. The League of Nations, established in 1920 as the first political international organisation with worldwide functions, set



down an international principle viz., *self-determination*, and provided a modest institutional mechanism, paving the way for *decolonisation* of most of the European colonies. Decolonisation, however, was finally achieved under the aegis of the United Nations.

#### 4.2.2 Developments in the 20th Century

A *fifth* area where the state system slowly started loosening its reserved domain was the growing international concern for minority rights. The European situation after the First World War clearly showed that it was necessary to establish a system of international guarantees for protection of minority rights. Old empires broke up as a result of the War, and most countries in Europe came to have sizeable religious, ethnic and linguistic minorities. To ensure peace among these countries, it was imperative to establish a web of mutual undertakings by states, and to confer upon the League of Nations some 'supervisory' role. These minority treaties in principle questioned the very nature of the claim of a sovereign state to exclusive jurisdiction over the individuals within its territory, and legitimised the role of international organisations in seeking to ensure implementation of international obligations of states to respect minority rights.

Last, but not the least, the establishment of the League of Nations coincided with the general acceptance of the idea that international organisations could be utilised to achieve co-ordinated efforts by states to resolve some of their socio-economic problems. The social and economic development of a state was and is considered to be within the exclusive domain of that state. However, the functional organisations such as the Universal Postal Union and International Telegraph Union had already shown the way for fruitful international co-operation in limited areas. Also, the destruction caused by the First World War on Europe was devastating by traditional standards, and required the joint efforts of nations for European reconstruction. Additionally, the influence of socialist thinkers in Britain and France since the second half of the 19th century also emphasised the need for the improvement of the lot of the workers in factories.

All these developments led to states authorising and empowering international organizations and in a small measure also, to take initiatives in the socio-economic fields.

#### Check Your Progress 1

1. Outline the six important developments that took place on international level that led to the evolution of the concept of human rights.

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#### 4.2.3 The Treaty of Versailles

In fact, the *Treaty of Versailles* (1919) contained the constitutions of two international organisations, namely the League of Nations and the International Labour Organisation (the ILO). The ILO, which still exists alongside the United Nations, was set up to promote social justice for working people everywhere. It formulates international policies and programmes to help improve the working and living conditions of workers, creates international labour standards to serve as guidelines for the authorities of member states, assists them in implementing these policies and programmes within their respective territories, and also assists them with technical advice, training and education in these fields. ILO is a unique international organisation in one respect. Its constitution requires each of its member states to include in its delegation to the General

Conference of ILO (i.e. the International Labour Conference) one representative each of the employers and the workers (besides the two government representatives) so that the latter too will have a direct say in the formulation of ILO policies and programmes. The contribution of ILO to social welfare legislation and programmes in various countries including India has been significant. Almost all of the Indian legislation on workers' welfare, such as those relating to regulation of work in various types of employment, payment of wages, minimum wages, safety at work, accident compensation, bonus, gratuity, industrial disputes, sickness benefits, maternity benefits, equality of men and women in respect of work and pay, regulation and prohibition of employment of women and children in certain conditions and employments, regulations relating to hazardous work, etc., are all based on conventions (treaties), or international labour standards developed by ILO since its inception in 1920.

Then, during the late 1930s and through the Second World War, there took place a historical development that 'shocked the conscience of mankind.' This was the sustained and naked abuse of state power over hapless individuals chiefly on racial grounds. Totalitarian governments emerged in Germany and Italy which showed scant respect for the individual. False notions of Aryan racial superiority drove the Nazi government in Germany into systematically killing thousands of Jews from all territories under its control including the annexed territories. Heinous crimes were perpetrated on their persons; they were denied even the right to a decent burial.

It was therefore decided to make persons in charge of sovereign authority responsible for such large scale violations of human dignity accountable for their actions. The International Military War Crimes Tribunals set up by the Allied and Associated Powers at the end of the war at Nuremberg in Germany and Tokyo in Japan held trials of a number of major war criminals, and awarded punishments to many of them.

The implications of these international war crimes' trials have been many. First and foremost, they meant that the international community could make persons in authority accountable for large-scale crimes perpetrated by them against individuals, even by way of exercise of state authority. Second, humanitarian laws could be enforced, even if partially, by victors in a war. Finally, there has been a growing international concern for the protection of the individuals both during the times of war as well as during peace, and the international organisations are no longer to be barred from inquiring into the treatment of individuals within a sovereign state.

### Check Your Progress 2

In Alpha, an independent country, there is a minority of persons belonging to a particular religion who are being ill-treated by the majority, which dominates the government. They are not selected for high positions in the government; social welfare schemes are not applicable to them, etc. Beta, another country, finding the policies of the Government of Alpha discriminatory, raises this question in the General Assembly of United Nations. The representative of Alpha state submits before the Assembly that the question of treatment of minorities is an internal, domestic issue and that Beta should not interfere in the internal affairs of Alpha. What is your opinion on this issue?

So far, we have seen how the states which loved and lived the concept of domestic jurisdiction came to recognize and accept the rights of the individuals, over passage of time. Now, we shall

take up for discussion all those international instruments of human rights which were prepared under the auspices of the United Nations.

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### 4.3 THE UNITED NATIONS FRAMEWORK OF HUMAN RIGHTS

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#### 4.3.1 The Framework under UN Charter

The human history has been witnessing an historical evolution of the interaction between state sovereignty and the international organizations (catalyzing cooperation on common national problems of states). It was at this cross-road that a new international organization, the United Nations, took shape at the end of the Second World War in 1945.

The Allies had already, promised the thick of War, a peace 'which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want.' (The Atlantic Charter, 14 August 1941, signed by the US President and the British Prime Minister.) To them, the War was 'to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands.' (The Declaration of the United Nations, 1 January 1942, signed by 21 Nations.)

The Charter of the United Nations Organisation that finally came into force on 24 October 1945, for the first time contains elaborate provisions on human rights and fundamental freedoms. The Preamble to the Charter reaffirms '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 the need 'to promote social progress and better standards of life in larger freedom.' The purposes of the United Nations include: 'to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.' The United Nations is expected 'to be a centre for harmonising the actions of nations in the attainment of these common ends.'

The UN Charter calls upon the General Assembly and the Economic and Social Council (ECOSOC) to play a comprehensive role in regard to promotion of human rights, for realisation of the above objectives. The General Assembly is to initiate studies and make recommendations for the purpose of 'promoting international co-operation in the economic, social, cultural, educational and health fields, and assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.' The responsibility to promote 'universal respect for, and observance of human rights and fundamental freedoms' is cast not only on the United Nations (Article 55), but also equally on all member states of the UN (Article 56). The member states have a duty to take joint and separate action in cooperation with the Organization 'for the realisation of human rights the world over' (Article 56).

The principal organ of the UN to carry out the tasks laid down under Article 55 of the Charter is the ECOSOC. A 54-member body, ECOSOC carries out its mandate by initiating studies, making reports, or making recommendations to the General Assembly, to member states or to other relevant international organisations. It also prepares draft treaties for submission to the General Assembly.

Acting under Article 68, the ECOSOC has set up commissions (that is, special committees) in economic and social fields, and for promotion of human rights. In 1946, the ECOSOC set up the Commission on Human Rights to carry out all its responsibilities under the Charter in respect of



human rights. The Commission consists of 53 member states elected by the ECOSOC. It makes proposals, recommendations and investigative reports on human rights issues to the General Assembly through the ECOSOC. It has become an active forum for states, inter-governmental organisations, and non-governmental organisations (NGOs) to ventilate their concern on human rights issues, even though the forum is at times exploited for political purposes, as has been the case with the recent Pakistani complaints on human rights situation in Jammu and Kashmir.

The Commission has also constituted special subcommissions, working groups and reporters on specific human rights issues. For instance, it established two permanent subcommissions in 1946, one on the *Prevention of Discrimination and the Protection of Minorities* and the other on the *Status of Women*.

Acting under its general mandate, the General Assembly created in 1993 a post of United Nations High Commissioner for Human Rights as a senior UN official, with special responsibility for the human rights activities of the United Nations, under the aegis of the UN Secretary-General. The first UN High Commissioner for Human Rights was appointed in February 1994.

The Second World War also brought to light a problem closely related to human rights violations—that of refugees. International concern for the problem of refugees has gathered momentum, as the problem continues to exist on a large scale, particularly in Africa and Asia. The Office of the UN High Commissioner for Refugees (UNHCR) was set up in 1951, under a decision of the General Assembly, to render humanitarian assistance to refugees.

### Check Your Progress 3

1. Briefly enumerate important references to Human Rights in the Charter of the United Nations.

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#### 4.3.2 A General Perception of UN's Role

The General Assembly and the ECOSOC, with the assistance of their various subsidiary bodies, have sought to serve human rights objectives of the United Nations in many ways. These are, however, organs with merely recommendatory powers, i.e. their decisions are not binding on member states. Nevertheless, these organisations perform important functions.

First, and perhaps most importantly, these bodies *evolve international policies* relating to human rights standards. They help evolve internationally acceptable norms of human rights. This is achieved by consensual adoption of principles or standards by way of a resolution or a formal treaty.

Second, the work of these international bodies has *an educational role*. Problems of implementation of human rights may vary from one state to another, and it is important for all states to understand and appreciate these problems, before evolving an international human rights standard, or insisting on implementation of a standard. A framework of international co-operation can be evolved on the basis of such educative process to assist member states in the implementation of international standards.

Third, the UN fora *provide a framework of communication* of complaints and rectification/moderation of human rights violations. Communication of complaints on the international level at once places a state under the scrutiny of other states. This may produce a moderating influence on it.

*Fourth*, to counter gross and persistent violations of human rights, sustained pressure of international public opinion over a period of time may help along with other factors of international relations. The UN bodies provide fora for the *evolution and sustenance of international public opinion*.

*Fifth*, the United Nations systems offers a *monitoring role* for the UN Human Rights Commission and the UN High Commissioner for Human Rights. This is indeed not equivalent to a supervisory role, or a role with a decisive say in implementation of human rights standards by states, let alone any enforcing power. States at least realise that the UN system has enough facilities to collect information about the human rights situation within a country and bring it to the attention of other states. This the UN human rights bodies may do, at the instance of state complaints, or through the intervention of NGOs. In other words, although many states have voluntarily followed the practice of making periodic reports to the UN Human Rights Commission, the Commission is not bound to accept these country reports without independent verification.

*Finally*, the availability of UN human rights bodies provides opportunities for the UN to play a *third party role*; if called upon, in a human rights situation which a state fails to rectify. Evidently, the authorisation for, and the acceptability of UN intervention in such cases depend on the consensual character of the UN decisions which are supposed to be fair and impartial.

#### Check Your Progress 4

1. The General Assembly of the United Nations can pass resolution on human rights issues addressed to member states and (Tick the correct option/s.)
  - a) compel them to change their internal laws to include more human rights.
  - b) recommend and request new human rights standards for inclusion in their internal laws.
  - c) look into enforcement and implementation of human rights with the states.
  - d) leave the matter to states as to how they deal with human rights issues.

Once we are aware of the UN framework of human rights and have an ample knowledge of the role played by the UN bodies in upholding the sanctity of such rights, we may go further into the details of what more has been achieved in this field. Perhaps, the most important event in the history of human rights is the formulation of the UDHR. IN the next section, we will have a detailed view of this significant Declaration.

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## 4.4 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

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The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly on 10 December 1948; represents the first and the most important instance of formulation of international human rights standards. In fact, much of the international norm-setting activity of the United Nations flows from and relates to UDHR.

### 4.4.1 Historical Setting

As already seen, the sovereign state's insistence on its exclusive jurisdiction over individuals

within its territory began loosening since 1648. The breaking up of empires and the gradual emergence of nationalism and democracy since the American and the French Revolutions made international concern for human rights legitimate. The devastation and misery brought about by the First World War and its aftermath were unparalleled in history. This was one of the reasons for the attempted trial of William Kaiser of Germany for having conspired, planned and perpetrated the war.

The Nazi tyranny and atrocities wrought on European Jews in the late thirties and through the Second World War are the darkest chapters in the history of European civilisation. The Allied and Associated Powers had decided to take action to ensure that such gross violations of human rights were never repeated. They sought to achieve this in two ways. At the end of the war, it was decided that major war criminals, i.e. the high functionaries of wartime Germany, Italy and Japan, would be put on trial by International Military War Crimes Tribunals. Additionally, the new international organisation, the United Nations, was to be given some mandate to promote human rights worldwide.

The need for an International Bill of Rights was strongly felt for a number of reasons. First, the provisions of the UN Charter do not themselves provide for effective guarantee for implementation of human rights by states. The Charter does not clarify how states can be made accountable to the United Nations for such implementation. Second, the Charter does not define human rights. Without a clear definition, the obligations of states remain unclear and undefined. Third, the international standards of implementation and the functions and powers of the international monitoring system should also be clarified. Finally, the San Francisco Conference indicated that further work needed to be performed by the future organisation. What was envisaged was an elaborate treaty with binding and enforceable international legal obligations of states in respect of human rights.

#### 4.4.2 Objectives

The preamble to UDHR bears ample testimony to the fact that it was the first normative response of the then international community to the terrible experiences it had during the war. It notes that 'disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.' It emphasises that 'recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.' It also stresses that a common understanding of the human rights and freedoms enshrined in the UN Charter 'is of greatest importance for the full realisation of the pledge.'

The Declaration contains thirty articles. The first twenty-one articles relate to civil and political rights, and the next six (Articles 22 to 27) to economic, social and cultural rights. The last three (Articles 28-30) are of general application and bear upon the entire Declaration.

#### Check Your Progress 4

1. The Universal Declaration of Human Rights is a formulation of human rights. The obligations of members of United Nations regarding the UDHR may be summarised as under: (Tick the correct option/s).
  - a) Include all human rights mentioned in UDHR in the constitution and other laws and give effect to the declaration.
  - b) Inform the UN General Assembly that human rights issues are internal matters and that all sovereign independent states have freedom to decide their own human rights policies.



- c) Make an attempt in good faith to include most of the human rights mentioned in UDHR in their internal laws so as to give maximum human rights guarantees to their citizens.

#### 4.4.3 Importance

When the UN General Assembly adopted UDHR in 1948, it only intended the Declaration to be 'a common standard of achievement for all peoples and all nations.' However, 50 years after the Declaration, one finds that it still stands as the single most important normative act ever adopted by the United Nations, for a number of reasons.

*First*, having come through the harrowing experiences of inter-war totalitarianism and the horrors of the Second World War, the post-war international community set its human rights agenda through the Declaration. Since then the record of state behaviour became subjected to scrutiny through the standards set by UDHR.

*Second*, although the Declaration did not proclaim itself to be legally binding, it acquired such a character in two ways. It came to be regarded as an interpretation and elaboration of the UN Charter provisions on human rights. Its influence on the drafting and practice of state constitutions which came into existence after 1948, has been extremely impressive and far-reaching. The founding fathers of the Indian Constitution too were influenced by UDHR. Indian courts still use the Declaration to interpret and clarify the Fundamental Rights provisions of the Constitution.

*Third*, UDHR provided the normative basis for all future activities of the United Nations in the field of human rights. It led to the drafting of the two International Covenants on Human Rights in 1966—both of which, along with UDHR, constitute the International Bill of Rights. The diverse provisions of UDHR inspired the eventual drafting and adoption of a large number of treaties and further declarations on specific aspects of human rights. In fact, almost all the United Nations' human rights instruments that have emerged so far are in some way or the other based on UDHR.

*Fourth*, the Declaration also inspired efforts at the regional level for evolving human rights institutions. Its influence on the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the institutions established under this treaty, such as the European Commission of Human Rights and the European Court of Human Rights, has been very significant. The Charter of the Organization of African Unity, 1963, also acknowledges its influence.

However, we cannot overlook the fact that UDHR reflects what was essentially a mid-century Western perception of human rights, a response to the inter-war and wartime European experiences. An international community dominated by the Western countries adopted it. The presence of the Third World countries of Asia, Africa and Latin America started being felt at the United Nations only from 1960. Till then, their human rights problems did not receive as much serious attention at the United Nations as they deserved. This becomes clear when the UDHR provisions are compared with those of the International Covenants of 1966. As noted already, only six of the thirty articles of UDHR relate to economic, social and cultural rights. The post-1960 normative developments clearly revealed a great divide between the Western, the Third World and the Socialist perceptions of human rights, in terms of their divergent socio-cultural ethos and ideological moorings.

Yet another weakness was that UDHR did not specifically provide for international machinery for its implementation. The reasons for this may be two-fold. As a standard setting instrument, UDHR looked to the peoples all over the world for their awareness of and zeal to insist on their

human rights; it looked to states to voluntarily promote human rights within their territories while calling upon each other to implement them. It was also based on an assumption that the then existing human rights mechanism of the United Nations was adequate for its implementation, until the treaty instruments of the International Bill of Rights would hopefully provide for a more rigorous implementation mechanism.

Despite these flaws, UDHR remains a crowning achievement of the international community in establishing international human rights standards, given the nature of the world that was just emerging after a devastating war.

### Check Your Progress 5

1. If you are asked to describe the UDHR in one sentence, which of the following would you choose (preferably).
  - a) A recommendation adopted by the General Assembly of United Nations.
  - b) A document containing a list of human rights.
  - c) A resolution adopted to promote human rights.
  - d) A common standard of achievement for all peoples and all nations.

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## 4.5 LET US SUM UP

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The Universal Declaration of Human Rights is the first and most important instance of the formulation of international human rights standards for all people and nations. In this unit we examined the expanding international concerns for the individual that culminated in the setting up of international human rights standards by the United Nations.

1. Even as the modern sovereign state system came into being, some restrictions on sovereignty have operated on states in the form of formal and informal rules. The establishment of international political organisations, first the League of Nations and following its failure, the United Nations, catalysed international cooperation to resolve common national problems of states. With the atrocities committed by totalitarian regimes on their population fresh in their minds, states that came together to establish the United Nations, committed the new organization to promoting and encouraging respect for human rights and for fundamental freedoms of all people.
2. The General Assembly, and the Economic and the Social Council with the assistance of their various subsidiary bodies have sought to serve human rights objectives of the UN in many ways. Their most important contribution lay in evolving international human rights standards in the form of the Universal Declaration of Human Rights and policies relating to human rights standards.
3. Since the adoption of the UDHR, a number of treaties have been adopted to make these moral standards into binding legal principles. With human rights becoming a legitimate area of international action, state sovereignty over the individual has further weakened. The international accountability of states in respect of their internal records of performance in promotion of human welfare has gained importance, even if this does not permit that the international community to legitimately intervene, readily and forcibly, into the internal affairs of a state (unless there is an international consensus that there exists gross and persistent violation of human dignity which demands international action).

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## 4.6 KEY WORDS

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**composite:** made up of various parts

**monarchy:** a kind of government in which the chief power is in the hands of a monarch

**oligarchy:** government by a small exclusive group of people

**philanthropist:** one who loves human beings

**colony:** a state's dependencies overseas or abroad

**decolonisation:** disappearance/breaking up of a colony

**gratuity:** an acknowledgement of one's services, generally in the form of monetary allowance

**totalitarian:** a system of government with but one political party, rivals not being tolerated; dictatorial

**Nazi:** (literally) National Socialist; a Hitlerite.

**Oceania:** Southern Pacific islands.

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## 4.7 SOME USEFUL BOOKS

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United Nations, *United Nations Action in the Field of Human Rights*

United Nations, *World Conference on Human Rights: The Vienna Declaration and Programme Action* (June 1993/1995).

K.P. Saksena (ed.), *Human Rights Perspectives and Challenges* (1994).

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## 4.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. Concept of state sovereignty and jurisdiction over individuals.  
Humanitarian law developments.  
Regulation of slave trade.  
De-colonisation.  
Protection of minority rights.  
Creation of international organisations.

### Check Your Progress 2

1. Although traditionally the matter appears to be an internal issue, yet in view of developments that have taken place during the last fifty years, it is now clear that human rights issues are matters of international concern and hence can be raised and discussed on international level.

### Check Your Progress 3

1. The Preamble refers to faith in fundamental human rights, in the dignity and worth of the human person, etc. 2. One of the purposes 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 respect for human rights. 3. The General Assembly is responsible for assisting in the realisation of human rights. 4. The Charter imposes responsibility on States to facilitate realisation of human rights. 5. Responsibility for taking up human rights issues is given to the ECOSOC.



**Check Your Progress 4**

1. b)

**Check Your Progress 5**

1. c)

**Check Your Progress 6**

1. I would choose (d)

5.0	Objectives
5.1	Introduction
5.2	History of the Covenants
5.3	The International Covenant on Economic, Social and Cultural Rights
5.3.1	Limitations on the Rights
5.3.2	Machinery for Implementation
5.4	The International Covenant on Civil and Political Rights
5.4.1	Limitations on the Rights
5.4.2	Machinery for Implementation
5.4.3	The Optional Protocols
5.5	An Evaluation of the Covenants
5.6	Let Us Sum Up
5.7	Key Words
5.8	Some Useful Books
5.9	Answers to Check Your Progress Exercises

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## 5.0 OBJECTIVES

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Efforts to translate the moral standards of the UDHR into legal and binding principles led to the drafting and ratification of the two major human rights treaties: the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. This unit deals with the main features of these Covenants, and the mechanism to enforce them among member states. After going through this unit, you should be able to

- identify the important rights guaranteed by the Covenants;
- explain the limitations on the exercise of the rights recognised by these Covenants;
- describe the machinery for monitoring the implementation of the rights; and
- critically evaluate the Covenants.

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## 5.1 INTRODUCTION

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While the UDHR enumerated the basic human rights, these did not have a binding force. The Declaration was a mere resolution and not a treaty imposing legal obligations on the states. Efforts to draft specific human rights treaties with legal and binding force began in the late 1940s. It, however, took nearly two decades to draft two major multilateral human rights treaties: the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. A decade later, these covenants came into force. Why did it take so long for the international community to implement these Covenants? What are their main features? What mechanism has been established to implement the rights contained in these Covenants? These are some of the questions that we will strive to answer in this unit

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## 5.2 HISTORY OF THE COVENANTS

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We have already seen that the international community, since 1945, had decided upon an International Bill of Rights which should comprise two parts: (1) a declaration of certain

international standards of human rights having a moral force to persuade states to accept them voluntarily, and (2) a set of rights and freedoms as a part of an international agreement or a treaty which would be legally binding on the states; and these rights and freedoms must also be made enforceable through some international mechanism under the treaty.

With the adoption of the UDHR in 1948, efforts to translate these moral standards into binding legal obligations on states began in earnest. As the Commission on Human Rights started drafting of the treaty, many states, particularly from Asia and Africa, became members of the United Nations. They brought with them their own perceptions of human rights. These emanated from their traditional cultural ethos common experience of colonialism and exploitation at the hands of the European powers. Their priorities and special emphasis rested on the more urgent realisation of economic, social and cultural rights, rather than the civil and political ones, as they believed that economic and social development alone would ensure larger freedoms. Some of them wanted both the categories of rights to go hand in hand. The states of the Third World and the Socialist bloc, however, realised that the two categories differed in their subject-matter and conditions for their achievement. Thus, they believed that their implementation monitoring mechanisms on the international level had to be different. Therefore, the ECOSOC and the General Assembly finally decided to formulate two treaties rather than one — one to provide for the economic, social and cultural rights, and the other for the civil and political rights.

It was after nearly two decades of protracted and contentious negotiations that the General Assembly adopted two Covenants — the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights — on 16<sup>th</sup> December, 1966, and recommended them to its member states. These Covenants finally came into force in 1976, when the required number of states, 35 in all, ratified and became parties to these covenants. In other words, it took 10 years for these treaties to become binding international instruments, which shows the hesitation on the part of states to accept restrictions on their sovereignty, and the international human rights monitoring machineries of even the mildest kind. India became a party to the covenants after ratifying them in 1979. This brought in a sense of balance in India's approach to human rights. It realised that efforts to achieve economic, social and cultural rights, as well as civil and political rights, must go hand in hand, as both categories of rights are equally important. One cannot be sacrificed for the sake of the other; nor can it be prioritised over the other. Also, all human rights are mutually interlinked: the full utilisation of one depends on that of the other.

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### **3 THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

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The International Covenant on Economic, Social and Cultural Rights contains 31 articles. Of these 25 are directly related to these rights, while, the rest deal with how the agreement is brought into force, and subsequently amended.



## **The Rights Recognised under the Covenant**

- **Right of self-determination of all peoples, and their right to freely dispose of their natural wealth and resources**
- **Equal right of men and women to enjoy all economic, social and cultural rights.**
- **Right to work, including the right to enjoy of just and favourable conditions of work.**
- **Right to form and join trade unions.**
- **Right to social security.**
- **Right to family, including the right to protection of motherhood and childhood.**
- **Right to an adequate standard of living and to continuous improvement of living conditions.**
- **Right to health.**
- **Right to education.**
- **Right to culture and to benefits of science and technology.**

### **5.3.1 Limitations on the Rights**

The covenant places certain limitations on the exercise of the rights recognised by it. Many of these limitations flow from the very nature of the rights and the problems involved in their implementation by states.

First, the covenant is based on the general awareness that full realisation of the rights contained in it would require a high level of economic development in state. Thus, the developing countries are allowed to determine to what extent they would guarantee these rights, "with due regard to human rights and their national economy" [Article 2(1)].

Second, states are permitted to impose limitations of the economic, social and cultural rights, subject to two conditions: (1) that the limitations must be "compatible with the nature of these rights", and (2) that they must be imposed "solely for the purpose of promoting the general welfare in a democratic society" (Article 4). This does not mean that the state or any group or person may engage in any activity in destruction of these rights [Article 5(1)].

Third, many of the rights, such as the right to adequate standard of living and the right to the benefits of scientific and technological advance, depend on international co-operation for their realisation [Articles 2(1), 11, 15 and 22]. Article 2(1)] specifically stresses the importance of international economic and technical co-operation for full realisation of the rights recognised under the covenant.

### **5.3.2 Machinery for Implementation**

The covenant expects the participating states to implement the rights contained in it in good faith. It also provides for an international mechanism for facilitating the implementation.

The mechanism for monitoring the implementation of the covenant consists of (a) an obligation of states to submit periodic reports to the Secretary-General of the United Nations, (b) the General Assembly, (c) the Economic and Social Council and its Commission on Human Rights, and (d) other international organisations dealing with the relevant aspects of the economic, social and cultural rights.

A state party to the covenant has a clear obligation to submit periodic reports to the Secretary-General. These reports should indicate the extent to which a country has been able to implement the various rights under the covenant and also the problems faced in the process. Other states and relevant specialised agencies comment upon these reports. The Commission on Human Rights

may then make its recommendations after considering the reports, comments of other states and international organisations and also of the state in question. The ECOSOC also sends periodic reports to the General Assembly with information and general recommendations to facilitate implementation of the covenant.

States agree that international action for the achievement of the economic, social and cultural rights would include adoption of further treaties and agreements, and recommendations of international organs. Provision of technical assistance to states needing such assistance, and holding of consultations and meetings for the Purpose of evolving international co-operation is also agreed upon (Article 23).

### Check Your Progress 1

1. Under what conditions is a state permitted to restrict rights elaborated by the International Covenant on Economic, Social and Cultural Rights?
- .....
- .....

## 5.4 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights consists of (a) the Covenant adopted in 1966, (b) First Optional Protocol, also adopted in 1966, and (c) Second Optional Protocol adopted in 1989.

### The Rights Recognised under the Covenant

- Right of self-determination of all peoples, and their right to freely dispose of their natural wealth and resources.
- Freedom from discrimination on ground of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Right to effective remedy for violations of rights committed by persons in authority.
- Equal right of men and women to enjoyment of civil and political rights.
- Right to life.
- Freedom from torture, or cruel, inhuman or degrading treatment.
- Freedom from all forms of slavery and slave trade.
- Right to liberty and security of person.
- Right to human dignity.
- Freedom from civil prison.
- Freedom of movement and residence.
- Freedom of aliens against arbitrary expulsion.
- Right to fair trial.
- Right against ex post facto criminal law.
- Right to recognition as a person before law.
- Right to privacy.
- Right to freedom of thought, conscience and religion.
- Right to freedom of opinion and expression.
- Right to peaceful assembly.
- Right to freedom of association, including freedom to form and join trade unions.
- Right to family life.
- Rights of the child.
- Right to participate in public affairs.
- Right to equality before law and equal protection of laws.
- Minority rights.

The Covenant has, for the first time, made a distinction between civil and political rights of the individual, which can be limited or temporarily denied by the state, and those which can never be denied. Thus Article 4 of the covenant permits a state to take measures, "in time of public emergency which threatens the life of the nation", even if these measures may conflict with its obligations under the covenant. **However, the state is not permitted, under any circumstances, to violate or derogate from the right to life, freedom from torture, freedom from slavery and slave trade, freedom from civil prison, right against *ex post facto* criminal law, right to recognition as a person before law, and the right to freedom of thought, conscience and religion.** In other words, these seven rights are considered the minimum fundamental rights which should remain guaranteed to the individual *at all times* and a state has no excuse to abridge, limit, or deny them to its people.

It would appear that these irreducible minimum rights form the universal standard of civil and political rights.

#### **5.4.1 Limitations on the Rights**

The most important limitation permitted by the covenant, as seen already, is that all the rights, except the seven irreducible minimum rights, can be denied by a state to its people during public emergency. However, this is subject to various conditions. First, the public emergency must be of such a nature as to "threaten the life of the nation". Second, it must be officially proclaimed. Third, the limitations on the rights must only be "to the extent strictly required by the exigencies of the situation". Fourth, they must be in conformity with other obligations of the state under international law. Fifth, they must not be discriminatory. Finally, the state invoking the powers of derogation must "immediately inform" other states, about the scope and extent of such derogation. It must also inform them after withdrawal of such restrictions. In other words, any denial of or restriction on rights can only be of temporary character. As soon as the state of public emergency ends, the limitations on rights must also end.

A second group of limitations would permit a state to prescribe by law restrictions of rights, "which are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others". This applies to the right to freedom of movement and residence; the right to fair trial; the right to freedom of thought, conscience, and religion; the right to freedom of opinion and expression; the right to peaceful assembly; the right to freedom of association; and the right to participate in public affairs.

#### **5.4.2 Machinery for Implementation**

The machinery for the implementation of the rights recognised under the Civil and Political Rights Covenant mainly consists of (a) the reports of states parties, (b) the Human Rights Committee, and (c) the ECOSOC.

The Human Rights Committee is a body composed of eighteen members "who shall be persons of high moral character and recognised competence in the field of human rights", some of them preferably with legal experience. States parties to the covenant elect these members.

States have an obligation to submit periodic reports to the Human Rights Committee. These reports present the extent of implementation of the rights contained in the covenant, including the problems and difficulties faced by the reporting state in ensuring implementation of the rights.



The Human Rights Committee studies these reports, and makes its own reports and comments. These are then sent to states, and also the ECOSOC. The states are free to submit their observations on the Committee's reports and comments.

The Human Rights Committee also has two special jurisdictions: one in regard to complaints by a state against another; and the other in regard to complaints by individuals against states. Each of these special jurisdictions will have to be voluntarily accepted by the states concerned, before the Committee acts under each of them.

Thus, as between states which have accepted the competence of the Committee to deal with state-to-state complaints, a state may complain against another's human rights violations. The Committee may then examine the complaints of one party and the replies of the other and try to find a settlement between them. If no settlement is possible, it makes its own findings and recommendations.

Similarly, if the Committee's special jurisdiction is recognised by a state regarding individual complaints, any individual may complain against the state before the Committee. The Committee, after examining the complaint and the replies of the state concerned, makes its own findings and recommendations.

The Human Rights Committee submits annual reports of its activities to the UN General Assembly through the ECOSOC.

### 5.4.3 The Optional Protocols

The First Protocol, adopted along with the covenant in 1966, provides for a special jurisdiction of the Human Rights Committee to deal with complaints by individuals of human rights violations by a state. As already discussed, this is a facility which cannot be used except against a state which has given its consent to it in advance. The Protocol describes elaborately this special optional jurisdiction of the Committee.

The Second Optional Protocol, adopted in 1989, aims at abolition of death penalty. There is a view gaining ground that death penalty as a punishment is a gross violation of human rights, and it does not effectively serve as a deterrent punishment. It is also argued that it has not helped to stop serious crimes like murder. However, the opposite view is equally strong. Many countries have not abolished death penalty in their legal systems. The Second Optional Protocol is binding only on states which have specifically accepted it.

#### Check Your Progress 2

1. The Covenant has identified some civil and political rights as minimum rights that a individual should be guaranteed at all times. These are:  
a) \_\_\_\_\_ b) \_\_\_\_\_  
c) \_\_\_\_\_ d) \_\_\_\_\_  
e) \_\_\_\_\_ f) \_\_\_\_\_
2. If a state has agreed to the special jurisdiction of the Human Rights committee by ratifyin the Optional Protocol, an individual whose rights have been restricted or violated can complain before the Human Rights Committee. Find out how many states have ratified the International Covenant and the Optional Protocol to the International covenant on civilian

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## 5.5 AN EVALUATION OF THE COVENANTS

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The Human Rights Covenants, as treaties imposing binding obligations on states, have converted the moral standards of UDHR into international legal standards. By the end of 1997, the Covenant on Economic, Social and Cultural Rights has been accepted by 137 states, and the Covenant on Civil and Political Rights, by 140 states.

Secondly, the covenants also reveal the differences of views among states regarding the content and meaning of many of the rights. They try to interpret and apply them according to their own traditional and religious beliefs. This is revealed through the reservations or declarations they make to the covenants when they become parties to them.

Thirdly, by adopting two separate treaties — one on civil and political rights and the other on economic, social and cultural rights — the member states of the United Nations have emphasised both the categories of human rights unlike UDHR.

Fourthly, given the problems and difficulties of implementation, especially the availability of resources, the international machinery for monitoring the implementation has been differently constituted under the two covenants. Thus, a more effective international scrutiny is provided for under the Covenant on Civil and Political Rights, which the Covenant on Economic, Social and Cultural Rights utilises a “less probing” machinery.

Fifthly, the main function of the international mechanism for monitoring implementation of both the categories of rights is to obligate the states to make periodic reports. The periodicity of these reports, which should be submitted to the monitoring bodies, has not been defined. States have not shown good faith either in making such reports regularly, or even in giving full and truthful information in whatever reports they submit.

Sixthly, both the covenants embody certain common rights, such as the right of all peoples to self-determination, and the right to permanent sovereignty over natural resources. The right to freedom of association, and to form and join trade unions are also included. This may at times create competing claims to jurisdiction by both the Human Right Committee as well as UN Human Rights Commission.

Seventhly, the working of the Human Rights Committee and the UN Human Rights Commission so far has placed them as political organs. The countries continue to fight their political battles through them rather than utilising them as human rights fora. The acrimonious debates regularly initiated by Pakistan against India, by raising the so-called human rights situation in Jammu and Kashmir, yet ignoring its own role in promoting terrorism across the border, is a clear example. These bodies are aptly misused by states for political purposes. Therefore, their main objective, i.e. promotion of implementation of human rights, remains unfulfilled.

Eighthly, the working of human rights monitoring bodies of the United Nations has shown that NGOs have an important role to play in forcing international attention to human rights situations

in various countries. It has made it possible for NGOs to promote implementation of human rights.

Ninthly, on the whole, the impact of the monitoring machinery as an effective tool for the implementation of human rights has not been significant. The monitoring bodies have no doubt succeeded in highlighting international concern, and some sensitive states have responded by taking measures rectifying the domestic situation. But, by and large, these have not prominently succeeded in their basic objective.

Finally, it is widely assumed that the United Nations has made a significant contribution in establishing human rights norms on the international level; that it has evolved binding treaties and non-binding resolutions, as a follow-up elaboration of and additions to UDHR. This is a modest, yet significant, contribution which the United Nations can claim in the field of human rights. The International Bill of Rights comprising the UDHR and the Covenants stands at the centre of this achievement.

### Check Your Progress 3

1. While Economic, Social and Cultural Rights, and Civil and Political Rights are distinct categories, there are some rights that easily fit into both the categories. Can you identify them? What problems might one encounter in dealing with such rights?

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## 5.6 LET US SUM UP

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We have examined some of the important features of the major international human rights treaties: the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. As we saw, the Covenants place certain restrictions on the exercise of the rights recognised by them. The Covenant of Civil and Political Rights, however, has identified some rights as irreducible.

The United Nations has played a significant role in establishing human rights norms on the international level in the form of binding treaties and non-binding resolutions. However, the submission of periodic reports to the United Nations and its agencies dealing with the relevant subject is the only obligation that a state undertakes by ratifying the Covenants. The pressure generated by the discussion on the report submitted by a country on the extent to which it has been able to implement the various rights is the only pressure acting on the state to respect the rights recognised by the Covenants. While states sensitive to international concerns take measure to rectify the domestic situation, many of them do not.

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## 5.7 KEY WORDS

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**Ethos:** Moral significance or practices.

**Ex post facto:** Retrospective. Existing at a particular point of time in the past.

**Irreducible:** Which cannot be reduced further that is to say, the rights are to be guaranteed to individuals at all times.



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## 5.8 SOME USEFUL BOOKS

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United Nations, *United Nations Action in the Field of Human Rights*

United Nations, *World Conference on Human Rights: The Vienna Declaration and Programme Action* (June 1993/1995).

K.P. Saksena (ed.), *Human Rights Perspectives and Challenges* (1994).

V.S. Mani, "Human rights and International Relations", in Lalit Mansingh , and others (eds.) *Indian Foreign Policy* (1997), Vol.1,pp. 311-330.

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## 5.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. Refer to section 5.3.1, para 3.

### Check Your Progress 2

1. Refer to section 5.4, para 2.
2. Refer to section 5.5, para 2.

### Check Your Progress 3

1. Refer to the rights mentioned in the boxes under Sections 5.3 and 5.4 respectively. To answer the last part of the Question, use your own discretion.

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## UNIT 6 IMPLEMENTING HUMAN RIGHTS: THE UN MACHINERY

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### Structure

- 6.0 Objectives
- 6.1 Introduction
- 6.2 UN Human Rights Implementation Mechanisms
  - 6.2.1 Organisations with distinguished records in human rights implementation
    - International Labour Organisation
    - The UN Office of the High Commissioner of Refugees
    - International Committee of the Red Cross
- 6.3 Role of Non-United Nation Actors
  - 6.3.1 Role of the NGOs
  - 6.3.2 Role of Regional Arrangements
  - 6.3.3 National Institutions
  - 6.3.4 Special Rapporteurs
- 6.4 How Powerful is the Human Rights Machinery?
- 6.5 Let Us Sum Up
- 6.6 Key Words
- 6.7 Some Useful Books
- 6.8 Answers to Check Your Progress Exercises
- 6.9 Documents
  - Document 1—The UN Human Rights Machinery
  - Document 2—Composite Chart of UN Human Rights Conventions
  - Document 3—UN Human Rights Conventions, Ratification status of select countries
  - Document 4—Develop Your Own Country Convention Chart

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### 6.0 OBJECTIVES

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Carrying on from the previous unit, this unit discusses the UN monitoring mechanism as well as treaty-based mechanisms for the implementation of human rights. After going through this unit, you should be able to

- describe the various types of UN based and treaty-based mechanisms established for the implementation of human rights obligations of states,
- identify the strengths and weaknesses of these mechanisms, and
- recognise the role of non-UN organisations, particularly, non-governmental and regional human rights organisations.

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### 6.1 INTRODUCTION

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As we saw in the previous unit, there is no single, all comprehensive international machinery for implementation of human rights. The UN machinery for this purpose varies with the category of rights involved, and the nature of obligations undertaken by states. As we observed, economic, social and cultural rights have a less exacting machinery, whereas civil and political rights have a more rigorous one. Rights unregulated by treaties have the general implementation machinery of the United Nations, while the treaty-based rights are monitored by machinery set up by the treaties. In this unit, we will examine the general implementation mechanism for human rights under the United Nations. We will also examine the role played by the non-UN bodies such as regional organisations and the NGOs in strengthening the human rights standards and norms evolved by the United Nations.

## 6.2 UN HUMAN RIGHTS IMPLEMENTATION MECHANISMS

The general UN human rights implementation mechanism, as already seen, comprises the sub-commissions and the Commission on Human Rights, the ECOSOC and the General Assembly. The main feature of this mechanism is its voluntary acceptance by member states. Furthermore, the obligation of states to submit periodic reports to the UN Commission or other bodies is voluntary and these bodies have power only to make recommendations. In recent years, however, the United Nations has appointed Working Groups and Rapporteurs to investigate specific complaints and report to a human rights body which can seek, if necessary, further information/explanation from the state concerned. The UN Commissioner for Human Rights assists in investigation of human rights complaints and situations. Since 1994 the High Commissioner has maintained a 24-hour facsimile (fax) 'hotline' for reporting human rights violations (*Fax No. 41-22-917-0092*). This is accessible to victims of human rights violations, their relatives and NGOs.

The treaty-based implementation mechanisms are legally separate from the United Nations, although they also report to the United Nations on their activities and these reports may form the basis for further discussions at the United Nations. Also, the UN Centre for Human Rights and other administrative departments of the United Nations offer technical and other assistance to these treaty-based bodies.

The principal treaty based monitoring bodies (control committees) in operation are:

1. The Committee on Economic, Social and Cultural Rights (ECOSOC). A working group that previously performed this function was converted and rechristened thus in 1985, under the International Convention on Economic, Social and Cultural Rights, 1966.
2. The Human Rights Committee under the International Covenant on Civil and Political Rights, 1966.
3. The Committee on the Elimination of Racial Discrimination, under the International Convention on the Elimination of Racial Discrimination, 1965.
4. The Committee on the Elimination of Discrimination against Women, under the Convention on the Elimination of All Forms of Discrimination against Women, 1979.
5. The Committee against Torture, under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1984.
6. The Group of Three, under the International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973.
7. The Committee on the Rights of the Child, under the Convention on the Rights of the Child, 1989.

The general pattern of structure and functioning of these bodies is as follows:

- States party to a treaty have a duty to submit periodic reports of information on the status of implementation of the treaty-based human rights to the monitoring body.
- The body then examines these reports, and the comments on them by other states and NGOs. It may, on its own, also ask for special reports and information. It gives the state concerned an opportunity to respond to others' comments and also the comments of the



monitoring body itself.

Finally, it makes its own report and recommendations to the state, and also to the relevant bodies of the United Nations. There is so much of interaction while the body is considering a report or information that the state is virtually put on the dock to defend its conduct in front of the world at large. This is the touchstone of effectiveness of these monitoring bodies in persuading states to comply with human rights standards.

Non-governmental organisations (NGOs) play an important role in making UN activities in the field of human rights effective. They assist the UN bodies and the treaty-based bodies in highlighting human rights situations or patterns of human rights violations in states. They also produce evidence and information before these bodies which use them in performing their functions.

In spite of these safeguards, the international implementation mechanism is flawed at least in three main respects. First, there is a serious *problem of overlapping jurisdictions* of the various monitoring bodies. (Some amount of overlapping cannot be avoided, since human rights themselves are interlinked.) Nevertheless, a proper coordinating framework needs to be evolved to tackle this problem. This framework should encompass not only the UN bodies but also the UN specialized agencies such as the ILO, the WHO, the FAO, the UNESCO etc., each one of which has its own monitoring mechanism.

Secondly, states have failed miserably in carrying out their *obligation to submit reports*. Many of them fail to submit their reports at all and are tardy in making required information available. Even when they make the reports, these reports fail to reveal more than the provisions of the constitution and other laws. In fact, they conceal much more than they reveal.

Thirdly, the most serious defect of the UN mechanism is its political nature. It is the *product of a state system and it is biased in favour of that system*. It has no effective power of compulsion or sanctioning process to force a state to comply with human rights standards. Also, given the political nature of the state system, each state tries to use the human rights bodies to its own political ends. The recent persistent misuse of the UN Commission on Human Rights by Pakistan against India explains why the UN bodies cannot be expected to look at human rights issues impartially and with consistency in applications of standards. In view of the international politics of human rights, nothing much can be expected of the international organisations. The effective implementation of human rights remains under the exclusive control of states. (Even otherwise, the national society must be the starting point of the implementation of human rights. The initiative must come from within the society. Human rights conditions cannot be imposed from above or outside).

It is clear from the above discussion that the evolution of the international concern for human rights, and also the unprecedented expansion of the human rights norms and standards enveloping all aspects of human life, are a standing testimony to the contribution of the international organisation to the dignity of man. During the last fifty years of UDHR, the canvas of human rights has vastly broadened and the content greatly deepened. More people are aware of their rights today than ever before. This is no small contribution, even if much remains to be done.

### **6.2.1 Organisations with distinguished records in human rights implementation**

This section on the implementation of human rights would remain incomplete without mention of two subsidiary bodies and a private organisation, which have distinguished themselves in their good work done for the cause of human dignity.

## **International Labour Organisation (ILO)**

The ILO has long been concerned with the labour rights of working people all over the world. First, as a parallel organisation to the League of Nations and later, as a specialised agency of the UN, it had developed series of complex procedures for monitoring state behaviour in the area of labour rights. It has also developed series of reasonable standards about international labour rights pertaining to safe and healthy work environment, non-discrimination, fair wages, working hours, child labour, freedom of association, right to organise trade unions etc. Due to the vast segment of human rights under its purview, ILO's record of performance remains a mixed one. Nevertheless, in its overall performance as a watchdog of labour rights, ILO's achievement is both historic and commendable.

## **The UN Office of the High Commissioner for Refugees (UNHCR)**

'Refugees' is defined as those individuals crossing an international boundary on the basis of well-founded fear of persecution. Such persons (refugees) have a legal right not to be returned to a state where their lives are perceived to be in danger.

In the wake of World War Two, the refugee situation was not considered very important and the general impression was that the problem would soon be over. But reality has proved dangerously different. Over half a century later, refugees number about 13-15 million each year with another 25 million found in refugee-like situations. Genocides and ethnic cleansing in Rwanda and Yugoslavia have been responsible for millions of refugees in the recent past. The workload is too immense to be relegated to the Commission for protection of human rights. The UN Office of the High Commissioner for Refugees is a permanent organisation with an annual budget of over \$1 billion (not much when one considers the vast numbers involved) that looks after these people in distress. UNHCR is one of the more respected UN agencies.

## **International Committee of the Red Cross (ICRC)**

A private Swiss agency, ICRC performs a noble mission at times of war. Under the Geneva Convention of 1949 and the Additional Protocol I of 1977 pertaining to armed conflict, warring states are supposed to appoint a neutral state as a protecting power to oversee and supervise application of international rules. But few such neutral states have been named, leaving largely the task of looking after captured, wounded and sick military personnel to the ICRC.

### **Check Your Progress 1**

1. If you have to report a human rights violation to the UN Commissioner for Human Rights, you would fax it to:

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

2. Some states that are parties to various human rights treaties do not carry out their obligation to submit periodic reports. Suggest some ways to compel these states to comply with their treaty obligations.

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

## 6.3 ROLE OF NON-UNITED NATION ACTORS

Having examined the UN implementation machinery, one can see that the implementation of human rights leaves much to be desired. Although some vital successes have been achieved, and thanks to the UN system, human rights has become one of the watchwords since the latter half of the twentieth century, the efficaciousness of the implementation has been flawed due to the politics of the member states. For example, the proceedings of the UN Commission on Human Rights gives the impression that who your friends matter more than what your track record is. While countries like Serbia have been issued a well-deserved condemnation, many others with blatant human rights violation records have gone scot-free.

Besides the UN system, there are other actors in the global order like non-governmental Organisations (NGOs) and regional inter-governmental organisations like the Council for Europe and the Organisation of American States who have also contributed to the implementation of human rights.

### 6.3.1 Role of the NGOs

In the last two decades non-governmental organisations or NGOs have gained tremendous clout vis-à-vis the issue of human rights and human rights implementation. Today there are a large number of NGOs at both national and international levels engaged in the field of human rights. They act as the unofficial guardians safeguarding people's rights against infringement by the state. They ensure this through diplomatic initiatives, annual reports (like those published by the Amnesty International and Human Rights Watch). They also make public statements in the hope to influence the deliberations of human rights bodies established under the UN and other inter-governmental bodies. They also engage in mobilising public opinion through year-long issue based campaigns such as the campaign Amnesty launched on the issue of political prisoners in Uruguay.

In the last decade a number of NGOs have gained consultative status with inter-governmental bodies such as the ECOSOC, the ILO, UNESCO and regional set-ups like the Council of Europe and the Organisation of American States.

Often, NGOs are at the forefront of human rights crusades since they are more vocal in criticising a state than other forums, when such criticism is due. However, there have been instances where NGOs have been accused of being partisan, although this is far outweighed by their overwhelming contribution to generating awareness about and alleviating human rights violations across the globe.

[There is a separate block (Block V, Course 1) on NGOs involved in the field of Human Rights, which may be referred for details]

### 6.3.2 Role of Regional Arrangements

Besides the UN, other inter-governmental actors in the development and implementation of human rights standards are regional arrangement set-ups like the Council of Europe and the Organization of American States.

The member states of the Council of Europe signed the European Convention for Protection of Human Rights and Fundamental Freedoms in 1950. Entered into force in 1953, the Convention created two mechanisms for ensuring the compliance of member states with the provisions of the Convention—the European Commission of Human Rights and the European Court of Human



Rights—the two most powerful inter-governmental human rights implementation mechanisms ever in the world.

The European Convention on Human Rights reflects the civil and political rights of the UDHR, but no social and economic rights find mention here. Under this convention, the rights are implemented through the Human Rights Commission and the European Court of Human Rights (at Strasbourg). They may receive both inter-state complaints as well as an individual persons' complaint regarding state infringement. The findings of these bodies are binding on the states which have no choice but to comply.

All parties have in fact complied so far—a rare phenomenon where human rights decisions are no less effective than regular court cases. European Convention is therefore considered to be the most successfully implemented human rights system in the world, as compared to other agencies, actors and instruments.

In addition to the state complaints mechanism, all persons residing in the territory of a member state can bring individual complaints against a state for violating the provisions of the European Convention which provides, broadly speaking, for civil and political rights. A case is usually admitted after screening by the European Commission and during the proceedings of the Court, the individual may participate. Judgements once given are final and binding on all parties, and the Committee of Ministers (a political body) sees to it that the judgements are enforced. The significance of the European Convention derives from its procedural fairness and collective enforcement mechanism which has seldom failed till date.

Like the European Convention system, the Organisation of American states also has an inter-American Human Rights system in the form of American Convention on Human Rights, 1969. This is patterned on its European counterpart but it lacks the strength of the former. Till date, the major powers of the Americas—the United States, Mexico, Argentina and Brazil—have not become parties to it. This is a great pity since this human rights set-up has provisions which, if given the binding character of the European system, would provide more advanced and enlightened guarantees than even the European Convention.

Asia is still without a regional arrangement, but an Asia-Pacific Forum was established in 1995 consisting of the national institutions in the region. SAARC has, however, adopted a related instrument viz., the Convention on Preventing and Combating Trafficking in Women Children for Prostitution.

### **6.3.3 National Institutions**

A very important machinery for implementation of human rights is the national institution created for this purpose. But such national institutions (like National Human Rights Commission, India) have been subjected to a set of (moral) 'principles relating to the states of national institutions' adopted in Paris in October 1991 and, subsequently, endorsed by the UN General Assembly in 1993. Known as Paris Principles, they focus on the importance of independence and pluralism, the capacity to receive and enquire into complaints to promote conformity of national laws and practice with international human rights standards, to undertake human rights education and research, to encourage co-operation with the NGOs dealing with human rights. Nearly 30 countries have now set up national institutions which are broadly based on the Paris Principles.

### **6.3.4 Special Rapporteurs**

Another important machinery consists in the working of the Special Rapporteur system. Special



Rapporteurs are appointed to examine specific cases of human rights violation on an organized mass scale, usually in the areas of widely-felt human deprivations. For example, we have Rapporteurs to report on the status of Torture, Development, Shelter, Women, AIDS/HIV, ethnic cleansing in Rwanda, Bosnia etc, on racial discrimination etc. The Special Rapporteurs submit a detailed report on the subject assigned to the Commission on Human Rights. Such reports not only expose the perpetrators but, more importantly, become a basis for information gathering and remedial struggles elsewhere.

## **6.4 HOW POWERFUL IS THE HUMAN RIGHTS MACHINERY?**

The answer to the above questions is that the machinery for implementation of human rights is powerful, but its development has been slow. A stock taking of the major milestones in this evolution reveals the following:

Each of the six organs of the UN has human rights responsibilities (See Document 1—'Watchdogs ...'). Though a specialised agency devoted to development, UNDP's 1998 policy outlines make it clear that all development works will have human rights perspective.

As mentioned above, elaborate specialised mechanisms have been created to address specific issues relating to women, minorities, children, etc. There are now eight treaty bodies (six created by the UN, two by the ILO) dealing with human-rights issues. There are some 70 international instruments (covenants, conventions, declarations, etc) dealing with human rights.

Two ad hoc International Tribunals have been set up to demonstrate that institutions for human rights are vested with sufficient power, viz. those for the former Yugoslavia (May 27, 1993) and another for Rwanda (November 8, 1994).

Most recently, on July 17 1998, the Statute of Rome was adopted to establish an International Criminal Court. Its aim is to end a situation in which, as Secretary General Kofi Annan observed, 'it has been easier to bring someone to justice for killing one person, than for killing 100,000.'

[A separate block (Block 3, Course 2) deals with human rights protection through constitutional machinery. Particularly for the role of National Human Rights Commission, read that block for more details.]

### **Check Your Progress 2**

1. Among the regional human rights organisations, which one is rated to be the most effective in dealing with civil and political rights?  
.....  
.....  
.....
2. Find out which are the non-governmental organisations that have a consultative status with inter-governmental organisations.  
.....  
.....  
.....

## **Enforcement Mechanisms**

### **I Principal UN Organs**

1. The Security Council
2. Office of the Security Council
3. The General Assembly
4. Economic and Social Council
5. International Court of Justice

### **II Major Subsidiary Bodies**

1. The Human Rights Commission
2. International Labour Organisation
3. The High Commissioner for Refugees
4. International Committee of the Red Cross (a private agency which works in times of armed conflict)

### **III Treaty Specific Bodies**

1. The Human Rights Committee
2. The Committee on Economic, Social and Cultural Rights

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## **6.5 LET US SUM UP**

1. There is no single, all comprehensive international machinery for implementation of human rights. The UN machinery for implementation of human rights varies with the category of rights involved, and the nature of obligations undertaken by states. Treaty-based implementation mechanisms are legally separate from the United Nations, although they also report to the United Nations on their activities and these reports may form the basis for further discussions at the United Nations.
2. While international organizations from above and non-governmental organizations from below can compel a state to abide by its international obligations, the effective implementation of human rights remains under the exclusive control of states.
3. The evolution of the international concern for human rights and also the unprecedented expansion of the human rights norms and standards enveloping all aspects of human life, are a standing testimony to the contribution of the international organization to the dignity of human beings. With non-governmental organizations also becoming active on the international stage and within the states, the canvas of human rights has vastly broadened and the content greatly deepened. More people are aware of their rights today than ever before. This is no small contribution, even if much remains to be done.

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## **6.6 KEY WORDS**

**genocide:** deliberate mass killing of people belonging to a particular community, religion or group.

**ethnic cleansing:** the mass expulsion or killing of members of one ethnic or religious group in an area by those of another

**watchword:** a word or slogan which is a principle or a guide to action

**flawed:** having defects

**efficaciousness:** effectiveness

**safeguards:** preventive measures

**standing testimony:** one which has been acknowledged long since

**convention:** in UN language, it means treaties signed by two or more states

**treaty:** an international agreement between two or more states, in a written form and governed by international law

**watchdog:** to act as a watchdog, i.e. guarding against undesirable practices

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## 6.7 SOME USEFUL BOOKS

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United Nations, *United Nations Action in the Field of Human Rights*

United Nations, *World Conference on Human Rights: The Vienna Declaration and Programme Action* (June 1993/1995).

K.P. Saksena (ed.), *Human Rights Perspectives and Challenges* (1994)

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## 6.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. The High Commissioner of Human Rights maintains a 24-hour facsimile (fax) hotline for reporting human rights violations. (Fax No. 41-22-917-0092.)
2. Since it is a responsibility of the government which have failed, usually non-governmental bodies submit such reports which carry weight with the international monitoring bodies like Human Rights Committee at Geneva. You can also fax to the High Commissioner.

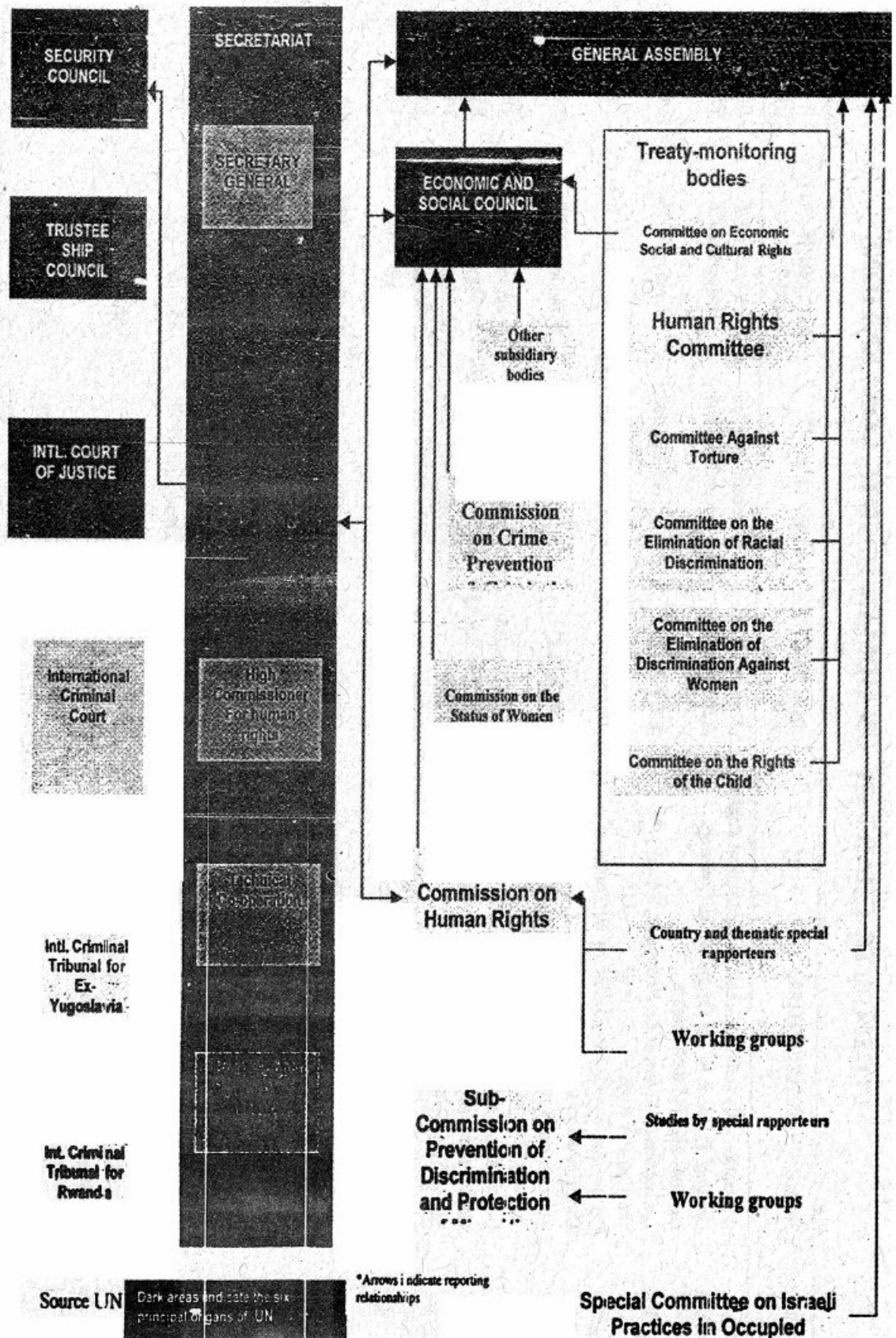
### Check Your Progress 2

1. The Council of Europe through the European Commission of Human Rights and the European Court of Human Right which are the specific implementing mechanisms of the European Convention.
2. Some NGOs enjoy the status of being consulted (in times of need) by the UN Economic and Social Council as per its 1296 (?) Resolution of May 1968. According to this Resolution (which is under review by a Working Group of the ECOSOC), the NGO shall be of representative character and of recognized international standing; it shall represent a substantial proportion, and express the views of major sections of the population or of the organized persons within the particular field of its competence, covering, where possible, a substantial member of countries in different regions of the world. The Resolution further specifies the required structure of the organization, policy-making procedures, voting rights on the floor of deliberations and the question of financing. For a detailed view, read Unit 15 of Course I.



# Watchdogs The United Nations human-rights machinery\*

Document-I



# COMPOSITE CHART OF UN HUMAN RIGHTS CONVENTIONS

ACRONYM	NAME OF CONVENTION	DOCUMENT NO.	ADOPTED	ENTERED INTO FORCE	RATIFICATION (No. of countries)
ICCPR	International Covenant on Civil and Political Rights	2200 A (XXI)	16 December 1966	23 March 1976	140
OPICCPR	Optional Protocol to the International Covenant on Civil and Political Rights	2200 A (XXI)	16 December 1966	23 March 1976	92
ICESCR	International Covenant on Economic, Social and Cultural Rights	2200 A (XXI)	16 December 1966	3 January 1976	141
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women	34/180	18 December 1979	3 September 1981	157
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination	2106A(XX)	21 December 1965	4 January 1969	154
CRC	Convention on the Rights of the Child	A/RES/44/25	20 November 1989	2 September 1990	188
CDE	Convention against Discrimination in Education	429 U.N.T.S.93	14 December 1960	22 May 1962	85
ERC	Equal Remuneration Convention	C.100	29 June 1951	23 May 1953	146
MPC	Maternity Protection Convention (Revised)	C.103	4 June 1952	7 September 1955	42
DC	Discrimination (Employment and Occupation) Convention	C.111	24 June 1958	15 June 1960	139
WFRC	Workers with Family Responsibilities Convention	C.156	June 1981	11 August 1983	29
HWC	Home Work Convention	C.177	June 1996	Not Entered into Force	0
CNMW	Convention on the Nationality of Married Women	1040(XI)1	29 January 1957	11 August 1958	64
CCM	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	521 U.N.T.S.231	7 November 1962	9 December 1964	47
CRSR	Convention Relating to the Status of Refugees.	189 U.N.T.S.150	28 July 1951	22 April 1954	130
CSTPEP	Convention for the Suppression of the Traffic in Person and of the Exploitation of the Prostitution of Other	96 U.N.T.S. 271	2 December 1949	25 July 1951	71
SCAS	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	226 U.N.T.S. 3	30 April 1956	30 April 1957	117
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	39/46	10 December 1984	26 June 1984	108

# UN Human Rights Conventions (Ratification status as on April 20, 1999)

	ICPR	OPICPR	ICESCR	CEDAW	ICERD	CRC	CDE	ERC	MPC	DC	WTRC	HWC*	CNMW	CCM	CRSR	CSTPEP	SCAS	CAT
Afghanistan	R		R		R	R		R	R	R						R	R	R
Bangladesh			R	R	R	R			R	R				R		R	R	R
Bhutan				R		R												
Cambodia	R		R	R	R	R									R		R	R
China			R	R	R	R	R	R							R			R
Democratic People's	R		R			R		R										
Rep. Of Korea	R		R			R		R										
India	R		R	R	R	R		R	R	R						R	R	R
Indonesia				R		R	R	R	R	R								
Iran	R		R	R	R	R	R	R	R	R					R		R	R
Japan	R		R	R	R	R		R			R				R			
Lao People's Democratic Republic			R		R	R	R	R										
Malaysia				R		R		R					R				R	R
Maldives				R		R												
Mongolia	R	R	R	R	R	R	R	R	R	R				R			R	R
Myanmar				R		R												
Nepal	R	R	R	R	R	R		R	R	R							R	R
Pakistan				R	R	R			R	R						R		
Philippines	R	R	R	R	R	R	R	R	R	R				R		R	R	R
Republic of Korea	R	R	R	R	R	R		R						R	R			
Singapore				R		R												
Sri Lanka	R	R	R	R	R	R	R	R	R	R			R			R	R	R
Thailand	R			R		R							R			R	R	R
Viet Nam	R		R	R	R	R	R			R								

\* Not Entered into Force  
R= Ratified or Acceded



# UN Human Rights Conventions (Ratification status as on April 20, 1999)

	ICCPR	OPICPR	ICESCR	CEDAW	ICERD	CRC	CDE	ERC	MPC	DC	WFR	HWC*	CNMW	CCM	CRSR	CSPEP	SCAS	CAT
Iraq	R		R	R	R	R	R	R		R						R	R	
Israel	R		R	R	R	R	R	R		R			R		R	R	R	R
Saudi Arabia					R	R	R	R		R							R	R

\* Not Entered into Force

R= Ratified or Accorded

# WESTERN ASIA

## UN Human Rights Conventions (Ratification status as on April 20, 1999)

	ICCPR	OPICCPR	ICESCR	CEDAW	ICERD	CRC	CDE	ERC	MPC	DC	WFR	HWC*	CNMW	CCM	CRSR	CSTPEP	SCAS	CAT
Iraq	R		R	R	R	R	R	R	R	R						R	R	
Israel	R		R	R	R	R	R	R	R	R			R		R	R	R	R
Saudi Arabia					R	R	R	R	R	R						R	R	R

\* Not Entered into Force

R= Ratified or Acceded

# PACIFIC

## UN Human Rights Conventions (Ratification status as on April 20, 1999)

	ICCPR	OPICCPR	ICESCR	CEDAW	ICERD	CRC	CDE	ERC	MPC	DC	WFR	HWC*	CNMW	CCM	CRSR	CSTPEP	SCAS	CAT
Australia	R	R	R	R	R	R	R	R	R	R	R		R		R		R	R
Fiji				R	R	R							R	R	R		R	
New Zealand	R	R	R	R	R	R	R	R	R	R			R	R	R		R	R

\*Not Entered into Force

R= Ratified or Acceded

! Not a UN member state

UN Human Rights Conventions  
(Ratification status as on April 20, 1999)

	ICCPR	OPICPR	ICESCR	CEDAW	ICERD	CRC	CDE	ERC	MPC	DC	WERC	HWC*	CNMW	CCM	CRSR	CSTPEP	SCAS	CAT
Austria	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Azerbaijan	R		R	R	R	R		R	R	R			R	R	R	R	R	R
Belgium	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Bosnia & Herzegovina	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Bulgaria	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Croatia	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Cyprus	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Czech Republic	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Denmark	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Finland	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
France	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Germany	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Greece	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Holy See	R		R	R	R	R		R	R	R			R	R	R	R	R	R
Hungary	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Ireland	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Italy	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Kazakhstan	R		R	R	R	R		R	R	R			R	R	R	R	R	R
Netherlands	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Norway	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Poland	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Portugal	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Romania	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Russian Federation	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Spain	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Sweden	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Switzerland	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Ukraine	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
United Kingdom	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Uzbekistan	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R
Yugoslavia	R	R	R	R	R	R		R	R	R			R	R	R	R	R	R

\* = Not Entered into Force R = Ratified or Acceded I = Not a UN member state



# LATIN AMERICA

## UN Human Rights Conventions (Ratification status as on April 20, 1999)

	ICCPR	OPICPR	ICESCR	CEDAW	ICERD	CRC	CDE	ERC	MPC	DC	WFCR	HWC*	CNMW	CCM	CRSF	CSTPEP	SCAS	CAT
Argentina	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Chile	R	R	R	R	R	R	R	R	R	R	R				R		R	R
Cuba				R	R	R	R	R	R	R	R	R	R	R		R	R	R

\*Not Entered into Force

R= Ratified or Acceded

D = Denounced

! With the exception of the occupations and work specified in Art.7 para 1 (b) and ©

# CÁRIBBEAN/NORTH AMERICA

## UN Human Rights Conventions (Ratification status as on April 20, 1999)

	ICCPR	OPICPR	ICESCR	CEDAW	ICERD	CRC	CDE	ERC	MPC	DC	WFCR	HWC*	CNMW	CCM	CRSR	CSTPEP	SCAS	CAT
Guyana	R	R	R	R	R	R		R		R								R
Canada	R	R	R	R	R	R		R		R			R		R		R	R
United State of America	R				R												F	R

\* Not Entered Force

R= Ratified or Acceded

# DEVELOP YOUR OWN COUNTRY CONVENTION CHART

Country: .....

Convention	Year in Force	Ratified Y/N	Reservations Y/N
Universal Declaration of Human Rights (UDHR)	1948		
International Covenant on Civil and Political Rights (ICCPR)	1966		
Optional Protocol on Civil and Political Rights (OPICCPR)	1966		
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966		
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	1981		
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	1965		
Convention on the Rights of the Child (CRC)			
Convention Against Discrimination in Education (CDE)	1960		
Equal Remuneration Convention (ERC)	1953		
Maternity Protection Convention (MPC)	1955		
Discrimination (Employment and Occupation) Convention (DC)	1960		
Workers with Family Responsibilities Convention (WFRC)	1983		
Home Work Convention (HWC) (not yet entered into force)			
Convention on the Nationality of Married Women (CNMW)	1957		
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (CCM)	1962		
Convention Relating to the Status of Refugees (CRSR)	1951		
Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others (CSTPEP)	1949		
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (SCAS)	1956		
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1984		
Protocol Relating to the Status of Refugees	1967		
Convention on the Political Rights of Women (CPRW)	1953		
Convention Relating to the Status of Stateless Persons (CS-SP)	1954		
Convention on the Reduction of Statelessness (CRS)	1961		

Assignment: Find out answers for yourself.



**U.P. Rajarshi Tandon Open  
University, Prayagraj**

# **AECHRD**

**Human Rights-Society  
and Development**

**Block**

## **3**

### **GLOBALISATION AND HUMAN RIGHTS**

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#### **UNIT 7**

<b>Development, Democracy and Human Rights</b>	<b>3</b>
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# UNIT 7 DEVELOPMENT, DEMOCRACY AND HUMAN RIGHTS

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## Structure

- 7.0 Objectives
- 7.1 End of Cold War and Shifts in International Economic/ Trade Relations
- 7.2 The 'Cruel Dilemma' between Bread and Freedom
- 7.3 Studies in Inter-relationship between Democracy, Development and Human Rights
- 7.4 Quality of Development – a Factor in Democracy
- 7.5 Development: An Integrated Concern
- 7.6 Strengthening Human Rights: Reconciling Liberty with Equality
- 7.7 Milestones in Human Rights-Centered Development
  - 7.7.1 The Banjul Charter and the Arusha Charter
  - 7.7.2 UN Initiatives: Integrating Human Rights with Sustainable Development
  - 7.7.3 UNDP's efforts
- 7.8 Is the Current Human Rights – Centered Approach Pro-Western?
  - 7.8.1 Who can Enforce Rights?
- 7.9 Let Us Sum Up
- 7.10 Key Words
- 7.11 Answers to Check Your Progress Exercises

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## 7.0 OBJECTIVES

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Reading this unit will make you understand:

- how have Development, Democracy and Human Rights become inter-related,
- more about inter-relationship between liberty and equality,
- essence of human rights-centred notion of 'Development' and various milestones in its evolution,
- different Human Rights Charters that have provided institutional and programmatic basis to its effective realization.

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## 7.1 END OF COLD WAR AND SHIFTS IN INTERNATIONAL ECONOMIC/ TRADE RELATIONS

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The end of Cold War triggered major changes in the international economic relationships. The first change was the triumph of the international financial institutions, particularly the World Bank and the IMF over the UN economic agencies especially UNDP after decades of rivalry. The former came around to the view that development is more than economic growth and the economic thinking of the fifties and the sixties were therefore not correct. But it is fifty years already past. And those who espoused such points of view like Third World countries and UNDP have been eclipsed. This is popularly known as *Washington Consensus* which reflected a united stand of Washington-based institutions like World Bank, IMF and of course, the government of USA.

The second change was the beginning of a new consensus on the importance of free markets as the foundation of economic development. Critics call it 'free market religion' since as *Prof. Noam Chomsky* and others have argued, acceptance of 'free market as the foundation of economic

development' is based more on a 'faith' than on 'empirical evidences'. It has been forced on people, particularly the Third World political leaders. With the disintegration of the Soviet model of the centralized planning (command economy), a noticeable change came in the economic debates. The shift has come about from an earlier position of 'planning' (socialist) vs free market (capitalist) to a new plane in which the debates centre around degrees of relaxation in government control and intervention in the national economies. Once again, the lead in this direction was provided by the World Bank in conjunction with a purposefully created European Bank for Reconstruction and Development (1991) for facilitating transition of the Central and East European (former Communist) countries into free-market economies.

Probably the most critical change was taking place in donor countries' thinking regarding future shape of international relationship (particularly economic) following the end of the Cold War and decline of ideological confrontation. This trend was contained in the 1989 Report of the OECD (Organization for Economic Cooperation and Development then consisting of 29 developed countries of the world, the figure has risen to 34 now) which reflected the state of things to come in the 1990s.

The 1989 OECD Report argued that "a quiet revolution may be in process which can have profound implications for development. While economic and political monopolies of power will resist this revolution, and while history tells us that there will be both backward and forward movements, we seem to be in a period when democratic processes are advancing. This phenomenon is reflected in donor thinking about development cooperation in 1990". (P.17)

Evidences in this direction of development - democracy integration came up quietly one after another, almost the same time around. We have, for example, Prof. Samuel P. Huntington's researches on "*Third Wave of Democracy*" to tell us that nearly forty countries have turned to democracy in the past two decades and "since the early 1970s, only four or five of the new democracies have returned to authoritarian rule".

If democracy has come to stay, we have the UNDP's famous 1993 Human Development Report establishing a close correlation between levels of development and the enjoyment of basic freedoms and democratic institutions. The same year (1993) the World Conference on Human Rights at Vienna was working up to a mandate given to it by the General Assembly and this mandate was to sincerely examine the **interrelationship between development and human rights**. While declaring Right to Development as 'inalienable', the Vienna Declaration mentioned in Article 10 that "**lack of development cannot be invoked as a ground for denial of human rights.**"

### Check Your Progress 1

1. What were the major changes in international economic/trade relations after the end of the Cold War?

.....

.....

.....

.....

2. State whether the following are True or False:

- (a) Soviet model of economic planning was based on free market philosophy.
- (b) The European Bank for Reconstruction and Development was created to lead the former socialist countries in Central Europe on to a capitalist path.

3. Which of the following statements is **Correct** about the 1989 OECD Report?
- (a) It predicted that the donor countries would be guided henceforth by considerations of democracy while dealing with the developing countries.
  - (b) It predicted the oncoming of revolutions in developing countries.
  - (c) It stressed the importance of capitalism to the development of the world.

**Illustrations: Box. 1**

A Brief look at the Reports and what they say:

- 1989 Report of the Organization for Economic Cooperation and Development - predicted the necessity for donor countries to take the development angle into consideration before they gave aid to the developing countries.
- 1993 Human Development Report - established close correlation between levels of development and the progress of basic freedoms, growth of democratic institutions.
- 1993 World Conference on Human Rights at Vienna - Article 10 of the declaration said 'lack of development cannot be a ground for denial of human rights'.

**Illustration: Box. 2**

What does INTEGRATING Human Rights with Development mean?

- Protection of Human Rights
- Poverty eradication.
- Realization of Human Rights for Sustainable Human Development.

## **7.2 THE 'CRUEL DILEMMA' BETWEEN BREAD AND FREEDOM**

The relationship between Development & Democracy has often been confused to mean 'one at the expense of another'. This is the 'old thinking' on development which believed that a strong hand of a dictator is only capable of taking hard decisions necessary in the developing countries. This thinking dates back to the early sixties.

Bread or Freedom? appeared as a 'cruel dilemma' for the national planners. The present generation who subscribes to this view would love to quote examples of growth (rather miraculous growth), experienced in countries like Taiwan, Hong Kong (as it then was), Singapore, Republic of Korea and China recently. They are classified as 'autocracies'. Even some countries experienced hard economic decisions taken by their 'unelected Prime Ministers', which were difficult for their elected counterparts. Examples cited are Moeen Qureshi of Pakistan who during his three months in office could slash budget deficits and introduce several hard measures for cleaning the corrupt system. Similarly, Anand Panyarachun of Thailand has been credited with cutting tariffs and reducing the all-powerful army's business clout etc. Both Qureshi and Anand were good administrators with, however, an important personal background in common. While the former was a Vice-President of the World Bank, the latter was the former Thai ambassador to Washington.

Can we hold out the example of these good administrators as evidences against elected governments or democracies? Some may still argue that the better-performing autocracies in South Korea and Taiwan could succeed in transiting into democracies afterwards. Why not then prefer autocracies over democracies, if the transition from the former into the latter is possible?



But why at all, South Korean and Taiwanese autocratic regimes “decided” to go democratic? Violent state repressions of popular strikes led by the students could not be continued longer and these pressures, rather than ‘benevolence of the autocrats, substantively explain for the decision to go democratic’. By any count, there are more tyrants who have remained unsuccessful in economic and social fields than those who became successful.

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### 7.3 STUDIES IN INTER-RELATIONSHIP BETWEEN DEMOCRACY, DEVELOPMENT AND HUMAN RIGHTS

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Many scholarly views suggest that development and democracy are not really strange bed-fellows though causality in their inter-relationships is suspect. Recent econometric studies have established that “this is probably of a *functional* and not *generic* nature”. (Monojit Chatterjee: *World Development* Vol. 21.No12, 1993). *Surajit Bhalla* has studied 90 countries (in the period 1973-90) about development which meant to him economic growth and social progress. He came to the conclusion that “civil and political freedom promote growth and social indicators better than autocracy”. *John Williamson* looked at 13 countries which went for radical economic reforms involving transitional difficulties for their citizens. Of them, he found at least six democratic countries as radically determined, if not more so, than four authoritarian countries. In any case, he found that the reforms were necessitated by the economic ruin caused by the previous autocratic regimes.

Prof. Jagdish Bhagwati offers an operational definition of democracy to include

- (i) right to vote and to turn out governments,
- (ii) an independent judiciary,
- (iii) a free press.

Such a democracy according to him is conducive to development, because it has been found that:

- (a) democracies have rarely gone to war against each other.,
- (b) whereas authoritarian regimes “bottle up” people’s problems, democracies provide “safety valves” for venting them out.

*Prof. Mancur Olson* argues, “a dictator may be interested in maximizing loot, subject to keeping the economy going whereas a democratic leader, of necessity, has to share the booty with the constituencies of voters”. In other words, a money-grabbing democrat is less costly for the economy than a money-grabbing dictator, since the democrat shares the loot with the constituents like farmers or trade unions (their leaders, at least) while the despot may send it all to the Swiss Banks. Therefore the economy is liable to be adversely affected under a dictatorship.

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### 7.4 QUALITY OF DEVELOPMENT — A FACTOR IN DEMOCRACY

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The **quality of democracy** is also important since it also affects quality of development. Neither development nor democracy is free from corrupting tendencies. Since both development and democracy are inter-connected, quality of one impinges on the quality of the other. A case in point is *Amartya Sen’s* famous argument of why and how famines could be controlled in India. His study says that in India people were allowed freedom to express their opinions and were given an opportunity to put their positive thinking into actual use whereas Mao’s China didn’t allow either. But democracies can also “create waste, even paralysis of useful state action,” through lobbying activities of various vested and special interest groups. A quality democracy



which substantially impacts the quality of development is founded on “the incentive and the ability to vote, to mobilize and to be heard” (on the part of the people). Modern information technologies and para-governmental bodies like NGOs and Peoples’ Organizations which have sprung up, can dynamize this process of quality infusion into democracies to promote healthy development.

Going through this route, *Prof. Bhagwati* seeks to resolve “the cruel dilemma” between bread and freedom (referred to in the previous section), which he and fellow economists faced during the fifties and sixties. He came to the conclusion that “to choose between democracy and development was too simple-minded” and evidences now suggest that this “relationship between the two is far more textured, and less unfavorable to democracy, than we thought then.”

### Check Your Progress 2

1. What issue has come to be known as the “Cruel Dilemma”?  
.....  
.....  
.....  
.....
2. Which of the following is not a necessity in Prof. Jagdish Bhagwati’s definition of Democracy?  
(a) right to vote,  
(b) right to own private property,  
(c) right to hold one’s opinion,  
(d) an independent judiciary.  
.....  
.....  
.....  
.....
3. Why do thinkers like Prof. Bhagwati and Prof. Mancur Olson opine that democracy is a better way for ensuring development?  
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4. How is quality of democracy related to the quality of development?  
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5. Can dictatorship be an alternative to democracy?  
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## 7.5 DEVELOPMENT: AN INTEGRATED CONCERN

In the previous section, we understood why democracy brings about development and what authoritarian governments cannot achieve. Democracy, we read, acquires real meaning only when human rights and human - centredness are followed when we discuss about Development. But what is Development? What is Right to Development?

The meaning of Development has grown and has acquired a new set of connotations. After years of debates, it is recently accepted that development is "an inalienable human right". Thus, the **UNDP Policy Document of 1998** supports this approach and defines *development* as "multi-dimensional, integrated, dynamic and progressive". Its realization involves full observance of all human rights - civil, political as much as social, economic and cultural. It addresses all concerns - environment, peaceful co-existence, poverty and persistent social and economic inequalities. It is human-centred development in which human beings occupy the centre of activities which constitute the responsibility of "all actors in development" within the international community, within States at both the national and international levels and within the UN system as such. Each human being has thus a right to development, as Gandhi said, till the last drop of the tear is wiped out from the last person on this earth. Development in this sense, is all-encompassing. In the words of the UN Secretary General, "The right to development is the measure of the respect of all other human rights. That should be our aim: a situation in which all individuals are enabled to maximize their potential, and to contribute to the evolution of society as a whole."

How would individuals who make and advance the societies be 'governed' for realization of their best potentials? Various recipes have been suggested, and most of them have pointed at one form of democracy or another.

Samuel Huntington who pioneered such type of studies holds the view that rapid economic growth creates conditions for political mobilization and participation which, in their turn, provide a basis for democratization.

Take the case of the oil-rich countries of West Asia. Concentration of wealth in a few hands there is positively associated with lack of democracy and insufficient protection of human rights. Developed countries of the West, on the other hand, show a high level of association between development and democracy. They also hold no less for the developing countries, *Prof. Vanhanen* would argue. This is so because if a developing country chooses to establish and maintain democratic institutions, relevant power resources will be distributed widely, as well.

### Check Your Progress 3

#### D. In Development

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.....

..... the following argued that rapid economic growth would lead towards more democratization?

- (a) Samuel Huntingte
- (b) Jagdish Bhagwati
- (c) Amartya Sen
- (d) Vanhanen

3. Which among the following is a correct statement?
- (a) Concentration of wealth in a few families creates opportunities for development.
  - (b) Peoples' participation in ruling lead to anarchy.
  - (c) There is no relationship between Dictatorship and Human Rights.
  - (d) Lack of Development leads to denial of Human Rights.

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## 7.6 STRENGTHENING HUMAN RIGHTS: RECONCILING LIBERTY WITH EQUALITY

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Human rights - centred view of democracy seeks to bring about a wholesome arrangement in which principles of liberty are reconciled with principles of equality. For a developing country like ours, considerations of equality would require that socio-economic and cultural needs of the people are no less important than the civil and political freedoms. The challenge is: the entire development process, principally the actors on the scene - the State, the international community, the civil society and above all, the UN agencies - must assume this daunting responsibility.

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## 7.7 MILESTONES IN HUMAN RIGHTS-CENTERED DEVELOPMENT

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Before we come to the State's responsibilities / obligations, it will be instructive to know the milestones of achievements in this direction:

1. **The Banjul Charter, 1986.**
2. **The Arusha Charter 1990.**
3. **Programmes of the International Organizations:**
  - (a) Agenda for Development of the UN General Assembly (November 1997).
  - (b) Recommendations of the Third Working Group on Right to Development of the UN (July 1998).
  - (c) UNDP Document, "Integrating Human Rights with Sustainable Human Development" (1998).
  - (d) UN Secretary General's report to the UN General Assembly, "Renewing the UN: A Programme for Reform".

### 7.7.1 The Banjul charter

The **Banjul Charter** is the famous **African Charter of Human and People's Rights** adopted in **1986** which stands out among all its counterparts for two specific contributions, viz.,

- (i) It is the only place where the 'rights of peoples' have been recognized and established formally and legally as collective rights in an international treaty.
- (ii) It is the only 'binding' international human rights treaty which has recognized the right to development. Article 22 of the Charter mentions unambiguously about this:
  - a. All people shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of humankind.
  - b. States shall have the duty, individually or collectively, to ensure the exercise of the Right to Development."

### The Arusha Charter

The **Arusha Charter** is a nother unique achievement as it was an outcome of joint efforts by 500 representatives from a combination of diverse sectors - NGOs, African governments, donor

countries, UN agencies etc. It is known as the **African Charter for Popular Participation in Development and Transformation** and was adopted in February 1990. According to the Arusha Charter, it is imperative for transformation of the society that people take initiative through non-governmental institutions, grassroots organizations and the like which are based on voluntary membership, are democratically organized and are rooted in African tradition and culture. In this way one can guarantee independent development "from the bottom up". In the model set out in the Arusha Charter, non-state voluntary sectors have a primary "extra-constitutional" right to participation, and in the case of this being withheld or violated, the international community is entitled to provide support for its realization. This is the highest that the voluntary peoples' initiatives could ever be elevated.

The African experiments as can be seen have always been a step ahead: they are engaged in protection of human rights which is a big step ahead of mere promotional initiative.

### **7.7.2 UN Initiatives: Integrating Human Rights with Sustainable Development**

The central thrust of the UN initiatives in this sphere lay in effectively integrating efforts for development with those for observance and promotion of human rights. The perspective and the achievements in this field have been discussed in the Unit on Right to Development. However, we may note that a global strategy has been formulated which aimed at making the Declaration in Right to Development (1986) applicable and realizable. Mention may be made here that a consensus had been achieved at a global level on the concept of development with the adoption of the Agenda for Development by the UN General Assembly in November 1997. This global consensus centred around the interwoven nature of development and human rights. The Agenda notes:

"Respect for all human rights and fundamental freedoms, democratic and effective institutions, combating corruption, transparent representative and accountable governance, popular participation, an independent judiciary, the rule of law and civil peace are among the indispensable foundations for development."

In order to implement this view so that Right to Development is meaningfully realized, the **Third Working Group on Right to Development** submitted its recommendation to the UN Economic and Social Council in July 1998 containing the following prominent suggestions:

#### **For the States**

- Legislative reforms to ensure that treaty laws take precedence over domestic laws.
- Adoption of socio-economic measures to avoid exclusion of marginalized groups and protection of local cultures.
- Measures to ensure that the poor and the vulnerable groups have access to resources to fulfil their basic needs.
- Respect for all human rights for all and ratification of human rights treaties.

#### **For the UN system**

- Establishment of a comprehensive set of human rights indicators.
- Increased UN initiatives and interventions to reduce social and economic inequities, for which the UN High Commissioner for Human Rights should enter a dialogue with premier institutions like World Bank, IMF and other financial institutions.
- UN monitoring of political and popular participation.
- Overcoming problems arising out of coordinating international trading system with the Right to Development.



These suggestions were hailed by the UN High Commissioner for Human Rights, Mary Robinson in the following words:

"Human rights bring to the development discussion a unifying set of standards - a common reference for setting objectives and assessing the value of action".

### 7.7.3 UNDP's efforts

A quick but a positive development was the acceptance of the principle of integrating human rights with development. In her message to the launching of this document "**Integrating Human Rights with Sustainable Human Development**", the UN High Commissioner for Human Rights, Mary Robinson wrote, "the United Nations Development Programme (UNDP) promotes international standards established to protect the human rights of every individual. I welcome this approach by which human rights has acquired a powerful new advocate".

Through adopting such an integration, UNDP has placed its commitment to human rights at three levels:

- (a) Poverty eradication
- (b) Realization of Human Rights for Sustainable Human Development
- (c) Good governance

*Firstly*, this UNDP's mandate for **eradicating poverty** has been understood in terms of full realization of Right to Development. "Poverty is a brutal denial of human rights. Thus by working to eradicate poverty, by supporting the antipoverty capacity of governments and civil society organizations, and by ensuring that United Nations operational activities for development are fully coordinated for the eradication of poverty, *UNDP is fostering the implementation of the Right to Development*".

*Secondly*, UNDP advocates realization of human rights as part of *Sustainable Human Development (SHD)*, an *approach that places people at the centre of development*. UNDP has identified in this connection four main areas of SHD, and they relate to:

- a) Eliminating poverty and sustaining livelihoods.
- b) Promoting advancement of women.
- c) Protecting and regenerating the environment.
- d) Developing capacity for good governance.

*Thirdly*, more of its programming activities will be devoted to **good governance** and they include activities like reforming legislatures, increasing efficiency of the executive and strengthening the judiciary and those which seek to promote transparency, accountability, decentralization, and above all, implementation of rule of law. While strengthening these governing institutions, UNDP would seek to promote capacity - development of such institutions through making available necessary training and education.

*Further*, every UN agency has a responsibility to promote and protect the human rights which however are a specific mandate of the office of the UN High Commissioner for Human Rights.

**UN Secretary General Report:** Integration of human rights with UN activities and programmes has been re-affirmed by the Secretary-General Kofi Annan in his report to the General Assembly, 'Renewing the United Nations: A Programme for Reform'.

In order to make it realizable, the UN Agencies have identified and adopted three duties for implementation. These duties are the same as were suggested by the famous Norwegian human

rights thinker and activist Asbjorn Eide,

the duty to respect,  
the duty to protect, and  
the duty to fulfil.

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## 7.8 IS THE CURRENT HUMAN RIGHTS — CENTERED APPROACH PRO-WESTERN?

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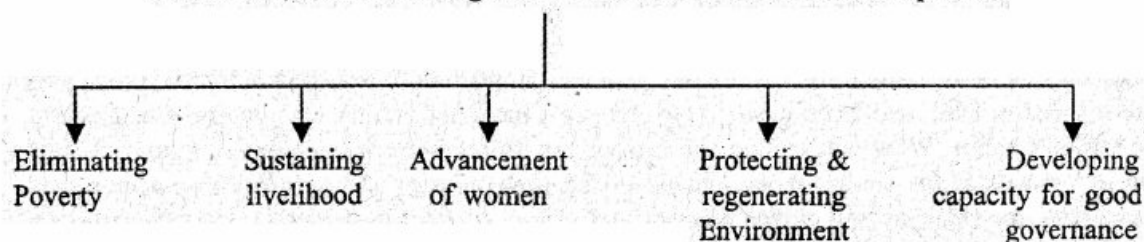
There has been a general feeling that it is so because 'democratization' has peculiarly been designed and worded to suit the western conceptions. Sometimes, such a phrasing tends to ignore the local, uniqueness of social and political compulsions of the developing countries.

Elsenhans summarises it as "democratization becomes the enhanced presence of the Western industrial countries through their multilateral fiscal aid and development agencies". The policy prescriptions are compatible with and rooted in the neo-liberal political philosophy of the western industrial countries. A few of such lately often heard prescriptions are: 'good governance' and 'civil society'. *All these three expressions of policy prescription, namely democratization, good governance and civil society, constitute the key elements in the neo-liberal philosophy.* The neo-liberal philosophy seeks to undermine the importance of the State as a protector of the lives of its citizens from the fetters of the State control and regulations. 'Good governance' aims to politically manage those affairs of the State which the latter cannot handle efficiently. It may be noticed that 'good' always accompanies governance impliedly, 'good' are those criteria which have been prescribed by the developed, donor countries. The formal expression 'governance' actually has come from the World Bank (1992) whose articles of agreement debar it, from entertaining political considerations for aid giving. But this digression into the political field appears to have been taken under the compulsions of a neo-liberal ideology which is fundamentally opposed to the institution of State including the Welfare State. The more the state can be discredited in this way, the more justified is the devolution of its powers *downwardly* into the private sectors and *outwardly* into the transactional sectors of the capital. These phenomena are increasingly becoming evident in the Third World Societies and are known as 'localization' / 'decentralization', and 'globalization' respectively. Ian Smillie, a veteran of grass roots experience tells us about the choice of the word 'governance'. He says, "Donors have often skirted suggestions that a recipient country might possibly have a bad government though a good ally in the field of international policies. The stress on 'governance' is more of an *anodyne*, having less to do with specific cases of corruption, tyranny, & repression, & more to do with a clinical management or "governing" .....according to some criteria set by the donors".

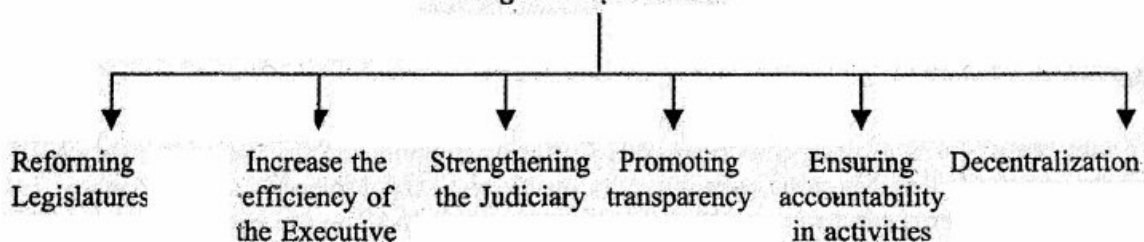
### 7.8.1 Who can Enforce Rights?

Who can force states to respect, protect and fulfill important obligations which are enshrined in Article 28 of the Universal Declaration of Human Rights? Certainly, not the Western Powers, though they can contribute substantially if there is a change of Popular control exercised through periodic free and fair election is one answer. In this connection, it is worth recognizing the importance of an optional Protocol for socio-economic rights similar to the one for civil and political rights. Some serious efforts are being made to campaign for such a protocol. Because it is felt that social security (like food, clothing, shelter) are as important as civil security (protection against torture, unlawful detention, and political harassment by the state agencies) in Developing States.

## Realization of Human Rights for Sustainable Human Development.

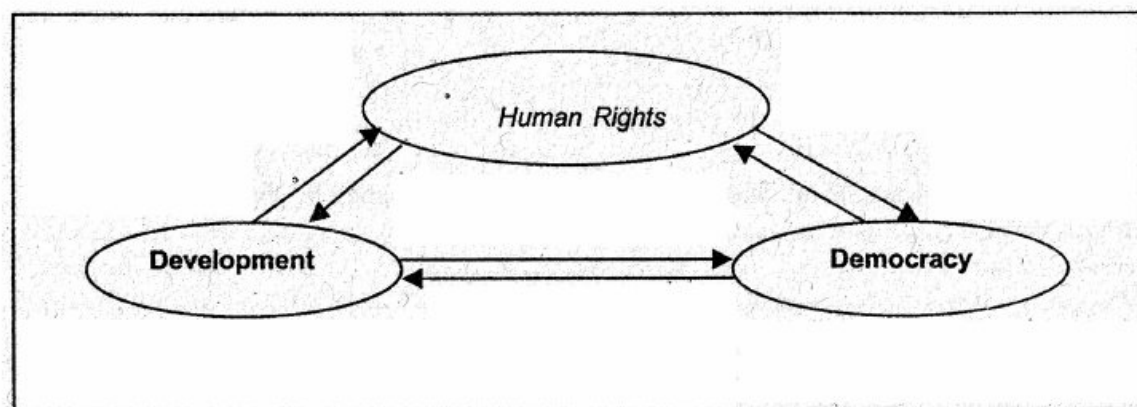


### Good governance means



### How would good governance be ensured?

Imparting training and education.



Human Rights is the centre of Development & Democracy

## 7.9 LET US SUM UP

We have studied how *states* and *international organizations* have begun to accept human-centeredness in Development as the main program in their policies. Previously, when a country achieved economic growth, it was considered to have helped the citizens, howsoever corrupt and dictatorial, policy makers were. But, social and economic thinkers have proved that real and sustained democracy cannot be achieved if that State suppressed the democratic aspirations and individual freedoms of the citizens. Autocracies usually tended to be helping only the ruling groups and not the common citizens. After the end of the Cold war in the 1990s, the hitherto suppressed national, cultural and ethnic aspirations of the people and communities came into the

open, thereby compelling the powers to take notice of the need for evolving an integrated approach to the issues of Human Rights and Development. Questions like 'good governance', 'democratisation', and 'civil society' were emphasized to give more weightage to the individuals and non-state actors and forces. African countries immediately responded to the prevailing international opinion and came up with the African Charter of Human and People's Rights and the Banjul Charter. What was unique about them was their insistence on placing human groups and individuals at the centre of the agenda of the governments and holding the governments responsible for safeguarding citizen's rights and bringing about development in the way their people desired. European countries too placed increasing importance on human rights - centered development. Though each continent responded differently, yet the underlying concern was to bring about an awareness of Human Rights. But the western countries began to pressurize the developing states to understand the issues of human rights and development in the light of their own perception and made such compliance a prerequisite for giving aid to them. Some UN agencies are opposed to this but since the West is the largest donor for the UN's operations, the UN remains helpless.

The approach of the developing countries is giving priority to social security measures over civil security measures. This has to be understood by the West so that Human Rights - Centered Development concerns can be promoted and protected meaningfully in the new century.

#### Check Your Progress 4

1. How are the Arusha and Banjul charters different from the other charters?  
.....  
.....
2. What is the essence of SHD?  
.....  
.....
3. Indicate three duties of the State which have now been assumed by the UN system.  
.....  
.....  
.....

### 7.10 KEY WORDS

<b>Autocracy</b>	- absolute government by one person, dictatorship.
<b>Anodyne</b>	- a pain killer which is used in all ailments.
<b>Bottle-up</b>	- put under curb.
<b>Clout</b>	- Influence.
<b>Daunting</b>	- discouraging
<b>Lobbying</b>	- the act of influencing legislators by interested group of people
<b>Multi dimensional</b>	- dealing with many aspects
<b>Neo-liberalism</b>	- a political philosophy which emphasizes on the role of free market against the state as engines of development.
<b>Recipe</b>	- a suggestion for achieving some thing.
<b>Safety valves</b>	- safe way out
<b>Skirted</b>	- avoid
<b>Texure</b>	- arranged



## 7.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

### Check Your Progress 1

1. Major changes that took place after the end of the Cold War in the 1990s were: the demise of the Soviet Union, the dismantling of the Communist - ruled Eastern bloc, and strengthening of the philosophy of free market. Neo-liberalism which emphasized de-control of the centrally structured economic systems, supports growth of the 'civil society' (non-governmental structures) and dilution of authority of State etc. are the hall marks of the new era.
- 2.(a) False
- (c) True
- 3.(a) is correct.

### Check Your Progress 2

1. Whether 'food' is more important or 'freedom'? Actually, this is a wrong way of posing the question since one is not necessarily at the expense of the others.
2. (b)
3. Democracies have ensured responsibility on the part of their rulers and have prevented monopolization of gains by a few members. The rulers are compelled to share wealth with peoples' representatives. See the text also.
4. A good democracy, where people are allowed freedom to implement what they think good and suitable for their own good, ensures a better standard of development. Since it is the people themselves who understand and manage their own resources in the way they think ideal, they develop interest in getting the best under the circumstances. Responsibility increases with encouragement given to local level (grass roots) leadership.
5. No. Because studies by Profs. Bhagawati, Olson and Amartya Sen have shown that dictatorships meant no participation by the local people, a high level of corruption, no transparency in decisions taken because they were at a distance from the people. Absence of questioning from the people turned leaders into irresponsible power - crazy individuals who looked to the country for their selfish ends only.

### Check Your Progress 3

1. An integrated, multi-dimensional approach which addresses more concerns than mere economic growth. UNDP Policy Document of 1998.
2. (a)
3. (d)

### Check Your Progress 4

1. The 'Right of Peoples' have been formally recognized and made binding on the signatories to enforce them. They have also expressly recognized the Right to Development. The Arusha Charter was prepared with the involvement of the NGOs, UN agencies, donor agencies, besides the governments.
2. People at the centre of development.
3. The duties to respect, protect & fulfil.

# UNIT 8 INTERNATIONAL RELATIONS, STATE SOVEREIGNTY AND HUMAN RIGHTS

## Structure

- 8.0 Objectives
- 8.1 Introduction
- 8.2 Modern International System
- 8.3 State Sovereignty and Human Rights
- 8.4 Humanitarian Interventions
  - 8.4.1 Three models of International Human Rights
- 8.5 Let Us Sum Up
- 8.6 Some Useful Books
- 8.7 Answers to Check Your Progress Exercises

## 8.0 OBJECTIVES

Human rights fit uncomfortably in an international order based on sovereign states. Why is it so? This unit answers this by examining the nature of the international order and the growth of the international human rights movement. After going through this unit, you will be able to:

- explain the concept of sovereignty,
- identify the key features of international relations,
- trace the emergence of international human rights movement,
- describe the obstacles in the enforcement of human rights.

## 8.1 INTRODUCTION

International order is structured around sovereign states having an exclusive jurisdiction over its territory, its occupants, resources and events that take place there. Despite the state regulations for their citizens, human rights territory have gradually acquired international legitimacy. Today, individuals, non-governmental organisations, international organisations, and even states have become vocal in expressing concern for human rights and sometimes act upon them. Individuals and their interests are beginning to find a place in international law and relations. Let us first examine the nature of the international system. Thereafter, we will examine the series of formal and informal restrictions that have begun to impinge on state sovereignty and the controversy surrounding the 'right' or 'duty' of humanitarian intervention.

## 8.2 MODERN INTERNATIONAL SYSTEM

In the present international order, also called the **Westphalian system** (after the Peace of Westphalia signed in 1648) territorial states are the leading actors. The script of world politics is written mainly for territorial states. Everybody else is a supporting actor.

What gives the territorial state this special place - the status of an independent actor - is sovereignty

Sovereignty is the **basic assumption** about authority of modern political life, domestically and internationally. Sovereignty, simply put, is supreme political authority. In medieval Europe, when political authority was highly decentralised, no earthly power was regarded as sovereign. That medieval order collapsed when the monarchs rose to absolute prominence over rival feudal claimants such as the aristocracy, the Papacy and the Holy Roman Empire. This centralisation of political authority marked the emergence of the modern territorial states.

In the *early territorial states*, sovereignty was regarded as a **personal attribute** of the ruler. In modern international relations, sovereignty resides in the **state**. The government, the principal political organ of a state, whether democratic or otherwise, has the final and absolute authority within its territory and its occupants.

To be sovereign is to be subject to no higher power. This dimension of sovereignty emphasising the political independence of the state was established by the principle of the Treaty of Westphalia (1648) *cuius regio eius religio* (or "whosoever territory, his religion"). This meant that the ruler of each territory could determine the religious (domestic) policies for that area without interference by anyone else. Other states are obliged not to interfere in the internal affairs of a state. A state's actions are a legitimate concern of other states only if those actions interfere with their sovereignty.

Many treaties and agreements have codified these principles. The Charter of the United Nations incorporated the *principle of territorial integrity and political independence* in Article 2 (4) thus: "Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." The Charter reiterated the *principle of non-intervention and domestic jurisdiction* in Article 2 (7): "Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter..."

The centrality of sovereignty in modern international relations is another way of saying that international relations is anarchic, that is, international system functions in the absence of hierarchical relations of authority. There is no rule making and rule enforcing institution in international relations. But anarchy or the absence of higher political authority above the state does not necessarily imply chaos or absence of order. In fact, although there is no international government, there exists a rule governed social order in international relations. States, initially free of obligations to one another, have accepted a whole body of formal and informal rules (for instance, international law, rules governing diplomacy and recognition of spheres of influence, etc. These restrict the freedom of action of a sovereign state in certain activities and spheres.

These restrictions on a state's freedom of action do not amount to loss of sovereignty. This is so because they have been voluntarily accepted by states as sovereign entities. The most basic international norms, principles and practices continue to rest on state sovereignty. Consider this: The illegal interventions by powerful states in the internal affairs of other states can be traced back to the absence of higher political power or legal authority above the state. That is the **essence** of sovereignty.

While states claim exclusive jurisdiction over their territory, and citizens, international human rights also seek to regulate the way states deal with them. International human rights policies, therefore, seem to involve unjustifiable intervention in sovereign state's affairs. And yet, in the last five decades or so, human rights have emerged as legitimate area of international action. In the following section, we will examine how international law came to regulate the way

governments treat their own citizens and assess human rights activity in a political order structured around state sovereignty.

## International Human Rights Framework

When we refer to international human rights policies, laws or practices, it becomes necessary to know the framework inside which the above are seen in practice. Today many human rights instruments make up the international human rights framework. Along with the Universal Declaration of Human Rights (1948), the crucial covenants, the International Covenants of Civil and Political Rights and the International Covenant of the Economic, Social and Political Rights constitute the **International Bill of Rights**.

Next are instruments that **protect against gender, cultural and racial discriminations**-the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on Elimination of All Forms of Racial Discrimination (1966), and Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992).

Then there are instruments that **protect against various crimes and stipulate punishments**-the Convention on the Prevention and Punishment of the Crime of Genocide (1949), the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment.

Several instruments focus on the **rights of specific groups** such as women, children, indigenous peoples and the disabled.

There are also international human rights law dealing with **treatment of prisoners** and a code of conduct for law enforcement officials who deal with human rights in **administration of justice**.

Finally, a number of declarations deal with **social welfare, progress and development** including the 1986 UN Declaration on the Right to Development.

Together these treaties, conventions and declarations emphasise inter dependent multi dimensional character of human rights which create legal obligations for signatory states and specialised roles, functions and obligations for the agencies and organisations of the United Nations system.

### Check Your Progress 1

Consider the following statements carefully and state whether they are **true or false**:

1. International law and informal rules place restrictions on state autonomy or freedom of action. This establishes an international political order in which rules are enforced by an international organisation.  
.....
2. International organisations are created by states and remain their creatures. They do not have independent lives of their own.  
.....
3. Some non-state actors such as multinational organisations are financially stronger than some of the states and may even influence the behaviour of states. But they are not independent actors on the international stage.  
.....



### 8.3 STATE SOVEREIGNTY AND HUMAN RIGHTS

Human rights, as a standard subject of international relations are of recent origin, emerging with the United Nations.

In the nineteenth and early twentieth centuries, the European powers and the United States did occasionally intervene in the Ottoman and Chinese empires to rescue nationals caught in situations of civil strife or to establish or protect special rights and privileges for Europeans and Americans. There is hardly an instance to cite where they intervened to protect foreign nationals from their own government. In fact, human rights were seldom even a topic of diplomatic discussion. Likewise, the 'humanitarian law' of war expressed in documents such as the Hague Convention of 1907, limited only what a state could do to foreign nationals, not the ways a state treated its own nationals or peoples over whom it exercised colonial rule.

A major exception was the nineteenth century anti-slavery campaign. As early as the Congress of Vienna in 1815, major powers recognised an obligation to abolish the slave trade. At the Brussels Conference of 1890, a comprehensive treaty to abolish the slave trade was finally concluded. But even slavery, as opposed to international trade in slaves, was treated as largely a national matter. A major international treaty to abolish slavery was not drafted until 1926. In the 1920s, the International Labour Organisation (ILO) also began to deal with some workers rights. In addition, the League of Nations was given limited powers to protect ethnic minorities in areas where boundaries had been altered following the First World War. With these marginal exceptions, human rights had not been a topic of international relations.

It was after the World War II that the idea that a government's treatment of their own citizens should matter to the rest of the world, gained acceptance. The event that brought this to the fore are the barbarities which were practised by the Nazis in Germany before and during the World War II. The Charter of the United Nations (UN) that was drafted at around this time, represented a break from the dominant tradition of national sovereignty over human rights. The Charter expressed a determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in equal rights of men and women." The purposes of this new international organisation were stated to be, among other things, "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . . [and] to achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.....". In two key articles of the Charter of the UN, all members "pledge themselves to take joint and separate action in co-operation with the organisation" for the achievement of these and related purposes.

Lest anyone gets carried away by the Charter's good human rights intentions, however, Article 2 (7) emphasised the principle of non-intervention. More important, the reiterated obligation in **Article 55** to promote "universal respect for, and observance of, human rights and fundamental freedoms for all" is presented as a means of assuring the conditions of stability and well being necessary for peace and security, not as an end equal in value to peace and security. These limitations around the Charter's commitment to human rights clearly suggest a promotional role for the UN. Legal scholars point out that the delegates to the founding conference in San Francisco rejected a Charter provision that would have given the UN the mandate to *protect*, not simply to *promote* human rights.

Once the international organisation came into being, the member states lost no time in elaborating human rights standards by adopting the UN Declaration of Human Rights (UDHR) in 1948. The

UDHR enumerated without clear prioritisation, virtually all the demands being made by citizens on their governments around the world-demands that governments not to interfere in their civil liberties and guarantee basic amenities like jobs, education, and health care.

Although the UDHR was a 'standard of achievement for all people and all nations' and not a treaty imposing legal obligations, it provided a new aura of legitimacy to human rights in international relations which was utilised by the international human rights constituency to translate their demands into binding international and domestic laws. The most comprehensive multilateral human rights treaties are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. These were adopted by the General Assembly in 1966. And following their ratification by thirty-five member states, they entered into force in 1976. That is, the Covenants became binding legal obligations of the signatory states. Today, over half the states of the world have become parties to the Covenants, and virtually all the rest (including most prominently, the United States) have either signed but not ratified the Covenants or, otherwise expressed their acceptance of and commitment to these norms.

Treaties are a source of international law. Law making treaties such as the Genocide Convention of 1948 and the International Human Rights Covenants of 1966 are typically drafted by an international organization or conference and then presented to states for their consideration. Neither the drafting of a treaty nor its approval by the UN or any international organization gives it legal effect. For a treaty to be binding, it must be accepted by sovereign states. After a specified number of states become parties (states that have ratified or acceded to the treaty) to the treaty, the treaty becomes binding. And it is binding only on those states that have formally and voluntarily accepted it.

Since their adoption by the UN General Assembly in the mid-1960s, these basic covenants increasingly referred to as the "international bill of rights", have in turn generated a multitude of specialised and auxiliary human rights conventions and forums.

At the multilateral level, the UN Human Rights Commission began to inquire into the human rights situation of specific states. The Commission also began to conduct confidential investigations of 'communications' (complaints) that suggested "a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms". In 1986, the Committee on Economic, Social and Cultural Rights was created to improve reporting and monitoring in this important area.

At the non-governmental level, human rights non-governmental organisations, representing the interests of individuals and groups have become more numerous and active. Their activities-expressing views, drawing up resolutions, drawing attention to violations, urging studies, attending trials, sending fact finding missions, protesting misconduct, and so on- have strengthened international human rights norms and constrained the actions of rights violating states.

Also several nations, particularly Western democratic nations led by the United States, have become vocal in expressing and sometimes even acting on their human rights concerns. They have often used their political, diplomatic, economic and financial leverage to press certain states to respect human rights.

With human rights gaining in strength, today states are having to contend with a new conception of legitimacy- moral legitimacy based on human rights performance. Traditionally, a government was considered legitimate if it exercised authority over its territory and accepted the international legal obligations that it and its predecessors had contracted. What it did at home was largely

irrelevant. Today, a moral legitimacy based on human rights performance is being weighed against legal legitimacy.

While human rights advocacy groups often emphasise the moral source of legitimacy, states attitudes are different. The United States described the Noriega regime in Panama as illegitimate on human rights grounds for being repressive and undemocratic and overthrew that regime through military action. But despite the almost universal condemnation of the Tienamen massacre in 1989 (when Chinese troops fired on armed student demonstrators and brutally crushed the emerging democratic movement in the Peoples Republic of China), the US did not let its human rights concerns stand in the way of more or less regular diplomatic relations, including continuation of special trading privileges for China. Take a more recent example. In Turkey, an estimated 3,000 Kurdish villages have been destroyed, three million people internally displaced and thousands of Kurds killed by the Turkish security forces in the context of the 15-year armed conflict with the PKK. There have been no threats of action by the international community. Instead, Turkey was accepted as a candidate for European Union membership. Clearly, human rights concerns are subordinate to other considerations such as power and legitimacy. In other words, human rights as a standard of legitimacy has been partially and incompletely incorporated into the rules of the international society of states.

With international human rights constituency becoming more active, states are also having to come to terms with the expanding international law of human rights (see box II) in the sense of deciding on the extent of its domestic application. Here, there is dispute of theory about whether domestic or international law should take precedence over the other. There are also problems in interpreting customary norms that are fashioned in multicultural setting. Still, some progress has been made in this direction. The celebrated case here is that of *Filartiga v. Pena Irala* (1980). In this case, Pena, a Paraguayan police inspector, was sued in a US court by Filartiga, the father of a student whom Pena had tortured to death in a Paraguay jail. Filartiga's case was that torture was a violation of the law of nations, and that the US court had jurisdiction in the matter, by virtue of the 1789 Alien Tort Statue allowing such competence when a tort had been committed in violation of the law of nations. Pena's lawyers argued that torture was not a violation of the law of nations, and that anyway, the proper forum for consideration of the case was Paraguay. This argument succeeded in the first instance. But, on appeal, it was found that torture was a violation of customary international law, that the Alien Tort Statue applied. The judge concluded that "the torturer has become-like the pirate and slave trader before him-*hostis humani generis*, an enemy of mankind". Torture, thus, becomes not a national but an international violation of human rights.

States can be subject to substantial international legal obligations to which they have not consented. This is because next to treaties, custom is the other main source of international law. Treaties are essentially contractual agreements of states to accept certain specific obligations. Customary rules of international law are well-established state practices to which a sense of obligation has come to be attached.

In the *Filartiga vs. Pena-Irala* case of 1980, the US Court held that torture was a violation of customary international law.

Some lawyers argue that that the UDHR had, over time, become a part of customary international law, or at least strong evidence of custom.

A significant aspect of the *Filartiga vs. Pena Irala* case is that it breached the principle of state sovereignty by holding a foreign individual guilty of human rights violations when the offence was committed in his own state. This practice has not gained ground, but the case clearly indicated the existence of social obligations laid upon individuals as humans as well as citizens.



The expanding international human rights activity reflects and has helped to create a transformed understanding of the place of individual in international relations. Traditionally, states have been the sole subjects of international law. Only states have legal standing, the right to bring actions in international tribunals. The rights and interests of individuals could be protected only by states acting on their behalf. This has begun to change. Individuals and their interests are beginning to find a place in international law and international relations. The European Convention for the Protection of Human Rights and Fundamental Freedoms which was signed in 1950 (along with subsequent protocols) has given individuals the chance to obtain human rights redress from forums outside of their own national systems. The European system became a model for the human rights conventions of the UN and other regional groupings (particularly, the American Convention on Human Rights that entered into force in 1978). But none have gone as far as the European regime in allowing individuals to complain against their own governments. In the late 1960s, the Economic and Social Council established what is popularly known as the **1503 Procedure**, whereby anyone in the world, or any group of persons who feel they have been prevented from exercising human rights or fundamental freedoms may complaint to the UN. The Optional Protocol to the International Covenant on Civil and Political Rights (which entered into force in 1976) and ratified so far by only thirty seven countries, created the United Nations Human Rights Committee with the power to consider written petitions directly from individuals who claim that their rights have been violated with the proviso that the claimants must first "have exhausted all domestic remedies". The committee can hold hearings and issue findings. These findings are not binding judicial decisions as those of the European Court. However, public exposure of country reports on human rights situation creates a morally binding force on the respective states to guard themselves against international criticism.

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## 8.4 HUMANITARIAN INTERVENTIONS

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With the collapse and break up of the Soviet Union and emergence of a new world order in which values like democracy, the rule of law and respect for human rights were supposed to be top priorities, idea of the 'right' or 'duty' of 'intervention' to deal with the humanitarian and human rights problems has gained currency. The 'right' or 'duty' of intervention came to public attention for the first time when several Western nations took military action against Iraq in April 1991. The operation was presented as a measure to protect the Kurds in northern Iraq, who were being harshly oppressed by the Iraqi authorities. In 1992, Operation Hope was carried out in Somalia to put an end to anarchy there and restore conditions in which people could survive. In 1994, France carried out Operation Turquoise in Rwanda, ostensibly to protect its inhabitants from a genocidal war that was tearing the country apart. There have also been interventions in Bosnia and Herzegovina (1994-95), Liberia, Sierra Leone, Albania in 1997 and in Kosova (1999).

But is there a 'right' or 'duty' of humanitarian intervention? Is the 'duty to assist' a moral right which can override the traditional legal rules. Is it a principle to be incorporated into international law?

Governments supporting foreign intervention argue in terms of morality and universal values. The US government, for instance, justified the North Atlantic Treaty Organisation's bombing of Belgrade on the grounds that to turn away would be a "moral and strategic disaster". Supporters of intervention also cite the development of international law to back their arguments. They argue that the Charter of the UN allows the UN Security Council to take coercive measures including military action, if it determines that there is a threat to "international peace and security". In fact, military intervention by Western nations in Iraq and in all subsequent occasions cited above have been authorised by the UN.



Governments opposed to foreign interventions argue that the basic international norms and principles rest on national sovereignty and non-intervention in the internal affairs of a state. As we noted elsewhere, the UN charter has codified these principles in Article 2 (4) and Article (7).

Any evaluation of humanitarian intervention rests fundamentally on our conception of international society and the place of human rights in it. **Jack Donnelly** gives us three competing theoretical models of the place of human rights in international relations- the statist, the cosmopolitan and the internationalist models-each with its own conception of international society and its role in international human rights.

#### 8.4.1 Three Models of International Human Rights

The traditional **statist** model sees the sovereign nation-state, operating in an anarchical international environment, as the central and overriding feature of international relations. There are elements of order in international relations, but that order arises largely out of the actions of the state. In other words, state power is the chief determinant of international outcomes. For a statist, state interests, defined in relatively narrow, selfish, terms, are the principal motivators of international action. Contemporary statist certainly admit that the state is no longer (if at all they were in the past) the sole significant actor and that human rights are no longer the exclusive preserve of the states. Nonetheless, they insist that individuals and their rights and interests are largely peripheral to international relations. Individuals are objects, rather than subjects, of international law and politics. The most that individuals can hope for is that their own state will act on their behalf. Human rights remain principally an internal matter of a sovereign state and a peripheral concern of inter-state relations. For a statist, there is nothing like a independent international society. In particular, there is no international body with the right to act on behalf of human rights.

Standing in sharp contrast with the statist model there is the **cosmopolitan** model. The cosmopolitan sees individuals more as members of a single world political community than as citizens of states. Instead of thinking of international relations, that is the relations between states, a cosmopolitan thinks of a world political process in which individuals and other non-state actors are important direct participants. For cosmopolitans, the world society is independent of, and in some sense superior to state and the society of states. Although they admit to the reality and power of states, they emphasise on challenges to the state and its powers from below, by individuals and non-governmental organisations, and from above, by international and regional organisations, and by the independent activities of a great array of multinational actors. They often see international organisations, and even some international NGOs, as representatives of an inchoate international society of humankind above the society of states. International action on behalf of human rights is relatively unproblematic in such a model. When states are guilty of gross and systematic violations of human rights, or are unable to respond effectively to situations of humanitarian crisis, individuals, NGOs, states, regional and international organisations all have at least a right, and perhaps even responsibility, to act. In fact, cosmopolitans, largely reverse the burden of proof, requiring justification for non-intervention in the face of gross and persistent violations of human rights.

Between the statist and cosmopolitan models, lies the **internationalist** model. In this model, individuals are not given the prominence they receive in the cosmopolitan conception, nor are they peripheral as in the statist conception. Internationalists admit that the international society is on the whole a society of states, but they see greater international social constraints on the liberty of states than do statist. Unlike the statist, an internationalist is less inclined to denigrate ethical constraints, declaratory norms of international law, and the constraining influence of non-state actors. In other words, without denying the continued centrality of states, they focus attention on the international society of states, which imposes only limited restrictions on states.

Internationalists stress the evolving consensus among states and non-state actors alike on international human rights norms. Since there is no consensus among states and non-state actors on norms for humanitarian intervention, the internationalist does not have a single perspective on humanitarian intervention. Defining his perspective largely in terms of the two ideal-types, the statist and the cosmopolitan conceptions of international relations, the internationalist is often torn in both directions. The final stand that the internationalist would take, closer to the statist or the cosmopolitan model, is a matter of how he/she would interpret the particulars of a case and the relevant international norms.

### Check Your Progress 2

1. State whether the following statements are True or False
  - a) Article 2(7) of the UN Charter emphasises the principle of non-intervention.  
.....
  - b) An individual of a foreign country can be held guilty for violating rights of another individual in his country.  
.....
  - c) Optional Protocol to the International Covenant on Civil and Political Rights empowers an individual to appeal to the UN Human Rights Committee.  
.....
  - d) India is not a signatory to the Optional Protocol?  
.....
  
2. What would be the typical reaction of a statist to the *Filariga v. Pena Irala* case?  
.....  
.....  
.....
  
3. Match the following:
 

i) Statist	a) UDHR has become a customary law and the international community should enforce it.
ii) Cosmopolitan	b) There is no international authority with the right to act on behalf of human rights.
iii) Internationalist	c) Consensus on humanitarian intervention must be evolved.

The statist model, although it was accurate until the Second World War, is at best a crude and somewhat misleading approximation today. Before the end of the Second World War, human rights practices of a state were, with few exceptions, considered a matter of domestic jurisdiction, largely beyond the legitimate concern of other states. As we saw, human rights have become a standard subject of bilateral and multilateral diplomacy. We also saw that state authority over human rights has been constrained by the activities of the non-governmental organisations representing the interests of individuals and groups.

This does not, however, mean that cosmopolitan model gives an accurate description of the present. In fact, the cosmopolitan model is largely a prediction about the direction of change in world politics. Some sort of internationalist model provides the most accurate description of the place of human rights in contemporary international relations. International human rights activity is permissible only to the extent authorised by the formal or informal norms of the international society of states.

Here, we see that states, protective of their sovereignty (right of non-interference) have not granted to the UN or any other international agency significant enforcement powers. They have created and accepted international legal obligations that are to be implemented entirely through national action. None of the obligations to be found in the multilateral human rights treaties can be coercively enforced by any external actor.

Typically, human rights treaties require states parties to submit periodic reports on their practices with respect to the rights recognised in the treaty. The supervisory committee established by the relevant treaty is authorised to study these reports, publicly question state representatives about their contents and omissions, and make comments on them. But once the review of a report has been concluded, the state in question remains free to do as it sees fit. The obligation to submit a report is the only international implementation obligation a state accepts by becoming a party to a typical international human rights treaty. The UN Commission on Human Rights, the principal forum for the development of international human rights norms, is as lacking in coercive enforcement powers as the supervisory bodies of the various treaties. At the regional level, the Council of Europe has established effective system of human rights enforcement which includes binding judicial decisions by the European Court of Human Rights. But even here, there is no way of guaranteeing the sentence will be carried out. Sovereignty has proved incompatible with the existence of a kind of worldwide "international police force".

In the present international order based on sovereign states there is no legal sanction for any form of intervention. While this places hurdles in the enforcement of human rights, many consider that it is less bad than the one would include a broad right of humanitarian intervention. After all the principle of non-intervention is the result of a historic battle waged by the weakest nations which were under colonialism. The Charter of the UN, of course, did not put an end to interventions by the big powers, but at least it gave the weaker nations a chance to oppose the use of force. A return to the situation where there was a right to intervene which could, hypothetically, involve side-stepping the UN decisions, would mean that the powerful states of the international system could set themselves up as sole judges of what humanity supposedly needs. Once again, might would be right.

### Check Your Progress 3

1. The weak human rights enforcement mechanism has facilitated many states to subscribe to international human rights agreements even though they cannot or may not implement them in practice. Why has the United States not ratified the Covenants? Find out.  
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.....  
.....  
.....
2. The President of Algeria and Chairman of the Organisation of African Unity, Mr. Abdelaziz Bouteflika, has compared international intervention with breaking into a neighbour's house because a child had allegedly been beaten by his parents. Is it an apt comparison? What action would you take if your neighbours ill-treat their own children?  
.....  
.....  
.....  
.....



3. The UN Secretary General, Kofi Annan, had outlined some criteria that might guide the UN Security Council in authorising interventions, whether by the UN, or by a regional or multinational organisation. These criteria include: the scale and nature of the breaches of human rights and international humanitarian law; the incapacity of local authorities to uphold order or their complicity in the violations; the exhaustion of peaceful means to address the situation; the ability of the UN Security Council to monitor the operation; and the limited and proportionate use of force, with attention to the repercussions upon civilian populations and the environment. What is your reaction to these criteria? Will these eliminate the misuse of power by the big powers? Will the big powers now have one more reason to intervene in the affairs of weaker states?
- .....
- .....
- .....

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## 8.5 LET US SUM UP

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Following the UDHR, several multilateral human rights treaties have been drafted and ratified by states. These have created a strong and comprehensive set of international human rights norms, to which most states publicly subscribe. These norms, along with the supervisory activities of committees created by these treaties, and the activities of international, regional and non-governmental organisations, have substantially transformed international attitudes and policies towards human rights.

The formal and informal restrictions on state sovereignty over human rights, the prominent role of individuals and groups in international relations, the recognition of human rights as a standard of moral legitimacy point to the departures and deviations from the traditional Westphalian state system. At the same time, it should be noted that even though the state is increasingly legally obligated and politically pressured to treat persons in accordance with universal (and regional) standards, formal sovereignty remains with the states. States remain supreme in the making and implementation of international human rights policy and state power primarily determines what international steps to be taken to defend human rights. Today's states, however, have to learn to co-exist with the growing forces of international human rights laws and norms, practices and pressures.

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## 8.6 SOME USEFUL BOOKS

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Jack Donnelly, 1993, *International Human Rights: Dilemmas in World Politics*, Westview Press, Boulder Colorado.

\_\_\_\_\_ *The Universal Declaration of Human Rights: Theory and Practice*

David P Forsythe, 1991, *The Internationalisation of Human Rights*, Lexington Books, Massachusetts.

David Held, *Political Theory and the Modern State*, 1989, Indian Reprint, 1998, Worldview, Maya Polity, New Delhi.

Robert Jackson, ed, *Political Studies*, Special Issue on Sovereignty at the Millennium, Vol. 47, No. 3.



Some of these corporations have gross incomes greater than the Gross Domestic Product (GDP) of most nation states. *General Motors* is bigger than Denmark and at least hundred largest corporations are larger than most member States of the United Nations. Nearly 70 percent of world trade is controlled by just 500 largest corporations, rightly known as the *Global 500* or *Fortune 500*. The annual revenues of the *Global 500* are twice the size of the gross domestic product of the United States, the largest economy in the world.

### 9.1.2 World Trade: G-7 dominance

In the period following the Second World War, the bulk of world trade is accounted for by the high income group economies known as developed countries. The core of the high-income group countries is made up of the G-7 economies consisting of USA, Japan, Germany, France, Italy, the UK and Canada. It is actually G-8 with the inclusion of Russia. The low-income and middle-income economies together are sometimes referred to as developing economies. Most of these are countries of Asia, Africa, Latin America. Which were under colonial subjugation in the past and under neo-colonial domination at present.

Twenty percent of the world's population requires 80% of the world's resources to maintain its living standards. It needs to exploit even those resources of the developing countries which were traditionally considered non tradeable, through their superior technology and knowledge. You must have heard about Neem and Basmati rice getting patented by American multinationals.

#### Check Your Progress 1

1. What does globalization mean?

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.....  
.....  
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2. Why should there be no unrestricted entry of TNCs into developing countries.

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.....  
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3. Name the G-7 countries.

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## 9.2 MISMATCH BETWEEN GLOBAL ECONOMY AND GLOBAL SOCIETY

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Instead of "globalization with a human face", grotesque inequalities have overshadowed world trade. UNCTAD Secretary General Rubens Recupero stated before ECOSOC in July 1997 that "the world economy is in some respects polarizing more than it is converging".

The development of a global economy has not been matched by the development of a global society. The basic unit for social and political life remains the nation-state. International law and

international institutions are not strong enough to prevent war or large scale abuse of human rights in individual countries where TNCs are operating and they can exploit the situation for their profit motives. They can also exploit the bio-diversity and environment, ruining both in the long run. Global financial markets being largely beyond the control of national or international authorities, the TNCs and financial markets have grown so very powerful that they can impinge upon, human rights of individuals in the society and sovereignty of the State in actual practice.

No doubt the States remain sovereign. They wield legal powers that no individual or corporation can possess. They can interfere in the economy but they are increasingly being subjected to the forces of global competition. If a government imposes conditions that are unfavourable to the capital, capital will seek to escape. Conversely, if a government keeps down wages, permits child labour, bonded labour, cheap prison labour etc., it can foster the accumulation of capital both for TNCs as well as the rulers of the country.

Globalization has, thus, led to the weakening of State and rendered the relationship between the community, the State and the corporation totally fluid. It has entrenched the powers and widened the freedoms of corporations eroding the powers and freedoms of people in their diverse community settings. Social scientists have begun to talk of 'reinventing government' because the State is turning more one-sided in representing corporate interest and failing to represent citizen and community interest.

For citizens and communities, the erosion of State power implies withdrawal of two *protective umbrellas*: to the individual citizens and the community. The first is the protection available through the *regulation of (commercial) profit-seeking behaviour* so that destruction of livelihoods, environment and people's health, can be prevented. The second is the protection *built into traditional* environmental rights and rights to knowledge and culture, rights which are often customary, indigenous and not written in law, but which are central to secure livelihood and survival options, especially of marginal groups such as women, tribals, landless and small peasants, farmers, traditional healers and craftsmen etc.

In view of the alarming situation created by the power and reach of the TNCs, it has become imperative to re-examine the efforts of agencies and instruments promoting world trade and global economic system. **Rubens Recupero** is right in warning that if "globalization is to deserve its name, it has to include and not to exclude, to integrate and not to marginalise". TNCs must generate enough jobs with adequate pay and must help reduce poverty of host and home countries. They should not rush headlong into heady philosophy of *market profitability* and *economic efficiency* but must bring about *human development* and *social protection* into equation. After all, the United Nations which drew up the Charter of Human Rights also created World Bank and IMF to help revamp the war ravaged economies of its member countries. The denial of these rights and fundamental freedoms is not only an individual and personal tragedy, but also creates conditions of social and political unrest sowing the seeds of violence and conflict within and between societies and nations. In a global society regional and local conflicts threaten to engulf the world community. But IMF and World Bank in their haste to create a new world economic order failed to take notice of the activities of TNCs. However their role in promoting international trade and reducing trade barriers cannot be discounted.

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## 9.3 AGENCIES AND INSTRUMENTS OF WORLD TRADE

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### 9.3.1 World Bank and IMF

There were no international agencies and instruments to control, supervise and promote international

trade before the Second World War. World Bank and IMF have helped Third World countries to integrate their economies in the new world economy through three measures:

- I) increase in exchange of good and services;
- II) raising transnational production, and
- III) helping in financial and exchange rate transactions.

The World Bank and IMF have induced, and sometimes forced through sanctions, the third World developing countries to change their planning and development policies, reduce the role of government to allow market forces greater freedom and promoted monetary tightening through structural adjustment policies. As many of these countries were caught in the "debt trap" and were not able to pay back the IMF and World Bank loans, structural adjustment of these economies was suggested by them in 1980s. Structural adjustment was a package of various policy efforts to get out of the debt trap and to rehabilitate them to resume growth in the coming decades. **Structural adjustment** can be seen as a measure by World Bank - IMF to bring the developing countries in the mainstream of global economy through:

1. new fiscal, monetary and trade policies,
2. reduction in government expenditure,
3. elimination of subsidies on domestic products, reduction in import duties and tariffs,
4. control of internal money supply,
5. opening of trade and production to private industry,
6. raising agricultural production through improved technology and quality inputs and
7. Stimulating export of agriculture commodities.

### 9.3.2 GATT

Besides World Bank and IMF, General Agreement on Trade and Tariff (GATT) was set up in 1948 as an instrument to regulate world trade. It was a complement to the IMF and World Bank. The original signatories of GATT desired to facilitate free trade by encouraging removal of any unnecessary barriers to trade.

The initiative to set up GATT came from the United States which wanted to extend the US economic model of high volume, standardized production and open market to the rest of the world. The US has dominated the working of this organization since its inception but it could not develop as an International Trade organization following disagreement by the US Senate in 1950 to pass its Charter. It has, thus, remained a Voluntary Contractual Agreement.

### 9.3.3 Uruguay Round

The 108 member countries of GATT met eight times since 1948. The purpose of the first seven rounds had been to set up a code of conduct regulating world export and import and reducing tariff and other trade barriers in order to promote free trade. The formation of trade blocks like (North American Free Trade Agreement) NAFTA in North America and the European common Market (later European Union) gave a fillip to its activities.

The eighth round of discussions by GATT called the Uruguay Round was held at Punta del Este in Uruguay in September 1986. The earlier regulations related mainly to general production and price policy while conceding the freedom of each country to design its own economic policy. This round not only aimed at increasing the scope and power of GATT but also prepared detailed regulations of domestic policies through measures like TRIMS and TRIPS and creating a new body called World Trade Organization (WTO).



## Check Your Progress 2

1. Name the two 'protective umbrellas' which will be withdrawn on weakening of State authority.  
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.....
2. Specify basic elements in Rubens Recupero's warning.  
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.....
3. What amount of international trade is controlled by Global 500 companies?  
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.....  
.....
4. Indicate four features of Structural Adjustment Programme.  
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.....  
.....

### 9.3.4 WTO

The WTO was set up in January 1995 with a comprehensive mandate covering economic governance, trade and investment of member countries. It is to monitor trends in global production, trade and flow of capital from one country to another and devise reforms and regulations from time to time. WTO has now replaced GATT and has an independent machinery for consultation, evaluation, negotiation and enforcement of trade decisions. It has a greater reach than the World Bank and the IMF in terms of its rules and regulations covering taxation, import, export, industrial and agricultural production of member countries.

The WTO has a mandate to reduce and eliminate trade distortions, to issue (wherever necessary) directives on tariff and non tariff measures taken by countries to raise exports, and to reduce imports. It prohibits incentives and subsidies to boost output of selected industries in a country. In agriculture, the major WTO provisions are:

- a) reduction in domestic subsidies,
- b) access to foreign trade,
- c) trade related intellectual property rights (TRIPS) and
- d) sanitary and phytosanitary regulation for products free of health hazards.

Countries which fail to implement WTO policies and structural adjustments suggested by World Bank will have to face sanctions and restrictions which may destroy their economies. They will also be disqualified for loans from World Bank and other foreign investors except in certain conditions.



### 9.3.5 Trade Related Intellectual Property Rights (TRIPS)

TRIPS clauses aim at regulating the patenting of all *products* and not just their *processes* (which was the usual practice earlier) which enter international trade. The clause covers drugs, pharmaceuticals, processed foods and chemicals. A ten-year transition period has been given to countries to implement TRIPS. Some major steps suggested are:

- i) National patent laws to be changed to include product patenting along with process patenting.
- ii) All indigenous agricultural species to be conserved immediately by setting up gene banks and bio-tech research and data centres.
- iii) If countries do not have patents in agro-chemicals or pharmaceuticals, the present (read foreign here) patent holders have exclusive marketing rights for 5 years.
- iv) Restrict transfer of seeds and plants breeding among farmers.
- v) Set up monitoring centers for safeguarding the interests of products, users and traders of seeds.
- vi) Disputes between member countries on food safety, and plant health will be settled by the World Intellectual Properties organization (WIPO), Geneva, whose decision will be final.

### 9.3.6 Trade Related Investment Measures (TRIMS)

The TRIMS agreement brings into being a new investment regime in the financial market. It replaces all existing restrictions on foreign investors imposed in developing countries and stresses right of investment of funds by one country in another as a legal right. It empowers foreign investors or industries to start retaliatory measures against governments which impose restrictions. Time period is given to developing countries to implement TRIMS and exception is made in favour of countries with serious balance of payment problems.

### 9.3.7 Social Clauses

Inclusion of social clauses linking trade to standards of labour and environment which are binding on all member countries, gives WTO immense power to fix rates and parameters for all economic transactions. Under these clauses, a country can refuse to trade with another on the ground that it does not observe international labour standards, allows child labour and coercive labour, does not enforce minimum wages, permits discrimination in wages of men and women, and allows pollution and environment damage.

These clauses prevent developing countries from having trade advantages due to lower costs of labour and gain competitive advantage against firms in rich countries. This also does not take into account the unequal social and economic structures and barriers in countries, where uniform labour standards would take a long time to implement. These clauses not only militate against democratic norms and sovereign rights of countries to pursue goals of social justice and equality but also force out semi-skilled and unorganized workers from export industries and deprive them of livelihood.

### 9.3.8 Multilateral Agreement on Investment (MAI)

In continuation of its policy of liberalization and globalization in the financial sector, the WTO in a high level meeting at Seattle, USA in November 1999 concluded a Multilateral Agreement on Investment (MAI). Countries which enter into MAI will have to give free access to foreign funds and investments. MAI allows investing firms to retaliate and file a suit against a country

which discriminates in any way either by imposing a quota of domestic labour, keeping a local partner, or placing restrictions on areas like media.

Such clauses are a direct intervention in the sovereignty of a country without any respect for its values, culture, tradition and history. In fact, the 'Super State' system of the World Bank, IMF and WTO, and TNCs, reach for the resources and knowledge that developing countries have so far controlled and conserved. Conflicts over economic value of nature and knowledge have become reflections of globalized conflicts now.

### Check Your Progress 3

1. When and in what circumstances was WTO set up?  
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.....  
.....
2. What is the focal point of TRIPS clause?  
.....  
.....  
.....
3. Mention at least two measures suggested by WTO to be followed by all countries in agriculture.  
.....  
.....  
.....
4. How does TRIMS remove all restrictions on foreign investors in developing countries?  
.....  
.....  
.....

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## 9.4 An Evaluation of WTO Efforts

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The new era of global trade heralded on January, 1995 by the inauguration of WTO which dramatically changed the whole concept of trade. Global economy now is to be legislated by the WTO which is armed with the power to make legal judgements in international trade relations and enforce the implementation of the Uruguay Round agreements. It has in fact replaced the GATT and its primary objective is to ensure a free trade environment. However, looked closely, these institutions are imposing interests of a handful of TNCs in all economic aspects - irrespective of their shocking environmental and social impact especially in the developing countries. They not only intend to draw all domestic issues into global economy, they want to extend their control on all matters related to life - ethics, values, ecology, food, culture, knowledge, democracy - as trade commodities. It is a secretive organization with poor accountability and less openness. The structure of WTO is supposed to be like the UN General Assembly - one member one vote - but in five years of its existence there has not been a single vote taken. Instead,

decision is made by so called consensus, whereby smaller and less powerful nations are browbeaten into accepting the position already decided upon by strong members like the US.

Environmental crisis has made it amply clear that 'growth' in global economy has led to the destruction of nature's economy which is the only renewable source of environmental regeneration. This has also snatched from the people their source of sustenance economy which provided them food and fuel free of cost. When these goods would be turned into trade commodities it will destroy people's freedom as well as basic needs. More trade and more cash may mean less life: in nature through ecological destruction, and in society through denial of basic needs.

For example, the World Bank policy paper on trade liberalization for India's agriculture sector recommends creation of 'markets in tradeable water rights.' It argued that "if rights to the delivery of water can be freely bought and sold, farmers with new crops or in new areas will be able to obtain water provided they are willing to pay more than its value to existing users. And established users will take account of its sale value in deciding on what and how much to produce".

Such a measure in tradeable water rights will divert water from small farmers to large corporate 'super farms' and lead to water monopolies. Taking the logic of the market into account, tradeable rights have a tendency to be sold to the highest bidder. Consequently, the wealthier you are, the more power you will have over access of even such resources which are considered free gifts of nature. This will lead not only to misuse of resources and their overexploitation, it would also lead to their depletion. The commodification and privatization of land and water resources are based and promoted by international trade organizations on the flawed belief that prices equal value. To prevent ecological abuse of land and water, the people in the developing world, consequently, are asking for the opposite - the inalienable right to resources like water.

The two central impacts of GATT Uruguay Round and WTO are the removal of national barriers in trade flows and the introduction of hitherto domestic concerns like agriculture and intellectual property rights into the arena of international trade. Assessing the impact of domination of market forces in the Indian food sector, one must not be surprised to learn that due to this policy food prices increased by 63 percent between 1989 - 90 and 1993 - 94. This has led to a decline in per capita food consumption in the last three years. When as demanded by WTO, food is available only at world market prices, starvation soon will be the likely certainly for the majority of the poor.

The liberalization of agricultural exports have led to exports of cotton and yarn shooting the prices three times. This has resulted in large-scale unemployment of weavers. Likewise, foreign import of grains and millets with various hidden subsidies, have put local farmers at disadvantage. **Vandana Shiva**, an active champion of human rights, points out that food "security is destroyed by 'liberalization of both exports and imports.'"

#### **9.4.1 Evaluation of TRIPS**

An analysis of TRIPS Agreement, likewise, would reveal that it has brought for the first time into global trade the areas of ideas, knowledge and innovation. The clauses that refer to intellectual property rights (IPR) in the areas of bio-diversity and agriculture are of particular interest. The agreements covering IPRs and clauses supporting the patenting of life forms and processes are heavily weighted in favour of TNCs which will acquire exclusive marketing rights even in the areas of traditional knowledge of the developing countries. For example, if a TNC manages to obtain a patent on genetically transformed Haldi, Neem or Soyabean, it will own all forms of these for generations and all those using them would have to pay for their use.



In most of the developing societies, their patent laws and cultures forbid patenting of life forms because they cannot be owned and manufactured. The GATT and WTO will force us to give up our moral values, economic priorities and autonomy to a handful of Fortune 500 companies.

The GATT-TRIPS is, therefore, not about trade. It is politics through other means to build up a neo-colonial society in the developing world. Environmentalists and labour unions have opposed these moves and have criticized GATT because it destroys jobs and the environment. To placate them "trade-related" social clauses and "trade-related" environmental clauses were offered.

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## 9.5 AN ALTERNATIVE APPROACH TO WORLD TRADE

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Realizing the impact of the GATT/WTO policies, the active negotiators of the trade work group of Non Governmental Organizations drafted an *Alternative Treaty on Trade and Sustainable Development* in June 1997 at the Global NGO Forum in Rio de Janeiro. This viewpoint of World trade declares:

- a. International trade should be conducted with the objective of improving the well being of the people, whilst recognizing the need to promote socially just and ecologically sustainable development and prudent resource management.
- b. International trade should guarantee the fair distribution of wealth, the self-determination of people, and participatory democracy.
- c. Compensation, working conditions, land use, and exploitation of natural resources must be directed towards sustaining socially and ecologically balanced communities. Comparative advantage must not be pursued by exploiting people and nature in an inhuman and unsustainable way.
- d. Debt cancellation and the retrieval of national sovereignty based on democratic principles is indispensable to socially just and ecologically sustainable development.
- e. Improving terms of trade of developing countries, eliminating distortions caused by unfair trade practices and preserving the right to enact fair policies including health, other social and environmental standards are important.
- f. People have the right to full access to all scientific information, financial and independent technical assistance must be available to enable all the countries to meet minimum international health, other social and environmental standards.
- g. Conflicts between the provisions of international trade and environmental agreements must be settled on the basis of maximum protection to the environment.
- h. Trade in armaments should be prohibited.

When third world developing countries began to face difficulties on home front in their liberalization efforts, various international forums came forward to voice their concern on eroding human values and rights in the face of interventions by TNCs.

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## 9.6 GROWING POWERS OF TNCs

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Proponents of market capitalism and liberalism who claim that free market is the essential foundation of political democracy-a guarantor of the rights of the people against the abuse of State power, have replaced a known devil that the State was with an unknown and unpredictable monster of the market. Market is never a friend and is an undemocratic institution. Dominated by global mega-corporations, stronger than majority of States in economic power and armed with unfettered powers through GATT/WTO pose a serious threat to economic and political rights of people everywhere. With most fundamental of all human rights - the rights to a means of living



- literally the rights to live - and the right to participation in making the decisions that affects our lives, in the hands of the TNCs people of the developing world can very well visualize their future life. The growing unaccountable powers of these corporations, has naturally turned out to be a cause of concern for most developing nations.

It is an internationally recognized principle that economic rights and civil and political rights are universal, indivisible, interdependent and interrelated. With roots in a distant country, no particular love for host people and society and profit as their only motive, TNCs are going to let loose neo-colonialism of a different nature. They may seem to pay lip service to the UN Declaration on the Right to Development, Vienna Declaration and Programme of Action, Amnesty International's Human Rights Principles for Companies etc. and national and international institutions may talk tirelessly of efforts being taken to make business responsible to society and to respect human rights and social development, there is no binding force in these declarations.

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## 9.7 HUMAN RIGHTS STANDARDS

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UN Secretary General **Kofi Annan**, speaking at the Davos World Economic Forum in January 1999 called on TNCs to promote universal values in their dealings and to 'uphold human rights and decent labour and environmental standards directly by your own conduct of your own business' challenging business leaders to abide by nine principles derived from internationally recognized standards. These are:

### Human Rights

1. Business should support and respect the protection of internationally proclaimed human rights within their sphere of influence and
2. Make sure they are not complicit in human rights abuses.

### Labour

3. Business should uphold the freedom of association and the effective recognition of the right to collective bargaining;
4. The elimination of all forms of forced and compulsory labour;
5. The effective abolition of child labour; and
6. Eliminate discrimination in respect of employment and occupation.

### Environment

7. Business should support a precautionary approach to environmental challenges;
8. Undertake initiatives to promote greater environmental responsibility; and
9. Encourage the development and diffusion environmental friendly technologies.

But these standards are neither binding nor enforceable through a court of law. If an TNC violates it, nothing can be done. Human rights, therefore, are under constant threat of violation and there is no traditional institution to protect individual from the threats of business and trade. It is amply clear that through trade and trade policies World Bank-IMF-GATT have played a high level politics with the developing countries and their poor people. These international organizations have turned out to be the mouth pieces of the TNCs and have thrust unacceptable conditions upon the developing countries. It may be sometime later that they would be able to see through the whole game plan of these institutions.

## 9.8 INDIAN RESPONSE

Third World developing communities which have evolved, adapted and survived adversity for centuries of oppression, suppression and economic exploitation find themselves suddenly deprived of their natural strength to offset these new engines of growth. The anti-poor, anti-human rights posture of TNCs threaten individuals and communities in a manner that requires to redraft international policies to secure a minimum of social equality, gender justice, human rights and freedoms for their people. The degree to which each nation captures opportunities or copes with threats depends upon its capabilities: Such capabilities include:

- the nation's culture, attitudes and values;
- Its social cohesion;
- Its factor endowments;
- Its industrial organizations; and
- Its government leadership.

Global international trade is both an opportunity and a risk for countries like India and they have to show a cautious approach. The fledgling economies can be ruined, their environment destroyed their people embeggered. A nation's capabilities have, therefore, to be analysed not just in terms of the scope and intensity of each element noted above but also in terms of the interactive effect among these elements over time.

India has adopted a cautious approach to the global integration in trade and investment and has seen it as both an opportunity and a risk.

After having remained outside the global trade system for forty long years, India responded to the realities of international trade in 1990s. Under the structural adjustment policies of World Bank, India adopted a New Economic Policy in 1991 and took the following measures to open up to the call of globalization of trade:

- (i) opening all but six industries (in strategic sectors) to domestic and foreign investors.
- (ii) Reforming trade policies.
- (iii) Opening up capital market to foreign direct investments.
- (iv) Removing restrictions on hiring foreign experts etc.

India realises that the time has come to enter the world trade scenario because in trade there are no losers - everyone who plays the game wins. India joined the WTO since it was not a party to any trading block like NAFTA or EU. WTO membership has paved its access to world markets without having to negotiate with each of the 135 members separately. According to WTO requirements, India is concerned about child labour and environmental protection. With a large GDP, a great pool of scientists, engineers, business managers and skilled workers with large surplus horticultural production, India is determined to make the best use of the global trade opportunities.

### 9.8.1 Cautious to WTO measures

While availing of the opportunities presented by free market economy in global trade, India has not closed its eyes to the threats of fundamental freedoms, human rights and a positive role of the State in the welfare of the society. It has taken up the cudgels against the inequitable terms of trade imposed by WTO, TRIPS, TRIMS and social clauses. India is in the forefront of the developing countries preparing long-drawn negotiations for securing equitable terms of trade in the global market and fights for the rights of the poor, the unskilled, and all those whose rights and existence are threatened by the WTO policies. It has not abandoned its implementation of internal

programmes for achieving social justice, equity and balanced growth with in the country and vis-à-vis the developed world.

#### Check Your Progress 4

1. Mention at least two alternative measures suggested by Non Governmental organizations as against WTO suggestions.  
.....  
.....  
.....
2. What are the main capabilities upon which a nation responds to global threats and opportunities?  
.....  
.....  
.....
3. What important measures has India taken to adapt to the emerging demands of trade?  
.....  
.....  
.....

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## 9.9 LET US SUM UP

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1. The World trade subsequent to the Second World War, has integrated the markets of the world and given shape to a world market economy.
2. The recent trend in world trade not only includes trade in goods and services it also encompasses trade in financial capital, knowledge, technology and genetics.
3. The world trade is dominated by transnational corporations. They are the prime agents of the global economy. Fortune-500 group of MNCs dominate world trade.
4. The World Bank, International Monetary Fund (IMF), General Agreement on Trade and Tariff have played a major role in casting the global economy in the form of a free international trade zone.
5. The World Trade Organization, a baby of the GATT, has assumed a super state status and has begun to legislate world trade policies.
6. The policies and programmes of World Bank, IMF, GATT and WTO are favourable to TNCs which are concentrated in US and Europe and they threaten to penetrate areas which were not traditionally included in tradable zones.
7. GATT policies of TRIMS and TRIPS threaten the very survival options of marginal communities in developing countries whereas WTO policies on social clauses and MAI, challenge the sovereignty of the State in the developing countries.
8. Though measures are being taken to make business responsible to society, their profit motive is well known and their ability to buy the authorities make them unchallenged in the third world countries.
9. All countries of the third world including India are trying to counter the anti-people, anti-poor, anti-state policies of the World Bank, IMF and WTO.
10. India has on the one hand made structural adjustments in its economic policies and on the other, raised its voice against inequitable terms of trade being imposed by international agencies.

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## 9.10 KEY WORDS

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**Channelize:** routed, directed

**Grotesque:** distorted

**Fluid:** uncertain

**Phyto sanitary:**

**Subjugation:** Control

**Browbeaten:** Threaten

**Regeneration:** revivify

**Co modification and privatization of law:** to make public land private and make it available for buying and selling in the market like a commodity.

**Marketing rights:** right to buy & sell in a market for securing equitable terms of trade: to get a fair share in trade: and exchange of goods and services.

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## 9.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. The complex of economic, technological ecological and cultural structures emerging at global level are generally referred to as globalization.
2. Global economy is characterized not only by free trade in goods and services but even more by free movement of labour, capital, skill, knowledge and entrepreneurship.
3. USA, Japan, Germany, France, Italy, UK and Canada.

### Check Your Progress 2

1. Transnational corporations are the main actors in the global trade today.
2. Transnational corporations are large corporate bodies whose activities are spread across a number of States and they provide trade and services in various fields cutting across national boundaries.
3. Nearly 70 percent of the international trade is controlled by the Global 500 companies also known as Fortune-500 companies.
4. World Bank, International Monetary fund and General Agreement on Trade Tariff have boosted trade to global propitious.

### Check Your Progress 3

1. WTO was set up on January 1, 1995.
2. The focal point of TRIPS clauses is to regulate patenting of all products and not just their processes so that only goods of the patented companies are available in the world market.
3. Reduction in domestic subsidies and maintaining sanitary and phytosanitary standards in agricultural products.
4. TRIMS stresses rights of investment of funds by one country in another as a legal right and thus removes all barriers to foreign investments.

### Check Your Progress 4

1. (a) Improving terms of trade of developing countries, eliminating distortions caused by unfair trade practices and preserving the right to enact fair policies including health and other social and environmental standards.
2. Trade in armaments should be prohibited.
3. Such capabilities include:
  - i) The nations culture, attitudes and values,
  - ii) Its social cohesion,



- iii) Its factor endowments
  - iv) Its industrial organizations
  - v) Its government leadership and
  - vi) Peoples morale.
- 4.
- i) Opening its market to domestic and foreign investors.
  - ii) Reforming trade policies.
  - iii) Reducing farm subsidies etc.

## NOTES

## NOTES



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# **AECHRD**

**Human Rights-Society  
and Development**

Block

## **4**

### **RIGHT TO DEVELOPMENT AS A HUMAN RIGHT**

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## UNIT 10 Right to Development

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### Structure

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- 10.1 Introduction
- 10.2 Shifts In The Meaning Of Development
  - 10.2.1 Right to Development: A Background
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  - 10.4.6 Basic Rights and Duties
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- 10.6 Let Us Sum Up
- 10.7 Key Words
- 10.8 References
- 10.9 Answers to Check Your Progress Exercises

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### 10.0 OBJECTIVES

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This unit will give you

- what Development is all about,
- highlights of the changes in the meaning of Development over the decades,
- an idea of Right to Development,
- chronicle of the UN's role in promoting the Right to Development,
- a picture of the relationship between Human Rights and Right to Development,
- a brief list of various conferences on the Right to Development and explains how each of them sought to reinforce this Right.

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### 10.1 INTRODUCTION

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'Development' is a word that has many meanings. When you say, "I develop a feeling for someone or something", you mean that a feeling, favourable or unfavourable, is growing within you. You also use the word "development", when you say, "I see some new developments happening" about a situation. In this sense, you say that some new incidents are occurring that has an impact on the situation you are talking or thinking about. You give yet another meaning to development when you notice some cracks in your house's walls. Then you say "yes, I notice the walls are developing cracks."

Whatever it may be, "development" means a new thing that is happening around you. In other words, it denotes a movement from a given situation.

In Social Sciences however, development has a specific meaning. Let us remember that we talked of development as movement from the present state.

Professor Gunnar Myrdal, a Swedish thinker, notes after extensively studying developing countries:

"By **Development** I mean the movement upward of the entire social system, and I believe this is the only logically tenable definition". The famous educationist and social activist, **Ivan Illich** gives a correct picture of the peoples' understanding of **development** when he says, "the development paradigm is more easily repudiated by those of us who were adults on 10<sup>th</sup> January 1949. That day most of us came to know the term in its present meaning for the first time when President Truman announced his Point Four programme. Until then, we used the term 'development' to refer to species, real estate, and moves in chess: **only thereafter** to people, countries, and economic strategies. Since then we have been flooded by development theories". Since 1949, 'Development' came to be known as the donor, developed countries medicine to cure the recipient, developing countries poverty and economic backwardness. This Kit of medicines contained models and strategies of economic growth, foreign aid, foreign technology, training of personnel etc. Borrowing countries of the South thus walked into a debt trap since they found it difficult to repay and thus became politically and economically dependent on donor countries.

## 10.2 SHIFTS IN THE MEANING OF DEVELOPMENT

Most of the researches have confirmed that whatever be the meaning of Development, one primary objective in all of them is the concern for economic growth. The First UN Decade which began in 1961 almost equaled development with economic growth which was supposed to have "trickled down" to masses of people.

### Box 1

During that Decade, the world's total Gross National Product increased by \$1000 billion. About 80 percent of this increase went to countries who had per capita income of \$US1000 and above but with just 25 percent of the world population. Only 6 percent of the increase went to countries where per capita income was \$US200 or less but which has 60 percent of the world population.

It is from the 1970s onwards, therefore, (the second UN Decade) that the focus shifted to address non-economic, social and cultural issues of development which consisted in promoting education, health care, environmental safeguards, gender sensitivities, etc. Now development came to be seen as no less dependent on just and equitable distribution of goods and services within a society. But the results of this changed focus and strategies - if at all they have been sincerely followed - show a pathetic trend. According to the 1996 Human Development Report (HDR) published by the UNDP, between 1960 and 1991, the share of the richest 20 percent countries rose from 70 percent of the global income to 85 percent - while that of the poorest 20 percent declined from 2.3 percent to 1.4 percent. The ratio of the share of the world's richest and the poorest thus increased from 30:1 to 61:1 during this period. But if the richest 20 percent had 61 times more income in 1991 (than the poorest 20%) it has worsened further to 74 times in 1999, according to that year's HDR. In other words, this sad story of ever widening inequality among the world's rich and the poor is continuing unabated.

These figures only highlight the fact that development, as it had been understood, had gone wrong somewhere along the road. This is explained by the following:

- (a) Hierarchy or rich-poor differences became acute; and
- (b) Unevenness developed within the nations themselves.

Therefore, thinkers who became alerted by the growing disparities thought out alternatives to the question of development. "Should we still insist on maximisation of economic growth of the 1<sup>st</sup> UN Decade or should we emphasize the basic needs approach that became the important point of concern during the 2<sup>nd</sup> UN Decade"?

This was the major question that occupied the minds in the beginning of the 1980s.

### 10.2.1 Right to Development: A Background

Thinkers felt that quest for Development cannot be confined to only one group of countries, mostly developing ones and concern for Development must be shared by both the rich and the poor countries alike.

George Shepherd Jr. correctly explains thus: "The fundamental position of the Right to Development approach is that development must begin and end with a concern for the human condition and that this is a collective international responsibility."

Thus 'concern for human conditions' and 'a collective international responsibility' constitute the two pillars of this concept.

The credit for pioneering the articulation of the **Right to Development** belongs to the noted Senegalese jurist, **Prof. Keba M'Baye**, a former president of UN's Commission on Human Rights and a former judge of the International Court of Justice and currently, the President of Senegal's Supreme Court, Prof. M'Baye developed the concept of Right to Development first in his Strasbourg lecture in 1972 as he was analysing the importance of Articles 55 & 56 of the UN Charter and Articles 22 to 27 of the UDHR and various statutes of specialized agencies in which international cooperation and solidarity were stressed. Addressing the drafting committee of the African Charter of Human and People's Rights in 1979, he said:

"Our overall conception of human rights is marked by the **Right to Development** since it integrates all economic, social and cultural rights, and also civil and political rights. Development is first and foremost a **change of quality of life**".

In another context, **Prof. M'Baye** makes it clear that 'development' is the recognized prerogative of every individual and every people to enjoy in just measure the goods and services, thanks to the effort of solidarity of the members of the community.

This right has been clearly recognised by the ILO (International Labour Organisation), the UN Agency responsible for maintaining labour standards and preserving rights of the labourers throughout the world. In fact, the ILO has the distinction of first recognising the Right to Development. As early as 1944, the ILO Declaration at Philadelphia affirmed that "all human beings have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity: and, that "poverty anywhere constitutes a danger to prosperity everywhere".

This Declaration also called for "war against want within each nation and by continuous and concerted international efforts" and proclaimed that these principles applied fully to all peoples everywhere, in both independent and dependent territories.

Two important points may be noted from the **ILO Declaration**:

- (a) *Right to Development evolved with the right to self-determination as it applied to the colonies then and*



- (b) *Along with it, a realization emerged in the minds of the colonial people that the colonial exploiters have a responsibility to remedy them in future.*

### 10.2.2 The UN Charter

The UN Charter of 1945 that followed, clearly lays down the foundation for an **integral relationship between socio-economic development and human rights**. Article 55 requires that the UN should promote

- (a) higher standards of living and conditions of economic and social progress and development, nationally;
- (b) solutions to international economic, social health and related problems and international cooperation in cultural and educational matters;
- (c) universal respect for human rights and fundamental freedoms.

All the above objectives are to be fulfilled with “respect for the principles of equal rights and self-determination of the peoples”.

Through next Article 56, “all the members pledge themselves to take joint and separate action in cooperation with the Organization [UN] for the achievement of the purposes set forth in Article 55.”

#### Check your Progress 1

1. Who did extensive study of the problems of Development in developing countries?  
(a) Gunnar Myrdal      (b) MV Pylee (c) Keynes      (d) Schumpeter  
.....
2. What was the difference in perception towards Development between the first UN Decade (1961 - 1970) and the Second Decade (1971-1980)?  
.....  
.....  
.....
3. Say whether the following statements are True or False.  
(a) Collective international responsibility is one of the most important pillars of the Right to Development.  
.....  
(b) The H.O Declaration of 1944 at Philadelphia is based on the UN Charter.  
.....

What is the importance of Article 55 of the UN Charter?  
.....  
.....  
.....

---

## 10.3 INTERNATIONAL BILL OF RIGHTS

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The Universal Declaration of Human Rights 1948 makes a specific reference to 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."

As expressed in **Article 1** which is common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (both of them were adopted in 1966), the right to self-determination includes the right of all peoples to "freely pursue their economic, social and cultural development."

In 1969, the UN General Assembly adopted a *Declaration on Social Progress and Development*. Recognizing the linkage between the global issues of the day arising out of socio-economic development and the root causes of human rights violations which were becoming rampant, the UN Commission on Human Rights called in 1977 for a UN study of the international dimensions of the Economic Order.

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## 10.4 NEW INTERNATIONAL ECONOMIC ORDER (NIEO)

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As an alternative to the liberal international economic order that highlighted strategies for maximization of growth, the **New International Economic Order (NIEO)** was first launched at the first meeting of the UNCTAD in 1964. Seventy-seven non-aligned countries participated. This grouping came to be known as the Group of 77. The NIEO proposals contained in a resolution were finally accepted by the UN General Assembly in 1974. The policy proposals for a New International Economic Order *aimed to correct growing imbalances in world trade which went against the developing countries*. The call for NIEO was strengthened by a short-lived but spectacular success coming from the four-fold rise in oil prices announced by Organization for Petroleum Exporting Countries (OPEC) in 1973.

### 10.4.1 COCOYOC Declaration of 1974:

It was in the general context of this demand for a NIEO that a **rights-oriented approach to development** was taking shape in the form of COCOYOC Declaration (CD). The CD regards **satisfaction of the basic needs** (" food, shelter, clothing, health, education") as **primary and "any process of growth that does not lead to their fulfillment or even worse, disrupts them is a travesty of the idea of development"**. *For the, first time, the principle of 'development centred in man (human beings), was established.*

The COCOYOC Declaration said: "Development is also freedom of opinion and its dissemination..... There exists a deep-rooted social need to participate in the structuring of the bases of one's existence, and to play a part in structuring the future of the world. Above all, however, development also means the right to work, by which we do not mean earning one's living, but finding self-fulfillment in work, the right not to be alienated by production processes which use human beings as mere tools."

In the context of the Right to Development, two momentous developments took place after 1974. They were:

- (i) the **Declaration on the Right to Development** adopted by the General Assembly on 4 December 1986; and
- (ii) the **African Charter on Human and Peoples' Rights** adopted in the same year.

### 10.4.2 UN Declaration on the right to Development 1986

A quick look at the Declaration containing 8 articles reveals an important development which was in continuity with the economic thinking on 'human-centred development' referred earlier. This

development consists in the fact that now, **almost all state members** (The United States cast the negative vote and eight other European countries abstained) have **agreed that they have certain duties** regarding the **individual's and people's right to development**. **Human rights are now explicitly considered as an essential element of development and must therefore be respected by all States**. Article 4 enjoins on the States a duty to formulate international development policies though without making clear the content and the nature of that duty. However, Article 8 identifies some 'means to be employed' by each nation for realization of the Right to Development. Member states are required to guarantee

- (a) equality of opportunity for all to access basic resources and services,
- (b) ensure active participation of women in development-related decision-making.

**Right to Development** is *declaratory* in nature and therefore, *it cannot be used as a justiciable right* i.e., as a right for which legal claims can be made. This failure has however been sought to be covered by recourse to judicial interpretations of various legal norms in which the Right to Development has been invoked and/or referred to. Two such important cases which deserve mention relate to the Maori tribals of New Zealand and, another, to the fisher-folks of Kerala in India. These relate, incidentally, to fishing rights of the traditional communities. The question put to the Tribunal/Court concerned was: Can these people who have been catching fish over so many years, also claim the right of using modern technologies which will considerably raise quantity of their catch from the seas? In the case of the Maoris of New Zealand, the Waitangi Tribunal referred to the Right to Development as quoted in the following passage:

"The right to development is recognized in domestic and international law; in domestic law in *Simon Vs the Queen* (1985). For example, all people have a right to development is an emerging concept of international law following the Declaration on the Right to Development adopted on 4 December 1986 by 146 states (including New Zealand) in resolution 41/128 of the United Nations General Assembly ..... The Treaty (of Waitangi) guaranteed the Maori full protection of their fishing activities, including unrestricted rights to developing them along either or both customary or modern lines."

The Indian case of fishing by the Kerala fisherfolks came up in 1995 before the Supreme Court when some owners of mechanized trawlers challenged the Kerala Government's permission allowing the traditional fisherfolks to go for new technologies if that helped raise the quantity of fish more than what they used to do in the past with the help of their country boats. Though a direct reference to the Declaration on Right to Development is not there, the Court was clearly thinking in those lines when it said:

"We are also of the opinion that the Government of Kerala is perfectly justified in adopting the attitude that the public interest cannot be determined only by looking at the quantum of fish caught in a year. In other words, *production alone cannot be the basis for determining public interest*. The Government is perfectly justified in saying that it is under an obligation to protect the economic interest of the traditional fishermen and to ensure that they are not deprived of their slender means of livelihood. Whether one calls it distributive justice or development with a human face, the ultimate truth is that *object of all development is the human being*. There can be no development for the sake of development. **Priorities ought not to be inverted nor the true Perspective lost in the quest for more production**"

#### 10.4.3 African charter of human and people's rights

In the sphere of human rights, you may have already noticed that seven good intentions are

spoken out but not many of them have been applied. These are not binding on the member states. However the *only binding international human rights treaty which has recognized the Right to Development is the African Charter of Human and People's Rights (ACHPR)*. Article 22 of the ACHPR reads:

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the Right to Development.

#### 10.4.4 Contribution to right to development: Two streams

Before we come to the debatable question of the duties of the State to ensure exercise of the Right to Development, it is necessary also to understand that two streams contributed to enriching the contents and raising the practical importance of this right.

The *First stream* combined several developments in various sectors of living which affect human beings. All these developments which had their small beginnings during 1970s and 1980s finally were streamlined in the 1990s under United Nation's initiatives (after the end of cold war rivalries with the collapse of the Soviet Union).

The *Second Stream* contributed to the deepening of the contents of the Right to Development to remove any hurdles for their realization and to create international environment for global cooperation. This is to help the states to perform their duties.

The following initiatives were taken under the first stream:

- In 1992, the UN conference on Environment and Development (the Earth Summit) took place at Rio de Janeiro that highlighted the *importance of sustainable development*. The latter meant that the present level of consumption should not *become a burden on the future generations*,
- In 1993, the second World Conference on Human Rights took place at Vienna. It registered a spectacular success in achieving global consensus on vital issues connecting human rights with development. Three salient gains from Vienna Declaration are:
  - (a) Recognition of interdependence and indivisibility of human rights. It meant human rights have no hierarchy, i.e. one set of rights cannot have preference over another set. *Every Right has an equal importance and value.*
  - (b) Lack of development cannot be made a ground for not observing human rights in a particular country.
  - (c) Development, democracy and human rights are henceforth to be treated as integrally connected to each other in both internal and external policies of the country.
- In 1994, the UN held in Cairo an *International Conference on Population and Development* which adopted four "guiding principles", the first of which was Human Rights.
- In 1995, the UN held a summit-level meeting in Copenhagen on "major social development dilemmas facing societies the world over as they approach the 21<sup>st</sup> century". It identified three problems: poverty, unemployment and social dislocations. Among *ten commitments made by the world leaders*, one was to *"promote social integration based on the enhancement and protection of all human rights."*



- *The Fourth World Conference on Women held in Beijing in 1995*, adopted a **Platform of Action** emphasizing women's rights as human rights in the context of development.
- *The Second International Conference on Human Settlement (Habitat II) held in 1996 at Istanbul* focused on the issue of **housing** which is considered a **human right** in almost all the countries in the developing world.
- A major milestone was the **Global Consultation on the Right to Development as a Human Right** which was convened in Geneva in January 1990. Participants included representatives from more than fifty governments, forty NGOs, twenty experts and a dozen UN programmes and agencies. The central contribution of this global consultation lay in its innovative focus on people's participation for "identifying appropriate goals and criteria" for the development process. **The right to development was seen as a process of empowering individuals and groups within a state by giving them a standing to participate in "international economic cooperation"**. It specifically asked the UN (a) to take the lead in implementation of the Right to Development and to (b) ensure all UN activities and programmes conform to the Declaration.

Lead was immediately taken by the **UN Development Programme (UNDP)** which issued the **First Human Development Report (HDR)** the same year i.e. 1990. Even since then, the HDRs has been an annual feature. The 1993 HDR re-affirmed that **"people must have constant access to decision-making and power"**. Participation in this sense is an **essential element of human development**. On the basis of a global survey, it concluded, *"Despite recent changes favouring market economics, multi-party democracies and grass-roots activities, 90 percent of the world's people still have no say in the political, social and cultural factors that shape their lives. Ethnic minorities, women, the poor, rural dwellers and the disabled have very little power to change their lives."*

#### 10.4.5 Basic rights and right to development

Right to Development critically rests on a right of equal opportunity to be given to vast masses of people living in misery and destitution. 600 million people in the least developed countries have only 0.3 percent share in the world trade. This share today became half of what it was two decades also. Further, the share of the developed countries for official development assistance to developing countries was fixed at 0.7% of their GNP (by the General Assembly in 1970). In 1980, this share was actually 0.35% which is virtually half of the expected and far less than 0.51% which was the figure for 1960, two decades ago. Concretely, this means, the developed countries owe an obligation to the people of the under-developed countries if effective realization of human rights is made possible as per Article 28 of the UDHR. Thus, they have a duty to protect "the basic rights" of human beings in the developing countries. Henry Shue defines "basic rights" as those which *"specify the line beneath which no one is to be allowed to sink"*. Just as individuals have a right not to be tortured, they also have a right not to be denied subsistence, which, at the minimum, should include adequate food, housing, health care and a livelihood as spelt out in the International Covenant on Economic Social and Cultural Rights.

#### 10.4.6 Basic rights and duties

**Basic Rights** refer to those rights which are critical for human survival.

Shue's Basic Rights notion contends, therefore, that every one of them has three correlative duties :

1. duties to respect
2. duties to protect from deprivation, and
3. duties to aid for performance of these

An important point to note is that performance of these duties applies to both for developed and developing countries for both the privileged sections and the less fortunate ones in a national society.

Realization of the Right to Development depends on the duties the State were required to perform and the leadership role to be provided by the organizations and agencies of the UN system.

So far as specific measures are concerned, the UN system's performance is far ahead that of the States. Though it has taken some time, one easily notices steady advances have been made in an effort to make the Right to Development work.

### Check Your Progress 2

1. Why was the call for a New International Economic order (NIEO) given?  
.....  
.....
2. Who were the G-77 countries?  
.....  
.....
3. State whether the following statements are True or False?  
(a) Right to Development is a justiciable right.  
.....  
(b) International legal institutions are recognising Right to Development in their judgements.  
.....  
(c) The 1992 UN Conference on Environment and Development was known as the Earth Summit.  
.....
4. What is so important about the African Charter of Human and People's Rights?  
.....  
.....  
.....
5. Fill in the Blanks:  
(a) The 1994 Cairo Conference on Population and Development adopted.....  
(b) .....,democracy and.....are integrally connected to each other.  
(c) .....conference in 1995 adopted a Platform of Action that stressed understanding of women's rights as being an integral part of Human Rights.  
(d) The Right to Development as a Human Right was advocated at the..... January 1990.

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## 10.5 INSTITUTIONAL REAFFIRMATIONS

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As far back as 1981, the Commission on Human Rights had established a working group to study the scope and content of the Right to Development. This was before the passing of the Declaration on the Right to Development in 1986. In 1993, the Commission decided to establish for a three year period, a second working group to "formulate measures to eliminate obstacles

to the implementation of the Declaration". The **group's recommendations in 1995** noted that Right to Development requires long-term strategy in which the States must ensure necessary conditions for its effective realization. This working group offered a new definition of the Right to Development. Development has become multi-faceted in definition. That it is no more confined to economic growth has become the standard perception as early as 1994 when then the Secretary General of the UN presented to the General Assembly (on November 11, 1994) what are famous today as **Agenda for Development**. Highlights of this Agenda are:

- (i) "Development is a fundamental human right" and
- (ii) It is closely linked to five major dimensions identified as "peace, the economy, the environment, society and democracy".

The **third working group** on the Right to Development presented its report to the UN Commission on Human Rights in November 1997. The Report outlines a global strategy for the promotion and implementation of the Right to Development. In its *recommendations* it called upon the *civil society, the State and the UN system to formulate concrete measures for positive implementation of the Right to Development*. Taking the lead, again, UNDP came out with its policy document in 1998, titled: **Integrating Human Rights with Sustainable Human Development**.

The 1990s have witnessed a spurt of UN activities. Credit for these belongs, in no small measure, to the UN High Commissioner for Human Rights. Soon after the creation of the office and his appointment, the first High Commissioner Mr. Jose Ayala-Lasso in his **Address to the 52<sup>nd</sup> Commission on Human Rights in April 1996** pointedly stated that the mandate of the Human Rights Commissioner extended to the right of development and that accordingly he had "endeavored to respond to this duty giving the implementation of the right to development practical and tangible substance and that the emerging consensus on right to development is an important example of how to build on the spirit of Vienna and create a truly universal approach to human rights." Mary Robinson, his successor, also followed it up.

The same is true of the succeeding Secretaries General of the UN. Prof. Boutros Boutros Ghali declared it as 'a fundamental human right. Mr. Kofi Annan, his successor is emphatic when he said: "The right to development is a measure of respect for all other human rights". In the classification of human rights under contemporary international law, the Right to Development would be a **"third generation right and a group right"**. But if it has moved to the forefront of the international agenda, much of this credit clearly belongs to the UN system and its prime-movers like the Secretary General and the UN High Commissioner for Human Rights among other agencies.

### Check Your Progress 3

1. How many working groups had been appointed by the commission on Human Rights till 1997?  
.....
2. What were the recommendations of the working groups set up by the Commission on Human Rights?  
.....
3. Does Right to Development include exclusive emphasis on economic growth?  
.....

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## 10.6 LET US SUM UP

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We had seen how the term Development has acquired different meanings over the decades. In the beginning, Development meant only economic growth and prosperity. But with only one set of countries, which was mostly the Colonial Powers and the USA that were already rich cornering most of the benefits, the developing world consisting of mostly ex-colonies that became members of the UN in the 1950s and 60s felt threatened by the one-sided growth. Therefore, they used their newly got influence in the UN forums and demanded equality first. They supported the cause of independence and freedom of the remaining colonies as they believed in acquiring the benefits of political freedom in order to gain equitable distribution of world's wealth. The UN's role in assisting the developing countries to bring about a new equitable world order stands as a milestone in the history of the struggle for the Right to Development. Largely due to the UN's efforts, the Right to Development has been considered to be a fundamental part of Human Rights. The calls for a New International Economic Order (NIEO) and a New International Information Order have not been for mere sloganeering. Developing Countries have made these as underlying principles both in their bilateral negotiations and multilateral discussions with the countries of the 'North', i.e. the Developed Countries. Gaining momentum in the 1980s, it took on various forms, such as the North-South Dialogue, and negotiations for creating an equitable world trade order. Further recently, with many of the Developing Countries joining in a call against the Nuclear Weapon Countries dumping nuclear wastes in their respective territorial spaces, it may be said that the beginning of the twenty first century will see the Developing Countries as a forum, acquire more powers in their relationship with the Developed Countries. In this process, the Right to Development acquired a primary and meaningful place in the spectrum of Human Rights.

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## 10.7 KEY WORDS

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- (1) **Civil Society:** Organized social groupings composed of individuals and their communities, bound by some common interests. They are not constituted by the State / government.
- (2) **Group Right:** Human Right of a group of people, i.e., a community of people. It means, in other words, your Right as a Human being is not the responsibility of you alone, but people or society around you will also fight jointly to safeguard your Right.
- (3) **UN System:** Institutions or Agencies or Programmes established by the UN in accordance with the UN's guiding principles.

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## 10.8 REFERENCES

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Mahbub ul Hag: Reflections on Human Development (OXFORD) 1995.

Mel Gurtov: Global Politics in the Human Interest (Lynne Rienner, London) 1999.

UNDP: Integrating Human Rights with Sustainable Human Development January 1998.



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## 10.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. Gunnar Myrdal.
2. The First UN Decade (1960s) equated economic growth with economic development, while the Second Decade (1970s) saw Development as not only based on economic factors but also on non-economic ones such as social and cultural.
3. (a) True. (b) False.
4. Article.55 enjoins the UN to promote higher standards of living and economic conditions of progress & development and to maintain universal respect for human rights and fundamental freedoms.

### Check Your Progress 2

1. The Call for a New International Economic Order was given to check the imbalances and inequalities caused in international trade due to the operation of a liberalised economic order where economic growth was preferred to socio-economic justice.
2. The G-77 were a group of Developed Countries primarily non-aligned that demanded equitable distribution of world's wealth among all the countries.
3. (a) False. (b) True. (c) True.
4. It is the only international Human Rights treaty that has recognised the Right to Development and has placed the responsibility of protection of the Peoples' Rights on the governments of the signatory States.
5. (a) Four guiding principles.  
(b) Development, Human Rights.  
(c) Beijing 4<sup>th</sup> World Conference on Women.  
(d) Global Consultation in Geneva.

### Check Your Progress 3

1. To study the scope and content of the Right to Development, to eliminate obstacles that hinder the implementation of the declaration on the Right to Development, help the States to devise long-term strategies for effective achievement.
2. Yes, but the economic growth has come to be understood as that which creates an equitable distribution of wealth among the countries and peoples all over the world, to stop exploitation by the rich countries. Economic growth has become linked to the maintenance of environment, and strengthening of democracy and peace.
3. Three working groups:  
The first group appointed in 1981.  
Second group appointed in 1993.  
Third group appointed in 1997.

# UNIT 11 RIGHT TO FOOD, HEALTH AND SHELTER

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## Structure

- 11.0 Objectives
- 11.1 Introduction
- 11.2 The Right to Food
- 11.3 The Right to Health
- 11.4 The Right to Shelter
- 11.5 Let Us Sum Up
- 11.6 Key Words
- 11.7 Some Useful Books
- 11.8 Answers to Check Your Progress Exercises

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## 11.0 OBJECTIVES

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Human rights are not entirely synonymous with political rights and civil liberties. The modern concept of rights also incorporates the basic right to a fulfilled life that allows individuals, families and communities to realise their full potential and capabilities. Thus economic rights are an integral component of the general rubric of rights. Moreover, it is not always possible or even desirable to partition the notion of development into economic, political and social development. The previous unit introduced you to the right to development as a human right. The present unit takes a step in a same direction and discusses the right to some basic needs like food, health and shelter.

After going through the unit you should be able to:

- elaborate on the concept of rights,
- identify the state as principally charged with the provision of human rights,
- discuss the right to food as a basic human right and the concept of food security,
- examine the rationale behind the right to health and its implication,
- discuss the right to shelter and adequate housing, and
- describe the role of the United Nations in formulating guidelines to deal with these issues at the national and international levels.

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## 11.1 INTRODUCTION

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The traditional approach to a study of rights has been in terms of individual liberty. When it is said that someone has rights, it implies that he/she has a certain zone of liberty and privacy that no one has the authority to transgress or snatch away. At the societal level, this naturally gets translated into the concept of civil liberties. The institution and agency under scrutiny, naturally, is the state. It is whether the civil society has liberties viz.-a vis. the state. Of course, one member of the civil society could infringe on the right of another, but then it is a matter of general law. Thus, social scientists have looked at human rights in terms of their being guaranteed, and their possible violation by the state.

It is possible that some people or groups are simply denied rights, to begin with, in tune with the prevalent value system of the society or some dominant group(s) in the society, and this may

be sought to be legitimised. Apartheid, as was practised in South Africa, is an example.

Although any libertarian value system should necessarily also involve an egalitarian credo, since to argue for liberty is to argue for *equal* liberty for *all*, it has sometimes been the case that individuals or states have professed a libertarian credo, while astonishingly displaying practices which can, under any reasonable definition, be called *inegalitarian*. The USA in the 1950's and 1960's, where Blacks were routinely discriminated against in education and employment as well as being segregated in schools, restaurants and buses, and in housing, provides an example.

It becomes necessary, therefore, to combine liberty and equality, at least by the state. Thus, one of the fundamental rights guaranteed by the Indian Constitution is the right to equality. In the eyes of the law and the State, all are equal. This is one of the basic underpinnings of a democracy. Liberty and fraternity sit well only with equality. It is of important to ask, when one is discussing equality in general, as Amartya Sen insists, "**equality of what?**" and specify the relevant space in which one is discussing equality. Moreover, which rights ought to be guaranteed can be a matter of dispute. The Indian constitution initially guaranteed a fundamental right to property but this was later taken away.

In the above discussion, the role of the state was taken to be a protective one: the issue is whether the state protects individual and civil liberties. But just as liberty has two aspects, negative and positive, similarly the role of the state goes beyond a protective one to a promotional one. Once it is realised that freedom does not simply mean freedom from something but also means opportunities, the focus of attention becomes the domain of opportunities that people have to grow and develop and to meet their needs and to realise their capabilities. This is a fruitful way to look at the concept of development—in terms of opportunities, functionings and capabilities. This has been rigorously as well as passionately been argued by Amartya Sen who has urged the adoption of a capability-based as against a commodity-centred or utilitarian view. Looking at the concept of freedom in this manner, the notion of rights takes the form of right to something. This 'something' in our case is basic human needs. In this unit, we shall discuss the right to food, to health and to shelter.

**Human rights need to be made the foundation of a New World Order in the era of globalisation. They also need to be made the bedrock on which a new sustainable society is based.** The idea of human rights emerged in a coherent form after the second world war and a coherent articulation could be given by the time the World Conference on Human Rights was held in Vienna in 1993. The historical starting point of human rights has been oppression by state authorities. Sometimes this oppression has been direct; sometimes it has taken place with the connivance of powerful private groups and interests. Now along with oppression deprivation has also been made a part of the concept of human rights. This is especially true in the case of economic rights. Here deprivation can be used in two senses—being already in a state of deprivation or being deprived of something that the person earlier had. In this latter sense, deprivation becomes part of oppression. In the former sense, deprivation can have reasons other than oppression. But if the full potential of the person is not allowed to flower, if the person fails to realise his/her capabilities, it is deprivation in the sense of not being allowed entitlements or optimal human potential. In the sense of oppression, human rights seek to determine levels of basic existential thresholds, so that pushing people below these levels constitutes oppression and hence human rights violation. It is also important to be careful that an ideological cloak is not put over oppression and somehow depict it as 'normal'. These thresholds can be determined by invoking the three principles of security, identity and participation. Security means personal security, an access to a secure livelihood, and a claim to privacy; identity implies one's cultural and social identity is protected; and participation involves being allowed to participate in the political life of one's community, society or state.

**Human rights** are not merely matters of ethics. They primarily involve the **obligation** of the **state**. The basic fact is that the duty-holders under human rights are states and the community of states. Human rights largely deal with oppression by the state. Human rights endow individuals with a legitimate claim against the state to enjoy an existential status with proper dignity. The primary thrust of human rights is on the empowerment of society, particularly the most vulnerable groups in society, to lay legitimate claims to the institution of the state for a life with dignity and freedom and resources.

Although the right to food health and shelter and the right to development in general is closely tied to the basic needs approach, the rights based approach goes further than the basic needs approach in that it injects an element of accountability. The government is held to be responsible for providing and promoting the right of people to these basic needs as well as ensuring that these rights are not infringed upon. In the subsequent sections, we spell what all this implies and entails.

Before we get down to a discussion of the right to food, health and shelter, however, let us discuss a little about economic rights in general. Like other human rights, **economic rights are expression of human dignity, which is common to all of humanity**. Since we should look at all aspects of rights in totality, the approach to economic rights should be no different from that to other rights.

As mentioned above economic rights should not be equated simply with the basic needs approach, which is a mere statement of policy, and involves some transfers by the state.

Focussing on economic rights involves going beyond "development", since that term, if interpreted in a particular way, can lead thousands of people to a sorry plight, through disenfranchisement, dislocation and deprivation. The development process has in several cases led to over-consumption of exhaustible resources, devastation of nature, and dislocation of marginal people. It has led to disparity in the standards of living of the countries of the North and those of the South, and within countries, especially of the South.

It is partly to address these issues that the concept of sustainable development was developed, but the concept of economic rights goes beyond this as well. Its aim is to help create an international political and legal framework to ensure that the path of sustainable development is followed and basic needs met. However, it must be recognised that there is no international law for addressing the malfunctioning of global governance.

Since it is now recognised that economic rights have an international dimension, both because they are thought to be universally applicable, and because actions in countries of the North have an impact in other countries of the North as well as countries of the South, policies have been suggested for economies of the developed countries as well as those of developing countries to help ensure that human rights are met. Some of these are:

- Ensuring that industrial production in developed countries is sustainable in nature. This would entail that rampant exploitation of nature be curtailed, energy resources are conserved and fertility of the soil be maintained.
- Ensuring women's rights are protected and women empowered.
- Introduction and promotion of technologies which respect the rights, economic, social and cultural, of poor people.
- Introduction of a global system of economic security.

It must be appreciated that economic exploitation and oppression cannot be ended merely by economic and material growth. Moreover, the demands of globalisation and the need for sustainable development will mean that international agreements and institutions will play a much larger role in the future. Human Rights NGOs, too, have a lot to contribute in this regard.



A basic point about economic rights needs to be always kept in mind. Normally, while talking about rights in general, we speak of human rights *violation*. In other words, people have rights which are taken away – here the state should be in the dock. But in the case of economic rights, rights are in the sense of being allowed to realise their capabilities. The state should ensure people's entitlement to various goods and services, which meet basic needs. The state should provide these goods and services. Here the distinction between protective and promotional roles that we talked of earlier becomes important.

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## 11.2 THE RIGHT TO FOOD

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Like other components of human rights, the right to food has its underpinnings in, and derives its force, content as well as implementation from the Universal Declaration of Human Rights (UDHR) which was adopted by the United Nations General Assembly in 1948, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. Article 25(1) of the UDHR states that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services...”. Under ICESCR Article 11, states “recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...”. Moreover, the state parties to the covenant recognise the fundamental right of everyone to be free from hunger, and list the steps to be taken individually and through international co-operation to end hunger. These steps are:

- “to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources”; and
- “Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need”.

Thus the important points spelt out are to do with *increasing supply of food* through increased production by making use of scientific techniques, and also using principles of nutrition.

In India a paradoxical situation has been the production of a high level of food but very poor access to that food by a large section of the population. This is the situation obtaining in many developing countries as well. Ever since the Green Revolution in India, food production has more than doubled, but a growing number of people are unable to meet their basic food requirements. Adding to the problem is a huge and growing income disparities and rising prices of food-grains. About 63 per cent of children below the age of five suffer from malnutrition. In India the main initiatives of the state to provide cheap and adequate food to the people have been the Public Distribution System, anti-poverty programmes and employment generation programmes which pay at least a part of the wages in the form of food-grains. There are a few other nutrition schemes, particularly for children, such as the mid-day meal scheme or the Integrated Child Development Scheme. A large vulnerable group, which is poor and likely to be unable to meet its entire food needs, is that of workers in agriculture. Landless labourers, small and marginal farmers and small peasants often face underemployment or fluctuating incomes, or receive wages which are below the legally stipulated minimum levels.

Per capita availability of food-grains has also gone up over the years, but in the absence of food security, a big proportion of the people still lack access to food, since they have low purchasing power. If we take per capita availability of cereals, it was 384.1 grams per day in 1960, which went up to 4003.1 in 1970, to 415.6 in 1985, to 453.3 in 1990 and to 436.4 in 1994. For pulses,

was 65.5 grams per day in 1960. Subsequently, it has suffered, going down to 51.9 in 1970, to a low of 30.9 in 1980, recovering to 38.4 and 41.1 in 1985 and 1990 respectively, again going down to 37.8 in 1994. Availability of cereals and pulses is important because nutritionists contend that in Indian conditions and with Indian food habits, a diet with adequate cereals and pulses is sufficient to meet protein-energy requirements, with the proteins of good quality.

Has the Green Revolution been successful in meeting the food requirements of the people? The government, the media and a large section of academics would have us believe so. The usual image about the Green Revolution is that it transformed India from having a ship-to-mouth existence to becoming a breadbasket. It focussed on the impression that distress imports of food-grains from developed countries, particularly the USA. However, food-grains output continued to be high, till the mid- seventies.

The Green Revolution is based on high yielding varieties of seed, particularly in wheat. But, if we look at actual data for production, we find that while the compound annual rate of growth of food-grains over the period 1949-50 to 1964-65 was 2.98 per cent per annum, it declined to 2.4 per cent per annum over the period 1967-68 to 1977-78. It is true that the rate of growth of production of wheat increased from 3.07 per cent per annum in the period 1949-50 to 1964-65 to 5.73 per cent in the period 1967-68 to 1977-78. However, the rate for rice fell from 3.37 per cent to 2.21 per cent, and that for pulses fell from 1.62 per cent to 0.20 per cent. The story was the same in the case of non-food-grains as well which fell from 3.65 per cent to 2.70 per cent. For all crops (food-grains and non-food-grains combined), the figures are 3.20 per cent and 2.50 per cent respectively.

The figures for yield tell an interesting story. While the increase in yield of wheat was at the rate of 1.24 per cent per annum in the period 1949-50 to 1964-65 and went up to 2.53 per cent in the period 1967-68 to 1977-78, that for rice *declined* from 2.09 per cent to 1.46 per cent in the two periods respectively. Thus the success of the Green Revolution in terms of increase in yield was limited to the case of wheat. Not only this. At the very time that farmers growing wheat were witnessing a rather dramatic spurt in yield rates, those growing rice saw the growth in yield fall. Even though, the figures for pulses show a rise from 0.24 per cent to 0.42 per cent, it is a reflection of the weightage of rice in the total basket of food-grains that figures for food-grains as a whole showed a decline from 1.61 per cent to 1.53 per cent. The post Green Revolution period does not seem to have contributed much to India's food security.

The Green Revolution has had other effects as well. It has increased economic inequality among farmers, nay even accentuated existing inequalities, since only large farmers were in a position to take advantage of the Green Revolution. It involved purchased inputs of the seeds, of nitrogen, potassium and phosphorus based fertilisers, pesticides, and required large tractors and harvesters, threshers. Naturally this increased the dependence of farmers on the market. The smaller farmers were adversely affected. Those farmers who were unable to repay loans were often caught in a debt trap.

The Green Revolution has had serious harmful effects on the environment as well. It has led to worsening of the soil quality and reduce the water content.

There are fears that the adoption of the process of liberalisation, certain sections of the people will be more vulnerable to hunger and deprivation, both because declining availability of food-grains and the shifting of cultivation to commercial crops for exports under the impact of globalisation.

Two factors assume importance here: food security and agrarian reform, that is, reform in the

production and cultivation process in agriculture.

Over the last several years, food production as well as exports have increased, but the rate of rise in food production lags behind that of population.

### Check Your Progress 1

1. What do you understand by the concept of 'right to food'?  
.....  
.....  
.....
2. Try to provide an explanation for the paradox of high production levels of food-grains with low availability in India.  
.....  
.....  
.....

## 11.3 THE RIGHT TO HEALTH

As mentioned in the previous section, Article 25 of the UDHR asserts the right that everyone has to a standard of living adequate for the health and well-being of themselves and their families including, among others, medical care. Notice carefully that the right is to a *standard of living*, and not necessarily directly to health care. This means that peoples' entitlement to health care is mainly in terms of incomes that enable people to have access to such care. Thus, it would appear that the State is not directly charged with providing adequate health care to the people.

With health care, the problem is that even if people may be thought to be able to afford it, it still cannot be left entirely to the market. The reason is that 'health care', particularly curative services, differs as a commodity from other goods in several ways:

1. People do not get utility from health care, that is, they do want health care for its own sake but to remove the disutility of ill-health.
2. People are uncertain about the quality of the health care that they receive. Health care is a good whose quality can be judged neither through inspection nor through experience.
3. People are uncertain as to *when* they are going to need medical care, as also regarding the *effect* that the medical care is having on them.
4. People often do not know the amount of medical care that they need. They are dependent on their doctors to tell them about the amount and duration of treatment and hence the doctor, as suppliers in the market for medical care, can induce demand for care.

Although treatment aspects of health care is often in the private sector, the state still has an important role to play in prevention and control of diseases and particularly in public health services like immunisation programmes.

Other than the UDHR there are several other declarations which have a bearing on the right to health. For instance, the Declaration of the Rights of the Child, proclaimed on 29 November 1959 states (in its Principle 4) that children shall enjoy the benefits of social security, and shall be entitled to grow in health. For this, the declaration stressed that special care should be given to



the child and her mother, including adequate pre-natal and post-natal care. It further stated that the child shall have right to adequate nutrition, housing, and medical facilities. The ICESCR, mentioned in the section on the right to food, in its Article 12 recognises everyone's right to the enjoyment of the highest attainable standard of physical and mental health. It laid emphasis on four main areas: (a) healthy development of children, and the reduction of still-birth rate and infant mortality rate; (b) improvement in environmental and industrial hygiene; (c) prevention, control and treatment of epidemic and other diseases; and (d) assurance of medical services and attention to all if they fall sick.

A very important Declaration was adopted by the International Conference of Primary Health Care, convened at Alma-Ata in the erstwhile USSR from 6 to 12 September 1978. This conference was jointly sponsored by the World Health Organisation and the United Nations Children's Fund. This Declaration was endorsed by the United Nations General Assembly on 29 November 1979. Broadly the declaration stressed as priority the achievement of health for all by 2000.

What were the main points contained in the Declaration? The declaration was remarkable for not only providing a definition of health and spelling out the components of primary health care but also for commenting on the factors influencing health status, and on items on which a great deal was being spent rather than on health.

The situation with respect to health on the eve of independence was not very bright. Of every 1000 children, 162 died before the age of one. For every 1000 live births, twenty mothers died. There was one doctor for every 6000 persons; one nurse for every 4300 persons; and one midwife for every 6000 persons.

After independence, the recommendations of the Health Survey and Development Committee (called Bhore committee), which was set up by the colonial government in 1946, as well as that of the Sokhey Committee, formed the basis of the health policy of the government. The basis of the policy prescription was the envisaging of the setting up of primary health centres, of tackling communicable diseases, and from the 1960s onwards, a well structured population policy. The salient features of the health policy of India have been:

- Establishing primary health centres (PHCs) since 1952,
- Emphasis on population control from the mid 1960s,
- Launching of sanitation and drinking water supply programmes since the fifth Five-Year Plan,
- Launching of the Integrated Child Development Services for pregnant and lactating mothers and pre-school children since 1975, and
- Launching a package of minimum needs programme since the 1970s.

The National Health Policy was adopted in 1982.

In a verdict in 1996, the Supreme Court in India declared that basic health care is a fundamental right of the people. It also ruled that government hospitals cannot deny treatment to patients on grounds of unavailability of resources like beds, and if refused, the patient is entitled to compensation. Article 21 of the Constitution guarantees every citizen the right to a life with dignity, and hence it is the duty of the state to safeguard the right to life of every citizen.



## Check Your Progress 2

1. Give reasons why health-care cannot be left entirely to market forces.

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2. Give the salient features of the health policy in India.

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## 11.4 THE RIGHT TO SHELTER

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The right to shelter and adequate housing is a fundamental economic right that individuals are entitled to. Inadequate housing, other than signifying a basic deprivation, also leads, in several cases, to health problems. Work productivity, and consequently, economic standard, can suffer. The situation acquires especial poignancy when we realise that in this era of globalisation, when the world is described as a global village, more than a billion people are without adequate shelter. Of these, about a hundred million are without any shelter. Most of these are poor and indigent people. Added to these are migrants and refugees who are victims of wars or civil wars. There are fears that the very process of globalisation itself may contribute to the exacerbation of the problem. It is a burning problem crying to be addressed.

National governments as well as the United Nations have been seized of the problem for long. In Article 25 of the UDHR mentioned several times in the unit, the right to an adequate standard of living is taken to include the right to adequate housing.

On 11 June, 1976, HABITAT, the United Nations Conference On Human Settlements, convened in Vancouver, Canada, from 31 May to 11 June, adopted what came to be known as the **Vancouver Declaration** on human settlements. This declaration had the mandate to disseminate knowledge and ideas, share experiences, and stimulate innovation in the field of human settlements; to formulate and recommend for an international policy in this area to help national governments; and to develop appropriate financial systems and institutions. In 1980, the General Assembly of the United Nations expressed the need to devote an international year to the problems of the homeless and those without adequate shelter. In 1982, it decided to name 1987 as the International Year of Shelter for the Homeless. It was done because it was felt that the international community needed to be sensitised about the problems of the homeless people in the urban and rural areas of developing countries. For the year 1987, it was thought that by the end of the year, the shelter and surroundings of some of the indigent and by the year 2000 for all such people. This hope seems to have been belied. The United Nations Centre for Human Settlements organised activities all over the world in 1987. These activities had the objectives of securing a political commitment by the international community to provide shelter for the homeless and to improve housing conditions for the poor and disadvantaged. These activities also focussed on using existing knowledge in these areas and to share such knowledge as well as experiences.

The main point about the decision taken in 1980 was the recognition of the right to adequate and secure shelter as a basic human right. Also, it recognised that inadequate and squalid shelter conditions can lead to poor health and can threaten life itself. This would have serious

consequences for human resource development. As a follow-up to the International Year of the Homeless, the Commission on Human Settlements prepared a proposal for a Global Strategy for Shelter to the Year 2000, including a plan of action for its implementation, monitoring and evaluation, with the objective of facilitating shelter for all by 2000.

Subsequently, the General Assembly, on the basis of the Vancouver Declaration, as well as the Global Strategy, adopted a series of guidelines for steps taken both at the national and the international levels for the provision of shelter. For the national level, the guidelines included steps to be taken both in the formulation as well as implementation of a strategy for shelter. The steps at the international level was to be essentially supportive of endeavours of national governments in the form of financial assistance, sharing of ideas and expertise, and devising of inter-agency working arrangement.

Other than the UDHR, and the ICESCR, Article 8 of the Declaration on the Right to Development, urges national governments to take measures to ensure equality of opportunity for all in their access to basic resources, education, health services, food, *housing*, employment and fair distribution of income. In its sixth session in 1991, the UN committee on ESCR adopted a resolution which, *inter alia*, mentioned that States recognise the right of everyone to an adequate standard of living including adequate food, clothing and housing and to the continuous improvement of living conditions. Thus, it is important to realise that the right to shelter like the right to health is placed within a general rubric of the right to an adequate standard of living. Again, it must be realised that Article 11 of the international covenant of 1966, mentioned earlier, is the most comprehensive and relevant of all the provisions regarding the right to shelter. Another important point of the 1991 resolution is that the right to shelter must apply to both men and women equally and to families of every type. A crucial point that the committee makes is that the concept of housing should not be interpreted in a narrow sense of simply a roof over one's head. Rather it should be seen as the right to live in security, peace and dignity. The right to housing or shelter is linked to other human rights, and is based upon the principle of "the inherent dignity of the human person". The right to shelter or housing must be interpreted as a right to *adequate* shelter or housing.

While the notion of 'adequacy' can differ in terms of economic, social, cultural and environmental factors, certain aspects must be borne in mind while devising a shelter or housing strategy. These aspects include security of tenure, availability of services, materials and infrastructure; affordability; location and accessibility; and habitability and cultural adequacy. Moreover, special attention must be given to deprived social groups and those living in unfavourable conditions.

How has the Indian State fared in the provision of shelter and housing? Housing is a State subject in the Constitution of India and hence under the purview of the states. The Union government, however, formulates policy about social housing schemes, particularly those pertaining to weaker sections of society. The union government formulated a National Housing Policy (NHP) as late as 1988. This policy aims at eradicating homelessness, to provide adequate housing to those with inadequate housing and provide a minimum level of services for all, recognising that the magnitude of the housing problem would require the involvement of non-governmental organisations (NGOs) and self-help groups. The policy sees the role of the government as more of facilitator than provider. The policy also envisages government's co-operation with the private sector.

Housing finance is an important aspect. The share of housing in total investment in the various plans has decreased over time. As part of the NHP, the National Housing Bank was set up as a subsidiary of the RBI. Land Development and Shelter Programmes of private and public agencies were to be operated through Housing and Urban Development Corporation (HUDCO) and commercial banks to increase the supply of land and houses.

The National Building Organisation was set up in 1954 to conduct research into low cost housing and building materials and techniques.

The centre also implements policies like *Indira Aawas Yojana* for low-cost housing for the rural poor and *Nehru Rozgar Yojana* which provides subsidy for upgradation of the housing stock of the poor.

### Check Your Progress 3

1. What do you understand by the term 'right to shelter'?  
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.....  
.....
2. Mention some of the steps taken by the government to provide shelter to the people.  
.....  
.....  
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## 11.5 LET US SUM UP

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This unit continued with the themes taken up in the previous unit on the right to development. The unit began by providing a general discussion the concept of rights and attempted to link it to the notions of liberty and equality. The unit then went on to discuss the nature of economic rights and how they are related to the concept of rights in general, and in what way they differ from basic needs. The two basic points that emerged were that economic rights, unlike basic needs, involved an element of accountability; and that the principal actor for economic rights as for rights in general was the state. Provision of human rights implied empowering the people to exercise claims on the state regarding basic needs. It was stressed that provision of rights by the State involved both a protective as well as a promotional component.

The subsequent sections of the unit then proceeded to discuss in turn the right to food health and shelter. The sections described the pertinent United Nations charter and resolutions about food, health, habitat and shelter. The section on food discussed the notion of food security and cautioned that the mere production or availability of food did not necessarily mean that people can establish entitlement rights over the food or can have access to it.

The section on health elaborated on the general notion of health and suggested the adoption of a holistic notion. This section too discussed the statements of the United Nations Resolutions regarding health and the right to an adequate standard of living.

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## 11.6 KEY WORDS

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**Basic Needs:** these denote the minimum needs which are required by people for survival and for carrying out elementary activities. These needs include food, clothing, housing sanitation. Potable water etc.

**Entitlements:** this is a term employed by Amartya Sen to denote the sum total of all ways for

people to exercise command over commodities, say food and housing. Entitlement may in normal circumstances be purchasing power made available through income, but in situations of unemployment or adverse conditions such as famines, may be doles or food stamps etc.

**Non-governmental Organisations:** these are organisations which are outside the government or parastatal sector and are distinguished from private organisations in that they do not operate with a profit motive. These are also known as voluntary organisations.

**Food Security:** this denotes the overall systemic arrangement in a society to take care of food availability as well as people's access to this food. This implies planning even in the times of food surplus for possible future adverse conditions.

**North and South:** this refers roughly to developed and developing countries, respectively.

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## 11.7 SOME USEFUL BOOKS

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Berman, Peter, and Khan, M.E. (1993) *Paying for India's Health Care*. Sage Publications: New Delhi.

Das Gupta, Monica, Chen, Lincoln C., and Krishnan, T.N.(eds.) (1996) *Health, Poverty and Development in India*. Oxford: New Delhi.

Dreze, Jean and Sen, Amartya (1995) *India: Economic Development and Social Opportunities*. Oxford: New Delhi.

Dreze, Jean and Sen, Amartya ( ) *Hunger and Public Action*. Oxford: New Delhi.

Dreze, Jean, and Sen, Amartya ( ) *The Political Economy of Hunger*. Oxford: New Delhi.  
Ahmed, E., Dreze, J., Hill, and Sen , Amartya (eds.)( ) *Social Security in Developing Countries*. Oxford: New Delhi.

Lawson, Edward (ed.) (1996) *Encyclopaedia of Human Rights (second edition)*. Taylor and Francis: Washington DC.

Sen, Amartya (1981) *Poverty and Famines*. Oxford: New Delhi.

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## 11.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. Read section 11.3 and answer.
2. Read section 11.3 and answer.

### Check Your Progress 2

1. Read section 11.4 and answer.
2. Read section 11.4 and answer.

### Check Your Progress Exercises 3

1. Read section 11.5 and answer.
2. Read section 11.5 and answer.



# UNIT 12 RIGHT TO INFORMATION

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## Structure

- 12.0 Objectives
- 12.1 Introduction
- 12.2 Current Situation
- 12.3 Standard Obstacles
- 12.4 Basis of Right to Information
  - 12.4.1 Basis in Existing law
  - 12.4.2 Basis in Electoral Promises
- 12.5 Popular Movements for Right to Information
- 12.6 Tips for People's Audit of Public Authorities
- 12.7 Main Features of a Right to Information Law
- 12.8 Let Us Sum Sp
- 12.9 Key Words
- 12.10 References
- 12.11 Answers to Check Your Progress Exercises

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## 12.0 OBJECTIVES

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It is expected after reading this Unit, that you should be able to:

- Familiarize yourself with certain areas of social interaction in which we accept information as a matter of blind habit without questioning.
- Know some standard obstacles in the way of opening out of vistas of information we actually have a right to know.
- Learn how information can also be managed through sharing them with people, and
- Know about some innovative experiments at work in the field in India, linking right to information with the rights to survival.

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## 12.1 INTRODUCTION

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Right to Information (RTI) is a growing area of concern in the field of human rights. In the western countries, it was primarily raised as an issue in the context of media-newspaper, radio, TV, Internet etc. India however has developed a new way for enforcing the RTI by linking it with the survival rights guaranteed by the Constitution. Information is important but no less important is the facility of accessing this information. Again when it is said that 'information is power', actually 'information that eventually leads to knowledge and action is power'. Hence the information must be based on accuracy and correctness. Basic presumption here is that in a democracy where power belongs to the people, they cannot be told by their representatives or public servants or business people or even the NGOs that a particular information cannot be given to the asking people. That is to say, sharing of information with people is the best way of managing public and private business. This situation in long run is in the interest of the governing as well as the governed people.

RTI thus is no longer a privilege of an elite group or the media. Despite heavy investment and promises, it is commonly known that the basic needs of the people have not yet been met. It is also not enough to say that the benefits of development did not trickle down, the experiment has

thus failed and no body can be seriously blamed. The RTI movement aims to tell people that they have a right to know what is theirs and for the poor, unprivileged, marginalized and discriminated, and knowing ones own rights is a good source of empowering them to get the policies implemented faithfully. Once the people are empowered with information and knowledge, the middle-men will be removed. As **James Madison**, one of the architects of the US constitution had said:

"A people who mean to be their own governors must arm themselves with the power which knowledge gives."

As early as 1947, the UN General Assembly's Resolution (59-1) had proclaimed: Freedom of information is a fundamental human rights .....the touch one of all freedoms to which the United Nations is consecrated.

But all these are easily said than done. In our daily living, we have all been subjected to 'secrecies' and 'ignorance' to an unbelievable extent. Many movements are going on for a comprehensive RTI Law which has engaged many minds and governments in India. Commonwealth Human Rights Initiative (CHRI) is an international NGO which has been seriously engaged in dissemination, promotion and advocacy of Right to Information and this Unit you are reading has drawn heavily on the documents of the CHRI.

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## 12.2 CURRENT SITUATION

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The Health Board had carried out a scheme for immunising children in Gauri's district. Gauri and others of her district heard about the scheme on the radio. However, no children were immunised in the district. When they asked the health officers for details about the scheme, *they were refused to give the details saying that the health board was under no duty to tell anybody anything.*

A journalist saw news item which said that in a particular village several children had died of diaphorrea. She went to the village to investigate the matter in order to bring out a detailed report. When she visited the homes of the children who had died she came to know that children had died due to starvation. When she asked the health authorities to give the details of the deaths and the disease of which the children had died, *they refused to give her the details saying that this was a confidential matter.*

The people of a locality had been going to the local ration shop for two weeks to get their share of the sugar and rice. Every time they were told that the rice had not come and the sugar had been distributed. After several such responses, the people asked to see the register of the supply and distribution of the rations. The person at the shop *said he was under no obligation to maintain or show them any register.*

Shabbir and Sunil had given their names in the employment exchange five years ago. Every time they asked the officers about their position, they were not given any clear reply. Then they came to know that Shankar, who had the same qualifications but had registered after them had been given a job. They demanded that they should be shown the rolls. The employment exchange refused, *saying that this was an official information and could not be shared.*

Many senior government officers and politicians had been staying in government houses long after their terms were over, even without paying rent. A Parliamentary committee was formed to look into the matter. When some journalists asked for the list of names of the persons in illegal

occupation of the houses, the Committee replied, "*this is confidential information, no-one is supposed to know this*".

These responses are not new to any of us no matter where we are. It happens in the village, in towns, in cities and even in the capital of the country. Whenever we ask for any information from any public body, we are generally refused saying that it is a part of secret records, or that it is confidential or that it just cannot be given. Most people continue to believe this and accept this as correct.

However, what most people do not know is that we have a right to know about all the above examples and most of the things about the functioning of government and other public bodies. We have a right to know what work and how it is being undertaken by these bodies and how much money is being spent and on what. *This is called the Right to Information.*

The villagers of Rampur had heard that a new bridge was being built across the river passing through their village. Three years passed by but no bridge could be seen. One day, some of the villagers decided to ask the panchayat about the bridge. The panchayat refused to give them any information on the subject.

The people of Rampur have a right to know the following things:

- *How much money* has been allocated for making the bridge.
- *In how much time* the bridge is to be completed.
- *How many people are being employed* for the construction of the bridge, how much they are being paid.
- What is the *exact location of the bridge*, etc.
- If after construction the bridge collapses *whose responsibility* it is and what action is taken against that person.

**Why is it important for people to know all these things?**

In a democracy, the government is formed by us for us, through our elected representatives. All governmental and public work are carried out for us, with our money. For the work to be done in accordance with our needs, we must be able to take part in the decision making directly or through their representatives. For this we need to know details of the work. For instance, the people of Rampur have a right to know how the decision to make the bridge was taken and how much money has been allocated for it. *This is called participation.*

Government takes many decisions which affect our lives in many ways. We have the right to know about the things which affect us. If the details and the expenditure of any project or work are openly known to everybody, the chances of corruption are minimized. *This is called transparency of government.*

Government is for the people and is not above the law. If things are not done properly, then the Government can be held responsible. If the Rampur bridge collapses, people have a right to know who was responsible for it and what action is taken against that person. *This is called accountability.*

To know decision, be informed on issues, ask for accounts, know details of various things and hold people responsible for their acts, we need *information.*



## What is information?

Information can be in the form of records of proceedings and meetings, copies of decisions, orders and notifications, copies of entries in government registers, copies of accounts, copies of notices, copies of procedures and rules, maps, drawings of work sites, etc.....*The right to have these things is called the Right to Information.*

## Then how can we get our right?

We can get the right by:

- The government giving orders to various departments to give the information to the people.  
Or
- By making changes in various laws so that information can be given through them (so that they do not restrict free flow of information).  
Or
- By having one law will enable us to get the information systematically.

**Government Orders** have been passed in some states such as Madhya Pradesh. In Bilaspur division, the Commissioner passed orders saying that people must be given information in certain areas. Orders have also been passed for the whole state for several departments. The heads of each department have asked their departments to provide information to the people. For example, the departments of mining, public transport, social welfare, tribal welfare and panchayat and rural development are now supposed to give information to people when they ask for it. In Uttar Pradesh too orders have been passed for the panchayats to give information. Orders like these are operative only in the department and in the state where they are passed. So we have no uniformity in getting information all over the country. If we want information in a state where the departmental orders have not been passed, we cannot get it. If the government changes its policy or if there is a new government these orders can be taken back.

**However, changes in certain laws** have been made in order to give information. The Rajasthan government has brought out changes in the Panchayat Act Rules to say that people may inspect or have copies of certain documents. This still leaves a large area where information cannot be reached. Changing all laws to say that information must be given is a long and complicated process.

**Laws on the right to Information** have been passed by a few states such as Goa and TamilNadu. However these laws are not satisfactory as they keep a large area of information away from the purview of the public. They also apply only to the states in which they are made.

That is why there is a demand that the Central Government must make a law which applies uniformly to the whole country and sets out a clear procedure for getting information.

### Check Your Progress 1

1. Having read thus far, can you sit back and recollect what are the habits you blindly follow without really examining whether they are true or not? List some of them.  
.....
2. What is information? How are some governments providing information asked for?  
.....  
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## 12.3 STANDARD OBSTACLES

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Obstacles to development of a freedom of information regime in India may be divided into two categories:

- (a) General and diffuse.
- (b) Specific and structured.

The general obstacles against freedom of information regime include poverty and illiteracy which India is suffering from. Critics argue that in such a society implementation of RTI will become unbearably costly. But given a correct mindset, a scientific policy preventing 'over loading' of administration and encouraging more dispersal of responsibility and power at the points of direct contact with people, will actually contribute to reduction in administrative expenses. Another obstacle comes from the outmoded procedures for storing, retrieving and disseminating information, which principally characterize office work in India, and hence RTI may prove to be a non-starter. Here again, office automation technologies including record keeping may actually come to the help of the government if it is politically willing to train its staff in these technologies. As regards the records of the past, it can always be worked out by giving an *access gap* to the documents from which information cannot be retrieved after a given period. This is a standard practice elsewhere as well.

The most obstructive rules which actually have impeded free flow of information are three:

- (a) The **Official Secrets Act**, which was promulgated by the colonial British in 1923 to protect its own agenda, has been allowed to survive into independent India. Article 5 of this draconian Act makes it an offence for an official to communicate any information.
- (b) The **Conduct Rules** of the Government of India similarly debar (Rule II) government servants from communicating any official document. Rule 7 prohibits them from criticizing government policies.
- (c) Besides these explicit rules, the Government has adopted an excessively **rigid classification procedure** regulating in "the over-classification of materials by relatively junior officials that could well be released to the public after their initial sensitivity has died down".

An action plan to overcome these obstacles for a free regime of information has got to be multi-pronged. Whereas some operational rules and regulations may have to go, some may have to be made participatory and flexible. But the RTI law cannot wait till problems of poverty and illiteracy are satisfactorily resolved. Actually, flow of information can be a good assault on these rampant problems. Information may have to be processed in a manner accessible to people and in the prevailing situation for instance, oral requests from people for information cannot be set aside because they cannot be processed by the information machines or through literate channels of office. This is the predominantly large constituency of information-seekers and the needed "chemistry which converts sterile information into living wisdom" has to be devised through suitably designing the 'intermediate process' for 'meaningful sequences' (Justice Krishna Iyer) That will remain a challenge to the information revolution we are passing through these days

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## 12.4 BASIS OF RIGHT TO INFORMATION

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RTI has legal support base within the existing parameters of fundamental rights, judicial support from various Supreme Court decisions and political support from election manifestos of major political parties. Influential national political forces are testifying the need for a regime of free information in India.

## 12.4.1 Basis in Existing Law

### International Scenario

RTI has constitutional support in countries like Canada, New Zealand, Australia and US. Canada has a special legislation on RTI. In India, the movement for freedom of information, has strong legal and constitutional underpinnings. India is a signatory of the Universal Declaration of Human Rights, which, in its celebrated **Article 19**, defines freedom of expression and opinion as including the right to "seek, receive, and impart information" and the International Covenant on Civil and Political Rights, which also protects the right to information in **Article 19 (2)**.

### Judicial support

The Supreme Court of India has, in several **landmark decisions**, interpreted this broad **guarantee of free speech to include the right to information** as well. In *Bennet Coleman & Co Vs. Union of India*, a leading newspapers publisher challenged the government's policy of restricting the availability of newsprint. In its decision, favouring the petitioner, the Supreme Court declared that "freedom of speech includes within its compass the right of all citizens to read and be informed". A dissenting opinion on the same case noted that "the fundamental principle involved here is the people's right to know". In *State of UP Vs. Raj Narain*, a case in which the respondent had demanded information relating to the security expenses of the then Prime Minister, Indira Gandhi, the Court emphasized the importance of the public's right to know as a deterrent to oppression and corruption. The legal basis of the right to information was strengthened further during the 1980's by a series of new cases. In *S.P.Gupta Vs. Union of India*, the Court declared that "disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interests so demands." In 1989 in a writ petition involving **Manubhai Shah**, a noted consumer activist, and the Life Insurance Corporation of India, the court ruled that no official medium of information could transmit one set of views without also providing for the expression of alternative views, thus widening the range of opinions presented to the public.

These and other similar cases effectively widened the scope of judicial protection for the right to information in India, and contributed to a greater interest in FOI legislation in India. Meanwhile, the Bofors scandal of the late 1980's, which involved the alleged bribing of senior government officials by international arms dealers, led to a greater interest in information rights by opposition politicians. In 1989, the V.P.Singh government, which had made the Bofors scandal a central plank of its campaign strategy, came to power promising a more open government based on the RTI.

### Constitutional base

**Right to Information is given to us by the basic law of our country which is called the Constitution.** The Constitution says that the people have some basic rights and the government is bound to protect those rights. These rights are called Fundamental Rights. Of these fundamental rights, there are important rights which give us the right to information. RTI is an inherent part of the Right to Equality under Article 14, the Right to Freedom of Speech and Expression under Article 19(1) (a) and the Right to Life and Personal Liberty under Article 21. These Articles read as under:

**Article 14:** "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

The Right to Equality includes lack of arbitrariness. The RTI is essential for transparency and lack of arbitrariness in government action.

**Article 19 (1) (a):** "All citizens shall have the right to freedom of speech and expression" Although Article 19 does not specifically mention the RTI, the Supreme Court has held on several occasions that the Right to Know is a part of the Right to Speech and Expression, because

To speak and express freely, we must have information on any subject  
In a democracy, we must know what the government is doing in order to express opinion on it. Expressing opinions includes the right to dissent, i.e. expressing an opinion different from the popular one or that given by the government.

The Supreme Court has held in several cases that Freedom of Information not only means freedom of the media but also access to government-held information.

**Article 21:** "No person shall be deprived of his life or personal liberty except according to procedure established by law"

As we have seen earlier, the right to life and personal liberty has received wide definition in several Supreme Court rulings. The Right to Life covers the right to basic needs such as food, education, health. The right to personal liberty covers freedom from illegal and unnecessary restraint. Denial of information relating to these aspects is often a denial of the right itself.

#### **12.4.2 Basis in Electoral promises**

The major political parties in India are considerate to right to information and thus includes this in their electoral agenda. It shows that they are, in principle, in favour of freedom to right to information.

Here are some excerpts from Election Manifestoes of Major National Parties:-

#### **Congress (I) Election Manifesto 1998**

"The Congress will enact a Freedom of Information Act to end the culture of secrecy and to ensure openness in administration and the Right thereof will be codified into a Bill so that the citizenry can gain easy access to information at all levels of governance".

#### **BJP Election Manifesto 1998**

- 1) "The BJP believes in taking concrete steps to promote transparency in the functioning of government as a confidence-building measure. The working of a government should not only be transparent but should be perceived to be so. The BJP therefore subscribes to the principle of sharing information about the government's work.

#### **National Democratic Alliance Manifesto 1999**

*There is no reference to Right to Information or transparency as such. However, government, including the Prime Minister, Minister for Information and Broadcasting and the Law Minister have been consistently making public statements that a Freedom of Information Bill is to be introduced 'soon'.*



## United Front Election Manifesto 1998

"The United Front is committed to set up the Lokpal as well as legislate a Bill on the Freedom of Information. The official Secrets Act will be amended with the stated objective of ensuring openness and transparency in governance."

## Communist Party of India Election manifesto 1999

"The system of government should be made more accountable for which citizens must have the right to information for which a Right to Information Act must be passed."

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## 12.5 POPULAR MOVEMENTS FOR RIGHT TO INFORMATION

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In several states in the 1990's, movements developed to monitor government development projects in order to root out corruption and promote transparency. In Rajasthan, for example, the **Mazdoor Kisan Shakti Sangathan (MKSS)** emerged as a powerful force in checking bureaucratic corruption in the critical area of development projects. Demanding access to muster rolls, vouchers, and records of bill payments, the MKSS succeeded in exposing official corruption in government projects by panchayat or village authorities in several districts and placing pressure on officials to take corrective action through highly innovative tactics, particularly public hearings in which evidence of wrong-doing was presented to the community at large. As a result of the efforts of the MKSS, the Rajasthan government agreed to make public all documents relating to development works at the panchayat level, allowed citizens to make photocopies of them, and investigate and punish those responsible for corruption. The Government of Rajasthan is now considering introducing a Bill on right to information in the state assembly. In Madhya Pradesh's Surguja district, an enterprising Indian Administrative Service (IAS) officer was able to check rampant corruption and theft in the Public Distribution System (PDS) by making copies of key documents, such as the stock, sale, and ration card registers in each PDS outlet publicly available for only a nominal fee. The case of DISHA a grassroots group from Gujarat illustrates some of the mechanics of using information in order to audit public expenditure. Ordinarily, one does not get any access to information on state finances - whether at the local level or at the top level of the state. What DISHA did was to persuade an elected representative to ask for the amount spent by the state on tribal welfare. Now, this state is bound by law to disclose the information which, they could decipher with the help of a benevolent bureaucrat.

The movement for the right to information has spread to several other states; in Bihar, for example, representatives of about forty NGO's assembled in April, 1999 for a workshop on the subject as a prelude to a full-fledged campaign for information rights in the state. In response, some states have passed their own freedom of information legislation, such as Goa and TamilNadu, but this legislation is often quite flawed: the TamilNadu Act, for example, contains 22 exemptions that render the right to information tenuous and lacks a clear provision for an independent appeals process.

### Check Your Progress 2:

1. List three obstacles which impede free flow of information at the official level.



2. Match the following and identify the correct pair:

1. Bennett Coleman and Co  
VS Union of India

4. Demand for information about security  
expenses of an oppressive Prime Minister  
was upheld.

2. State of UP VS Raj Narain

5. Freedom of speech comprises right to be  
informed as well.

3. SP Gupta VS Union of India

6. Disclosure and not secrecy must be a rule for  
the Government on demand for information  
regarding its functioning.

A. 14,25,36

B. 34,26,15

C. 15,24,36

## 12.6 TIPS FOR PEOPLE'S AUDIT OF PUBLIC AUTHORITIES

As you have seen, various struggles for RTI have yielded desired results; but there is little awareness about how to go about launching such struggles which empower citizens to check corruption and enable utilization of people's money for welfare. Following tips are suggested for willing groups to take up the exercise in their localities:

1. Identify the specific problems: Victims of corrupt and arbitrary administration are strongly advised to clearly identify the problem area in the interface between people and authorities. They should not get emotionally swayed away by immediate grief and grievance.
2. Specify the information required to strengthen the people's movement to be launched. A well-collected stock of information is a bulwark of defense.
3. Information to be collected will require (i) some specialized studies of internal procedures and (ii) indication of whether and where and in what form, those information are required and they are to be generated.
4. The rules governing access: Ask for the rules, procedures and precedents with the help of which you can access information. If public access is not available, it is desirable to pressurize your elected representatives for an enabling legislation guaranteeing RTI.
5. Use the Information for further empowerment. A visible priority is empowering the disadvantaged groups like the lower caste, land less, poor and minorities people.

All these are fine as value statements. But how can people's audit help punish corrupt and guilty public authorities? What sanction is available with them? There are two democratic bodies for such public sanctions: *gram sabha* (statutory) and the public hearings or *Jan Sunwai* as conducted by the MKSS (it is a case of a democratic institution innovated). See what happened in the case study of the Kukurkheda panchayat in Rajasthan where the MKSS had conducted a *Jan Sunwai*:

In a *jan sunwai* organised by the MKSS, the woman *sarpanch* publicly accepted her guilt in a charge of corruption in public works to the tune of 100,000 rupees, and during the *jan sunwai* itself, she returned the first installment of Rs.50,000/-. This was perceived as a major victory by both the village community and the MKSS, although questions were raised whether mere refund

of the amount misappropriated constituted adequate penalty and deterrence, or whether criminal charges should also have been registered.

By contrast, in Ajmer district, two *sarpanches* also returned misappropriated money detected during the *jan sunwai*. The Collector ordered a special audit, recovery of misappropriated money as arrears of land revenue, as well as filed police complaints against the guilty. These *sarpanches* were sent to judicial custody.

Empowered people without resources of the state - poor and illiterate but aware of their RTI - have restored justice through punishing the erring officials. These public hearings organized by MKSS evoked so much of response that the Lal Bahadur Shastri National Academy of Administration, Mussorie, which is responsible for training of all senior civil servants, took in October 1995 the unusual step of organizing a national workshop of the officials and the activists to focus attention on the RTI.

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## 12.7 MAIN FEATURES OF A RIGHT TO INFORMATION LAW

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As said earlier, some states have passed their own laws on Right to Information. But, they are an unorganized pool. They need to be standardized for common application in the country. Further, Right to Information is a fundamental right and like other fundamental rights, it has to be observed within the limits set by 'reasonable restrictions'. These limits need to be clarified as closely as possible. It is a long and a slow process to amend the outdated laws; and it is therefore desirable to have a comprehensive law which should replace them all. Parliament has the competence to enact such a law under its residuary powers under Entry 97 of List I, Union List, VI Schedule of the Constitution of India.

Since many groups consisting mainly of jurists, media persons, civil society members have been advocating the issue strongly over the last few years, there have been suggested drafts from different quarters.

- The Press Council of India, under the guidance of the Chairman Mr. P.B.Sawant drafted a law which was later updated and hanged at a workshop and renamed 'The Press Council - NIRD Freedom of Information Act, 1997'.
- The Consumer Education and Research Council (CERC), Ahmedabad, under the guidance of Prof. Manubhai Shah drafted a law on the Right to Information.
- The Working Group appointed by the United Front Government, under the Chairmanship of Mr. H.D.Shourie drafted a law called the Freedom of Information Bill 1997.
- The present government has also prepared a draft on Freedom of Information law which however is not officially available.

All the above drafts have their strong and weak points. However, there are certain things which any Right to Information / Freedom of Information / Transparency Law must contain. These are:

### a) Minimal exceptions

The Right to Information is a Fundamental Right and can be subjected only to the restrictions allowed by the Constitution. In drafting the law, care must be taken to keep the exceptions within the limits prescribed by the Constitution.

The right of access to government - held information should be a wide right. The exceptions to the rule of giving information must be limited and specific. A Right to Information does not need to disclose any specific need.

**b) Up-gradation of systems**

The law should contain provision for setting up specific systems for storing and disseminating information. Existing systems may be upgraded for enabling easy access.

**c) Allocation of funds**

The law must contain a specific allocation of funds for the purpose of operationalising the RTI. Without this, the law will be a dead letter and will have no effect.

**d) Accountability**

A Right to Information law must lay down clearly the principle of accountability. That is to say, it must state specifically as to who is responsible for providing the information. Penalties should be imposed on officials for delay, or denial of information on unwarranted grounds.

**e) Independent forum for appeals**

The law should contain a simple and independent procedure for appeals from refusals to give information. The appellate forum should be an independent person or institution such as an Ombudsman.

**f) Duty to inform**

The law must cast a positive duty on public bodies to inform the public in case of certain kind of information which include rules, information on proposed projects and schemes, and other relevant information which needs to be given out pro-actively and updated routinely.

**g) Reasonable fee structure**

The law, if it provides for a levy of a fee for getting information must ensure that the fee is reasonable and does not act as a deterrent for asking information and does not end up debarring information from the disadvantaged groups who cannot afford the fees. The law must provide for waiver of fees in certain circumstances and for certain classes of people such as those living below the poverty line.

**h) Methods of communication**

The law must contain a specific directive for simplification of official language. Information - giving should be in a form which can be easily understood by people. The law should ensure proper use of the electronic and print media as well as use of conventional methods of communication as per the target group.

**i) Time limit**

The law must contain a provision for timely imparting of information. The concerned public officials should face a penalty in case the information is not given in time.

**j) Protection of privacy**

The law must take into account the protection of an individual's privacy. Personal information held by the government must be exempt from disclosure.

**k) Application to private bodies**

Although, strictly speaking, the RTI is for government - held information, the law must make it binding on private bodies to disclose certain kinds of information which could affect the public health, etc. This is especially in view of increasing globalization and incidents like the Bhopal Gas Leak which claimed many lives and put to irreparable harm even future generations.

**l) Protection of whistleblowers**

The law should give protection to public officials who give certain exempted information where it is necessary to do so in overwhelming public interest or to disclose some serious corrupt practice, etc.

**m) Publicity and training**

The law must contain a mandatory procedure for publicizing its contents. Often, laws are passed without their knowledge percolating down with sufficient speed or impact and therefore fail to bring about the desired change in the systems.

The Right to Information law must also contain a strong aspect of training and orientation of public servants at all levels, in order to bring about an effective change in the civic culture.

**Check Your Progress 3**

1. Five tips for people's audit of public authorities are given in the text. Develop one of them in the light of an actual happening around you.  
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2. Indicate True or False:
  - a. Personal information held by the government must be exempt from disclosure.
  - b. Right to Information can be enacted under the residuary powers of the Union Government.
  - c. The Shastri National Academy of Administration, Mussorie which is responsible for training of senior civil servants in India held a national workshop of officials and activists to focus attention on right to information.
  - d. It is necessary to avoid getting swayed away by a personal tragedy and muster courage to ask from authority specific bits of information.  
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## 12.8 LET US SUM UP

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Right to Information is a fundamental right whose observance has been submerged under routine obedience of the citizens to a secrecy - shrouded administration. Though the demand was initially for government - held information, the scope of the subject matter of RTI expanded with the rise in the movement to include other agencies including business establishments and NGOs. Though there have been standard obstacles in the realization of a free regime of information a comprehensive law can override those dark effects. Information is required to adjust to accessibility, then only Indians who are mostly illiterate and poor living in villages will benefit. Though the basis for RTI can be found in the International Bill of Rights, Constitution of India and the Electoral manifestos of the national parties, the trail was actually blazed by a series of people's movements notably in Rajasthan (MKSS) and Madhya Pradesh. Other states have followed in responding to popular demands but what is required is a central law to provide uniform and clear basis for application of RTI. But there have been some tips which have flowed out of the field of struggles which are necessary for all of us to apply and provide sinews and muscles to this movement for Right to Information.



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## 12.9 KEY WORDS

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**Survival Rights:** Basic rights necessary for survival Examples: food, shelter, security etc.

**Pro-active Disclosure:** Announcing before the information was asked for. It is self-initiated under a given mandate.

**People's Audit / Public Audit:** Common and ordinary people ask for them and prepare an account of various doings by the officials. These activities come under 'audit'.

**Reasonable Restriction:** A general expression used in the Constitution of India limiting unfettered exercise of rights.

**Residuary Power:** Power to make law on any subject not enumerated in the State or the concurrent List. In Indian federation, this power vests with the Union.

**Civic Culture:** Political life and milieu of citizens of a state.

**Draconian:** harsh and severe

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## 12.10 REFERENCES

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The Commonwealth Human Rights Initiative publications used here are:

1. *Your Right to Information* (1999).
2. *The Movement for Right to Information in India* - Harsh Mander & Abha Singhal Joshi (1999).
3. *Legislating Freedom of Information* - Dr. Vikram Khub Chand (1999)
4. *Right to Information in South Asia* - A Conference Report
5. *Submissions to Legislators on a Right to Information Law* (2000)

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## 12.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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Answers for all general questions may be searched from the preceding text materials.

**Check Your Progress 2**

2. ( C )

**Check Your Progress 3**

2. A(T), B(T), C(T), D(T).

## Structure

- 13.0 Objectives
- 13.1 Introduction
- 13.2 Issues In Education
- 13.3 Better Life Through Education
  - 13.3.1 Exploitation through education
  - 13.3.2 Education for planning development
  - 13.3.3 Administering education in India
- 13.4 Access vs. Success In Education
  - 13.4.1 Child labour and the right of the child
- 13.5 Role of Medium of Instruction in Education
- 13.6 Developing Critical Thinking
- 13.7 Let Us Sum Up
- 13.8 Suggested Readings
- 13.9 Answers to Assignments

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## 13.0 OBJECTIVES

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If we examine all the qualities that distinguish human beings, from other living beings education is definitely one of them. As people fight for scarce resources, education becomes an important facility. Some people have succeeded in taking more benefits from the educational facilities than others. It is important that those who have monopolised education as well as those who have been deprived of it know the importance of the situation. The struggle for the right to education has to be seen from two angles – one of providing education and once it is attained people must try to make the same available to those who are still deprived. It is sometimes noted as a tendency of the deprived, as Paulo Friere in *Pedagogy of the Oppressed* pointed out, to “adopt an attitude of ‘adherents’ to the oppressor”. That is actually a tendency of the educated elite to join the league of the oppressors. Just as it is important to let no one snatch the right of education, it is equally important that these ‘oppressors’ do not indulge, consciously or unconsciously, in subverting this crucial right to humanization.

After going through this unit. You would come to know:

- the importance of education in human life,
- some of the major issues in providing education,
- the crucial issues of access vs. success in education, and
- the crucial role medium of instruction plays in education.

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## 13.1 INTRODUCTION

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Every human being has got certain rights which are basic to becoming a respectable citizen. Education is a right of every individual to access sources of information and knowing about the opportunities for self-development. It is also important because through education one can know of human rights which are crucial to extending dignity of human beings. Education as Gandhiji said, should nurture respect for oneself and respect for one's own culture, community and country. Education should be seen as an equalizing force. It should not only make provisions and physical resources required for imparting education but actually making quality education

available on equitable basis. Education should bring about equality in society.

Those who are educated give an impression that it is a difficult job and they have acquired education through hard work. If we examine the percent of successful people we will find that those who went to good schools and were taught by trained teachers were better educated and so they became successful. As against them, those who went to ill-equipped or ill-managed schools could not acquire proper education and so they lagged behind. Those who are declared successful in schools go for higher education and in turn become eligible for all social benefits. The quality of higher education (HE) rests on the quality of school education. We cannot expect HE to do miracles if the school education is mediocre. Only if a sound foundation is laid, the HE can be expected to give quality output. Another hurdle in the success of education is the corruption perpetuated by the white-collar people. Corruption is one of the major hurdles in extending the benefits of education to the actual beneficiaries. Educational resources, right from chalk to computer have been misused. Those who are ill-equipped cannot even raise the voice against them. However, because of the unequal distribution of education those in possession of this skill consider themselves superior to others. This argument needs no elaboration. How is it that those who work day and night in the rugged field conditions to feed those who work in cozy conditions command less respect? Education should aspire to develop respect not only for ones own culture but also for culture of others. Tolerance, peaceful co-existence and instructional brotherhood should be the objective of education.

1. **It seems education is the beginning of human development and happiness. What measures would you suggest to make education universal?**

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All political parties irrespective of ideological differences show similar concern for education of the masses, but no party government has taken up this issue seriously. The reiteration of the obligation to provide basic education without making any effort is doubly harmful. Governments make the commitment again and again without doing anything in this direction.

A thumbnail sketch of the government's expenditure shows that 25% of the state's funds go to defence, 26% to debt repayment and 18% for administrative expenses. Only about 31% of the funds are available for the basic needs of living which include, among others education, health, drinking water, shelter and roads. Political parties and governments raise the issue of mass-education but the essence of the problem is lost as their concern ends by making budget available for education. And whatever little is available, the concerns of parties and governments end with making provisions for buildings and staff. The questions, which need attention, are:

- budget allocation for education must increase
- educational provisions should be made not only through construction of building and appointment of teachers, but by making the whole system work
- the teaching-learning process should be friendly and not alien.
- the medium of education should be familiar, and
- the learners should be involved in deciding what to learn (i.e. curriculum design).

2. Success or failure of a student depends upon the type of school s/he goes to. Give reasons 'for' and 'against' this view.
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## 13.2 ISSUES IN EDUCATION

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Glaring differences exist between individuals, groups, societies and countries. These disparities are not god-made but created by human beings. Some thrive by snatching the rights and privileges of others. Efforts are being made to give every person his/her due. The awareness of 'Right to Education' is significant because it initiates the process of learning to be equal human beings. To become aware of the rights of individuals and groups one needs to know the skills. Education provides this crucial tool – *the Aladin's Chirag*. Education is essentially a means to an end. It helps in unearthing the mine of information extending access to so many opportunities and privileges which an uneducated person does not know about. In the absence of such information, one is deprived and cheated of the rights the government and humanity are under obligation to extend. It is useful to know that learning is a life-long process: it is never too late to learn. It is actually wrong to think that learning gets over after the school and college. Education is actually a movement since right to education cannot be realized by waiting for the obligations to be extended by the government and the community. Much less in a society where so much less is spent on education and with distorted priorities.

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## 13.3 BETTER LIFE THROUGH EDUCATION

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If we count the achievements of modern society we will find that medical, transport, means of information and so on are the best ones. We can improve our lives by using them. Scores of studies suggest that illiterate people believe more in traditional methods of treatment including black magic. These methods are not scientific and illiterate people, because of centuries of belief in these, tend to get trapped. Education has reached the benefits of new medical inventions to those who have access to scientific knowledge. Education gives access to sources of information and new discoveries and an educated person can reap benefits from the discoveries made world over. It has been found that educated parents use the medical advice and assistance for childbirth and child rearing. It has been seen that ill-educated people have more children than well-educated. All their earnings are spent on providing sub-standard health, education and other amenities of life. Because of low child mortality and immunization facilities, educated people have twenty-five percent less fertility rates. Because of less fertility and a small size family the educated have more money and resources available for other luxuries of life.

Education, besides providing direct access to sources of information, indirectly extends benefits of developments in different areas like health, wealth and happiness. For example, those agriculturists who have access to knowledge tend to select the most appropriate type of crop for their land and also use optimum fertilizer. Knowledgeable people get maximum return for their investment. Those who do not get first hand information from the sources of information depend upon hearsay which is not scientific. Educated people don't have to learn from experience all the time and repeat mistakes made by others.



3. In the previous section you have read about the benefits of education. Please identify two more benefits that you think come through education.

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### 13.3.1 Exploitation through education

As against education being an equalising and empowering tool, it can also be used for exploiting others. Education is a handy tool in creating hierarchies in a society. For example, every colonial rule imposes its own system of education, language of education, methods of evaluation etc. which mismatch with the learners' native systems and practices. Explaining the character of Indian education in *Hind Swaraj*, Gandhiji said, "Our ancient school system is enough. Character building has the first place in it and that is primary education. A building erected on that foundation will last." He expressed the view that without weighing the consequences of adopting Western education we gave up our ancient system and this was destined to bring unhappiness.

Children who are educated in a foreign system lose touch with their own system and find it extremely difficult to master an alien system. A foreign system of education brings texts along with examples which glorify a foreign system. Slowly the learners develop a liking for the foreign system and also develop apathy for natives. This apathy for 'native' and attraction for 'foreign' can be seen not only in educational matters but also spreading into other fields like culture, race, customs, government, country and so on. It is only through education that masses can learn to respect one's own culture and discard whatever is not conducive to promoting human dignity in one's culture.

It is easy to fight colonialism because it is exploitative both in form and content. But exploitation through education is difficult to combat because it wears a progressive garb. Describing modern education of letters Gandhiji said "It is merely an instrument and an instrument may be well used or abused. The same instrument that may be used to cure a patient may be used to take his life, and so may a knowledge of letters." When most human of humane charity – in this case, educational charity - carries an exploitative agenda, it is difficult to counter.

4. Do you think the present system of education is appropriate? Mention your views in the space given below.

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### 13.3.2 Education for planning development

The development of the skills to read and write in a person may look simple but they have larger implications in the life of a person, a family, a society and a country. An educated person may adopt scientific methods and start using more industrial products, demand more rights and privileges and ultimately may demand a 'share in the cake' which the informed ones share by default, as it were, in the absence of the demand from the illiterate. Education is the process to power and higher the degree of education more empowerment would follow to the person, family,

society or country. Educated individual is expected to take socially rational decisions based on scientific process of decision making just as an educated society is expected to take globally rational decisions. This is also reflected in the development profile of states in India.

In the years after independence Kerala has developed very much where as Bihar has not done so well. We examined the case of female literacy, and number of schools and teachers in primary schools compared to mortality rate of children and consumption of power per capita, number of telecom lines per thousand population. It was found that compared with Bihar:

- Kerala has more schools, less students per teacher
- Kerala had less mortality rate among children
- Kerala had high per capita consumption of power
- Kerala had more telephone lines per 1000 persons as and so on.

It is apparent that where we have more literacy, we have high life expectancy. Education was given a high priority in the planning of Kerala in the past and they have now attained a level where life is more secure and comfortable.

The latest Human Development Report (2000) has boldly announced that there is no cure better than education is relieving Indian women from the rampant and inhuman cruelties of domestic violence. Educating women has proved particularly beneficial in this regard, the Report claims.

The key activity of modern societies is planning. Through plans and policies made today, the resources and powers of tomorrow are ensured. Those who plan are qualified to plan because they understand the benefits of planning. If this understanding is extended to masses, planning would be more equitable. The participation of all in the decision making process can be ensured only through education. Once educated, masses cannot be ignored, far less discriminated against. Every one can become part of the decision making process.

Education is thus an important empowering tool. Education you may have notice, is one of the most important agents of mobility and change - individual and social. This tool will decide the fate of individuals and groups in times to come. Such a situation was envisaged by the founding fathers of the Indian Constitution and they made provisions for the education of the masses at least at three places under three Articles namely Art. 41, 45 and 46.

5. If you are asked to review the subjects taught in the elementary classes which subjects would you like to drop and which would you like to introduce and why?

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### 13.3.3 Administering education in India

The notion of 'Right to Education' encompasses larger issue beyond the simple question of admission to a school. Somewhere we have to make a beginning however. In fact this dilemma has always remained. Article 45 made it mandatory for the Government to make educational provisions for children below the age of 14 by saying that "The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years." But the force of the Article 45 was diluted by the provisions made in Article 41. Through the 42<sup>nd</sup> amendment to the

Constitution, Education which was till then a State subject was transferred to the Concurrent list making it a joint responsibility of the Central and the State Governments.

Let us also be clear that just making provisions for education is not enough. Unequal quality of education will give birth to unequal competition and as a consequence inequality in society. Only when education of equal quality is extended there can be real competition and equal distribution of facilities and privileges. The UN Convention held in 1989 on the 'Right of the Child' recognized the right to education. India was one of the signatories of this Convention which made it mandatory for India to make primary education (i.e. education of children up to the age of 14) compulsory and free. But this goal is evading the Indian planners even after 50 years of independence.

Some important steps have been taken by the government and non-governmental agencies in this area. Foremost of course, is the Supreme Court decision in the Unnikrishnan Vs Andhra Pradesh. The court decreed that "every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the state".

The demand to right to education is finally taking a shape in the form of 'right to primary education' for which reportedly, a bill is likely to be placed in the 'Parliament' shortly. There has been a good variety of programmes launched in the country to combat problems of illiteracy. Among others, they include Operation Blackboard, Teacher Education, Minimum Levels of Learning and the District Primary Education Programme funded externally by the World Bank. The National Literacy Mission claims to have raised the level of literacy from 52% to 62% in the country. Besides, there are inspiring innovative experiments in educating the society going on in the country. Ekalavya (Hosangabad), Lok Jumbis (Rajasthan), Education Guarantee Scheme (MP) etc. are some of the prominent examples. The government expenditure on education is also on the rise. Since the inception of planning in 1950-51, spending on education as a promotion of GNP has increased from 1.5% to 3.9% but as can be seen, much more remains to be done than is the case so far.

6. Find out about any such educational programme going on in your area and write about its merits.

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The concept of right to education entails two very different things. It can mean equal right to everyone to receive education and right to equal education to everyone. Provision for maintaining schools have been made in all parts of the country; but it is not difficult to notice a great difference in infrastructure and teacher attendance. The public schools are so ill-maintained that most people like to send their children to the private schools (Privately owned and managed schools are often misleadingly called public schools). Most people first want to send their children to public schools but as these schools don't perform well they discontinue sending children because it is found to be a wasteful exercise. The survey conducted by the Public Report On Basic Education (PROBE) team in rural U.P., Bihar, M.P. and Rajasthan presents a very gloomy picture of the facilities in public schools. There are no blackboards, chalks and also most often the teachers were absent from the schools. As against this, it has been found that in the state of Himachal Pradesh, the public schools were made to function efficiently. Himachal Pradesh has also moved to the top position in the scale of social development among states in India.



## 13.4 ACCESS Vs. SUCCESS IN EDUCATION

One of the first hurdles in making education available is the issue of access to educational institutions. Access involves two key concepts – physical and socio-linguistic access. It has been pointed out time and again that location of a school influences accessibility. Quite often the most powerful person or the powerful community influences the decision of the location of a school in a village or town. There are no roads connecting the school to the areas of the less privileged. The less-privileged children have to walk down the difficult terrains to reach the school, which tire them and often influence their punctuality and achievement in the long run.

The schools, which are said to be free, in fact demand expenditure in terms of transport, passage, roads etc. if learners do not have to commute on foot. Before deciding on the location of a school it is important to ensure that all learners have physically friendly access to the school. Constantly lagging behind children undergo humiliation and finally dropout. Even though access to education is a major issue but it is not the only issues.

The Fifth All India Educational Survey says that 94.5 percent of the rural population had primary schools within one km and 83.98 percent had upper primary school within 3 kms, which sounds reasonable as far as providing infrastructure facilities are considered. Besides the issue of physical accessibility is the issue of social accessibility. The norms and processes of schools, the dress, the seating arrangement etc. do not normally subscribe to the social norms of the less-privileged children. Some children do not find any difference between the home and the school norms, for example, behaviourally and linguistically. Their total energy and concentration is devoted to learning activities but some find the home and the school norms totally different. Such children feel out of place in schools and suffer mentally and psychologically. They cannot concentrate. Often, they feel discriminated. Poverty denies human rights to their children. But as the latest Human Development Report (2000) has indicated, education especially universal elementary education is the best cure for removal of child labour problems in India.

7. Which language would you prefer to be used as the medium of instruction English or in other tongue? Give reasons.

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### 13.4.1 Child labour and the Right of the Child

The right to education is directly related to the abolition of child labour. Quite often we are confronted with data that abolition of child labour would cost heavens; but unless and until children are debarred from working they cannot go to school. According to one report nearly 10 crore children were employed as labourers during mid 1990s. The inclination of the poor parents and children themselves would be great to make an earning out of living. Immediate needs overshadow the long term needs. Studies have proved that there is high desire for education but most of the times opportunities are not available. Neither the Governments nor the society can be spared of this responsibility of providing necessary facilities so that every child is attracted to the school.

At the back of the mind of those who are involved in providing learning facilities, particularly to the less privileged is that they are doing a charity this notion must be dispensed. Receiving equitable educational facilities is a right of every individual and those involved in expediting it are welcome but they should not make it a tool of further exploitation



education cannot be seen in isolation. It is one of the many sub-systems like administrative, police, government etc. which mutually influence each other. We cannot expect a radical education system in a conservative society, which is still hierarchically arranged on colonial power patterns. By and large Indian institutions and systems still follow colonial power ethics. This actually calls for raising voice to change other sub-systems to make provision of education more democratic, equitable, and accessible.

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### 13.5 ROLE OF MEDIUM OF INSTRUCTION IN EDUCATION

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To carry on the process of education we need a language – as the medium of education. The choice of language is crucial as it drastically influences not only the process but also the success of learners. Most often the language of education in Indian schools is either English or one of the National Languages of India. On close examination we find that English is neither the mother tongue nor the first language of most Indians. Similarly, most Indians speak in a language which is not one of the National Languages but a dialect of these languages. In the case of learners who speak a dialect, they find it difficult to concentrate on the content of the subject because they have to first concentrate on the language used, understand it, and then understand the contents. In such a situation, don't you think every learner has the right to get education in one's **mother tongue**?

Programme evaluation of students (for success or failure) is usually done for understanding the content. Language is only a catalytic agent in these cases. The natural question, which arises, is why not provide the needed range of opportunities to all students to study in their own mother tongue. The choice of one language as against the other as the medium of instruction puts some above the others and it has been seen with English language that a particular medium of instruction seeks to put one set of learners over many others because of the system's bias in favour of it.

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### 13.6 DEVELOPING CRITICAL THINKING

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present system and structure of teaching-learning does not encourage original thinking and equity oriented education. Instead it develops a tendency to follow - first the teacher and later the boss. The traditional Indian system of education has been inquiry-oriented. That is why the classical texts are in the form of question and answer. From what we know, the Gurukul also followed a system of inquiry from students and answers from fellow students and the teacher. The present system is **information oriented** which gives a secondary status to knowledge and wisdom. More dangerous is the fact that information of things alien to us are imparted in abundance but leave us totally ignorant about our surrounding. Once people get educated these issues will come up and transform not only the system of education but also the content of education i.e. the curriculum will change.

Priorities have to be decided upon by the Government and the beneficiaries as well. It becomes a chicken and egg question. Should education precede health care, eradication of child labor, provision for decent accommodation or these would precede education. The widely accepted and more forceful argument these days is that **education must precede everything** as the capacity to realize and utilize optimally the provisions of health and child care and hygiene cannot be made without education. One of the major hurdles posed in making educational provisions is that learners are not ready, there is no demand for it. To explain the situation precisely it has been mentioned that learners i.e. children will have to be pulled out from industries and household jobs which will cost a lot of money. The families surviving on these wages would need assistance. The other argument is that because the illiterate people have not realized the importance of education,

## NOTES

they keep being exploited generation after generation. Should education not be made compulsory by Constitutional amendment so that the children up to the age of fourteen compulsorily attend school? Article III.24 (a Fundamental Right) of our Constitution has clearly pronounced that "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any hazardous employment" but still millions of children are employed for hazardous work in different sectors. Besides children are employed to do household jobs and often subjected to inhuman treatments. Can we create a system where economic capacity of the families can be enhanced leading naturally to a situation where the children engaged in hazardous works today are freed to pursue education. Education cannot be planned in isolation; it is an **important component** of social development. In this route one can see the practical possibilities of realizing the goal of 'Education for All' which will lay the crucial cornerstone for the Right to Education.

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### 13.7 LET US SUM UP

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**Education is the gateway to success in life.** It is one of the tools which makes people aware of the disparities, processes of creating and finally re-emerging disparities and develops equity in society. The importance of education is not realised by all. Some people have monopolised the provisions made for education and others are scared of joining the group and sceptical about their capabilities in receiving education. Education has been thought to bring about qualitative difference in the life of individuals and groups.

To bring about a social change through information about the provisions of education and the right of every individual to education it is expected that the demand for education will grow. This consciousness can be brought about through the process of education itself. It is one of the most important responsibilities of the governments and people involved in human affairs to find means and ways to make it available to all on an equitable basis.

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### 13.8 SUGGESTED READINGS

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Gandhi, M. K. (1938). *Hind Swaraj or Indian Home Rule*. Ahmedabad: Navjivan Publishing House.

Friere, Paulo. (1972). *Pedagogy of the Oppressed*. London: Penguin.

Ilich, Ivan.(1971). *Deschooling Society*. London: Penguin.

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### 13.9 ANSWERS TO ASSIGNMENTS

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Sit with a class fellow or an interested person and argue your points of view on Right to Education in respect of eight assignments given above. What is important in this connection is to develop critical thinking and not to blindly succumb to forces and arguments just because they are current or they come from sources which are otherwise influential.



**U.P. Rajarshi Tandon Open  
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# **AECHRD**

**Human Rights-Society  
and Development**

**Block**

# **5**

## **HUMAN RIGHTS MOVEMENTS**

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### **UNIT 14**

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# UNIT 14 NGO MOVEMENTS AND POLITICAL REFORMS IN DEVELOPING COUNTRIES

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  - 14.1 Introduction
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    - 14.2.1 Basic Elements of a Democracy
  - 14.3 State and NGOs
  - 14.4 Impact of NGOs In India and Elsewhere
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  - 14.8 Key Words and Phrases
  - 14.9 Some Useful Books
  - 14.10 Answers to Check Your Progress Exercises
- 

## 14.0 OBJECTIVES

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Now you have reached the last block of the Course on *Human Rights: Society and Development*. This Course essentially was about human rights as they came to be shaped into the present form in theory and practice, in the context of history and contemporary political economy. In the course of study, some new forces like **Globalization, Right to Development, World Trade** etc were analyzed to understand their impact on human rights as they have evolved till date. Now, it is the turn of another protean force influencing human rights, especially its protection; and this is the non-governmental organizations and other voluntary sector initiatives emanating from the civil society. NGOs in general and human rights NGOs in particular, have contributed to the spread of the movement and protection of human rights.

At the end of reading this Unit, you should be able to understand

- about the NGOs and the meaning of Civil Society,
  - relationship between the State & NGOs, particularly in developing countries,
  - political impact and reforms they have unleashed and
  - finally, how they are conducting themselves as initiators of human rights movement.
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## 14.1 INTRODUCTION

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In this last Block, we plan to look into the group initiatives which the people have launched either against the state or in supplementation of state efforts. During the post-cold war phase, among major strands of development taking place all over the globe, the following are visibly prominent: market, non-governmental organizations and human rights. Three prominent trends which characterized global affairs during 1990s (in particular) are globalization and the decline of state sovereignty which has undergone modifications in response to these global trends.

Emergence of non-governmental organizations represents an organized response of the civil society in those areas where the state has either failed to reach or did so inadequately. It was also considered in some circles as a reaction to authority of the state, as a last-leg response of the 20<sup>th</sup>

century for transition into the next. The 21<sup>st</sup> century, it has been widely claimed, is one of democracy, human rights and the markets which is going to be characterized by globalization on the one hand and decentralization on the other. Power is shifting its locus and this has largely been inspired by a demand for democracy and 'associational' life. It was so elegantly expressed 150 years ago by Alexis de Tocqueville, one of the original thinkers in this matter: "Among the laws that rule human societies, there is one that seems more precise and clear than all others. If men are to remain civilized or become so, the art of associating together must grow and improve in the same ratio in which the equality of conditions is increased".

## 14.2 CIVIL SOCIETY

If the 'association' and 'equality of living conditions' are now being stressed upon, it was mainly done so by the donor agencies and the NGOs who discovered and ensured 'participation' of people in their own affairs as the key to making both possible. Interestingly, all these were known to social scientists in general and political scientists in particular since days of ancient Greek States. But it is the powerful Western aid policy which highlighted its importance for the developing countries if they are interested in getting aid from the West. Thanks to the political elites of the Third World, these countries are already in the debt trap by the 1970s. There was hardly any other option available to them but to accept the compulsions of new political moralities as enunciated by line aid-givers from the West, particularly during 1990s. As an aid agency (UNDP) put it:

"simply stated, civil society is, together with the state and the market, one of the three 'spheres' that interface in the making of democratic societies. Civil society is the sphere in which social movements become organized. The organizations of civil society, which represent many diverse and sometimes contradictory social interests include church-related groups, trade unions, cooperatives, service organizations community groups and youth organizations, as well as academic institutions and other

Previously, it may be recalled points of a country meant understanding about its state and society. Now with the civil society coming up as the basic sphere (along with state and market) the importance of State diminished in its impact on the lives of people. The meaning of market is not difficult to understand though it has some very deepening implications. But what is this civil society one is called upon to live with

Civil Societies essentially is a conceptual product of the Enlightenment age in the west and as such it refers to those societies which are governed by the rule of law and held together not so much by blood and ethnicity as by institutions as of common interest. One can easily see how different is this concept from the one recognized in cultures of Asia, Africa and Latin America which have been organized along the lines of blood ethnicity and other forms of collective behaviour and group living. The institutions and principles of common interest are essentially those which are basic to democratic political system (to emerge if not there and to strengthen itself in the light of western practices if already there).

**14.2.1 Basic Elements of a Democracy** In a civil society where the government is democratic which means following basic elements are found with it

- (a) Legitimacy : a government that relies on the consent of the governed the importance of free and fair elections is highlighted here

- (b) **Accountability:** a government to remain responsible to its citizens between elections and make available 'equality conditions' of living to them through guaranteeing freedom of association, freedom of press and freedom to dissent. A stable set of rules of law and an independent judiciary are prime requisites in a civil society.
- (c) **Participation:** a government which should permit and encourage citizens to take advantage of such rights and opportunities available to them. For this, pluralism and tolerance of diversities are encouraged as principles of organization. As a mark of good intentions, non-governmental organizations based on public rather than private goals are promoted as institutions.
- (d) **Competence:** a government with transparent and effective bureaucratic institutions and personnel to formulate and implement policies and deliver essential services effectively.

With social and cultural traditions essentially different from those of a classical 'civil society', countries of the Third World have been called upon to negotiate with these new political compulsions. This task can become possible and governance made responsive to people's needs (whether independent of the state or otherwise) through promotion of the non-governmental organizations. In the rest of the Unit, you will read about struggles for political reforms, launched by the NGOs in developing countries.

### Check Your Progress 1

1. What is 'Civil Society'? Why has it become important for the developing countries to adopt?  
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2. Democracy, as understood today, is constituted by interfacing of three spheres. What are they?  
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3. Identify the new political compulsions which the governments in new states have to cope with.  
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## 14.3 STATE & NGOS

Lester Salamon wrote, "we are in the midst of a global 'associational revolution' that may prove to be as significant to the later twentieth century as the rise of the nation-state was to the later nineteenth. NGOs have ushered in a *barefoot revolution*". They are considered to be *peoples' platform for struggle* against indifferent and hostile forces of the *state* and the recent phenomenon of *globalization*.



There has been a proliferation of NGOs, *more in South* than elsewhere in the world. They surfaced more than twice the rate at which private sector grew in Asia, Africa and Latin America. By 1993, Brazil topping the list, had an estimated 1,10,000 NGOs with India coming a close second with 1,00,000. As has been seen in India, many of the NGOs have been found spurious or their funding has come in for criticisms, but the role of some of these NGOs has proved to be *revolutionary at times and welfare-oriented many a time*.

*NGOs are private, non-profit professional organizations with a distinct legal character concerned with public welfare goals.* In meeting these goals, they have proved to be good complements to the State's exercises. NGOs exert significant influence over legislation and public policy; they in fact provide *the closest approximation to direct popular participation* in governmental and intergovernmental forums. Some even have gone to the extent of providing political strength to fight. In the Philippines, India, Brazil and Chile, *political parties fighting elite interests have found an ally in NGO support* whereas left parties in India or **Dr. Mahathir Mohamad** of Malaysia have condemned foreign-funded NGOs for their *neo-liberal role of continuing imperialism through other means*. But NGO influence on legislation for various reforms cannot be denied: in India and Bangladesh these reforms can be found in areas of minimum wages, feudalism and bonded labour. Right to Information has been legislated by some states (Rajasthan, Goa, Tamil Nadu) and in the Union Parliament, a Bill is under active consideration. In the Philippines, NGOs not only influence legislation and public policy but they enjoy today constitutional recognition of such roles. *Article II, Section 23 of the 1987 Constitution of the Philippines* reads:

"The State shall encourage non-governmental, community-based or sectoral organizations that promote the welfare of the nation". *Article XIII Section 15* requires that "the State shall respect the role of independent people's organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests through peaceful and lawful means".

In Chile, the NGOs helped to restructure left-wing opposition to the State during the mid-70s under the military junta rule of Gen. Pinochet. By 1990s, the NGO policy proposals represented, according to an informed analyst "a fundamental component" of the programmes adopted by the Alwyn Administration. Even in Africa where the obstacles to 'associational life' are found more (than in the case of Asia or Latin America), NGOs have played a major role in bringing about political change in the continent. *The African Charter of Human and Peoples' Rights* is the only regional instrument in human rights, which explicitly provides for 'people' rights (since it has powers to investigate into State's reports) as well as the *Right to Development*.

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## 14.4 IMPACT OF NGOS IN INDIA AND ELSEWHERE

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Human Rights field has essentially been a battle ground between the government and the civil society, though it need not be necessarily so. Here again, political impact of the bottom-up projects i.e. NGOs is less evident than the economic social and cultural. In fulfillment of the latter aims and objectives, NGOs have been found to empower beneficiary communities and build institutions that challenge retrograde local and religious traditions and commercial elites. In India for example, one may mention several cases of *social and quasi-religious movements* which have exerted a moral and philosophical impact on the development of human beings. Gandhian movement, Bhodan movement, Arya Samaj movement of the 19<sup>th</sup> century, Ramakrishna mission, Sarvodaya movement of JP in India and of the Buddhists in Sri Lanka, Swami Narayana movement in Gujarat and abroad, Swadhyaya movement of Pandurang Shastri Athavale, organized social upliftment services of late Mother Teresa, Baba Amte, Nana Hazare, Nanaji Deshmukh, Kishan Patnaik are some among many other prominent examples from the field.

The political impact of the people's initiatives at the grass-roots level became evident with the coming into existence of the civil liberties organization in 1970s and thereafter. Sixties were a decade which witnessed wide inequalities between the rich and the poor. We had on the one hand, Green Revolution whose benefits were cornered by the landed rich, and the naxalite movements which mobilized and organized the landless peasants and workers against the state, on the other. Seventies witnessed the state becoming authoritarian and getting things done through severe measures of control, repression and authoritarian rule. The National Emergency in 1975 followed the nation-wide strikes and struggle of demanding people like industrial workers, agricultural labourers, students etc. These were the days (beginning from the late sixties) which actually spawned the civil liberties movement in India. The latter arose largely in response to an ever-increasing political control by the State. The Indian State responded through draconian measures like Maintenance of Internal Security Act (1971 repealed in 1978), Defence of India Act (1975), National Security Act (1980), the Terrorist and Disruptive Activities (Prevention) Act (1985) which are some examples of state repression. It was in response to this repression, that the first generation of civil liberties organizations took birth. Some important names in the field are:

*Association for the Protection of Democratic Rights (APDR) in West Bengal, Andhra Pradesh Civil Liberties Committee (APCLC) & the Organization for Protection of Democratic Rights (OPDR) in Andhra Pradesh, People Union for Civil Liberties and People Union for Democratic Rights (all India), Lokshahi Hakk Sangathan and Committee for Protection of the Democratic Rights (Maharashtra), Naga People's Movement for Human Rights etc.* These are many civil liberties organizations which came up fighting for the cause of the people against the wrongs done by the State. You may go to the nearest civil liberties organization and study how they are making a political impact in changing people's attitudes and behaviour as a part of the emergent human rights culture in India.

Indonesia's largest NGO, for instance, *Yayasan Bina Swadaya* (Community Self-reliance Development Agency) has by late 1980s organized 17000 local groups directly or indirectly, *strengthening the autonomy of local communities vis-à-vis local military, political and agricultural elites.* Bangladesh's records show that NGOs *grew into a parallel force* reaching 10 to 20% of the poor who were marginalized under the authoritarian regimes of Zia and Ershad. Similarly in India, *Action for Welfare and Awakening (AWARE)* based in Andhra Pradesh had formed 200 village organizations bringing 23,000 hectares of land under cultivation and mobilized a volunteer force of 25000 by the late 1980s directly challenging the interests of powerful landowners. *Bondhua Mukti Morcha* of Swami Agnivesh is a well-known case in India which is engaged in guaranteeing payment of minimum wages and releasing bonded labourers into freedom. There are many outstanding leaders who glorified themselves through their efforts, mobilized people for organized struggle to achieve human rights goals. Ela Bhatt, Medha Patkar, B.D.Sharma, Vandana Siva, Kannabaran, Bunker Roy, Aruna Roy and Nikhil Dey, Thomas Kuchchery are some of the prominent civil society leaders.

Can you identify a group of similarly engaged civil society leaders! Please send them to the Programme Coordinator with a short note on each one of them.

As studies by B. Sanyal and A. Fowler have shown, NGOs' *contributions to democratization and human rights struggle* have not been so free and distinguishable. Fowler reaches the conclusion after a careful study of evidences from Kenya that "NGOs are more likely to maintain the status quo than to change it" because of "the fragmentation, competitiveness and unrepresentative structure" of the NGO community. Lack of consolidation among civil society groups leads more to a state of "reluctant partnerships" with the State whose failures to reach the marginalized groups are thus covered (though thinly) by NGO efforts. The State hardly entertains any fear of

challenge or confrontation from them. This is something that the genuinely struggling voluntary groups have always resented, more so in case of those who are in receipt of foreign funds.

## 14.5 NGOs CONTRIBUTIONS TO POLITICAL REFORMS

Though piece meal, NGO efforts at political reforms have made substantial contributions. In India, it is unthinkable that we will have another National Emergency from a group of disgruntled political rulers. Even imposition of President's Rule under Art 356 is becoming politically prohibitive, thanks mainly to the vigilant and active public opinion and people's movements. In Thailand, for instance, NGOs especially concerned with human rights played an important role in the demonstrations of May 1992 which led to the collapse of the National Peace-Keeping Council the same month. In Chile, they played a significant role in restoration of democracy and as mentioned above, in drafting policy proposals for the Allwyn government. NGO efforts to mobilize political opinion at the grassroots level for elections to local self-government, have been noticeably significant in the Philippines, Brazil, Chile and Thailand. As a researched study by Gerard Clarke shows:

"A correlation exists between the proliferation of NGOs and political change in Asia, Africa and Latin America since the mid-1980s. NGOs have played a significant political role in engendering stability in transitional societies, by providing socio-economic assistance to sectors weakened by structural adjustment policies and cut backs in government expenditure, by sustaining and aggregating political participation amid the withering of socialist movements, and by providing direct linkage between government and local communities."

Today we have successful stories of people and community initiatives for harvesting of water in drought prone areas of Gujarat and Rajasthan, asking for right to be informed about the governing process, protection of forests and bio-diversity interests and in other areas of health care, education and livelihood for survival in some areas, such initiatives have been together with the State, though more often, they are exemplary and supplementary in nature search for civil society leaders will reveal to you these areas of people and community initiatives.

### Check Your Progress 2

1. Indicate True or False:
  - i) Global proliferation of NGOs show that they have grown more in South than elsewhere.
  - ii) The Philippines Constitution of 1987 requires the State to promote NGOs.
  - iii) The Africa Commission on Human and Peoples' Rights can investigate into State-issued communications.
  - iv) A. Fowler's research shows that the NGO community is solidly united and pose a threat to the State of Kenya.
  - v) Political impact of NGO efforts is more than socio-economic and cultural impact.
2. Will it be correct to say that the NGO movement in the developing countries of Asia, Africa and Latin America has influenced their political change? Explain.



3. Take a country each from Asia and Latin America and show how NGOs have played an important role in their respective countries.

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## 14.6 NGOs INTO HUMAN RIGHTS MOVEMENT

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You must have heard about the recent failure of the World Trade Organization to reach a consensus at its meeting at **Seattle** (1999, USA) mainly under the pressure of some influential non-governmental organizations (NGOs). No less impact making was their pressure at **Davos** which followed the Seattle meeting. Considering the power and influence they wield, President Clinton even agreed that the NGOs be made a part of the negotiations at this highest and most powerful world body. World Trade Organization is a rich nations' club that works on certain principles of trade which the sovereign signatory states cannot obstruct or resist. You know that we are now passing through an era of globalization in which the dominant players are the transnational corporations and in such a situation, many of these trade-related principles have also been agreed upon by the developing countries. No wonder, in many cases, these developing, (heavily indebted) states have surrendered their economic sovereignty under different types of pressures emanating mostly from the World Bank and the International Monetary Fund (IMF).

These NGOs who were barricading the roads to the negotiation site and in the process, were subjected to law-and-order repressions, actually represent an example of the growing civil society movements around the globe. There have been many such sterling achievements on the part of micro-level organizations making macro-level impact. And these achievements belong to diverse sectors: gender, environment, indigenous people, political victims etc., etc. But an important example is the infamous phenomenon of 'disappearances'. This phenomenon is typically true of developing countries with repressive military/authoritarian regimes. We had our own version of 'fake encounter death' through which dissident political workers were killed by police who, however, gave an explanation of killing them in the course of a confrontation or when they were fleeing. Civil liberty organizations are fighting against these violations, as mentioned above.

'Disappearances' phenomenon (mainly of 1970s) applied to hundreds and thousands of dissidents who opposed the military regime in Latin American countries such as Guatemala, Argentina, Chile and Uruguay. Official explanations to queries from relatives always were misleading nonsense: they might have gone to meet their girl-friends or some relatives etc. Later on, they turned out to be cases of killing by the state officials, and often after subjecting them to torture.

The movement which this Latino phenomenon of State-Sponsored 'shame' had provoked made the "**Crazy Mothers**" of Argentina to march in protest against the military regime. They constituted themselves into "Mothers of the Plaza de Mayo" and held weekly public meetings to expose the wrong doings of the state officials. Soon after, such meetings and street demonstrations on the part of the mothers whose sons and relatives "disappeared" drew international attention. A Latin American Federation of Relatives of Disappeared Persons (FEDEFAM) was established and the Amnesty International launched a vigorous campaign in 1980.

### 14.6.1 INSTITUTIONAL REFORMS

The cumulative effect which all these civil rights movements (beginning with a group of concerned mothers) produced lay in introduction of many institutional reforms. Growing



international concern led the UN Commission on Human Rights to establish a Working Group on Enforced or Involuntary Disappearances which has been mandated to examine such cases and report to the Commission on Human Rights. In the first year (1981), the Working Group received information about between 11,000 and 13,000 cases of disappearance. These figures have grown to 43,890 in December, 1996 when it issued the report. As **Peter Baehr** mentions : "The Working Group expressed its particular concern over the following countries where during more than ten years, more than 500 cases had remained unresolved : Argentina, Chile, El Salvador, Guatemala, Iraq, Peru, the Philippines and Sri Lanka. The Working Group urged states to invite it for a visiting mission. By the end of 1996, this had been done only by Bolivia, Colombia, Cyprus, Guatemala, Mexico, Peru, the Philippines and Sri Lanka. India had reacted negatively, and Iraq and Turkey did not react at all to requests for such a visit."

NGOs represent small groups of people fighting for promotion as well as protection of human rights. As the famous human rights activist, **Laurie Wiseberg** observes: it is only in the 1970s that it came to be widely recognized under the pressure of the human rights NGOs that the States have failed to scrutinize and monitor human rights violations committed by other states. Under these pressures, states "reluctantly moved from **promotion of human rights** and a concentration on the drafting of international instruments and standards to the **protection of human rights** with an emphasis on implementation and enforcement." It is clear that the human rights community is expanding with the increase in the spread of the human rights movement which has largely been fueled by organized associations/ groups of aware and alert people struggling for 'political space'. 'Political space' refers to freedom to express political views, and as you can realize on a little introspection, this political space is getting restricted, more often in the name of 'law and order'. The latter is carried out through various repressive measures adopted by the state officials in excess of those required for maintaining public order or what are known in our Constitution as "reasonable restrictions".

### Check Your Progress 3

1. Answer **True** or **False**:
  - (i) President Clinton agreed after the World Trade Organisation fiasco at Seattle that NGOs should be given the right to participate in global deliberations.
  - (ii) Heavily indebted states from the developing countries who have signed the World Trade Organisation are maintaining their economic sovereignty as before.
  - (iii) 'Fake encounter death' meant killing of people by police and para-military forces under some pretext.
2. What lessons do you draw out of 'disappearance' phenomenon?  
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 .....
3. Which are the countries who had not invited the Working Group on Enforced or Involuntary Disappearances (till 1996)?  
 .....  
 .....  
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## 14.7 LET US SUM UP

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This Unit is devoted to analysis of NGO phenomenon in the developing countries. Emergence of the NGO phenomenon is related to a new constellation of forces which ruled the globe, particularly during 1990s in the wake of collapse of Soviet Union. So many new forces make this constellation: One strand reveals that globalization has become as important as devolution of power to the people while the State's sovereignty has come under attack. Another way of looking at the same phenomenon reveals a considerable measure of interfacing taking place between civil society, state and market. This is the view of the Western aid givers and donors who insist on making the new century one of democracy, development and human rights.

A resurgent civil society is usually served by the NGOs who have mushroomed more in South than in North. A barefoot revolution has thus been launched which provides a platform for people's struggle and participation. Group initiatives have made distinct impact on people's lives forcing State to introduce political reforms. But not all NGO operations have been found above board; in some cases they were autonomous while they have also been criticized for preserving status quo and acting as State's 'reluctant partners'.

But the beauty of the community initiative lies in their growth into movements for a cause. NGOs thus have entered into new roles of **protecting** (which is beyond promotion) human rights by staging group actions. Instances of success stories are many where, in the absence of State protection, people have managed for themselves water, biodiversity, livelihood systems etc. They have even successfully launched tirades against global aggression (Seattle fiasco of WTO) and dictatorial military regimes (Mothers of the Plaza de Mayo). And they have led to institutional reforms: **President Clinton** declared that the NGOs need to be consulted in future WTO negotiations and in cases of 'disappearance', a Working Group has been set up which would visit the states and report on such human rights violations to the UN Commission on Human Rights.

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## 14.8 KEY WORDS AND PHRASES

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**Political economy:** political consideration governing economic decision-making

**Protean:** strong

**Unleashed:** released

**Initiator:** beginning efforts

**Supplementation:** adding to

**Last-leg:** towards the end

**Distinguishable:** easily identifiable

**Retrograde:** backward

**Proliferation:** rapid growth

**Reluctant partnership:** becoming partner against one's own interest

**Sustaining and aggregating political participation:** Pooling together into one frame and maintaining the same through ups and downs.

**Withering:** loss of force

**Structural Adjustment Policies:** Indebted nations have accepted the terms to change the structure of their economics in the light of conditions imposed by World Bank and IMF who have either lent to them or had facilitated the loans earlier.

**Constellation:** a cluster

**Enforced or Involuntary Disappearance:** to remove people from the scene against their willingness. Often they are killed.

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## 14.9 SOME USEFUL BOOKS

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1. Ian Smillie - The Alms Bazaar IT Publications, 1995.
2. David Korten - Getting to the 21<sup>st</sup> Century: Voluntary Action and the Global Agenda Kumarian Press, 1990.
3. Alan Fowler - "Democracy, Development and NGOs in Sub-Saharan Africa" Development and Democracy No.3, 1993.

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## 14.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. A western conceptual product of the Enlightenment Age which emphasized on 'rule of law' and public institutions of common interest. Because it is becoming an aid conditionality.
2. Civil society, state and market.
3. Legitimacy, accountability, participation and competence.

### Check Your Progress 2

1. i - (T), ii-(T), iii-(T), iv-(F), v (F).
2. Yes. Ref 14.5 (and also elsewhere).

### Check Your Progress 3

1. i.(T), ii (F), iii (T)
2. Even a state-sponsored shame can be countered through organized efforts and struggles by those who look to be least powerful of persons. 'Crazy Mothers' of Argentina offer this lesson to the world.
3. Bolivia, Colombia, Cyprus, Guatemala, Mexico, Peru, the Philippines and Sri Lanka.

# **UNIT 15 HUMAN RIGHTS MOVEMENTS AND THE NGOS**

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## **Structure**

- 15.0 Objectives
  - 15.1 Introduction
  - 15.2 Human Rights NGOs: Features and Responsibilities
  - 15.3 Emergence of International Human Rights Movement
    - 15.3.1 Vienna Congress
    - 15.3.2 UN Commission on Human Rights
    - 15.3.3 NGOs Promoting Human Rights Movement
  - 15.4 NGOs and the UN
    - 15.4.1 Committee on Non-governmental Organisations
    - 15.4.2 UN and the League: Differences over associating the NGOs
  - 15.5 Conditions Necessary for Effective Working of Human Rights NGOs
    - 15.5.1 Reliability
    - 15.5.2 Access vs. Independence
    - 15.5.3 Representativeness
  - 15.6 NGOs: A Divided House
  - 15.7 Let Us Sum Up
  - 15.8 Key Words
  - 15.8 Some Useful Books
  - 15.9 Answers to Check Your Progress Exercises
- 

## **15.0 OBJECTIVES**

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At the end of reading this unit, you should be able to know about

- features and responsibilities of human rights NGOs,
  - emergence of international human rights movement,
  - the nature of response from the UN system towards the human rights movement in the past; and
  - how in the present, ambiguities in provisions regarding consultative status are preventing unity of the NGOs for reasons of which the general cause of human rights is suffering.
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## **15.1 INTRODUCTION**

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In the last Unit, we have read about the political contributions made by the NGOs for reforms in State behaviour in the developing countries. In this Unit, the focus of NGO contribution is narrowed to analysis of their contributions to human rights movement which is easily a global phenomenon today. The UN system has particularly provided the leadership and necessary encouragement for the emergence of international human rights movement.

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## **15.2 HUMAN RIGHTS NGOS : FEATURES AND RESPONSIBILITIES**

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**Human rights NGOs** are groups of organized people engaged in **protecting and promoting** (civil) security against excesses of the state agencies. But should one remain content with 'civil' aspect of security or one should also assert and struggle for social security as well ? In so far as human rights movements are concerned struggle for social security like right to food security, shelter, an adequate standard of living, right to education, cultural rights, etc. are no less important



than fighting against arbitrary arrests, illegal detention, torture, custodial deaths, 'third-degree' methods adopted for extraction of 'confessions', disappearances, fake encounter deaths, etc. In other words, for us in the developing countries, socio-economic and cultural rights and the Right to Development are no less important than civil and political rights. The true test for their being "indivisible and inter-dependent" lies with us in the developing world.

A distinction is usually made between human rights NGOs and other political groups and actors like trade unions, farmers organization etc. What distinguishes a human rights NGO from other political actors, suggests Wiseberg, is that the latter typically are seeking to protect the rights only of their constituents, a human rights group seeks to secure rights for all members of society. It is this 'general disinterested focus' which distinguishes human rights NGOs from 'sectional groups' like trade unions or 'promotional groups' like lobbies which have come around a humanitarian cause on an adhoc basis. There is thus a widely shared view that a human rights movement does not aim at capturing state power (as an organized body) which is what precisely distinguishes it from other political associations like political parties etc. "Their aim should not be to take over institutions or to have direct governmental responsibility."

Such human rights NGOs may be as wide as local provincial, national, regional and international. Pick out an example of a local human rights NGOs in your locality and the province. 'Peoples' Watch', for example, in Tamil Nadu, PUCL and PUDR are examples of national groups in India. Amnesty International, Human Rights Internet (Canada) and FIAN (Food first, Information and Action Network) are globally active whereas Commonwealth Human Rights Initiative, Forum-Asia (Singapore), Hurights (Osaka), FEDEFAM (Buenos Aires) in South America are examples of regional groupings.

### Check Your Progress 1

1. Do you believe that socio-economic security is as important as civil security? Reason it out from the given provisions in the International Bill of Rights.

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2. Give one example each from:
  - (a) 'Pure' human rights NGO
  - (b) International human rights NGO
  - (c) Local human rights NGO

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## 15.3 EMERGENCE OF INTERNATIONAL HUMAN RIGHTS MOVEMENT

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### 15.3.1 Vienna Congress

As you know, the UN is at the apex of inter-governmental system but the role of UN in encouraging human rights movement was really nothing much as compared to the spurt of

developments which followed the end of cold war rivalry. The World Conference on Human Rights at Vienna actually focussed on a vigorous role of the NGOs in human rights movement. This conference recognized:

[The] important role of non-governmental organizations in the promotion of all human rights at national, regional and international levels. The World Conference on Human Rights appreciates their contribution to increasing public awareness of human rights issues, to the conduct of education, training and research in this field and to the promotion and protection of all human rights and fundamental freedoms. While recognizing that the primary responsibility for standard setting lies with States, the Conference also appreciates the contribution of non-governmental organizations to this process. In this aspect, the World Conference on Human Rights emphasizes the importance of continued dialogue and cooperation between governments and non-governmental organizations.

This is the first major global level recognition of the importance of NGO's in the advancements of the cause of human rights. Otherwise, the past of the human rights movement has been rather patchy from this point of view.

### **15.3.2 UN Commission on Human Rights**

The UN Commission on Human Rights created in 1946 did little till the 1970s. Until 1970 when the Economic and Social Council (an auxiliary organ of the UN system working under the General Assembly and with a specific mandate "to promote respect for and observance of human rights and fundamental freedoms for all") adopted the Resolution 1503 (a Procedure for Dealing with Communications relating to violations of Human Rights and Fundamental Freedoms), thousands of complaints reaching UN concerning human rights violations were ritually sent into limbo under a 1947 decision that the Commission "was not competent to investigate or take action on any of these complaints." Human rights monitoring expanded only with the end of the Cold War rivalry but even now, not more than 2% of the UN budget is spent on human rights (not including the expenditure on relief for refugees).

### **15.3.3 NGOs Promoting Human Rights Movement**

When the UN system was not effective during the cold war era, streams of sustenance flowed from political formations outside the nation-state (para-statal). It was in the background of the pressure of the Afro-Asian countries of the Non-aligned Movement, that the monitoring of complaints received was given a start in the Commission's office. The pressure came particularly from the African countries to end the racist apartheid regime then in South Africa. Similarly, a coalition of forces could be forged in early seventies; particularly in Latin America. The first salvo was fired with the military overthrow of Allende of Chile in 1973 which provoked many human rights organizations to take up issues with the military dictatorships which sprang up soon in the southern cone of South America. Dissidents in Eastern Europe and Soviet Union received enormous boost on signing of the Helsinki Treaty and with the support flowing from the 'Helsinki Watch' committees and Soviet Jewry groups that emerged in the West soon after. The development of a social justice agenda and liberation theology by elements in the Catholic Church following Pope John's Vatican II (1961) and the move from 'study' to 'action programmes' among them gave an effective push to the agenda of human rights movement. As Wiseberg observes:

The development of a human rights program by the Ford Foundation in the mid-1970s which made resources available to human rights NGOs, the awarding of Nobel Peace Prize to Amnesty International in 1977, the end of the Vietnam War, which meant that progressive Americans could redirect their energies to a broader range of concerns, and the

coming into force of the human rights covenants in 1976 – all contributed to the coalescence of the movement. Thus in 1977, when US President Carter took up the banner of human rights as his own, and got human rights inscribed as an enduring item in the international political agenda, he was less a leader than a follower of a trail already blazed by NGOs.

**Human Rights NGOs**, however, are not to be confused as products of the UN system only. P. Archer identifies the *Anti-slavery Society* founded in 1837 as the **first human rights NGO** but the creation of Amnesty International in 1961 marked the real beginning of development of an international human rights movement – a trend which visibly peaked up with over 1500 NGOs participating in the Vienna Congress in 1993. The effective strength of this NGO led movement began to make its presence felt with the beginnings of 1970s, as the second the Development Decade (1970s) began taking a point of departure from the first (1960s). Whereas the first decade had the goal of encouraging economic growth, the second focussed on basic needs of the people with coming into evidence of the ever-widening inequality and rampant authoritarian political governance in most of the developing countries. Political repressions spawned grass-roots movements as the Third World walked blithely into the debt trap laid by the World Bank and the International Monetary Fund. Fall of a superpower (former Soviet Union) broke the balance, and thus enter aggressive forces of globalization (especially economic and financial) led by the TNCs. In this era of globalization, human rights movements have a bigger responsibility than before. In order to undertake them successfully, the same Informational Communication Technologies which have destroyed global distance for financial capital, can be intelligently put to use for consolidation of the democratic forces all over the world. The latter in their turn, will give rise to a global civil society over years of consolidated human struggle. A widespread human rights movement of these characteristics will constitute *globalization-from-below* which can resist mindless invasions by *globalization-from-above* represented by aggressive capitalism (especially the speculative and financial) of the TNCs.

### Check Your Progress 2

1. Answer True or False:

- (i) Vienna Declaration gave the first major recognition to the role of NGOs in human rights movement.
- (ii) Till 1970, UN Commission on Human Rights did little to promote the cause of human rights.
- (iii) President Carter pioneered the human rights movement when he made observance of human rights as one of his foreign policy planks.
- (iv) NGOs can make use of information and communication technologies to forge globalisation-from-below.

2. Developments during 1970s were crucial for emergence of human rights movement. List them.

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## 15.4 NGOS AND THE UN

**Article 71** of the UN Charter creates formal relations between the UN and the non-governmental organizations with a view to facilitating effective functioning of the ECOSOL which a mandate to advance the cause of human rights. Therefore, though there were NGOs before, they actually got articulated with primary reference to the UN system. To a large extent, an NGO is defined by what it is not: it is not governmental, that is, it is not controlled by the government. While the 'basic resources' must come from contributions made by individuals or non-governmental agencies, provision has also been made, exceptionally for national NGOs 'after consultation with' the government concerned.

### 15.4.1 Committee on Non-Governmental Organisations

Pursuant to Article 71, the ECOSOL has raised a Committee on Non-governmental Organizations to receive information from and supervise application of, the international human rights instruments through the NGOs which it divides into three groups:

- i) Category I has those NGOs which have a basic interest in most of the Council's activities
- ii) Category II has those NGO, which have special competence but are concerned with only a limited number of Council's activities.
- iii) The Roster which contains the names of the NGOs which make occasional but useful contributions to the Council's work.

### 15.4.2 UN and the League: Differences over Associating the NGOs

Article 71 did not, however, go too far, definitely not beyond what the NGO representatives enjoyed in the committees of the League of Nations. ".....although not able to vote, (they) were allowed to speak, present reports, initiate discussions, propose resolutions and amendments, and be assigned to sub-committees." The UN, however, clearly distinguishes between 'consultation' with NGOs in Article 71 and 'participation without vote' granted to specialized agencies as well as states (not members of the Council) in Article 70. Further, the NGOs in consultative status have been subjected to threats of 'suspension or withdrawal of status' if they are found politically motivated and supplying unsubstantiated information against the Member States.

The relationship between the NGOs and the UN are under review. Till date, however, **Resolution 1296** of the ECOSOC provides for specific features which an NGO should have in order to take up human rights issues at the global level. Resolution 1295 passed by ECOSOC under the heading "Arrangements for Consultation with Non-governmental Organisations" mentions that the "Organisation shall be of representative character and of recognized international standing; it shall represent a substantial proportion, and express the views of major sections of the population or of the organised persons within the particular field of its competence, covering, where possible, a substantial number of countries in different regions of the world." Accordingly, the following conditions may have to be fulfilled for effective working of international human rights NGOs (Peter R. Baehr).



### Check Your Progress 3

1. How is Article 71 different from Article 70?

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2. What is the basic inadequacy in Resolution 1296?

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## 15.5 CONDITIONS NECESSARY FOR EFFECTIVE WORKING OF HUMAN RIGHTS NGOS

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### 15.5.1 Reliability

Providing **reliable information** is a foremost requisite since, now a days, dependence on NGO information has become credible. They help various UN experts committee to make their questioning more precise, factual and less abstract." For any theme or issue-based examination, NGO supplied information is mostly used. No less than 74% of the cases taken up by the UN Working Group on Arbitrary Detentions in 1994 were brought by international NGOs, another 23% came from national NGOs and 3% from the families.

Collection of reliable information demands that NGOs should have professional expert staff. **Amnesty International** with a professional staff of almost 300 individuals in its International Secretariat in London compares easily with the Office of the UN High Commissioner in Geneva. Other organizations with good expert staff strength include International Commission of Jurists, Human Rights Watch Committee (USA), Article XIX (which works for freedom of expression all over the world).

Reliability is closely linked to **credibility**. An NGO to remain credible and maintain its reputation must be extremely careful and guard itself against charges with regard to its objectives, financial sources and methods of work. In any case, if such information relates to new areas of human rights violations (like e.g. 'ethnic cleansing' taking place in former Yugoslavia, Rwanda, Kosovo, etc.) protection of international human rights standards is considerably strengthened.

### 15.5.2 Access vs. Independence

This sums up the foremost dilemma facing a human rights NGO. For an NGO, it is important to have access to government as much as it is important for that NGO to remain independent, of it when it comes to processing and passing relevant information to the higher human rights bodies of the UN, for example. In politically open societies like the Netherlands and Norway access to government is easy but it is really not so in politically not so open societies. In some countries, former NGO executives hold positions in national governments and the NGO representatives are routinely included in official delegations to sessions of the General Assembly of the UN or the Special Conferences. **Australia** provides a bright example: members of parliament (including members of government) serve on the committee suggestively called "*Parliamentarians for*

*Amnesty International*". Yet another interesting experiment is the two-day consultations with the NGOs which the Canadian Ministry of Foreign Affairs conducts once a year. Weiss and Gordenker would identify an important channel of access in the pioneering human rights defenders like former President Jimmy Carter, former Norwegian Prime Minister Gro Harlem Brundlandt and former Dutch Foreign Minister Peter Kooijmans. Each country has such famous figures: Rajni Kothari, Soli Sorabjee, Justice Rajinder Sachar, Justice Krishna Iyer, Sunderlal Bahuguna, Baba Amte, Medha Patkar, Illa Bhatta, Swami Agnivesh, among many others active in India, Asma Jahangir I.A. Rahman in Pakistan, Kamal Hossain. Mohammad Yunus of Bangladesh, Radhika Coomanswamy and A.T. Araratne of Sri Lanka bring to bear considerable importance of their personalities on the human rights cause they may be advocating or campaigning for.

### 15.5.3 Representativeness

NGOs may provide instruments and facilities which, whether invited or not by the governments, emphasize participation of the majority usually beyond the delivery reach of the state. As Bratton commented in the context of planning of projects: once the question was 'how can development agencies reach the poor majority?', now it is 'how can the poor majority reach the makers of public policy?'. Various studies have confirmed strong correlation between project success and the participation of grass-roots organizations. NGOs have now become known for their distinctive contributions in the following sectors:

- (a) their ability to reach poor people, especially in inaccessible areas,
- (b) their capacity for innovation and experimentation in areas difficult for official agencies
- (c) their close links with the poor and marginalised communities – a phenomenon now becoming known as 'representivity'.
- (d) For a rich variety of skills to promote participation out there.

NGOs thus have constituted '*the Third System*' (the other two being international and national) dedicated to 'representing' interests of the majority of people out there beyond the delivery reach of the state. For one of these reasons, John Clark has estimated that a significant portion (12%) of development assistance from the North is now in the conduit of the NGOs.

NGOs may contribute to expanding representativeness in performance of public policies, but not infrequently, they are also known for "grass-roots apathy" – a phenomenon (Fowler has coined the term) of NGOs remaining busy in national and international seminars, conferences, meetings, or remaining confined to working in state capitals, etc. and losing sight of their goals of empowerment in the process. One of the principles laid down to decide 'representative' nature of the NGOs may be found in ECOSOC's considerations for granting consultative status to the NGOs. According to this principle, the organization should have a "representative structure" and possess appropriate mechanisms of accountability so that control over its policies and actions can be ensued through exercise of voting rights or other appropriate democratic and transparent decision-making processes. Criteria for judging such representativeness have not however been spelt out while this has given opportunities to make a virtue of this ambiguity. This unholy advantage has been taken as much by the rich Northern NGOs as by a good majority of Southern NGOs which have been reduced to personal fiefdoms by not so scrupulous 'human rights activists', taking shelter behind pompous formalities and high-sounding rhetorics.

## 15.6 NGOs: A DIVIDED HOUSE

The overall scenario presents an important message : NGOs are not united in claiming their pound of flesh. Southern NGOs have been criticized for lack of transparency. Northern NGOs have not yet succeeded in internalizing the Vienna Declaration's stipulation:

"Non-governmental organizations should be free to carry out their human rights activities, without interference, within the framework of national law and the Universal Declaration of Human Rights.

**Vienna Declaration**, it may be recalled, asked of the member states to promote and protect all human rights and fundamental freedoms "while the significance of national and regional peculiarities and various historical, cultural and religious backgrounds must be borne in mind".

But as Laurie Wiseberg reminds us, the G-77 countries have been paying only lip-service to this provision as can be seen in the highly divisive issue (among the NGOs) on democratization of the relationship between the UN and the NGOs i.e., wider access for the NGOs to consultative status of the UN. She observes :

On the one side were the NGOs (and governments) arguing for a democratization of the relationship between NGOs and ECOSOC by allowing political space for new actors (especially from the South) to participate more fully. On the other side, were the NGOs concerned that opening the UN so broadly would erode the rights and privileges they (reference is to the northern NGOs) had worked so hard to achieve. These include the right to make oral and written interventions at meetings of ECOSOC's subsidiary bodies, and in some cases, propose items for the agenda.

These considerations have led influential countries in G-77 to adopt an ambiguous posture: welcome (in principle) Southern NGOs into the UN system but stall, for all practical purposes, national human rights NGOs from attending. And for doing so, they have stood firmly behind a paragraph which states:

"Organizations accorded special consultative status because of their interest in the field of human rights and humanitarian assistance should have a general international concern with this matter, not restricted to the interests of a particular group of persons, a single nationality or the situation in a single state or restricted group of states."

Absence of unity in purpose and consequent lack of cooperation among the NGOs have impaired advancement of human rights movement. It also means abdication of a huge responsibility given to the member states by the World Conference on Human Rights. This responsibility consists in elaborating international standards in the light of all the complexities one finds in diverse cultural backgrounds. Through this route, one can promote universality of human rights in day-to-day practice. Otherwise universal human rights found in the International Bill of Rights may not be a set of practical standards. It may be reduced to being universal in goal, but less applied rights. Clearly, few can rival the capacity of the NGOs in providing flesh and blood to these universal standards meant for all nations and all peoples. Member States (i.e. the national governments), it may be recalled, have the obligation to protect these NGOs. It is actually in the interest of a live and a genuine set of universal human rights that the NGOs may be encouraged within the framework of their own national laws, but, without deviation, to promote universality of 'human rights' in actual practice. We have all agreed on this aspect at Vienna in 1993.



## Check Your Progress 4

1. Many outstanding human rights defenders' names have not been given in the text. Make a list of at least ten such persons – dead or living, international or national or local  
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.....  
.....
2. Identify salient contributions made by NGOs.  
.....  
.....  
.....
3. Pinpoint the ambiguity in the G-77 countries' stand for the Southern NGOs relating to the 'consultation status'.  
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.....  
.....
4. Indicate **True** or **False**:
  - (i) Northern NGOs have not fully accepted the Vienna Declaration's message focussing on the significance of the national and regional peculiarities of the member states.
  - (ii) Development assistance from the North has actually fallen, as seen in its conduits.
  - (iii) Reliability is closely linked to credibility of an NGO.

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## 15.7 LET US SUM UP

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NGOs play a major role in advancement of the cause of human rights. Neither the UN Commission on Human Rights nor the ECOSOC did anything substantial for this cause during the Cold War days. However, private initiatives launched by non-governmental organisations did not give up, till Amnesty International set up in 1961 spearheaded the movement. Till 1970s, concentration was for drafting of international standards and promotion of human rights. However with the advent of the second UN Decade, the focus shifted to protection since as **Prof. Louis Henkin** observed (in 1978):

"The early assumption that states might be prepared to scrutinize other states and be scrutinized by them" has not stood up and there has been little 'horizontal' enforcement.

The **real seeds** of human rights as a movement were sown in reaction to authoritarian and repressive regimes in the **1970s**, mostly in the developing countries. Mainstreaming human rights as a foreign policy plank by **Jimmy Carter** was the result of following a trail already blazed by the NGOs, rather than the President pioneering a human rights movement.

The relationship between the UN and the NGOs is governed by provisions in the **ECOSOC Resolution No.1296**. Criteria given there for a bonafide NGO are ambiguous. This particular feature has been a bane of NGO developments in advancing the cause of human rights across the global. Though the Southern NGOs lack transparency (in many cases), the Northern NGOs have



not shown full commitment for entry of the Southern NGOs into the UN process. That is how the Southern NGOs have been kept out of influencing UN policies.

NGOs in general and human rights NGOs in particular have a gigantic **responsibility**, if human rights are to be made universal in practice (that is, if they are not to be pious aspirations). Incidents at Seattle, Davos and also at Washington with regard to global conferences on world trade are making it clearer that the NGOs should plan towards acquiring more teeth. The Vienna Declaration has focussed on this aspect of making human rights genuinely universal (i.e. in practice) and asked the Member States to keep in mind their cultural specificities. This task of the state can be best performed through adding 'flesh and blood' to the 'dry bones' of the universal human rights, by the NGOs working in the field within the national framework. The quality of human rights protection in future would thus depend on how the UN (and the other inter-governmental agencies) and the Member States create enabling conditions for the NGOs to act in making '**universal human rights**' actually so '**in practice**'.

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## 15.8 KEY WORDS

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**Consultative status:** person or agency of a particular rank or position providing professional advise.

**Civil security:** security against exploitation by state/its agencies.

**Custodial deaths:** deaths of persons when under imprisonment, police arrest or detention/ confinement in prison.

**Third degree methods:** long and severe questioning methods by police to obtain information or a confession (liiegel).

**General disinterested focus:** general unbiased with focus no other than the violation of human rights.

**Apartheid:** system of race based (racial) discrimination of people. Ex: South African White Government.

**Blithely:** carelessly

**Roster:** list, register or catalogue.

**Arbitrary detention:** mindless arrest of people by police.

**Ethnic cleansing:** mass expulsion or killing on the ground of race or ethnicity.

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## 15.9 SOME USEFUL BOOKS

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Laurie S. Wiseberg, 1996, "Introductory Essay" in *Encyclopaedia of Human Rights* by Edward Lauson.

Rachel Brett, 1995, "The Role and Limits of Human Rights NGOs at the United Nations" *Political Studies*.

Pater R. Baehr, 1999, *Human Rights*, Macmillan

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## 15.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. Yes. Both the sets of rights are interdependent and inalienable. If civil security is important, why not 'social'? Elaborate on this.
2. Amnesty International for a and b and give one example from your locality (for c).

### Check Your Progress 2

1. (i) True  
(ii) True  
(iii) False  
(iv) True

### Check Your Progress 3

1. Relate to 'consultative status' for the NGOs.
2. Ambiguity in criteria.

### Check Your Progress 4

4. (i) True  
(ii) False  
(iii) True

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# UNIT 16 HUMAN RIGHTS NGOs AND THEIR FUNCTIONS

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## Structure

- 16.0 Objectives
- 16.1 Introduction
- 16.2 International Organisations
  - 16.2.1 Amnesty International
    - A. Objects and Mandate
    - B. Methods
  - 16.2.2 Human Rights Watch
  - 16.2.3 F.I.A.N.
  - 16.2.4 C.H.R.I.
  - 16.2.5 Anti-slavery International
- 16.3 National Human Rights Organisations
  - 16.3.1 PUCL
  - 16.3.2 PUDR
  - 16.3.3 Chipko Movement
  - 16.3.4 The Fish Workers' Movement
  - 16.3.5 Narmada Bachao Andolan
- 16.4 Functions of Human Rights NGOs
- 16.5 Let Us Sum Up
- 16.6 Key Words
- 16.7 Recommended Readings
- 16.8 Answers to Check Your Progress Exercises

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## 16.0 OBJECTIVES

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After reading this Unit, you should be able to know

- about many international and national NGOs as they have been working, and in continuation thereof,
- about some functions which a Human Rights NGO is expected to perform.

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## 16.1 INTRODUCTION

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In this last Unit of the course on Society and Development for human rights studies, it shall be useful to know certain new and positive developments taking place due to the private and voluntary initiatives of NGOs.

Many studies have been done to predict what is going to happen to this world driven by poverty, disease and environmental degradation. Why always the poor, illiterate and indigenous peoples have to suffer whenever development activities are undertaken? Whether it is urbanisation, employment – generating schemes, dams for irrigation etc. it will not be difficult to see that the victims belong to this category which is increasingly swelling its numbers. Ian Smillie has done an excellent analysis of such studies in his famous book: **The Alma Bazar** he has divided such analyses into two categories: (i) There are the **Doomsters** or those who predict the world in going to fall apart. **The Limits to Growth** is such an alarming book which was produced by the Club of Rome in 1972. There are many in this genre. (ii) Here we have people who tend to see light at the end of the tunnel. They believe that development can be reconceptualised and it is possible through such non-economic contributions like good education, effective health and welfare

services, good and open government a dynamic private sector, a vibrant civil society and a well-intentioned trading regime. Aid from the developed countries can enable such things to happen if the non-governmental organisations can gear themselves up to rise to these challenges. Along with this new concept of development which is called "human development", a global civil society can result out of sustained activities of the NGOs both in the North and the South.

This Unit deals with a small sample of such NGOs. These NGOs have been grouped into two categories: international and national.

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## 16.2 INTERNATIONAL ORGANISATIONS

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International non-governmental organisations are those organisations which do not have any national identity and which have chapters in various countries. Apart from various groups supporting them, these international NGOs have individuals support also in different countries who show solidarity with other cause. The solidarity could be in the form of writing protest letters, campaigning etc. The international human rights groups have also been supporting the UN human rights system and bringing out various reports. There are a number of international human rights groups but we would be discussing some of the very prominent human right organisations:

1. Amnesty International
2. Human Rights Watch
3. Foodfirst Information and Action Network
4. Commonwealth Human Rights Initiative
5. Anti Slavery International for the Protection of Human Rights

### 16.2.1 Amnesty International (AI)

Amnesty International was founded in 1961 by a British Lawyer **Peter Benenson** who urged people every where to begin working impartially and peacefully for the release of 'prisoners of conscience'. Within months thousands of people from various countries sent in offers of practical help – many were prepared to help to collect information on cases, publicise them and approach the governments – and what started of as a brief publicity effort became the most influential and highly respected human rights organisation of the world.

Today, AI has about one million members spread over 150 countries. It has a research staff in London of about 320 persons (plus about 100 volunteers) which is much larger than the staff of the UN Human Rights Centre in Geneva.

As its primary mandate, AI seeks to release 'prisoners of conscience' – those detained for their beliefs, colour, sex, ethnic origin, language, or religion who have not used or advocated violence. Through the network of members, supporters, AI takes up individual cases, mobilises public opinion, and seeks improved international standards for treatment of prisoners. Observers and sent to various countries on fact-finding missions and the government version of the report. **In 1977, Amnesty International got Nobel Peace Prize**, for its contribution 'to securing the ground for freedom, for justice and thereby for peace in the world'. On the occasion of the **30<sup>th</sup> anniversary** of Universal Declaration of Human Rights (1978) Amnesty International was awarded the **UN Human Rights Award**.

To publicise its concerns and activities, Amnesty International supports a large scale publication programme. The most influential and widely disseminated of its many reports is the annually published Amnesty International report, which provides a country by country survey of AI's



work. The Amnesty International Newsletter, a monthly bulletin brings out updated monthly reports of fact-finding missions, details of arrest and release of political prisoners and reliable reports of torture and executions. Amnesty reports on Kashmir conflict and the cold-blooded killings of Muslims in Maliana (Hashimpura) township of Meerut by PAC (Provincial Arms Constabulary) in 1982, are classic. The successive governments in India and Pakistan have blamed Amnesty International for its bias but they often use its report against each other to prove their points. Amnesty's reports on Afghanistan, Kosovo, China, South Africa and East Timor are eye openers and have been widely appreciated by world human rights fraternity.

Since Amnesty is a highly credible organisation, hence, it is necessary to know the aims and objects of the organisation as amended by the 23rd International Council Meeting, Cape Town, South Africa, 12-19 December 1997.

### 16.2.1 A Objects and Mandate

The *object* of Amnesty International is to contribute to the observance throughout the world of human rights as set out in the Universal Declaration of Human Rights.

In pursuance of this object, and recognising the obligation on each person to extend to others rights and freedoms equal to his or her own, Amnesty International adopts as its mandate;

To **promote awareness** of and adherence to the Universal Declaration of Human Rights and other internationally recognised human rights instruments, the values enshrined in them, and the indivisibility and interdependence of all human rights and freedoms;

To *oppose irrespective of political consideration, grave violations* of the rights of every person freely to hold and express his or her convictions and to be free from discrimination, and of the right of every person to physical and mental integrity.

To oppose by all appropriate means:

- a) the imprisonment, detention or other physical restrictions imposed on any person by reason of his or her political, religious or other conscientiously held beliefs or by reason of his or her ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, provided that he or she has not used or advocated violence (hereinafter referred to as 'prisoners of conscience'). Amnesty International shall work towards the release of and shall provide assistance to 'prisoners of conscience';
- b) the **detention** of any political prisoner without fair trial within a reasonable time or any trial procedures relating to such prisoners that do not conform to internationally recognised norms.
- c) the **death penalty**, and the **torture** or other cruel, inhuman or degrading treatment or punishment of prisoners or other detained or restricted persons, whether or not the persons affected have used or advocated violence;
- d) the **extra judicial execution** of persons whether or not imprisoned, detained or restricted, and "disappearances", whether or not the persons affected have used or advocated violence.

It is important to understand the working of an international organisation like Amnesty International. How has it been able to retain its credibility despite criticism from the rightist element and government in the third world.

## 16.2.1 B Methods

In order to achieve the aforesaid object and mandate, Amnesty International shall:

- a) at all times *make clear its impartiality* as regards countries adhering to the different world political ideologies and groupings;
- b) **promote** (as appears appropriate) *the adoption of constitutions, conventions, treaties* and other measures which guarantee the rights contained in the provisions referred to in Article 1.
- c) **support and publicise the activities** of, and cooperate with international organisations and agencies which work for the implementation of the aforesaid provisions;
- d) take all necessary steps to **establish an effective organisation** of sections, affiliated groups and individual members.
- e) secure the **adoption** by groups of members or supporters of individual prisoners of conscience or entrust to such groups other tasks in support of the object and mandate set out in Article 1;
- f) **provide financial and other relief** to prisoners of conscience and their dependants and to persons who have lately been prisoners of conscience or who might reasonably be expected to be prisoners of conscience or to become prisoners of conscience if convicted or if they were to return to their own countries, to the dependants of such persons and to victims of torture in need of medical care as a direct result thereof;
- g) **provide legal aid**, where necessary and possible, to prisoners of conscience and to persons who might reasonably be expected to be prisoners of conscience or to become prisoners of conscience if convicted or if they were to return to their own countries, and, where desirable, send observers to attend the trials of such persons;
- h) **publicise the cases of prisoners of conscience** or persons who have otherwise been subjected to disabilities in violation of the aforesaid provisions;
- i) **investigate and publicise the disappearance of persons** where there is reason to believe that they may have been victims of violations of the rights set out in article 1 hereof
- j) **oppose the sending of persons from one country to another** where they can reasonably be expected to become prisoners of conscience or to face torture or the death penalty;
- k) **send investigators**, where appropriate, to investigate allegations that the rights of individuals under the aforesaid provisions have been violated or threatened;
- l) **make representations** to international organisations and to governments whenever it appears that an individual is a prisoner of conscience or has otherwise been subjected to disabilities in violation of the aforesaid provisions;
- m) **promote and support the granting of general amnesties** of which the beneficiaries will include prisoners of conscience;

n) adopt any other appropriate methods for the securing of its object and mandate.

*To members of Amnesty International, the individual prisoners are important; they do not work to change systems of government. To further ensure impartiality, members do not work for the release of prisoners of conscience in their own countries, except in cases of capital punishment or refugee issues. This helps to eliminate suspicion of political motivation.*

*Volunteers still carry out most of Amnesty International's work. They write letters to governments that are abusing the human rights of those who hold opposing viewpoints, whether through imprisonment, harassment, threats, physical mistreatment, torture, "disappearances", or politically-motivated murder. They staff tables at public events, passing out information to the public on prisoners of conscience and human rights issues. They organise demonstrations, write press releases, found letter-writing groups at their churches or synagogues, and exercise their intelligence and imagination in almost unlimited ways.*

### **16.2.2 Human Rights Watch**

Based in New York, Human Rights Watch (HRW) was initially known as **Helsinki Watch** when it began its journey in 1978 with foundation offices in Europe and Asia. The objective of Human Rights Watch is dedicated to protecting human rights of the people around the world. "We stand with the victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in war time and to bring offenders to justice." The organisation investigates and exposes human rights violations and holds abusers accountable. They challenge the governments and those who hold power to show examples of ending abusive practices and respecting international human rights law. The organisation also enlists support of the public and the international community to fight for the cause of human rights for all.

Apart from New York, the HRW has its offices in Washington DC, London, Belgium, Moscow, Dushanbe, Rio de Janeiro and Hong Kong. It has its divisions covering Asia and Africa, Americas and the Middle East. In addition it includes three thematic divisions on arms, Children's Right and Women's Right.

In 1998, Human Rights Watch brought out an excellent report on the plight of India's 160 million untouchables. It was for the first time that an international organisation did spend its energy and time to investigate the plight of Dalits in India in which the research head of the HRW Ms. Smita Narula did travel all over India and met about 300 Dalit activists and organisations and presented a huge report which exposes the so called democratic power being delegated to Dalits. The report is an eye-opener. The credibility of HRW lies in its proven and total commitment to the cause of human rights and in its persistent stand for not taking any government and official support in various campaigns.

### **16.2.3 Foodfirst Information & Action Network (FIAN) International**

Human Rights are not civil and political rights alone. In the growing realisation about the Economic, Social Cultural Rights FIAN began to work since 1986, to highlight the Right to Food in the developing and third world countries. It has its International Secretariat at Heidelberg town of Germany. FIAN is also a consultative member of the UN Committee on Economic and Social Rights. FIAN believes that today, hunger and malnutrition are mainly caused by violations of the right to feed oneself rather than just lack of food. The work of FIAN is primarily based on Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which spells out the inalienable right of every one to adequate food. The right to feed oneself is derived from



several human rights related to the right to food, for instance, right to work, the right to housing and peoples' right to self-determination.

FIAN approaches the problem of hunger and malnutrition by fighting oppression. No matter who **Stands behind the oppression**, the ultimate responsibility for such acts always lies with the government.

The International Secretariat of FIAN takes up the cases of violation of Right to Feed Oneself, mostly concerning the land rights of the landless peasants and agricultural workers including the indigenous people. FIAN not only brings out reports on the issue of violation but it also does the necessary campaigns like Urgent Actions and Hotlines which are in the form of protest letters to the relevant parties from its sections, co-coordinators and the individuals. And these have met with huge success. Another important work that FIAN is involved in is lobbying in the United Nations, like the case for an Optimal Protocol to the ICESCR and parallel reporting on various violation issues. FIAN has not only presented parallel reports from various countries but also sensitised their issues at the international level. For the past few years, FIAN has been involved in Human Rights Education programme with special emphasis on Economic, Social and Cultural Rights, which have been side lined by the human rights organisations and academics in their programmes. The role of FIAN during the World Food Summit in organising a parallel NGOs met and formulating plans have been lauded by the FAO. The FIAN publishes a number of documents and related material in English, German, French, Spanish and Hindi. FIAN has its presence in more than 50 countries of the world including its presence in three Indian States of Tamilnadu, West Bengal and Uttar Pradesh.

FIAN's development is an answer to the urgent appeals which the poor, struggling for their fundamental human rights, have been addressing to the world public for years. The initiative which eventually led to the founding of FIAN was taken by a few members of Amnesty International in the Heidelberg region in Federal Republic of Germany. This was often at the root of Amnesty's cases. Spokesperson of the poor had repeatedly called for such an initiative, like Helder Camara, for example, in his 'Appeal to Amnesty' in 1979.

#### **16.2.4 The Commonwealth Human Rights Initiative (CHRI)**

It is an independent international NGO mandated to promote the practical realisation of human rights in the countries of the Commonwealth.

It aims to promote awareness of, and adherence to the internationally recognised human right norms, the Commonwealth Harare Principles of 1991 as well as domestic instruments supporting human rights in Commonwealth member states.

Launched in 1987 by six Commonwealth associations and originally based in London, in 1983 CHRI moved its headquarters to New Delhi.

It happened when these activists decided to form FIAN in order to go to the roots of the problems of poverty and related violations of human rights. CHRI adopts an approach similar to that of AI in the sphere of civil and political rights, to make available right to food security to the hungry and under-nourished.

**CHRI** is one of the few international human rights organisations which have been head quartered in the developing South.



Human Rights education and advocacy are the core themes of CHRI's activities the aims and ends of all its reports and investigations.

CHRI lays emphasis on working in close collaboration with human rights commissions, understanding their functioning, disseminating information about them and encouraging interaction between them and the communities they protect. Besides addressing issues of capacity building (like these), CHRI has also launched initiatives for targeted human rights education for police and common people.

CHRI's fact finding missions not only highlight growing and continuing violations of human rights in a specific Commonwealth country, but also accesses the nature of infringements, and advocate for early adherence to international norms.

Every two years since 1991, CHRI publishes its report on the human right situation in Commonwealth States which is kept ready before the Commonwealth Summit. CHRI Quarterly Newsletter is a reflection and review of CHRI's on-going activities.

#### **16.2.5 Anti-Slavery International for the Protection of Human Rights**

An International NGO in Consultative Status with UN ECOSOC (Category II), ILO, UNESCO, UNICEF, the NGO is also known as the Anti-Slavery Society and has 1800 individual members in 43 countries.

Founded in 1839 as the British and Foreign Anti-Slavery Society, the organisation was amalgamated in 1909 with the Aborigines Protection Society. The Society works to eliminate all:

*Forms of slavery, including forced labour,*

*To promote well being and defend the interests of the oppressed and threatened indigenous and other peoples,*

**To promote human rights in accordance with the principles of UDHR,**

The society participated in activities that led to the adoption of the League of Nations Convention on Slavery and the UN Convention on Slavery (1956) and in the appointment of the Working Group on Contemporary Forms of Slavery.

In 1989 Session, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (Resolution 1989/140) congratulated the Anti-Slavery Society, 'the oldest human rights organisation in the world', on the occasion of its 150<sup>th</sup> anniversary noting 'the great contribution that the Anti Slavery Society has made to the cause of the human rights over the last century and a half by its tireless advocacy, research and concern for indigenous peoples as well as those suffering from the abuses of slavery and slavery like practices' ... 'the important and continuing vital work the Society does in maintaining its global programmes and providing information to the Sub-commission' ... and the need for these valuable sources to be maintained.

## Check Your Progress 1

- 1) Define the new concept of development.

- 2) Indicate True or False:

- A) Dams displace people who are mostly tribals and poor.
- B) Doomsters predict a happy future for the world.
- C) In 1977, Amnesty International was awarded Nobel Peace Prize.
- D) Human Rights Watch was earlier known as Helsinki Watch.

- 3) Match the pairs:

NGOs      Functions/activities

- |       |                       |    |                                  |
|-------|-----------------------|----|----------------------------------|
| A) 1. | Amnesty International | 5. | Capacity building                |
| B) 2. | CHRI                  | 6. | Dalit Rights                     |
| C) 3. | HR Watch              | 7. | Prisoners of Conscience          |
| D) 4. | FIAN                  | 8. | Rights of the landless peasants. |

## 16.3 NATIONAL HUMAN RIGHTS ORGANISATIONS

National NGOs focus on the issues which are the concern of international human rights, but which revolve around national legal system or policies. Such organisations take up a variety of causes: rights of marginalised sections, rights of the disabled, rights of minorities, rights of dalits and tribal, and all other rights in furtherance of the international covenants.

The number of organisations with specific concern for civil liberties and democratic rights, is growing. Such groups defend human rights through five major activities:

- 1. Fact finding missions and investigations,
- 2. Public interest litigations,
- 3. Citizen awareness programmes,
- 4. Campaigns
- 5. Publication of literature on their movements and organisations
- 6. Lobbying with Government and national institutions on human right issues.

Through their activities, these groups have raised three kinds of issues for national as well as global attention and action:

- 1. Violation of human rights by the State,
- 2. Denial of Constitutional rights of the citizens owing to inefficient functioning of government institutions,
- 3. Social and economic constraints which restrict realisation of human rights, i.e., violence in the family, oppression of tribals and dalits.

These organisations have had an impact in mitigating some sources of oppression and sensitising the issues confronting the nation. Some of the prominent national human right groups are the following:

### A. Regarding Civil Liberties:

- 1. People's Union for Civil Liberties

2. People's Union for Democratic Rights

**B Environment and displacement related issues:**

1. Chipko movement
2. Narmada Bachao Andolan
3. Fishermen's movement

### **16.3.1 People's Union for Civil Liberties (PUCL)**

People's Union for Civil Liberties or simply **PUCL** was formed in 1976 against the suspension of civil and democratic rights during emergency by Late **Shri Jai Prakash Narain**. It was formerly called People's Union for Civil Liberties and Democratic Rights and was not a membership organisation. The idea behind PUCL was to create a movement in favour of civil liberties in India among all the political parties in India. It is a broad based organisation seeking to bring under one roof, political parties and groups subscribing to diverse ideologies. Some of the ideologues thought that after emergency was over, their work was finished and hence there was no question for fighting on the issue of democratic rights. But a large number of intellectuals thought that threat to civil liberties was not an aberration to our culture and hence there should be an organisation which could work as monitoring body. It goes to the PUCL's credit that the proposed bill of 'Preventive Detection Act' by the Janata Party home minister late Charan Singh had to be withdrawn by the government.

PUCL became a membership organisation at an All India Civil Liberties Conference held in New Delhi on November 22-23<sup>rd</sup>, 1980.

The **Aims and Objects** of this organisation are:

- a) to uphold and promote by peaceful means **civil liberties** and the democratic way of life throughout India,
- b) to secure recognition to the principle of **dignity** of the individual,
- c) to undertake a **constant review** of penal laws and the criminal procedure with a view to bringing them in harmony with humane and liberal principles,
- d) to work for the withdrawal and repeal of all **repressive laws** including preventive detention,
- e) to encourage **freedom of thought** and defend the right of public dissent,
- f) to ensure **freedom of press** and independence of mass media like radio and television,
- g) to secure the **rule of law** and independence of the judiciary,
- h) to make legal aid available to the poor,
- i) to make **legal assistance** available for the defence of civil liberties,
- j) to work for the **reform** of judicial system so as to remove inordinate delays, reduce heavy expenses and eliminate inequities,
- k) to bring about prison reforms,



- l) to oppose police excesses and use of third degree methods,
- m) to oppose **discrimination** on the ground of religion, race, caste, sex or place of birth,
- n) to combat **social evils** which encroach on civil liberties such as untouchability, casteism and communalism,
- o) to defend in particular the civil liberties of weaker sections of society and **women and children**, and
- p) to do all acts and things that may be necessary, helpful or incidental to the above aims and objects.

The PUCL has framed a seven-point Charter of demands concerning rights of people and basic elements of rule of law in keeping with the spirit of the Constitution. These demands include civil and political rights, right to information and elimination of executive interference in appointment in judiciary. It has also called upon lawyers in all parts of the country to form appropriate bodies for protection of civil liberties.

The role played by PUCL in the 1984 Punjab crisis was exceptional. The PUCL reports on the Meerut disturbances, on Kashmir, the anti-Sikh riots in Delhi, Bokaro and Kanpur and the post Babri demolition riots in various parts of India especially in Mumbai are extra-ordinary. The organisation has a monthly newsletter named PUCL Bulletin being edited by Dr. R.M. Pal, which is perhaps the only journal being regularly published in the field of human rights. Some important members of PUCL have been Justice V.M. Tarkunde, Prof. Rajni Kothari, Justice Rajendra Sachar, among others. PUCL also organises annual lectures on the human rights issue. Its membership is open to all upon payment of membership fee of Rs.50/- per annum. PUCL has branches set up in many states of India. The state committees look for the cases of human right violations. *Strictly speaking*, PUCL is not an NGO and hence there has never been any news about PUCL campaign on human right education or something else. The reason for this is that PUCL by nature is *not a system but a group of intellectuals* who have concern for the human rights. It does not receive funding from abroad and that is why most of its members have been drawn from among academics, lawyers, former judges and journalists. It could not become a mass-based organisation as well, since most of them who have been at the helm of affairs were not full time activity members, but concerned members, but concerned members from all walks of life. Nonetheless, PUCL's reports on the human rights violations in India have been widely appreciated, though the activists have faced the ire of the government of India which blamed for them for supporting secessionist movements in Kashmir and North-East. The Uttar Pradesh (UP) PUCL fought the cases for the rape victims of Muzaffar Nagar firing case in which PAC Jawans molested and raped the Uttarkhand women's activists who were coming to Delhi to participate in a rally on October 2<sup>nd</sup> 1994. The UP high court ordered a compensation of ten lakh rupees to every women who was raped, which was the highest compensation amount awarded by any court in India, though the high court order was vacated later by the Supreme Court.

### 16.3.2 People's Union for Democratic Rights (PUDR)

PUDR was a part of PUCLDR till emergency was over. However after the new government took over in 1977 under Morarji Desai, a section of PUCLDR felt that their work was over as the threat to civil liberties and democratic rights receded after emergency. It is also said that some members, especially the left-wing elements found it difficult to adjust inside PUCL which allegedly was captured by the right-wing elements. The former formed PUDCLDR brought some of the best



reports on the problems of dalits and tribals for the past few years. On the anti-Sikh riots in 1984, the PUDR team worked in close collaboration with PUCL. Late Gobinda Mukhoty was among the founder leaders of PUDR. PUDR is not a membership organisation and is basically based in Delhi. It is a group of concerned citizens mostly from the academic fraternity having a particular ideological leaning. Unfortunately, due to concentration in Delhi and among the academic and legal world, the organisation could not attract the attention of the ordinary human rights activists, students and others. As with PUCL, PUDR also has no systematic structure.

### 16.3.3 Chipko Movement

**Chipko Movement** is a tribute to the strength of Uttarakhand women struggling to save their environment in the hill region of Uttar Pradesh which was endangered by the timber mafia illegally cutting the forest wood in collusion with the revenue officials. And it was started by none other than a village woman named Gaura Devi in 1968. It was the first occasion in which women participated in a major way independent of the male activists and without being biased to any ideological consideration. It was organised by women who were basically agricultural labourers against the contractors. They were defending their traditional forest rights against the state encroachment. Later on Sunder Lal Bahuguna became the main leader of the movement against deforestation and illegal state patronage to the contractors threatened the ecological system of the Himalayan region. They fought against the deforestation in the Himalayan region and asked the people to protect it. The women folk especially after their anti-liquor campaign in Uttarakhand became quite active in the entire Chipko movement. *Chipko* means *clinging to the tree*. The entire women activists in Tehri clung to the forest trees and threatened the timber mafia with dire consequences if they tried to cut the trees.

Chipko is not an NGO movement nor is there a structured organisation in Uttarakhand on this issue. This was a spontaneous response of the people of Uttarakhand towards their fight against ecological degradation being caused by the various government schemes.

Succumbing to the people's pressure in the entire hill region, the Government of Uttar Pradesh formed a committee to study the impact of Himalayan deforestation in 1970 which included some of the prominent social activists of the hills including Mr. Govind Singh Negi and Mr. Chandi Prasad Bhatt. In 1977, this committee finally submitted its reports suggesting that massive deforestation is the main cause of floods, unemployment and economic backwardness of the region. After the report, the government prohibited the cutting of the trees through private contractor system and commercial felling for a period of 10 years. In the following years, the movement demanded as to who should control the forest resources and how a regular supply of water and fodder be ensured for the people of the area. Bahuguna also became a more active leader of the movement with his regular interaction with intelligentsia and local populace on the one hand and with his symbolic fasts and 'Padyatras' to arouse people's consciousness, on the other.

### 16.3.4 The Fish Worker's Movement

The fish worker's movement is one of the most dynamic movements for the rights of fishermen all over the country which has transcended the caste and religion barriers. This movement has also brought to the fore the importance of protecting the rights of marginalised people from the continuous onslaught of the multi-national companies. This also brought to the fore the danger of development in the traditional society like India which has failed to protect the people who have stuck to traditional occupations. In a way, fish worker's movement also gave vent to the anger of those artisans whose occupation is under threat from the impact of new-economic

policies. Fish workers were not considered as landless agricultural labourers and no trade union in India was ever ready to fight a battle for them, whereas mechanised trawling system introduced for more quantities of fish harvesting endangered the livelihoods of masses of fisher man and woman.

"Over fishing accentuated the crisis because several species of fishes disappeared from the marine bed and the fishing period got shortened. Within a span of two to three decades, the fishery resources and the economy fell into a crisis which the developed countries experienced around 50 years ago." The technological advancement of fisheries sector created a havoc with the traditional fishermen as it threatened their livelihood and placed them at the mercy of money lenders, businessmen, exporters and transnational corporations. As usual, it became too difficult for the fish workers to cope with this modernisation process which he could ill afford to do. For the government, modernisation process was a means to earn huge foreign exchange which according to them was hitherto untapped from this important sector.

Fish workers from different states have been fighting for their rights from the seventies after the modernisation process in this sector began. Kerala, Karnataka, Goa, Tamil Nadu and Maharashtra were the states where fish workers united and formed unions to fight against the onslaught of the modernisation process. In 1978 different associations and unions of fishermen from different states came to join hand and formed a "National Fish Worker's Forum" to strengthen the local level movements, spread this movement to other states and supported the cause of small fishermen whose interests were adversely getting affected by the so-called modernisation process in the fisheries sector.

Another important aspect of fish worker's movement is its ecological concern. Big trawlers which have been involved in commercial fishing in the Indian sea are known to release chemicals into the sea disturbing the delicate sea ecology. Accordingly, the fishing for commercial gain is short sighted and would finish the fishing sector in India very soon since the chemicals are equally dangerous for the growth of sea animals including fishes. The commercial market is involved in over fishing and without any environmental concern. After the 90s when the country embraced the new set of global economic policies, this sector has been hard hit. The government has not only allowed but also leased out important places to trans-national-national corporation for shrimp cultivation. This situation has worsened the already deteriorating condition of traditional fishing sector in India. The fish workers are up in arms against their onslaught of the new world order. The leader of fish worker's movement in India, **Thomas Kutchury** was awarded the prestigious **Magsaysay** award for his outstanding work for the cause of fish workers in India.

### **16.3.5 Narmada Bachao Andolan**

In 1985, **Medha Patkar**, a 30 years old activist was assigned a project by Tata Social Institute, Mumbai to look into the problems of the adivasis or tribals of Narmada Valley, supposed to be submerged by the Sardar Sarovar Project. But the more Patkar worked on her thesis, the more she got interested in the problems of the poor tribals. And finally, she left her survey and joined the activists struggling for the compensation for the displaced people. To acquaint herself with the problems of the displaced tribals, Patkar travelled by foot, but and broad throughout the nearly 200 kilometre long submergence zone, living with the people to be displaced, listening to their fears for the future, and urging them to organise to force the government to respect their rights.

In 1986, **Narmada Dharangrast Samiti** was formed in the area mainly by activists, journalists, students who were concerned with the plight of the adivasis. Patkar with her oratorical skill and



capacity building network, attracted a large number of youth to join the programme of NDS. The NDS was fighting for the compensation of the displaced people.

When it became clear that the government's claim about the project beneficiaries were fraudulent and that the costing of the project was too high and the government has no policy for the displaced tribals and that their resettlement is impossible, the NDS and its at six rallies organised simultaneously in the three affected states (Gujarat, Madhya Pradesh and Maharashtra) on August 18, 1988, to announce their total – but strictly non-violent – opposition to the dam.

According to NBA, the controversial Narmada Valley Development project comprises 30 large dams, 135 medium dams and 3000 small dams on the Narmada and her tributaries. Almost all the people on both sides of the bank of Narmada would lose their land and houses. about 1,00,000 people would be uprooted from their land, homes, culture and livelihood. Sardar Sarovar is one of such dams to be built over Narmada. It is being built in Vadgam in Baharuch district of Gujarat and would submerge around 245 villages and the forests, lands and homes of over 2.5 Lakh people in Gujarat, Maharashtra and Madhya Pradesh.

In May 1990, the Adivasis demonstrated in front of the Prime Minister's residence. In June 1992 the World bank's independent review commission published Morse Committee report which recommended the Bank to withdraw from the project. In April 1993, the World Bank withdrew from the project. On August 5<sup>th</sup>, 1993, the government of India constituted a 5 member review panel for the Sardar Sarovar Project. On January 30<sup>th</sup>, 1998, the Government of Madhya Pradesh constituted a review committee on Maheswar Project with stoppage of big dams on Narmada.

The issue of Narmada is not only related to the problems of Adivasis who have always been at the receiving end from the state but also have wide environmental implications. And that is why not only the intellectuals and activists from India but also from abroad have wholeheartedly supported the Narmada Bachao Andolan. Narmada bachao Andolan has thus become the symbol of the right of the Tribals on their land and water. This also confirms how the modern developments have been anti-Tribal and anti-environment.

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## 16.4 FUNCTIONS OF HUMAN RIGHTS NGOS

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Human Rights Organisations do the following functions:

1. **Monitoring of Human Right Violations:** The utmost duty of human rights NGOs is to monitor the violation of human rights in countries. By monitoring the violations, the NGOs are able to sensitise the issue before the world community and help create an international opinion so that the government of that country initiate a dialogue with the voluntary groups and take appropriate action regarding the same.
2. **Documentation:** The second most important task human rights NGOs are doing these days is to document the events of atrocities. For this, they not only depend on their own first hand reports but also depend on the local organisations, regional newspapers, the reports of other organisations including the official reports if there are any. Documentation helps the NGOs to formulate their strategies and present a better understanding of the problem.
3. **Lobbying:** Lobbying is another important task that human right NGOs have been involved in. Most of the cases of lobbying are where the third party is involved. After the globalisation process began in the third world countries, a large number of projects are

being funded by the developed world. In many countries local NGOs and people's movements have been waging a war against some of the projects which have been funded either by the developed countries or global institutions like the World Bank or International Monetary Fund. In this case, the human rights organisations' lobby for the people if there is any kind of human rights violation due to the funding of a project. For example the Sardar Sarovar Project on Narmada, the Project has been funded by the German government and the World Bank. It is reported that after persuasion of the Narmada Bachao Andolan, these institutions have withdrawn from the project and the Indian government is doing the same on entirely on its own efforts.

4. **Preparing Parallel Reports:** All the world Governments who have ratified the two International Covenants on Civil and Political Rights, and Economic Social and Cultural Rights are supposed to submit their reports in Geneva on human rights situation in their respective countries. We know how government reports are prepared and how the documents are fudged. Keeping this in view and to ensure more transparency, the UN Human Rights Commission has allowed the NGOs to prepare independent reports of the countries. These are called Parallel Reports. These parallel reports are presented every year in Geneva during March and August when the Sub-commission hears petitions from the states and NGOs. Reports of NGOs are always taken seriously because there are always doubts over the reports presented by the government agencies about the conditions related to human rights in their countries.
5. **Human Rights Education:** An important work the human rights NGOs have been taking up these days is 'human rights education programme'. The programme is aimed at the vulnerable sections of society as well as to educate those in the power who are supposed to implement the national laws. Due to their ignorance as well as arrogance they often violate their own framed laws, hence the human rights groups take up such educational programmes to teach these individuals/sections their duties towards the vulnerable sections. Human rights education is not only the national and international laws but also they discuss about the social movements in various countries.
6. **Campaigning:** International and National human rights organisations have found campaigning a very important and effective tool to sensitise people on human rights issues. Even the government bodies such as police and Panchayats have started campaigning for their cause. After the human rights organisations take up certain causes which they consider important to create public awareness and opinion so that government acts on that. Human Rights Watch in collaboration with Ford Foundation and various Dalit groups have launched a campaign about the Dalits rights. 'Dalit rights' are Human Rights. The Watch sent its team to various places of India to interact with Dalit intellectuals, activists and ordinary Dalits and publicised the issue internationally by publishing an excellent report on the plight of Dalits in India. Similarly, FIAN has organised International Solidarity day with the landless peasants of Brazil who were the victims of high-handedness of their government. On April 19<sup>th</sup>, 1998, FIAN activists all over the world staged protest march and handed over memorandum to Brazilian embassies in their respective countries. The result was that the Brazil government became serious about the issue and issued notices to their own agencies.
7. **Case Studies:** Sometimes the NGOs ask their representatives to do a case study of certain situations which cause human rights violation. Human Rights Watch report on Dalits is a compilation of case studies. FIAN International also involve itself in case studies and last year the Tamilnadu section of FIAN did extensive work on the suicide of farmers in Andhra Pradesh and Karnataka.



## Check Your Progress 2

- 1) Name two influential NGOs who do not deal with human rights education directly.  
.....  
.....  
.....
- 2) Go to two NGOs and list the type of activities they do in the light of the functions you have read about human rights NGOs.  
.....  
.....  
.....
- 3) Match the following pairs:
- |    |                           |                                |
|----|---------------------------|--------------------------------|
| A. | 1. Chipko Movement        | 5. Study of suicide of farmers |
| B. | 2. NBA                    | 6. Struggle against MNCs       |
| C. | 3. FIAN (TN)              | 7. Displacement of Tribals     |
| D. | 4. Fish Workers' Movement | 8. Clinging to trees           |
- 4) Associate the following columns:
- |    | Activists             | NGOs                      |
|----|-----------------------|---------------------------|
| A. | 1. Rajni Kothari      | 5. Fish Workers' Movement |
| B. | 2. Gobinda Mukhoty    | 6. Chipko Movement        |
| C. | 3. Thomas Kutchury    | 7. PUCL                   |
| D. | 4. Sunderlal Bahuguna | 8. PUDR                   |

## 16.5 LET US SUM UP

In this Unit, we got to learn the nature and functioning of some select NGOs both national as well as international. It is important to remember that these NGOs represent a sample and is exhaustive or representative. The purpose was to show how and what the NGOs do against human rights violations. Some of these NGOs, it may be noted, are not properly organised as a system and some have nothing to do with violations of civil security (i.e., against state's law and order machinery). The important thing which has been highlighted in this discussion about NGOs is that all human rights are meant for all.

Over the years, the NGOs have also systematised their functions and roles. This helps in furthering the cause since, with articulation and clarity, NGOs can network their efforts for campaign and advocacy. The main purpose is not necessarily to confront the state; often NGOs have been filling in where the State may have forgotten or overlooked a particular area in reaching for its people. It is, therefore, not advisable to form an impression from its name that these voluntary bodies are necessarily against the government of the day because they are called 'non-governmental'. NGOs have earned in the process a rare credibility, as their parallel reports on human rights violations have become more acceptable to the UN bodies over these years.

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## 16.6 KEY WORDS

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<b>Doomster</b>	pessimist, alarmist
<b>Global Civil Society</b>	a worldwide society with certain common rules of healthy living
<b>Chapters</b>	branches
<b>Solidarity</b>	unity
<b>Extra-judicial</b>	without going through prescribed judicial procedures
<b>Advocacy</b>	fight a case on sustained basis
<b>Amalgamated</b>	mixed, joined
<b>Lobbying</b>	mobilise support
<b>Aberration</b>	exception
<b>Third degree methods</b>	cruel and illegal methods
<b>Fudge</b>	fake

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## 16.7 RECOMMENDED READINGS

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Ian Smillie, *The Alms Bazar*, IT Publications, 1995.  
Edward Lawson, *Encyclopaedia of Human Rights*  
Mahbul Ul Haq, *Reflections on Human Development*

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## 16.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

- 1) Non-economic variables, human development.
- 2) A (T), B(F), C(T), D(T)
- 3) A(17), B(25), C(36), D(48)

### Check Your Progress 2

- 1) PUCL, PUDR
- 2) Discuss with their functionaries – What they are doing and what they can do more.
- 3) A(18), B(27), C(35), D(46)
- 4) A(17), B(28), C(35), D(46)

## NOTES



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# **AECHRD**

**Human Rights-Society  
and Development**

**Block**

## **6**

### **HUMAN RIGHTS IN HISTORICAL CONTEXT**

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<b>UNIT 3</b>	
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## **UNIT 3    RIGHT TO SELF-DETERMINATION**

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### **Structure**

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Meaning and Nature
- 3.3 The Indian Context
  - 3.3.1 Streams
- 3.4 The No-compromise School
- 3.5 The Liberal school
- 3.6 The Marxists
- 3.7 The Newly Emerging Groups
  - 3.7.1 UN and Indigenous People
- 3.8 Discussion I
- 3.9 Discussion II
- 3.10 Let Us Sum Up
- 3.11 Keywords
- 3.12 Answers to Check Your Progress Exercises

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### **3.0 OBJECTIVES**

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In this unit, you should be able to

- understand the meaning and evolution of the concept of right to self- determination,
- identify different schools of opinion on right to self-determination, and
- educate yourself about various positive and negative considerations associated with different ways of looking at the problem of self-determination.

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### **3.1 INTRODUCTION**

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The right to self-determination is the most important basic right. Unless the people are able to govern themselves, there is no possibility of real participation. Participation and therefore democracy loses meaning without exercising this right. The principle of equal rights and self determination of peoples has been defined in the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation between States adopted by the General Assembly in 1970. It says:

“All peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter”. Thus the right of a group of people to freely determine would conflict not infrequently with the parent State’s duty to respect that right. Such conflicts underline the demand for self-determination. Rightly or otherwise, the group politics and the pressure of international opinion make right to self determination most controversial since the States are sovereign and all of them have to respect sovereignty as per the UN charter.

### 3.2 MEANING AND NATURE

Traditionally, the right to self-determination meant right to political independence, relevant to many colonized people of Africa and Asia. But once these countries became independent, the meaning of right to self-determination has changed to include the freshly emerging political equations of these former colonies. The political rulers of the new nations however would argue that this principle has largely lost its meaning since the decline of colonialism and apartheid.

After the second world war, right to self determination worked as a dynamic concept. It brought about rapid de-colonization and gave expression to human rights of the people historically living as groups. When the cold war was over, the right to self- determination assumed a new meaning with the United Nations General Assembly passing an important resolution (GA Res. 45/115 of February 21, 1991). It declared that "determining the will of the people required an electoral process that provides equal opportunity for all citizens to become candidates and put forward their political views, individually and in cooperation with others as provided in national constitutions and laws. For this world to grow into a free democracy where participatory rights of people can not be arbitrarily abridged by any government, right to self-determination provides the necessary cement to hold the society together. There is a three way linkage involved in this world-view: democracy, human rights and peace".

The right to self-determination is actually a *collective human right* like the right to human development, right to environment protection, right to peace and security. It encompasses 'solidarity' rights which heavily underline the concept of fraternity since "It is the people, a community, or a group as a whole which is entitled to this right along with its members individually".

In this connection, it may be pointed out that the Universal Declaration of Human Rights contains a contradiction. Whereas the first sentence of the Preamble makes a noble claim: "where as recognition of inherent dignity and of the equal and inalienable rights of all human family is the foundation of freedom, justice and peace in the world....." what actually follows after the Preamble, is a list of *human rights worded in terms of individual human beings' rights*. Take an example: it may take at least two persons to assemble or associate, but the article 20 of UDHR has been phrased, '*everyone* has the right to freedom of peaceful assembly and association'. Similarly, minorities have not been referred to as groups but as 'persons belonging to minorities'. The member States were actually afraid that minorities might push the self-determination too far making governance difficult and, therefore, the rights of minorities were provided in individual terms. As a matter of fact, the UDHR did not even contain an article on Right to Self-determination. This deficit was realized very soon and was rectified in 1966 in both the Covenants of human rights. The first article of both the Covenants is commonly devoted to the right to self-determination and very importantly, it has been phrased in a group sense: "all peoples have the right of self determination". But again, the word 'peoples' remains undefined and ambiguous.

In actual practice, one comes across three meanings of people - territorial, ethnic and indigenous. Indian people are an example of the first, Punjabis of the second, Adivasis of the third. After long debates in the Vienna World Conference on human rights in 1993 they agreed to use 'people' rather than 'peoples' "in order to avoid the risk that certain individual groups can claim rights as peoples". The UDHR phrases it in individual terms and understand people in its abstract description making the right to self-determination of minority community a sterile concept in international law.

But in practice, right to self-determination has gained wider expression and acceptance with the establishment of the UN Electoral Committee in 1991 to assist nations in guaranteeing free and fair elections on request. It appears now that the sovereign jurisdiction of the domestic law is coming to terms with the demand of the globalizing forces. One can identify three stages in the evolution of the collective right of self-determination:

1. At the ground level, there is a universal entitlement of every human being in the civil society to participate in the decision to shape the destiny and no government can abridge arbitrarily these participatory rights.
2. In its concrete manifestation, right to self-determination meant freedom from colonization. This is known as *external self-determination*. With the end of colonialism and apartheid, self-determination came to underline the revolution of rising aspirations of the people. In fact, it has come to be understood that human right is not meaningfully secure without self-determination. This self-determination can be brought about through seeking independence, autonomy or self rule of groups of people so that their human rights are secure.
3. The third stage is inseparably linked to democracy. This stage followed the downfall of the Soviet super power. The surviving super power of the cold war days, the USA and the liberal West now insisted on democracy and offered it in a package of *human rights, development* and *international cooperation*. Promotion of such democracy also enjoys international protection for electoral rights and for this necessary mechanism & working rules have also come up during the 90's.

Operationally speaking, there are three situations in which right to self determination can be exercised:

- (i) Colonies clearly have the right to liberate themselves and become free.
- (ii) Large scale violation of human rights like genocide, ethnic cleansing etc. provide justifiable ground for intervention by the world community (UN sanctions, interventions etc.).
- (iii) Democracy is now being construed as a global entitlement of the people. A state is now internationally obliged to maintain democracy for its people. Strange but true, this is what USA did on behalf of the UN to its small neighbouring state of Haiti. It reinstalled the elected prime minister of Haiti and its forces removed the army dictator who had ousted the prime minister.

While ratifying the International Covenant on Civil and Political Rights in 1979, India has made its position clear, by explicitly laying down that "the words 'right to self-determination' appearing (in Article 1) apply only to peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of people or nation which is the essence of national integrity"

In this era of rising aspirations of diverse peoples of religious, linguistic and ethnic communities and dilution of State authorities against assaults of globalization, (transnational corporations, revolution in telecommunications etc.) and the global insistence on democracy as the legitimate political arrangement, right to self-determination is likely to be exercised more easily than before. *This of course needs to be done more responsibly.* This is clearly a warning to the state authorities anywhere: *Human rights must be promoted and protected to the satisfaction of the diverse groups of people so that self determination is not pushed beyond limits, to secession.*



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### 3.3 THE INDIAN CONTEXT

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In daily life, you encounter a variety of situations. You must be seeing that problems tend to get interconnected quite fast. Also that there is no simple straightforward solution to any one problem. And, the question of the 'right to self-determination' is no exception. Most of the social issues of living together tend to get linked up with what rights an individual in a community may be entitled to. In India, we become more and more concerned about our rights, as we become anxious about our nationhood.

As you know, the Indian Constitution is a noble product of our struggle for national self-determination and it defines our rights explicitly. However, the problem arises when we see that, despite rights, the benefits of social and economic development tend to get concentrated in very few hands and the majority of Indians are deprived of a decent standard of living. That is how we define our concerns as activists, seeking to move the process of development along a more equitable path.

Immediately, we run into a problem here. We see that there are communities and groups within our nation state expressing these aspirations in their own ways. In India they are invariably expressed as demands for regional autonomy, a sense of injury against a dominant ethnic group or even demands for secession from the Indian union. The major communities in India, by and large, have become the basis for states within the Indian Union. Thus Tamil, Bengali, Marathi or Kannada nationalities etc. in India have acquired a constitutional recognition. Their struggles for betterment today get expressed in the centre-state disputes which by and large are resolved within the framework of our Constitution. Remember that India is a federation with the Union (Centre) and the States always trying to maintain a balance within the limits set by the Constitution.

The problem becomes tricky, however, when we consider the case of communities which have not acquired a political and legal recognition of their demands for more powers or autonomy within the constitutional framework. It is here that the militant and vicious struggles take place. The Bodos in Assam, the Jharkhand demand, the demand for autonomy in the Kashmir valley are cases in point.

As concerned individuals, how do we look at these? Can the existing literature on 'self-determination' and 'human rights' help us?

To clarify these questions, let us have a look at what this literature tells us.

#### 3.3.1 Streams

Broadly speaking, we can identify four major streams of writings on this issue:

- a) The no-compromise school,
- b) The liberal school,
- c) The Marxists, and
- d) The newly emerging human rights groups.

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### 3.4 THE NO-COMPROMISE SCHOOL

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Simply put, the no-compromise school argues that India has been one civilization from time immemorial, therefore there can be no question of self-determination. The attempt on the contrary is to integrate various peoples and nationalities by the logic of a hard core cultural nationalism.

One of the major figures in this literature is guru Golwalkar. Very often this no-compromise school's hardened stand leads to sectarian and ethnic divides and conflicts. Let us understand where do minorities stand in India from a human rights angle.

### **Do Minorities Have Rights?**

Indian state is committed to protecting and promoting only the values and standards of the Indian Constitution and those of the International Human Rights Instruments. The private beliefs and creeds have been left to the individual and the domain of the community for their choice. It is this right to religious and cultural freedom that the Indian Constitution has guaranteed to all persons and groups as 'sections of citizens' having a distinct language, script or culture of its own' and 'minorities based on religion and language'. This right to cultural freedom again constitutes one of the corner stones of minority rights under Article 27 of International Covenant on Civil and Political Rights (ICCPR), under which the Indian Government is accountable to the UN Human Rights Committee, to which it is required to submit periodic Reports on its implementation. The 1992 UN Declaration on Rights of...Minorities goes beyond the minority's right to preserve its culture, language and script and puts the positive obligation on the States to not only protect the national, ethnic, cultural, religious and linguistic identity of minorities [Article 1 (1)], but also requires them (States) to create favourable conditions to enable the minorities to express their characteristics and to develop their culture, language, religion, tradition and customs [Article 4 (2)]. Similar obligations are put on the State to take "appropriate measures in the field of education, language and culture of the minorities existing within their territory" [Article 4(4)].

## **3.5 THE LIBERAL SCHOOL**

The liberal school is a keen defender of pluralism and diversity. However, the defining point for this school are the needs of the market. The concern of this school tends to be overwhelmed by the demands of the global market. The market demands a uniform taste, culture and individualized consumer behaviour.

The recent emergence of globalization has brought in its train some developments which were not anticipated before. A global economy has emerged with an increasing share of gross national product directly dependent on foreign exchange and international capital flow. Capital no longer feels constrained by national stipulations. It goes where ever there is profit. Capitalism no longer sells just commodities and goods for creature comforts. The consumer society of material goods of 60's & 70's is changing into a new system which Benjamin R.Barber calls "McWorld" — like in 'Macintosh' or 'McDonald'. Capitalism now sells signs, sounds, images, softwares. The nature of consumption has become heavily dependent on the spectacle of advertisement which is fast becoming a global form of social integration. Look around and you will find how fast your culture and traditions, social and economic behaviour are changing to give rise to a homogenized life-style thanks mainly to MTV, Hollywood films, personal computers etc.

So against this global trend of homogenized life-style or a 'cosmopolitan culture', some culture groups deeply feel that their essentials are under attack. Since "globalization destroys sovereignties", the question of identity of these aggrieved cultural groups occupies the centre of stage. The more globalization grows, the more such societies try to reconstruct their socio-cultural and religious particularities. Confronted with frustrations against this global juggernaut, they give birth to a cultural scene of opposition which can be graphically captured by Barber's another expression of "Jihad versus McWorld". In today's world, Chechnya, Bosnia exhibit this new phenomenon of cultural assertions which had also affected countries like Indonesia, Ethiopia etc.

### Check Your Progress 1

1. Is it correct to say that amongst the 'no compromise' school the question of self-determination finds the first priority?

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2. What are the constraints facing the liberal school over the question of 'self-determination'?

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## 3.6 THE MARXISTS

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The Marxist school has debated the right to self-determination very extensively. In this school the specificity of the historical growth of a community / nationality is kept in focus. Unlike the no-compromisers who are overwhelmed with cultural nationalism or the liberals who are overwhelmed with the market, the Marxists try to find solutions to social problems keeping the potentiality of the community in view.

The Marxist literature makes it clear that the 'self' we are talking about is a 'self' in community. Though it can be said that the cultural nationalists are also talking about a 'self' in community, the point of departure for Marxists however are the criteria laid out for the definition of this community as a nationality. For the Marxists, nationality /community should possess (for exercise of Right to Self-determination), a sense of shared history, economic growth, language, cultural and psychological makeup. Unlike for the cultural nationalists, religion is not taken to be a defining criterion.

The Marxists also do not place the needs of the market absolutely over and above the aspirations of the nationality. However, it is emphasized that the nationality question should be linked to an internationalist working class movement. It was thus that Karl Marx argued in the context of Ireland in 1860s that the needs of the working class movement were best served if Ireland became independent of British domination. Thus while the pro-market logic of liberals argued that England needed to maintain national unity, Marx was able to argue that such a national unity only prolonged the oppression of the working people in England and Ireland. Similarly, Lenin emphasized that democrats of an exploiting nation should call for secession of an oppressed nationality in an exploited nation while it is considered a duty for the democrats of the oppressed nationality to call for national unity.

From these examples we may find that, for the Marxists, the criterion of national unity is not absolute as it is with the 'no compromise' or the 'liberal' school. B.T. Ranadive, the Indian Marxist, was therefore able to point out the need for an Indian national unity in independent India since imperialism targets small nationalities to weaken Indian working people's efforts towards development.



### 3.7 THE NEWLY EMERGING GROUPS

The newly emerging human rights groups have now raised another problem, namely the problem of the rights of the indigenous people. Indigenous people are also called "first peoples", "Tribal peoples", aboriginal and autochthons. They number more than 300 million and live in more than 70 countries on five continents. A good majority of them — 150 million — live in Asia.

At least 5,000 indigenous groups can be distinguished by linguistic and cultural differences and by geographical separation. All indigenous people proudly love their traditional lands which are in variably rich tracts of mineral and bio-diversity wealth.

They argue that it would be wrong to bring indigenous communities within the traditional domain of either racial or minority discrimination or within the strict parameter of the nationality question (the marxist version).

It may be argued that the debate about the right to self-determination has moved away from the cultural nationalist or bourgeois liberal perspective, and has settled (at least in UN bodies) within the parameters evolved by anti colonial and Marxian framework. However the specific problems of indigenous people continues to dog these parameters. As Douglas Sanders points out, the erstwhile Soviet Union placed the problems of the indigenous people of Latin America within the UN forum but refused to recognize this problem within its own borders. Similarly in India, Canada etc. the indigenous people were bypassed on one ground or the other.

#### 3.7.1 UN and Indigenous People

The UN's consideration of the human rights problems faced by indigenous people began in earnest with the famous study conducted by special Rapporteur (1971-84) Jose R. Martinez Cobo. This study has led to the creation of the *Working Group on Indigenous Populations* which, under Erica-Irene A. Daes, chairperson /Rapporteur since 1984, has become the focal point for UN activities concerning indigenous people:

- The Working Group meets once a year in Geneva and critically discusses current practices of various governments.
- There is a Voluntary Fund for Indigenous Populations which funds participation of indigenous people from remote areas in such international meets.
- The year 1993 was declared as the year of Indigenous People. The General Assembly proclaimed the International Decade of the World's Indigenous People, beginning from 1991 December, 1994. The UN Commission on Human Rights has submitted its request to create a Permanent Forum in the UN for proper representation of the interests of indigenous people. This is still pending, so also is the approval of the draft on the rights of the indigenous people on which the Working Group has expressed its unanimous agreement.

The UN Working Group set-up to look into this problem combined with ten major human rights groups to work on a solution. In August 1988 it placed a draft which tried to evolve a common standard on issues facing indigenous people.

It defined the following major issues:

- i) **Problems of survival:** In the context of the Chittagong hill tribals, the issues of survival i.e. right to hunting and gathering, slash and burn agriculture use of land resources etc. was highlighted.



- ii) **Issue of equality:** Indigenous people have frequently been denied legal equality with other members of the state. Brazil's 'policy of treating Indians as minors is a contemporary example of the old pattern'.
- iii) **Cultural survival:** "Equality rights alone will not protect indigenous peoples or other minorities against assimilationist campaigns by the states. A mere tolerance of minority cultures is also not sufficient if the state is devolving resources to a mono cultural educational system and unilingual state services". An affirmative obligation on states is mandatory to "ensure that indigenous collectivities receive state's support for maintenance of their identity."
- iv) : **Economic rights** Rights to ownership of traditional lands and resources. An attempt to hand over traditional Indian groups their lands in New Zealand recently is a case in point to limited acceptance of his demand on the contrary, in Australia this move just back fired in the recent elections
- v) **Political rights** The main debate in the UN is whether these issues can be addressed within the framework of full right to self determination under international law. Canada and Sweden have made representation to UN that Sami and Indian people collectively do not have the rights to such determination Similarly Dacs report of 1986 argues that indigenous people do not have a right to secession the Martinez cobo report on the other hand qualified the by saying that the indigenous people did not necessarily have the right to secession Meanwhile political conflicts continue to simmer on this question in East Timor etc

Douglas Sanders points out that at least a possibility of some kind of principle of autonomy reflecting the ideas of tribal sovereignty in the US law self government in Canadian policy and similar elements of state practice of policy in Australia New Zealand. Scandinavian countries and parts of Latin America seem to be emerging but he pointed out that the above formulation is consistent with stated policies for nationalities of minorities in various countries. According to him the indigenous peoples generally have the strongest claim of autonomy because typically they have greater cultural differences from dominant populations as compared to other minorities

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### 3.8 DISCUSSION I

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The above outline of various ways of looking at the problem of self-determination has crystallized to a particular point. Despite the broadest categorization of who has the right to decide, it becomes very difficult to identify this 'who' in the field of practice. The struggle of the indigenous people is a case in point. Where do they fit in? The 'no compromise' school would try their utmost to fit them into their cultural 'framework', the liberal school would drag them to the market and the left movements are still trying to come to terms with them. Their plight is highlighted in the recent Australian elections (1999) where the conservatives and the democrats both refused to give space to them.

In this context Behar's description of the concept of 'self-determination' as 'highly-controversial and emotional' is fitting. Behar's solution that 'it would be preferable to begin the discussion about external i.e. political self-determination only after agreement has been reached about demands of internal self-determination' however seems problematic. This is so because discussions about 'Internal' self-determination are normally very difficult. The states within whose boundaries they are conducted normally clamp down on these discussions in national or international forum. Witness the difficulties in Chechnya or Kashmir.

In this context, James Anaya has explored the capacity of International law to advance nationality's rights claims. He argues that settling of nationality disputes with reference to sovereignty approach runs into problems. This is because historical claims to a territory etc. are often disputed. These claims also overlook the role of wars & conquests in acquisition of territories, which involved ruthless violation and suppression of human rights of the conquered in the past. Within the international law's expanding lexicon of human rights, self-determination actually takes shape and gets articulated in the light of cultural integration which binds a group together. An emergent human right of cultural survival and flourishing within international law is signalled by the UN Charter, Article 27 of Civil and Political Rights Covenant, the Convention against Genocide and the UNESCO Declaration of Principles of Cultural Cooperation. Similarly, a UN study recognizes various forms of self-determination: 'where self-governance as an inherent part of cultural and legal heritage contributes to the cohesion and maintenance of social and cultural tradition of the indigenous people'.

Anaya identifies two major obstacles to the realisation of the human right approach to self-determination within the International law. Firstly he sees an individualist bias towards human rights conceptions within modern International law which impedes the recognition of collective or group rights. This bias, he argues, results from "traditional western liberal political philosophy with its emphasis on the individual and the exclusion of rich variety of intermediate or alternative associational groupings actually found in human environs". Secondly, he points to the doctrine of state sovereignty which limits the recognition of group rights of families and peoples as distinct from individual or state rights. The African Charter of Human and People's Rights is an attempt to counter this perception.

The placement of 'individual' and 'collectives' is indeed a nodal point in the western and eastern philosophical discourses. A remedial viewing of this problem (along these lines) may open new directions for a realistic appraisal of the right to self-determination.

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### 3.9 DISCUSSION II

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In this section it might be relevant to consider the question of the right to secession of national groups. The question assumes importance with a spate of recent literature addressing this problem. Margaret Moore in a recent article (*in Political Studies*) has suggested moving to *subjective criteria* for a definition of nationality. This she suggested is due to legal and philosophical problems in defining "the underpinnings of the territorial conception". That is to say, what territory means becomes difficult to spell out. Therefore, she moves over to a subjective definition of nationality. This, she says, can be done by identifying in practice as to which nationality group is asking for secession or self-determination. Secondly, she suggests that this could be complemented by an approach of imaginatively recognizing equal rights for all nationality groups in a multi ethnic situation.

John Rosenthal (in the *Monthly Review*) has pointed out the dangerous limits of such subjectively defined criteria for nationality. He points out that it was precisely the subjective criteria which made for erroneous NATO intervention in Kosovo. He warns that it was precisely a moving to a subjective ethnic definition of nationality principle which had led to Nazi hegemony and extermination of the stateless people viz., the Jews.

It might be suggested here that the classical literature on secession has still much to offer. If we take the Marxist writings on the question, (either as a point of departure or as point of method), we might just push towards a solution. The problem of territoriality, we suggest, is not solved by ignoring it but rather tackling it. It should be kept in mind that the literature on territory is not

just philosophical. It is, as Marx suggested long ago in the German Ideology, *a question of exploring the historical relations in their concreteness*. No amount of substituting philosophy or politics here would help. One may suggest that the historical writings on the nature of territoriality have demonstrated a complex unity of kinship and territory in different phases of historical evolution. In fact the criteria for the rights to territory and its partition influenced the concept of territory as it evolved. These need to be investigated and spelt out before any rash generalizations on the nationality question is made.

### Check Your Progress 2

You do the marysise detran the waccept of right of self-determind

Can you illustrate how the Markists link the question of right the aecessrminwop with the question fo the International working class movement

3. What are the problems faced by the indigenous groups with respect to the question of rith to self detemination

4. What are the limitations of the 'historical soverignty school' which james anaya points to when talking fo role of international law in solving the question of self detemination

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## 3.10 LET US SUM UP

In this unit you saw how the conception of 'self-determination' differs from perception to perception. However, with the experience of this question now spanning almost a full century certain broad frameworks for its solution have emerged. But the question of how to look at the collectivity still dog the proposed solution of the question of 'self-determination'.

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## 3.11 KEYWORDS

**Pluralism:** The doctrine which argues that diverse cultures, systems etc. can exist without basic antagonism.

**Secession:** Here the act of a group, nationality or unit of a nation to break away from it.

**Colonialism:** The 18<sup>th</sup> and 19<sup>th</sup> century phenomenon of one nation occupying another nation. Colonialism differs from earlier conquests since it is an outcome of modern capitalist nations to fulfill the aspirations of capital for capturing markets and raw materials for the benefit of the home nation. We have witnessed three phases of colonialism viz., (i) Mercantile, (ii) Industrial, and (iii) Finance. In each phase the differing demands of capital are evident to the colonial country. In different colonies these phases manifest in a complete or incomplete manner.

**Affirmative Obligations:** Duties to be done in compensation for lapses and losses suffered by social groups of the current beneficiaries.

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### **3.12 ANSWERS TO CHECK YOUR PROGRESS EXERCISES**

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#### **Check your progress 1**

1. Refer to sec. 3.4.
2. Refer to sec. 3.5.

#### **Check your progress 2**

1. Refer to sec. 3.6
2. Refer to sec. 3.6.
3. Refer to sub sec. 3.7.1.
4. Refer to sec. 3.8.



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## UNIT 4 COLONIALISM AND HUMAN RIGHTS

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### Structure

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Stages of Colonialism
- 4.3 British Colonialism and Human Rights Violations in India
  - 4.3.1 People and Human Rights Violations
  - 4.3.2 Peasants and Human Rights Violations
  - 4.3.3 Army and Human Rights Violations
  - 4.3.4 Press and Human Rights Violations
  - 4.3.5 Police and Human Rights Violations
  - 4.3.6 Prisons and Human Rights Violations
  - 4.3.7 Workers and Human Rights Violations
- 4.4 Let Us Sum Up
- 4.5 Key Words
- 4.6 Some Useful Books
- 4.7 Answers to Check Your Progress Exercises

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### 4.0 OBJECTIVES

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After reading this unit, you will be able to:

- discuss colonialism and Human Rights in the historical context,
- the links between colonialism and Human Rights, and
- the violation of Human Rights in India at that time.

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### 4.1 INTRODUCTION

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The age of modern colonialism began about 1500 AD following the European discoveries of a sea route around Africa's southern coast and of America. By discovery, conquest, treason, deceive and settlement, the European nations expanded and colonized throughout the World spreading European institutions and culture.

Colonialism refers to a state of inferiority or of servitude experienced by a community, a country or a nation which is dominated politically, and/or economically and/or culturally by another and more developed community or a nation.

President Sukarno of Indonesia (the Bandung Conference, 1955) referred to colonialism as economic control, intellectual and actual physical control by a small but alien community within a nation. (*Keessing's contemporary Archives*, London, 7-14 May 1955)

While describing the French Colonialism in Africa especially Algeria, *Franz Fanon* explained the meaning of colonialism for the Colonized people which we quote 'the Colonialism is a systematic negation of other person and furious determination to deny the other all attributes of humanity'. (*Franz Fanon, Wretched of the Earth*, New York, 1963)

Colonialism, therefore, means complete control affecting all aspects of life. It is more than a political and economic domination as commonly believed.

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## 4.2 STAGES OF COLONIALISM

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The process of subordination viewed by scholars is defined in terms of stages. The different stages through which a country is ruled differed from country to country. But the nature and content of exploitation remained the same. The colonial societies underwent a fundamental transformation under colonialism. They were made an integral part of the world capitalist system. These changes invariably had adverse effect on the colonies, most often, the violation of human rights.

Colonialism may broadly be divided into three distinct stages related to different forms of exploitation. It varies from colony to colony and from period to period. The stages are always inter-linked though different stages are marked by distinct dominant features. There is a qualitative change from one stage to another. India is a classic example. It remained a colony under the British rule for nearly 200 years. Britain's position in international milieu had led to changes in the nature of its colonialism in India, in forms of exploitation and, consequently, in colonial policies, impact and violation of human rights. As Karl Marx put it 'the misery inflicted by the British in Hindustan is of an essentially different and infinitely more intensive kind than all Hindustan had to suffer before.'

*Karl Marx, New York Daily Tribune, 25 June 1853.*

The three distinct stages of colonialism in India are:

- Monopoly of free trade and direct appropriation by East India Company 1757-1813.
- Free trade of East India Company and British capitalists.
- Direct British rule.

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## 4.3 BRITISH COLONIALISM AND HUMAN RIGHTS VIOLATIONS IN INDIA

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For the convenience of understanding and highlighting the human rights violations during the British rule, we can divide the issues and areas as follows:

### 4.3.1 People and Human Rights Violations

India was rediscovered by the British imperialists. The imperial ideologues who were administrators, academics, writers, novelists, evangelists, liberals, utilitarians etc shaped the exploitation. They 'discovered' Indian civilization as 'backward'. They rationalized the colonial exploitation by stating that the principle of liberty did not apply to backward states of the society. They legitimized despotic mode of governance in dealing with what they called 'barbarians'. 'Civilizing' the Indians was considered 'the white man's burden'.

*Rudyard Kipling*, British poet and a great apostle of imperialism of his time extended even an invitation to the Americans to join in the task of shouldering the burden of civilizing the 'barbarians'.

Take up the White man's  
burden

Your new caught, sullen peoples,

Half-devil and half-child (*The Times*, London, 4 February, 1899)

To propagate, expand and spread leading to domination of the colonised people, the British cultivated a new class of Indians who were described by Lord Macaulay as 'a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals and in intellect'. The Macaulayan system of education was a systematic effort on the part of the British government to educate the upper classes of India through the medium of English language. Education of the masses was not the aim of Macaulay, rather he believed in the 'infiltration theory', saying, these English educated persons would act as a class of 'interpreters' often known in Bengali parlance as 'Bhadralok'. They were the newly introduced English educated, liberal in thought, microscopic in number who helped to propagate the imperial ideas. They played collaborators who showed absolute loyalty to the rulers.

The *hoi polloi* had to suffer the racial discrimination of the minority whites. Various laws were introduced, imposed, and implemented to curb the basic rights of the masses. When India was reeling under the great famine of 1876, the government was preparing for the Prince of Wales' visit in 1877. It was criticized by two Bengali plays. To curb the protests from the natives against the misrule of the government, the government enacted the Dramatic Performance Act of 1876. The government had the power to arrest the performers and those who witnessed. In Arms Act of 1878, the racial discrimination was again brought up. This act exempted the Europeans, Anglo-Indians and some categories of government officials. Under The Indian Telegraph Act 1885 and the Indian Post Office Act, 1898, the government enjoyed powers to intercept and detain respectively any postal article or telegram 'on the occurrence of any public emergency or in the interest of any public safety.'

### Check Your Progress 1

1. What do you understand by Colonialism?

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2. How did Lord Macaulay describe the Indian 'Bhadralok'?

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### 4.3.2 Peasants and Human Rights Violations

The economic exploitation coupled with political control destroyed the traditional Indian handi-crafts and agriculture and ultimately *the village communities*. The traditional Indian village was a self-sufficient basic unit of Indian society. The artisans, craftsmen and weavers who were then patronised by the ruling elite, *maharajas* and *nawabs* were compelled to sell their products at uneconomic rates or to *work for* the East India Company at low wages. The traditional Indian agricultural society transformed to cater to the needs of British society. The export of Indian goods exceeded the import of British manufactured goods. The company was interested in large scale 'drain of wealth' from India. This wealth played an important role in promoting industrial revolution in England.

In a blatant violation of the law of the land, the British created a new class of exploiters - the *Zamindars* to collect the revenue. The newly invented revenue systems like the *permanent settle-ment* in Bengal, the *Ryotwari* and *Mahalwari* systems in the rest of India led to unending woes to



the peasants. The peasants were deprived of their rightful land and put under the *Zamindars*, the feudal lords. The *Zamindars* used unheard of methods to extract maximum from the peasants who had already lost to them their rights to till their lands. During the early phase of colonialism, the East India Company did not impose any ideological set up. Many peasants had withdrawn to the jungles to avoid capture and torture. The *Zamindars* were made the owners of the land.

In the free trade stage, India was thrown open to the individual British capitalists. The internal changes in political and mercantile community in Britain had resulted in passing of the Regulating Acts of which 1773 and the Pitt's India Act of 1784 the Charter Acts of 1813 and 1833 fully opened India to the British exploiters. The British capitalists were permitted to invest, develop, produce and export the capital goods like tea, coffee, indigo and opium. The trade, transport, mining and modern industries were set up for the British capitalists and the government had protected their interests. The rapid industrialization in Europe with increase in population needed raw materials for the industries. The plantation industry made a fertile ground for exploitation. The tea plantation workers in Assam and Bengal, the indigo plantation workers and peasants in Bihar became the worst victims of lusty exploiters. They were forced to work for long hours continuously, even though in Britain various laws were enacted to reduce the working hours in the factories and provide better living conditions to the workers. The indigo planters were forced to cultivate again and again even though they incurred heavy losses while the fertility of the soil was going down drastically.

### 4.3.3 Army and Human Rights Violations

The army in India was controlled and commandeered by the British. It was used to quell the rebellions, conquer colonies, and fight the imperial wars beyond the frontiers. It had transformed from a mere group of upper class 'mercenaries' to the army of 'recruits'. India as 'oriental barrack' was the only large reservoir of trained troops in the empire. It comprised mostly uneducated, illiterate masses and poor peasants. They were the most ill-treated and 'discriminated lot'. They were exploited religiously, economically, socially and physically. The Indian soldiers were denied pay parity with the Europeans, they were seldom promoted, nor were they allowed to command the Europeans. Religiously, the Hindus believed crossing of seas a taboo, but often they had to perform duties abroad. Any denial resulted in disbanding of the unit or hanging of the soldiers. Innumerable examples could be found during Indian army's participation in various theatres of World War I. To name a few, the Singapore mutiny in 1915, a revolt in France and Flanders over the quality of food etc. The Revolt of 1857 was the watershed in British imperialism. The flash point for the revolt was the greased cartridge which affected both the Hindus and the Muslims alike. The mutiny itself was quelled ruthlessly by the bloodthirsty commanders. We quote below in the box an eyewitness account of one of the methods used by the British to suppress the rebellion and reign of terror among the sepoys. After 1857 revolt, the British were cautious of admitting from all the castes into Army. They found a new theory - the 'Martial race' and recruited from only those castes which supported them during the 1857 revolt like the Sikhs, Jats etc, into the army.

"Some 200 prisoners of the 55<sup>th</sup> Regiment BHI have been tried here (Peshawar) and we blew 40 of them away from our guns, in the presence of the whole force,.... a fearful but necessary example, which has struck terror into their souls. Three sides of a square were formed, ten guns pointed outwards, the sentence of the court was read, a prisoner bound to each gun, the signal given, and the salvo fired. Such 'a scene I hope never again to witness - human trunks, legs, arms, etc, flying about in all directions'. (*The Times*, London, 4 August 1857)

A major result of the revolt was that India had come under direct British Crown. It was also the beginning of the third stage of colonialism in India.



#### 4.3.4 Press and Human Rights Violations

Like the army, press was one of the pillars of British colonialism. It was the press that helped to propagate, preach, disinform, disseminate the false information to the people.

The first attempts to publish newspapers in India were made by the disgruntled employees of the East India Company who sought to expose the malpractices of private trade by the Company's employees. The earlier newspapers were started by the English in their mother tongue and they catered to a microscopic intellectual society of Englishmen and the Anglo-Indians. There was really no threat of a rebellion or a strong public protest. But, there was an apprehension that these newspapers might reach London and expose their misdeeds. This fear had played havoc with freedom of expression in India. The government sometimes enforced pre-censorship, sometimes deported the offending editor of a paper for anti-government policies.

Given below is a brief account of various draconian and gagging Acts which were time and again imposed on the newspapers.

While apprehending Napoleon's invasion of India when the East India Company was engaged in the struggle for supremacy in India, Lord Wellesley imposed the first censorship of the press in 1799. First time the newspapers had to carry the name of the printer, publisher and the proprietor. The publisher had to submit all material for pre-censorship. In 1818, the editors were warned against publishing of the doings of the Court of Directors. The Licensing Regulations of 1823 had proved more stringent than the earlier ones. It made the publisher and printer to obtain a license for starting a press. These regulations were basically aimed at the Indian language press or Indian editors. After this Act was promulgated, most of the publications were stopped. Charles Metcalf as officiating Governor General (1835-36) repealed these obnoxious regulations of 1823. This act earned him the 'liberator of the Indian Press'. Lord Macaulay, a Whig himself had reasoned out that already India was under the control of the British, there was no necessity to control the press. But the liberation did not last long. The Revolt of 1857 changed the destiny of India and the British attitude towards India. The Licensing Act, 1857 had reintroduced the restrictions on Indian press. The Registration Act, 1867 had replaced Metcalfes' 1835 Act. By this Act, every book or newspaper should have the name of printer, publisher, and place of publishing. This has been amended in 1890, 1914, 1952 and 1953.

The 1870 Act amended the Indian Penal Code regarding 'sedition'. This became necessary due to the revolt of *Wahabis* (1869-1870).

The Revolt of 1857 had resulted in racial bitterness among the rulers and the ruled. As a fall out of the Revolt of 1857, the European press in India had sided with the government. The vernacular press by now had grown a major threat to the government in mobilizing public opinion. In 1878, there were about 170 vernacular papers in India. It was calculated that there were probably more than one lakh readers of such papers. In 1876-77, the great Indian famine consumed about 6 million lives of India. The government went into the famine relief casually. Immediately followed the imperial *darbar* at Delhi in 1877 made the press and the public opinion wary of government antipathy to peoples' woes. The Vernacular Press Act of 1878 was designed to 'better control' the native press. This Act empowered a magistrate to confiscate the press. No appeal could be made to a court of law against the magistrate's action. The 'Gagging Act' as it came to be known, discriminated between the 'disloyal native press' and the 'loyal Anglo - Indian press'. It was the major attempt by the colonial power to throttle the freedom of expression by native press. It was widely condemned as an unwise step to smother the rising flames of discontent. Most of the native press however did not have the courage to stand up against the government repressive

measures. This Act paved way for a press commissioner to supply authentic and accurate news to the press. The Vernacular Press Act was repealed by *Lord Ripon* in 1882.

When the Partition of Bengal in 1905 coupled with the extremist faction gaining ground in the Indian National Congress, the newspapers began criticising the government policies. The government followed a repressive policy, enacted the Newspapers (Incitement to Offences) Act, 1908. It enabled the magistrate to confiscate the printing press, property for publishing objectionable material. The Indian Press Act, 1910 enabled the government to increase the deposit to Rs.2000 at the time of the registration.

The First World War 1914-18 saw the Defence of India Rules to supersede the existing rules. The government used the rules not only for war purposes but also aimed to suppress political agitations against the 'compulsory' and forceful recruitment of the government.

In 1921, the Press Committee was constituted under Sir Tej Bahadur Sapru, Law Member, Viceroy's Executive Council. The Committee recommended the repeal of 1908 and 1910 acts. This was done so by the government under the Press Law Repeal and Amendment Act, 1922. There were very minor and cosmetic changes which took place during the rest of the British rule save during the Second World War. But during the freedom struggle, the number of readership increased for both the vernacular and the English language. Vernacular papers were no longer a competition for the English language papers. But the government definitely interfered with the English newspapers on the basis that some newspapers like *The Statesman* and *The Times of India* became pro government sympathisers while others including the *The Hindustan Times*, *The Bombay Chronicle* were pro Congress newspapers who supported the national movement. There were instances during the freedom struggle that the Anglo-Indian press had played on communal feelings amongst various sections of Indians, even at times when communal disturbances were taking place. The government even acted one sided while dealing with Indian owned newspapers. During the civil disobedience movement of 1930-32, many provincial governments prohibited the publication of news items concerning Congress agitation; even the photographs of the events and the leaders were banned. But it happened many times that the newspapers were either confiscated or the editors were deported for not abiding the government order. But *The Times of India* (Bombay) and *The Statesman* (Calcutta) published such items without let or hindrance.

### Check Your Progress 2

1. Who was the first governor general to introduce press censorship?

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

2. Vernacular Press Act was repealed by.....in the year...

3. Which are the two newspapers that supported the British Raj:

- a. The Hindustan Times
- b. The Times of India
- c. The Statesman
- d. The Bombay Chronicle
- e. The Hindu

Choose from a and b, b and c, c and e, c and d.

4. Who earned the name the liberator of the Indian press and why?

#### 4.3.5 Police and Human Rights Violations

Another pillar of British colonialism is the police force. British 'Raj' was often called 'Police Raj'. The governed were under the constant surveillance of the police. The use of force is an ingredient of the colonialism. The Army used to conquer the land. The Police force used to quell the internal disturbance of the conquered land. Even a civilized state has police force but the colonial state had used the sheer brutal force against the natives. The Police force in India was governed by the Police Act of 1861 and the Special Acts of Madras (1859) and Bombay (1890) presidencies. The Police in India were provincial forces. To an ordinary Indian, the police represent the power of the British government. Policeman was not looked upon as a protector of peace nor the public have any confidence in the police. According to an estimate, there was one policeman to every one thousand three hundred of the population. There were about 10,000 police stations or one in 100 square miles; at the same time, there was one hospital in every 400 square miles. The Police in India, whether in peace or during any agitation, used 'excessive' force and adopted methods which were indefensible and inhuman. *Lathis*, teargas, bayonets, and rifles had been used to disperse unarmed, peaceful and non-violent crowds, pickets or processions. The ordinances were only redundant when it were produced in the court against police 'excesses'. The judiciary itself was a mute spectator to police lies. Often police used third degree methods to extract the truth. The 'disappearances' were common during the British raj. The police *Zulum* included burning of houses, looting and destruction of property, forcible entry into houses and beating of people, blockading of villages, looting of crops, entry of *Zenanas*, molesting and raping the Indian women, etc. The government also imposed punitive fines during the agitation.

The century old Indian Penal Code considered as 'Britain's grim gift to India' is still used and misused by the police and the judiciary alike. The police excesses also included 'forced labour' (*begar*). Forced labour was used by the government contractors for construction of public utility systems like rail roads and roads. They were actively protected by the police. The people were even forced to sell lottery tickets and threatened to attack lands if sufficient tickets were not sold. Police in many occasions behaved in a haphazard manner. Everything was left to the man leading on the spot. The police seldom behaved in a civilized manner with the women and children. One can get a glimpse of police atrocities unleashed on women in the pangs of history. During the Civil Disobedience Movement (1930-32) in Bengal, the women volunteers were taken into custody, then driven miles away from their homes or places of arrest to island *chars* (in many cases uninhabited), and left at dead of night. There had been widespread feeling about the manhandling of women processionists, picketers, and volunteers and threats of molestation loomed large. One such incident we quote:

'Miss. Nilakanta, the head of the local National Girls, School and a graduate of an American University, replied to the threats by appearing as a picket armed with a knife. She announced that if there was one attempt at molestation she would take her life rather than submit to it, as her country women would.' (*Condition of India*, p.204)

The ordinances gave blanket power to the executive officers to detain a person on reasonable grounds of suspicion. In one of *modus operandi* of police raj, a person who was arrested was released and asked to report to the police station at least thrice in a day, which was disobeyed in many cases. Now, the person was re arrested and a proper case had been filed. The aim of the procedure was to create an offence.



Police raj was much seen in the villages. Villages were considered as backbone of India. Almost none of the villagers were educated. The police had a free hand in dealing with the villagers. Even for a small theft, a villager might be tortured and killed in police custody. For not paying the tax of few rupees, the village household might be ransacked, women were molested and raped. These were never reported in the press, or taken to the courts. The villagers were the silent and mute sufferers of the police raj. Police atrocities were innumerable and unimaginable. In some cases, the menfolk of the family were made to undress themselves in front of the women which include the wife, daughters, daughter-in-law. The children also did not escape the police brutalities. In many incidents, the police used 'unnatural' offence like sodomy on boys.

#### 4.3.6 Prisons and Human Rights Violations

The prisons in India were governed by the provisions of the Indian Prisons Act of 1894. The official estimate of prisons were nearly 2000 in British India. The government discouraged sending of men to the jails, as it was difficult to maintain and feed them there. The prisoners included small time convicts, murderers, and mostly political prisoners who were detained for violation of various ordinances of British government. The government did not recognize the category of 'political' prisoners.

Mohan Kaul is a young fellow of 19 years of age, son of an ex- government official. He refused to *salam* at the call of *Sarkar Salam* in Rajshahi Jail. He was put in standing handcuffs and given other punishments. Each time he was brought before the Superintendent he declined to make the required obeisance. Altogether, he suffered five and a half months of solitary confinement. After the first three months, when he was still adamant about his refusal to *salam*, he was put into a cage with his hands fettered behind his back. The cage was seven by five feet. In this cage Mohan Kaul spent all hours of the day and night; he was obliged to take his food and answer the calls of nature in it'. (*Condition of India*, p245)

In addition to prisoners, there were 'detenues' interned in detention camps without trial for an indefinite period. In jail, there were three classes of prisoners as A, B and C. However, the classification was arbitrary. Most of the Political prisoners were sent to C class even though they were entitled for class A and sentenced to Rigorous Imprisonment. It had been a regular feature of complaints against the jail authorities. Jail strikes were common sight in British India. The women and children too were humiliated without any sympathy. For instance, women prisoners were escorted over long journeys by policemen and head constables, without women warders or other female company. The juvenile prisoners had been given Rigorous Imprisonment, were flogged and whipped, were forced to do the work of adults, most dangerous of all, they were the victims of foul abusive language and even sodomised in the jails. These were against the very nature of the jail manuals. These human rights violations were never heard in the courts. The administration in India was based on racial discrimination despite proclamations and declarations to the contrary. This discrimination was seen in the jails too. Even highly reputed Indian prisoners with high moral character like Mahatma Gandhi, against whom there might not be a formal case, were treated worse than a normal European criminal. The Europeans were jailed only in particular jails. The Europeans, Americans, British and Anglo-Indians enjoyed maximum benefits under the jail manuals. There had been jail riots over the quality of food served inside the jails even though the manuals had given clear instructions regarding the food served. But they were grossly violated. Often the quality betrayed the manuals. The appeals of prisoners went unheard, often resulted in no food or rigorous punishment. The jail manuals said that no convict should work for more than nine hours a day, except in emergency. The labour in the prisons were classed as 'hard', 'medium' and 'light'. The prisoners who were physically fit were put to hard labour including pressing oil, grounding corn, and pounding grain.



"In oil mills political prisoners were made to run like bullocks. They had to eat while they were doing work". (Hari Singh , Bareilly Jail, U.P. Committee Report, 1930.)

Other kinds of hard work included weaving, weighing and storing grains, also pounding, cooking, water raising from well, water carrying, carrying stone, quarrying etc. Punishments for not complying with the above included severe labour, hand-cuffing (front of body-fetters, and back of body-chains) fetters (Bar fetters, link fetters and crow bar fetters), penal diet, solitary confinement, cellular confinement, whipping, etc. Like police 'raj' outside, the treatment in the prison cell is partly the consequence of official callousness to human suffering and dignity. It was also the basic nature of British superior race ideology that ruled the minds of the officials and their collaborators.

### Check Your Progress 3

1. Most of the Political Prisoners were sent to .....class prisons.

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.....  
.....

2. Detenues were interned in camps without trial. True / False.

3. What were the categories of labour in prison?

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.....  
.....

4. Write a short note on atrocities of women by the prison authorities.

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#### 4.3.7 Workers and Human Rights Violations

One of the most affected lot during the colonial rule was the labour force. The Chartist movement in Britain paved the way for trade unionism and workers rights. In India, the trade unionism was dealt with iron fist. The government had always supported the owners against the workers. The

workers were denied equal pay parity with the whites, Christians and Anglo-Indians. The standard working hours were denied to them. Trade unions were either quashed or made impotent. While in England the Child labour was abolished, it still continued in India. The government turned a Nelson's eye to the atrocities of the mill owners of both Indian and British origin. In India, by law, agricultural serfdom was abolished. But in practice 'forced labour' still persisted under the British rule. The 'forced labour' was used both by private individuals and the official contractors for public construction. The question of forced labour had been raised in International fora time and again but were officially refuted. The slavery of labour was officially abolished in 1843 but it paved the way for the indentured labour. One can see even today the forced labour and slavery in remote India.

## Check Your Progress 4

The slavery in India was abolished in .....

More rights movement in Britain connects with .....

---

## 4.4 LET US SUM UP

In this unit, we have seen the relation between the colonialism and the human rights. Colonialism is a synonym for exploitation. British colonial rule in India affected the common man, children, women, labourers, workers, peasants, either directly or indirectly. The police and the army were used as basic tools to suppress the rights of the individuals. The judiciary either had played second fiddle or been a silent spectator to the police raj. The prisons were fertile ground for human rights violations because of the veil of secrecy around them. Unless a prisoner lived to tell his story, the brutalities get buried inside the four walls of the prisons. The press which brought out the colonial atrocities suffered seizure, or pressmen deported and fined.

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## 4.5 KEY WORDS

**Fetter** : A fetter is one of a pair of chains which were used to tie prisoners to a place, by the legs, and so prevent them from escaping.

**Rigorous Imprisonment** : Hard Labour.

**Zulum** : Hindustani word for oppression.

**Sarkar Salaam** : Hindustani Word means saluting the governance.

**Char** : Small islands, in the middle of the rivers in East Berigal.

**Lathi** : Long stick used by the police.

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## 4.6 SOME USEFUL BOOKS

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Desai A.R. (ed), *Expanding Governmental Lawlessness and Organised struggles*, Delhi, 1991

Marx, Karl and Fedrick Engels, *On Colonialism*, Moscow.

Rau, Chalapathi. M *India - Land and people: The Press*, New Delhi 1974.

Synder, Louis.L *The Imperialism reader: Documents and Readings on modern expansionism*. Princeton, 1962.

Vivekananda, Swami, *Proletariat win equal rights*, Calcutta, 1984.

Whately, Monica, et.al, *Condition of India*, New Delhi, 1999 (Reprint).

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## 4.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. See Section 4.1.
2. See Sub-section 4.3.1.

### Check Your Progress 2

1. Lord Wellesley.
2. Lord Rippon, 1882.
3. b and c
4. See Sub-section 4.3.4.

### Check Your Progress 3

1. c
2. True
3. See Sub-section 4.3.6.
4. See Sub-section 4.3.6.
5. See Sub-section 4.3.5.
6. See Sub-section 4.3.5.

### Check Your Progress 4

1. 1843
2. Workers Rights

# UNIT 5 NATIONAL MOVEMENT AND HUMAN RIGHTS

## Structure

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Origins
- 5.3 National Movement and Human Rights
  - 5.3.1 Incorporating in the Programme
  - 5.3.2 Making Demands from the Government
  - 5.3.3 Struggling for Human Rights
  - 5.3.4 Practising Human Rights
- 5.4 Struggles for Social Transformation
  - 5.4.1 Struggle Against Caste Oppression
  - 5.4.2 Rural Reorganisation
- 5.5 Spread
- 5.6 Implications
- 5.7 Let Us Sum UP
- 5.8 Answers to Check Your Progress Exercises

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## 5.0 OBJECTIVES

---

After you have read this Unit, you will learn about

- the sources from which the national movement drew inspiration,
- the nature and the programmatic content that the national movement evolved *vis-à-vis* the question of human rights,
- the different ways in which the national movement practised and demonstrated its concern for human rights, and
- what was its implication for the future of India's society and polity.

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## 5.1 INTRODUCTION

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It is now common knowledge that the national movement was primarily a struggle against British imperialism. What is however not so widely known is that Indian National Movement was actually more than that. It was also a grand project to build a modern India along democratic and civil libertarian lines. The fight against the British was a part of this larger struggle. As the colonial state frequently trampled upon peoples' human rights and civil liberties, the Indian National Movement constantly strove to defend and uphold these values. In fact, overthrow of British imperialism was seen by the leaders of the national movement as a precondition to the development of India as a country where people would be able to defend their basic rights. This would become amply clear if we compare India's record of civil liberties and human rights with other developing post-colonial societies. Evidently, the human rights that the people of India enjoy, in however limited a measure, is a legacy of our national movement.

If you look at the records and documents of the national movement, speeches and writings of its leaders, you would not find the term human rights anywhere. But this should not lead you to assume that this concern did not exist during the national movement. It is important to keep in mind that the term human rights is of a latter origin and came into vogue only at the end of the World war II, in 1948. The experience of fascist politics and horrors of the world war gave birth



to a renewed concern for a man's right to live with freedom from want and fear and enjoy some basic economic and cultural rights along with the political ones. The common expression used before the second world war was civil liberties. The concept of civil liberties was about 200 years old and could be dated back to the French Revolution of 1789. It was this understanding that was inherited by the leaders of the national movement and made an integral part of their struggle against the British imperialism. It is therefore important to look at the sources that inspired our national movement in its struggle for civil liberties and human rights.

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## 5.2 ORIGINS

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In the year 1776, delegates from English colonies from North America met and adopted a declaration of independence. In the declaration the colonies considered themselves independent from British control and, in so doing, provided a framework for all subsequent liberation struggles. The Congress asserted : "All men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are Life, Liberty and the Pursuit of Happiness." This was perhaps the first political document that emphasised the basic equality of all men and their natural rights. Then in 1789 during the French Revolution, the National Assembly of France adopted the "Declaration of the Rights of Men and Citizen". This declaration inspired revolutionary and democratic movements not only in Europe but also in Asia and Africa. The declaration said: "The principle of all sovereignty rests essentially in the nation. No body and no individuals may exercise authority which does not emanate from the nation expressly."

When these ideas were applied to the Indian society at the beginning of the 19<sup>th</sup> century, well before the start of the national movement, they acquired a uniquely Indian character. During the course of the social reforms various human rights came to be looked at as *individual rights*, *rights of the community* and *those of the nation*. All the three were expressed throughout the 19<sup>th</sup> century. The campaigns for the removal of Sati and the advocacy of widow remarriage were projected as important individual rights. Leaders like Rammohan Roy, Ishwarchandra Vidyasagar and others championed these issues as part of an individual's basic rights. Similarly, low caste leaders like Jyotiba Phule fought for the rights of the community as a whole. And leaders like Bankim Chandra and Vivekanand took the initiative in projecting rights of the nation. All the three concerns were incorporated in the 20<sup>th</sup> century during the course of the national movement in concrete struggles around these issues. Thus, the national movement derived its inspiration from the classical European doctrine of 'rights' and also its creative application during the social reform movements in the 19<sup>th</sup> century India.

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## 5.3 NATIONAL MOVEMENT AND HUMAN RIGHTS

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There was a variety of ways in which the leaders of the Indian National Movement introduced the issue of peoples' human rights into the anti-imperialist struggle. It included:

- giving these issues top priority on its agenda,
- constantly making demands from the government specially at the initial stage of the movement,
- educating the people regarding their rights and conducting struggles around these issues, and
- demonstrating through practice, whenever they could, their utmost concern for civil liberties and human rights.

### 5.3.1 Incorporating in the Programme

As you are probably aware, in the initial stages, the national movement did not go in for a direct confrontation with the colonial government. Instead, it confined itself to educating the people through speeches and writings and acquiring a programme that would include the rights of all Indians and also specific groups. *Vis-a-vis* the minority groups, the early nationalist leaders displayed a special sensitivity. Immediately after its formation in 1885, the Indian National Congress passed many resolutions to ensure that no injustice was done to the voice of the minorities. In the years 1888 and 1889, the Congress resolved at its sessions that no proposal relating to minorities could be passed if the majority from that group was opposed to it. At its Karachi session in 1931 the Congress came out with its declaration of fundamental rights. The declaration guaranteed to "every citizen of India of every caste and creed the right of free expression of opinion, free association and combination, freedom of conscience and the right freely to profess and practise his religion subject to public order and morality."

Merely passing of a resolution may seem simple but it was not always easy to stand by it. Often it became difficult for the organisation to carry together different ideals. For instance, from the early days, Congress had committed itself to the establishment of national unity or unity among different groups and communities. But at the same time Congress also resolved that it would not impose unity on any group against its wishes. Thus when the Muslim League, under the leadership of M.A.Jinnah, began demanding a political separation between Hindus and Muslims after 1940, Congress leadership opposed it but conceded that any group, if it so desired, could opt for separatism. Gandhi put it beautifully: "We are at present a joint family. Any member can seek a separation." It was thus that while pure nationalism was to be maintained and upheld as a desirable principle, it was not to be done by violating groups' rights of self-determination. Let us take another example. When in 1938, World War II broke out between forces of democracy (Britain, France and Poland) and those of fascism (Germany, Italy and Japan), it became imperative that our national movement would side with the forces of democracy. But whereas in the global context, Britain represented the forces of independence and democracy, in the Indian context, Britain was the imperial power denying independence and democracy to the people of India. Should the national movement support Britain as a democratic force engaged in a war against fascism, or oppose it as an imperial power? Should the national movement focus only on the Indian reality (and fight the British) or express solidarity with the people of the world in their struggle against fascism? This was a serious dilemma. But the mainstream leadership of the Congress managed to resolve it. Jawaharlal Nehru wrote:

We want to combat fascism. But we will not permit ourselves to be exploited by imperialism, we will not have war imposed upon us by outside authority, we will not sacrifice to preserve the old injustices or to maintain an order that is based on them. We will not and cannot forget our own struggle for freedom for slogans which may sound pleasant to the ear but have little reality behind them...

Nehru argued that the people of India were willing to participate in a global war to uphold independence and democracy for the people of the world, but they could not do it as long as they themselves were not free. Therefore, Nehru demanded independence for India as a precondition for their participation in the war. It was thus that the national movement was able to combine its national commitment with a global commitment and also emphasize independence and democracy as basic human rights for the people of the world.

### 5.3.2 Making Demands from the Government

It should be emphasized here that ideas of political modernity (democracy, representational

government, peoples' sovereignty, respect for human rights, freedom of the press among others) were not a gift of the British, contrary to popular belief. These were constantly demanded by the leaders of the national movement and conceded only grudgingly, and partially, by the British government. For instance, from the beginning of the 20th century, Bal Gangadhar Tilak, followed by Gandhi and others, began demanding adult franchise (even though it did not exist in Britain till 1928), but it was not granted to Indians till independence. Till as late as 1935, only three per cent of Indians had the right to vote. But complete adult franchise was firmly put on the agenda. Indian leaders, from the 19th century onwards, constantly criticized the British government for its non-representative character and questioned its credentials in preparing a constitution for India. Motilal Nehru and Tej Bahadur Sapru went to the extent of preparing a national constitution in 1928. It recommended the declaration of fundamental rights, a parliamentary system of government, adult franchise and an independent judiciary among other things. Even though the Nehru Report, as it came to be known, was rejected by the British government, it inspired the Indian people and re-affirmed their capacity for governing themselves. From 1930s onwards, leaders like Jawaharlal Nehru began demanding the creation of an elected Constituent Assembly, which would prepare a constitution for India.

In making issues of human rights central to the struggle for independence, the contribution of early leaders like Bal Gangadhar Tilak and Gopal Krishna Gokhale is very important. Gokhale, throughout his career, argued against heavy taxation levied by the British. But he was willing to support the existing taxes if primary education was made compulsory and if the colonial state took responsibility for it. Gokhale was probably the first Indian leader who saw education as a basic human right. Tilak was a great champion of the liberty of the press and freedom of speech. His famous statement — "freedom is my birth right" — is perhaps the earliest attempt by an Indian leader to look at freedom as a human right. He practised his freedom of speech and wrote freely against the British policies in newspapers. He was arrested twice for it — in 1897 and again in 1908 for six long years.

### 5.3.3 Struggling for Human Rights

Apart from making demands on the British government to enlarge the space available for exercise of human rights, the national movement, from 1920 onwards, actually conducted popular struggles around this issue. It is important to remember that the first all-India mass movement against the British was organised on the question of violation, by the British, of a crucial aspect of human rights. In 1919, the British government brought forth the notorious Rowlatt Bill (known after its author Sir Sidney A.T. Rowlatt) which would authorize the government to imprison any person without trial and any other legal procedure. This move by the British government was received with unprecedented and fierce opposition by Indian leaders of all shades of opinions. All the Indian members of the Legislative Council — from Srinivasa Shastri to Mohammad Ali Jinnah — opposed the Bill (yet it was passed). The national press was indignant calling it "monstrous" (*New India* from Madras), "a gigantic blunder" (*Amrita Bazar Patrika* from Calcutta), "repression in exelusus" (*Bombay Chronicle* from Bombay) and a matter of "shame, indignation and disgust" (*The Hindu* from Madras). An all-India Hartal was organized and the entire country rose in protest against what it considered a blatant violation of human rights. Throughout its life, the Indian National Movement upheld human rights as an uncompromisable issue.

### 5.3.4 Practising Human Rights

Yet another way in which the Indian National Movement contributed to the enlargement of space for human rights was by actually practising it when the opportunity came. The Government of India Act of 1935 provided fully elected popular governments in the provinces. As a result, the



Indian National Congress formed a government in seven provinces and successfully practised what it had preached for many years in the past. All the emergency powers exercised by the previous provincial governments were repealed. Ban on illegal political organizations was lifted. All restrictions on the press were removed and securities taken from them were returned. Confiscated arms were returned and forfeited arms licenses were restored. But the most important achievement was the release of thousands of political prisoners who had been languishing in various prisons for many years. During its brief stay of twenty-eight months in office, the Congress was able to demonstrate its serious concern for the issue of civil liberties and human rights.

### Check Your Progress 1

1. What was Nehru's argument about the dilemma of joining the British rulers in the war? What was his pre-condition for it?  
.....  
.....  
.....  
.....
2. 'The Ideas of political modernity were not a gift of the British' — comment.  
.....  
.....  
.....  
.....
3. Discuss briefly the effects of the Government of India Act, 1935.  
.....  
.....  
.....  
.....

## 5.4 STRUGGLES FOR SOCIAL TRANSFORMATION

Apart from integrating the issue of human rights into the struggle for independence, the national movement also created space for various social struggles as important human rights issues. This took many forms but was quite evident in two fields:

- (i) the struggle against caste oppression and discrimination, and
- (ii) the endeavour for village reorganisation.

### 5.4.1 Struggle Against Caste Oppression

The struggle against caste oppression was in some ways more complex than the fight against the British. The battle against the caste system was against attitudes and prejudices, which were thousands of years old and could take centuries to overcome. Moreover, it was not a battle against the alien rule but against oneself and one's own people. It was therefore easier to throw out the British but very difficult to eradicate caste oppressions. Since it was not a straight problem it also did not have a straight solution. Different leaders therefore adopted different approaches to the problem. Gandhi and B.R.Ambedkar looked at the question very differently from each other. They also adopted different methods but in the end, their efforts rather complemented each other. Gandhi thought that the practice of untouchability was at the core of the caste oppression and



unless it was removed, it would not be possible to destroy caste system. Ambedkar, on the other hand, thought that problem of untouchability was inherent in the caste system and was integral to it. Therefore, according to Ambedkar, the struggle against untouchability was essentially a struggle against the caste system. Gandhi thought that social work and social reforms in the villages would help in imparting social respect to lower caste people and make living more honourable for them. He, therefore, undertook extensive campaigns for making village temples and wells accessible to the lower caste people. He even coined a new word for them – Harijan.

According to Ambedkar, on the other hand, a share in political power was the key to the problem of caste injustice. He therefore worked hard for creating an entry for the lower caste groups into formal structures of political power. Once they got political power, Ambedkar believed, they would be able to improve their lot. Then they will not have to plead to others for justice and fairplay.

While pointing out the differences between the two approaches, it is important to remember that the two approaches were not contradictory in nature but rather like two different routes to arrive at the same destination. In the long run, both the leaders, through their efforts, succeeded in initiating a process in which the low caste people were able to fight for social justice as well as a share in political power. Gandhi and Ambedkar, and many others too, helped in shaping the dalit question as a powerful human right issue.

#### 5.4.2 Rural Reorganisation

In the 19<sup>th</sup> and the 20<sup>th</sup> centuries 85% of India's population lived in about 700,000 villages. A majority of them were steeped in utter poverty, exploited not only by the British government but also the rural and urban elite. Industrialisation of the country had rendered them unemployed; the colonial economic system did not create alternative sources of employment. In the late 19<sup>th</sup> and the early 20<sup>th</sup> centuries many people from towns and villages came to live in the cities, thereby accentuating the already heavy pressures on them. No scheme or system existed for the amelioration of their condition. The Indian villages were centres of poverty, disease and ignorance. Gandhi took the initiative in this regard and drew the attention of the country to this violation of some basic human rights of 85% of Indians. Immediately after his entry into Indian politics in 1915, he formed the All India Spinners Association with a purpose to create employment for the villagers by insisting on the city dwelling population to use hand spun cloth only. The spinners association soon reached 5300 villages and provided employment to 220,000 spinners, 20,000 weavers and 20,000 carders. Within ten years of its formation it succeeded in disbursing over two crore rupees in those villages. In 1934, after his temporary retirement from politics, Gandhi settled in Segaoon, a village in Gujarat. He formed an Ashram there and helped in the formation of an All India Village Industries Association. The purpose of the Association was to support and develop industries in villages with little capital and without any help from outside. The Association also set up a school to train village workers in various crafts.

The focus of Gandhian initiative was to make the villages self-sufficient and self-supportive. This, thought Gandhi, was the best way of restoring prestige and dignity to villages and villagers. A good example of this was given in Harijan, a weekly journal started by Gandhi: Chandranath, a man without any higher education but with full commitment to constructive work, enlisted the voluntary labour of about 15,000 villagers and completed a canal, three miles long and a roadway of the same length. The official estimate for this work was Rs. 50,000.

Largely at Gandhi's initiatives, the annual sessions of the Congress began to be held in villages. The canvass of the human rights was thus enlarged to include the pressing problems that had gripped rural India.

## Check Your Progress 2

1. Compare and contrast the views of Gandhi and Ambedkar on the caste problems.  
.....  
.....  
.....
2. What was the focus of Gandhi's initiative in the context of the rural India?  
.....  
.....  
.....
3. Write 5 lines on the All India Spinners Association.  
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.....  
.....

## 5.5 SPREAD

Many of the basic themes pertaining to human rights (democracy, self-government, freedom of the press, adult franchise, right to form associations etc.) had been articulated by the early nationalist leaders by the end of the 19<sup>th</sup> century. But, because the national movement itself was confined to very few people at that stage, these ideas also did not reach the majority of the Indian people. But once the national movement started reaching out to new groups and people in the 20<sup>th</sup> century, it carried the ideas of civil liberties and human rights to them. This, on one hand, strengthened the national movement and, on the other, motivated these groups and people to take up the questions of their rights on their own. This was specially true of low caste people, peasants, women and young people. Peasants formed their own Kisan Sabhas to fight for their rights. The All India Students Federation (AISF) was formed in 1936. A number of such organisations came to be formed in the 1920s and 1930s. These were confined to specific groups and articulated their demands and rights.

A major landmark in the growth of civil liberties and human rights was the formation of Indian Civil Liberties Union in 1936 at the initiative of Jawaharlal Nehru. The Civil Liberties Union was to be formed along non-party lines and could be joined by any Indian opposed to the violation of Indian peoples' civil liberties by the British government. The circular, prepared by Nehru, said: "It is proposed to start an Indian Civil Liberties Union, the sole function of which will be the protection of civil liberties in all departments of national activity. It should be open to all individuals who believe in this fundamental proposition and it should avoid any entanglement of any other political or economic issue....The first object of this union would be to collect data and give publicity to it. Other activities such as the organisation of public opinion to resist all encroachments on civil liberties would follow."

The constitution of the Indian Civil Liberties Union (ICLU) was drafted along the lines of the Civil Liberties Union of America and the National Civil Liberties Union of Great Britain. Rabindranath Tagore was its honorary president and Sarojini Naidu the chairperson. The task of the Union was to gather information about the suppression of civil liberties in the provinces,

collect facts, publish them, mobilise public opinion, keep in touch with other foreign unions and reach out to world opinion through them.

These political and social initiatives helped in sensitising people and also resulted in the creation of a certain kind of literature and cinema that were sensitive to the question of people's individual rights. *Achhut Kanya*, a film made in 1936, dealt with a socially explosive theme of marriage between an upper caste boy and an untouchable girl. Another film made in the same year by V. Shantaram, *Duniya Na Mane* projected the plight of a young girl in a male dominated society that forced her to marry an old man against her wishes. The film portrayed the girl's rebellion and assertion of her rights. Many other films of 1930s took up social and even mythological themes that highlighted people's desire for justice and freedom in a cruel world.

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## 5.6 IMPLICATIONS

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The gradual integration of human rights issues into the struggle for independence had important implications not only for the national movement but also for politics and society after the attainment of independence in 1947. For one, it imparted many new dimensions to the national movement and turned it into a very dynamic process. The early 20<sup>th</sup> century notion of political independence gave way to a new and a vibrant notion of economic independence in which people would determine their own destiny. At the same time, it created a space for a variety of other struggles by specific groups for their rights. A healthy respect shown by the national movement for democracy and other social struggles resulted in the creation of a political climate after independence that was conducive for the growth of democracy.

Over the years the canvass of democracy has enlarged itself considerably to include new groups and classes. This extension of democracy to marginal groups and sections has ensured that the issue of human rights remain firm on the agenda. It has also enabled people to conduct their struggles for their rights and justice within a democratic framework.

### Check Your Progress 3

1. Write 5 lines on the Indian Civil Liberties Union.  
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.....
2. Comment on the implication of integration of human rights into the struggle for freedom.  
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.....  
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## 5.7 LET US SUM UP

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In this Unit, you learnt about the Indian National Movement which derived its inspiration for human rights mainly from the French Revolution and the classical European doctrine of 'rights' of both the individual and the nation. The 19<sup>th</sup> century social reform movement transformed this understanding into 'rights' for the individual, community and the nation. This triple concern for human rights provided the immediate inspiration for the national movement. The organised



national movement that started roughly from the last quarter of the 19<sup>th</sup> century, initially took up issues of democracy, universal franchise, freedom of the press, compulsory education etc. As the movement entered its popular phase under the leadership of Gandhi, it took these issues to the people and educated them regarding their political and economic rights. The national movement took up the battle for human rights in a variety of ways. It increasingly incorporated these issues into its central agenda, made constant demands from the British government for their implementation, conducted struggles around some of these issues and actually practised the principles of human rights whenever the opportunity came. Apart from according supreme position to these issues in its programme, the national movement also created space for other social struggles, which took up the issues of people's human rights. The integration of human rights issues into the struggle for independence transformed the national movement from a mere fight against the British government into a vibrant multi-dimensional phenomenon with respect for democracy, civil liberties and people's urge for self-determination. As a result, the society after independence was able to sustain democracy against all odds. Over the years this democracy has grown and reached out to marginal groups and sections. This has given them the incentive to conduct their sectional struggles within the democratic framework rather than against it.

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## **5.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES**

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### **Check Your Progress 1**

1. Refer to sub-section 5.3.1.
2. Base your answer on sub-section 5.3.2.
3. Refer to sub-section 5.3.4.

### **Check Your Progress 2**

1. Refer to sub-section 5.4.1.
2. Refer to sub-section 5.4.2.
3. Refer to sub-section 5.4.2.

### **Check your progress 3**

1. Refer to section 5.5.
2. Base your answer on section 5.6.



## NOTES

## NOTES

## NOTES



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**7**

## **INDIAN CONSTITUTION AND HUMAN RIGHTS**

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### **UNIT 6**

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### **UNIT 7**

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## **UNIT 6 FREEDOM STRUGGLE, CONSTITUENT ASSEMBLY AND HUMAN RIGHTS**

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### **Structure**

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Background of the Demand for Rights
  - 6.2.1 Nature of People's Resistance
  - 6.2.2 Role Played by the Indian National Congress
- 6.3 The Constitution and the Demand for Rights
  - 6.3.1 Constitution Framing: An Exercise in Self-determination
  - 6.3.2 Various Efforts to Draft a Constitution
  - 6.3.3 Demand for a Constituent Assembly
- 6.4 Cabinet Mission Plan and the Birth of the Constituent Assembly
  - 6.4.1 Objectives Resolution
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  - 6.5.1 Justice, Equality and Freedom
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  - 6.5.4 Existing Precedents
- 6.6 Issues Relating to Fundamental Rights: the Dilemmas and Their Resolutions
  - 6.6.1 The Form and Substance of Fundamental Rights
  - 6.6.2 Judicial Guarantee of Rights
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  - 6.6.4 How Much Freedom?
  - 6.6.5 Rights of Minorities and Religious Freedom
  - 6.6.6 Equality
  - 6.6.7 Minorities
  - 6.6.8 Backward Classes
  - 6.6.9 Backward Areas
- 6.7 Let Us Sum Up
- 6.8 Key Words
- 6.9 Some Useful Books
- 6.10 Answers to Check Your Progress Exercises

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### **6.0 OBJECTIVES**

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In this Unit we shall see

- how the demand for various rights grew in the British Period,
- the nature of the rights demanded, and
- the various forms and means by which the rights were sought to be realized.

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### **6.1 INTRODUCTION**

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The idea that every individual possesses certain 'inherent rights' to be exercised 'equally with others' developed in India in the course of the freedom struggle. It may indeed be said that the freedom movement in India was predominantly a struggle for rights to equality, freedom and justice, which were denied to the Indian people in colonial subjectivity. The long struggle for equal rights against colonial rule was marked by slow and piecemeal reforms by the rulers. A tiny section of Indians, primarily the propertied and affluent sections, were given limited political rights viz., of voting and sitting in governing bodies. All Indians were, however, subject to innumerable restrictions on their right to freedom and equality under demeaning conditions of

colonial rule. The struggle against colonial rule, thus, forms the context in which the language of rights developed. So, the ideas of equality and freedom as primary conditions of dignified human existence were the moving force behind the freedom struggle. And, it led to the setting up of the Constituent Assembly. The Assembly framed the Constitution of India, which became the source of sovereignty of the people of an independent nation. The rights, which were hitherto denied by colonial rule, became the basic and fundamental rights of the people.

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## 6.2 BACKGROUND OF THE DEMAND FOR RIGHTS

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The year 1857 saw the Indians lose their First War of Independence and their direct incorporation into the British Empire as its subjects. The colonial state ruled over India as the representative of the British Crown. The ideals of freedom and equality which were seen as essential values within Britain, were, however, denied to the colonised Indians. In fact, colonial rule was justified on the grounds that the Indian culture, marked by caste and religious loyalties, lacked the conditions in which the values of individual equality and freedom could be understood or applied. Resistance against colonial rule was articulated in the form of demands for rights denied to them. Thus, a range of rights including right to freedom of the press, greater opportunity in senior government jobs including the Indian Civil Service, security of land tenure, rights of the working class etc. were demanded.

### 6.2.1 Nature of People's Resistance

Resistance took the form of local struggles by peasants and workers in their immediate surroundings. It also took a more organised form of mass movements viz., the Non-cooperation Movement (1920-22) and the Civil Disobedience Movement (1930-34) under the leadership of Gandhi and the Indian National Congress.

### 6.2.2 Role Played by the Indian National Congress

In 1930 the Indian National Congress demanded complete independence. In 1931, at Karachi, the Congress adopted the Fundamental Rights Resolution which became the guiding spirit in the formulation of Fundamental Rights in the Constitution of India. While demanding political freedom as the primary condition for realising the rights of the people, the resolution promised to achieve universal adult franchise for all Indians, men and women, education and development for all and social and economic justice for individuals and groups.

In its election manifesto in 1936 before the provincial council elections, the objectives of rights and justice for all were repeated. The last elaboration of Congress policy before the convening of the Constituent Assembly was the manifesto for the provincial elections in the winter of 1945-46, wherein the Congress envisaged a free, democratic and federal state with the 'fundamental rights and liberties of all its citizens guaranteed in the Constitution' (S.K. Chaube, *Constituent Assembly of India*, Delhi, 1973, p.123).

#### Check Your Progress 1

1. Examine the context in which the demands for rights was first articulated in India.

## 6.3 THE CONSTITUTION AND THE DEMAND FOR RIGHTS

### 6.3.1 Constitution Framing: an Exercise in Self-determination

The demand for framing a constitution for India was really an assertion of self-determination. The Constitution was seen as the source of sovereignty and the rights of the people of India. The British imperial practice has no tradition of a written constitution over and above the ordinary law. Rights of the British subjects are derived from royal grants, parliamentary statutes and the common law. Within the British Empire, for the first time in 1921, the Irish Free State framed a Constitution that included a list of fundamental rights. But, the Irish Constitution was a 'rebel' constitution. The British Parliament did not recognize it. Ireland left the British Empire in 1939.

The idea that the Constitution was the source of people's rights and self-determination of the nation emerged in the context of the freedom struggle. The piecemeal reforms introduced by the British failed to satisfy the aspirations of the people. In its Nagpur session in 1920, the Congress adopted the goal of *swaraj* and launched a *satyagraha* in the form of the non-cooperation movement. It became the considered policy of the leaders of the movement not to participate in any reform efforts of the colonial rulers.

### 6.3.2 Various Efforts to Draft a Constitution

The appointment in 1928 of the Indian Statutory Commission (Simon Commission) to look into the demands for constitutional reforms was considered demeaning as it did not include an Indian representative. The first effort to draft a constitution was made in 1928 when an All-Parties Conference met in Delhi and appointed a committee under the chairmanship of Motilal Nehru to draft a constitution for India. The Nehru Committee recommended a set of fundamental rights which could not be withdrawn by the government. The Simon Commission, however, did not favour the grant of any such rights to Indians. Frustration following the fading out of the Civil Disobedience Movement in 1934, formed the background against which the demand for a constituent assembly was first made.

### 6.3.3 Demand for a Constituent Assembly

In May 1934, a section of the Indian National Congress revived the Swarajya Party and demanded a Constituent Assembly containing "representatives of all sections of the Indian people". The task of this Constituent Assembly would be to frame an acceptable Constitution as the only means by which the principle of self-determination of India could be applied. The Government of India Act, 1935, which was the outcome of the Statutory Commission Report and the deliberations of the Round Table Conferences in London, did not meet the demands of rights for the Indian people. The Congress rejected the Government of India Act of 1935.

In its Lucknow session in 1936, the Congress declared that the aspirations of the people of India will not be satisfied by a constitution imposed by outsiders. It criticised the reform attempts by the British. It asserted that the 1935 Act curtailed the sovereignty of the people and did not recognise their right to shape and control their political and economic future. In the 1940s, amidst the Second World War and rising discontent in India over India's involvement in it, the demand for a Constituent Assembly as a means to self-determination gained momentum.



## Check Your Progress 2

1. Describe some of the earlier efforts at drafting a Constitution for free India.  
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2. Why was the demand for a Constituent Assembly raised?  
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## 6.4 CABINET MISSION PLAN AND THE BIRTH OF THE CONSTITUENT ASSEMBLY

Increasing demands by Indians for a greater say in their own governance led to the acknowledgement by the Viceroy in August 1940, that the framing of the Constitution for India would be 'primarily the responsibility of Indians themselves'. But this exercise, he said, had to wait till the war was over. This announcement, in what has come to be known as the 'August Offer', was followed by the Cripps Mission which promised in its declaration steps for the 'earliest possible realisation of self-government in India'. It also proposed the setting up of a Constituent Assembly after the war. It may be pointed out here that the freedom movement in India was composed of a variety of strands. While the Indian National Congress emerged as the dominant strand, a number of ideologically divergent strands contended Congress' vision of free India. In the matter of the institution of the Constituent Assembly as well, fears were expressed that rights of certain groups, particularly the non-Hindus and the scheduled castes, may not be adequately protected in a Constituent Assembly which was dominated by the Congress. Such fears were expressed by the Muslim League, the Scheduled Caste Federation of India and the Justice Party.

### 6.4.1 Objectives Resolution

The Cabinet Mission visited India in March 1946 and sought to make 'immediate arrangements' for Indians to decide the future constitution of India in which all such conflicts could be resolved. The Cabinet Mission Plan, issued in May 1946, offered the opportunity to Indians to make a Constituent Assembly for that purpose. In the 'Objectives Resolution' of the Constituent Assembly which is also reflected in the Preamble of the Constitution of India, the Constituent Assembly declared its resolve to constitute India into a sovereign republic. The sovereignty of the Constitution would be derived from the people, who would secure justice, equality and freedom. The Objectives Resolution showed its commitment to democratic ideals by declaring that adequate safeguards would be provided for the rights of minorities, backward and tribal areas, and the depressed and other backward classes.

### 6.4.2 Advisory Committee and its Subcommittees

The cabinet mission had suggested the setting up of an advisory committee on the rights of citizens minorities and tribal and excluded areas. Its task would be to draw a list of fundamental rights the clauses for the protection of minorities and a scheme for the administration of the tribal and excluded areas. So the Constituent assembly set up an advisory committee with sardar

Vallabhbhai Patel as the chairman. The Advisory Committee, in turn, set up five sub-committees:

- the Subcommittee on Fundamental Rights;
- the Subcommittee on Minority Rights;
- the Subcommittee on Tribal and Excluded Areas in Assam;
- the Subcommittee on Tribal and Excluded Areas in the North-West Frontier; and
- the Subcommittee on Excluded and Partially Excluded areas other than Assam and North — West Frontier.

Of these the fourth sub-committee, that is, the one on the Tribal and Excluded Areas in North West Frontier, was separated from the Constituent Assembly of India after partition. The four other sub-committees submitted their report to the Advisory Committee. The Advisory Committee considered such reports and presented its own reports to the Constituent Assembly of India. The Constituent Assembly thoroughly debated these reports, modified them wherever necessary, and then sent the same to the Drafting Committee. The Drafting Committee, chaired by Dr. B.R. Ambedkar, considered them again and prepared draft articles and clauses for consideration of the Constituent Assembly. These articles and clauses were then debated again, sometimes repeatedly. They were finally passed with modifications wherever necessary. The drawing up of the fundamental rights was the most lively and complex exercise in the Constituent Assembly of India.

### Check Your Progress 3

1. How was the formation of the Constituent Assembly set in motion?  
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2. What steps did the Assembly take to ensure that rights of all sections of the people could be achieved?  
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## 6.5 FUNDAMENTAL RIGHTS AND THE CONSTITUENT ASSEMBLY

As stated earlier, the moving force behind the freedom struggle was the idea that every individual possessed certain 'inherent rights' which could be exercised 'equally with others'. The freedom movement in India was predominantly a struggle for rights to equality, freedom and justice: which were denied to the Indian people in colonial subjectivity. In this context, the framing of fundamental rights was a significant exercise. The rights embodied the aspirations of the people and also the democratic ideals which the Constituent Assembly set itself in the Objectives Resolution.

### 6.5.1 Justice, Equality and Freedom

The Objectives Resolution moved by Jawaharlal Nehru in the Constituent Assembly on December 13, 1946 promised to all citizens of India:

**Justice**, social, economic and political;

**Equality** of status, of opportunity, and before the law; and

**Freedom** of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality.

The assurance of such rights in a differentiated society marked by differences of caste, religion etc., was undoubtedly complex. The idea was to take into consideration these differences while applying the ideals of equality, freedom and justice. To ensure that 'equal enjoyment of rights' was not merely a formal statement, steps were to be taken to assure rights in a manner that the disadvantaged sections could be given protective safeguards.

## **6.5.2 Circumstances of Constitution Making**

It may be pointed out, however, that constitution making took place under rather difficult circumstances. The country was reeling under the post-war depression. The creation of independent India was accompanied by partition, communal conflict, loss of lives and arrival of hundreds of thousands of refugees from the newly created state of Pakistan. A Communist revolutionary programme in West Bengal and the Andhra region raised basic questions regarding the class biases of the Indian state and its structures of governance. Amidst such apprehensions about communal and class relations, the Constituent Assembly addressed itself to the task of framing a constitution assuring the rights and dignity of the people.

## **6.5.3 Considerations Governing Fundamental Rights**

While laying down the specific details of the fundamental rights which were already outlined in the Objectives Resolution, there appeared to have been a general consensus that fundamental rights of citizens should be uniform, irrespective of race, religion, caste, sex and place of birth. There was at the same time a recognition that the minorities and weaker sections of the people needed some special safeguards. There was also a consensus that all laws prevalent in the British period and inconsistent with the rights to be sanctioned by the Constitution would be void. Nor would a future government be permitted to make a law in violation of such rights. The Fundamental Rights Subcommittee examined and debated several drafts of the proposed fundamental rights. It is significant that the Fundamental Rights Subcommittee worked in close association with the Minority Rights Subcommittee. The Advisory Committee to which the Fundamental Rights Subcommittee reported took into account both the final report of the Fundamental Rights Subcommittee as well as the comments of the Minority Rights Subcommittee.

## **6.5.4 Existing Precedents**

In the process of formulation of fundamental rights existing precedents were also taken into consideration. The secretariat of the Constituent Assembly compared the fundamental rights that had been granted in several democratic countries of the world and the United Nations Declaration on Human Rights adopted on 10 December 1948. Sir B.N. Rau, a senior civil servant and Constitutional advisor to the Constituent Assembly of India, visited several countries. He consulted, among others Eamon de Valera, President of the Irish Republic and a great friend of India, as well as Justice Frankfurter of the Supreme Court of the U.S.A.



## Check Your Progress 4

1. What was the Objectives Resolution? How do you think it sought to embody the aspirations of all sections of the people?

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2. What were the concerns at the time of the formation of the Fundamental Rights? How did the Constitution makers seek to address these concerns?

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## 6.6 ISSUES RELATING TO FUNDAMENTAL RIGHTS: THE DILEMMAS AND THEIR RESOLUTIONS

Thus, while framing the fundamental rights, the Constituent Assembly and its committees faced the challenging task of giving these rights a form and substance which would assure equality and justice for all.

### 6.6.1 The Form and Substance of Fundamental Rights

There was intense debate within the Fundamental Rights Subcommittee on the form or language of Fundamental Rights. It is important to note here that rights can be worded either negatively or positively. The manner in which rights are worded has important bearing on their legal nature and the role of the state in implementing them. A positively worded right places an obligation on the state to provide the conditions for the exercise of rights. In this case the rights are legally enforceable or justiciable. This essentially means that in case the government fails in its obligation to provide for a right, the courts can intervene and instruct the government to do so. The 1936 constitution of the USSR granted rights in a positive language. The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations also showed preference for positive formulation of rights.

A negatively worded right, on the other hand, sees rights as belonging naturally to the citizens and prohibits the state from taking away such rights. While providing for rights to the people, it does not put the state under a legal obligation to provide the conditions for their exercise. This was the practice followed by liberal democracies since the adoption of fundamental rights by the Constitution of the U.S.A. in 1791.

The dilemma was resolved by the Constituent Assembly in favour of wording the rights positively, giving the judiciary the role of an independent protector of the rights of the people. The people could turn to the courts for redemption if any of their rights was taken away. Members of the Constituent Assembly felt that a justiciable form of rights was necessary to instill a feeling of security among the minority groups and the disadvantaged sections.



## **6.6.2 Judicial Guarantee of Rights**

Arising directly from the above was the dilemma over the role of the judiciary in the guarantee of rights. Those in support of positive rights, notably K.M.Munshi, were in favour of placing fundamental rights under judicial review. Munshi, therefore, made elaborate provisions for constitutional remedies through the Supreme Court. This meant that the court had the power to issue a number of writs to safeguard the rights of citizens as laid down in the Constitution.

## **6.6.3 Socio-economic Dimension of Rights**

An important aspect of the discussions within the Fundamental Rights Subcommittee was the substance of the rights to be guaranteed. Would the Constitution of India, for example, give the people only political rights, as in the USA, or economic rights as well, as was the case in USSR? How would independent India deal with the problems of illiteracy, poverty and exploitation? How would India, for instance, implement land reforms or abolish untouchability? It is significant that in accepting justiciability as an essential aspect of Fundamental Rights, it was felt by members of the Subcommittee that certain rights like right to education, workers' rights, etc., could not be legally enforceable. These rights were seen as being part of social and economic planning. The Subcommittee agreed, therefore to dividing rights into two parts — justiciable rights which came to be incorporated as Fundamental Rights, and non-justiciable rights which were adopted as Directive Principles of State Policy.

## **6.6.4 How Much Freedom?**

The right to freedom was discussed broadly under three heads by the Fundamental Rights Subcommittee: (i) specific freedoms, like those pertaining to freedom of speech and expression etc., (ii) protection of personal liberty and property, and (iii) right to universal adult franchise. Several leading members of the Constituent Assembly were of the opinion that unlimited personal freedom might endanger the security and stability of the country. They pleaded therefore, for restricting the various rights to freedom to preserve law and order, security of the country, to control class and communal conflicts and to protect personal honour and morality. Provision for preventive detention was also made in the Constitution in the interest of law and order and security of the state.

It is interesting that the Karachi Declaration of fundamental rights by the Congress included provision for the right to property. At the same time the Congress, which dominated the Constituent Assembly, was also committed to land reforms and abolition of feudalism. A section of the party wanted to insert the socialist principles of economy into the Constitution. The big landholders and zamindars, however, wanted strict protection of their right to property and sought to ensure that no property could be taken over by the government without paying compensation. Finally, after heated debates, the Right to Property was adopted with certain restrictions.

The Fundamental Rights Committee also adopted the principle of universal adult franchise. Voting rights were given to all above the age of 21 years, irrespective of their caste, religion, gender, education etc. Elections were to be universal, free and secret and controlled by an independent commission. This right was an important manifestation of the citizens' sovereignty and equality.

## **6.6.5 Rights of Minorities and Religious Freedom**

Minority rights and religious freedom were significant issues discussed in the Minorities

Subcommittee and, thereafter, in the Fundamental Rights Subcommittee. Whereas the Constituent Assembly did not explicitly declare India a secular state, religious freedom was given recognition. Religious freedom included the freedom of conscience and the freedom to practice and profess any religion. A distinction was, however, made between freedom of religion pertaining to religious practice and faith on the one hand, and secular affairs like economic, financial and political activities connected with religion and religious institutions on the other. Such secular activities were made subject to state control. The state was permitted to carry out social reform of all sections of the people. Further, the state was allowed to throw open places of Hindu religious worship of public character to all sections of the Hindus (including the Sikhs, the Jains and the Buddhists). The Sikhs were allowed to carry kirpans within the limits of law. The opening up of places of Hindu religious worship was a part of the firm commitment of the Indian national movement to the abolition of untouchability. Since the 1920s, Gandhi had himself taken up the leadership of several temple entry movements. A dignified social existence of the so-called 'untouchables' among the Hindus, Sikhs, Jains and the Buddhists was assured through a separate article declaring untouchability an offence and its practice punishable by law.

It is important to point out here that some women members of the Subcommittee on Fundamental Rights opposed the form of religious freedom which gave independence to religious communities to govern their internal matters. Hansa Mehta and Amrit Kaur felt that such freedom would prevent the reform by the government of certain dehumanising practices against women like devdasi and child-marriage which had the backing of religion. Giving religious communities freedom to govern their internal matters has to a large extent limited the scope of intervention by the government to curb practices and norms which are unjust to women.

#### 6.6.6 Equality

The chairman of the Drafting Committee, Dr.B.R. Ambedkar was well known for his passion for social and economic equality. It is important to note that there was an almost total agreement on the right to equality in the Constituent Assembly. There was an equal amount of agreement on the need of the backward classes for special treatment in order to enable them to overcome their backwardness.

Difference among members were confined to matters relating to identifying the backward classes, because of the wide variety of castes and tribes in India, and differences in their status. These problems were compounded by the fact that the British Indian provinces and the princely states followed different kinds of categorization. Eventually, the Constituent Assembly left it to the Union Government and the Parliament to identify the Scheduled Castes and the Scheduled Tribes from time to time. The states were permitted to identify other backward classes for special treatment.

#### 6.6.7 Minorities

Religious and other minorities acquired special status in the British period. The system of separate electorate followed by the colonial government in India, affirmed their special identities. The Cabinet Mission Plan retained their separate identities through the provision for a sub-committee on minority rights. But the partition of British India altered the picture as the most vocal minority party, the Muslim League, got the Muslim-majority state of Pakistan. Though the partition left more Muslims in India than in Pakistan, the claim to a *political* status of the Muslim minority in post-partition India was lost. The other minorities did not insist on this status. The Constituent Assembly of India dropped the concept of political minorities but retained the status of cultural minorities. Religious minorities were thus granted cultural and educational rights. But the system

of separate electorate as well as that of reservation was abolished. The Constituent Assembly, however, expanded the concept of minorities to include linguistic minorities.

### 6.6.8 Backward Classes

The Scheduled Castes and the Scheduled Tribes were granted reservation of seats in the Union and State legislatures because they constituted the most underprivileged classes of society. Provision was made allowing reservation of jobs in the governmental departments and undertakings. Provision was also made allowing reservation of jobs for such backward classes of citizens which, in the opinion of the Government, were not adequately represented in the services. The small Anglo-Indian Community was thus granted reservation in services for two years. Provision was also made for their nomination to the first chambers of the legislatures of the Union and states where, in the opinion of the Government, they were inadequately represented.

### 6.6.9 Backward Areas

The bulk of the Scheduled Tribes lived in what was generally known as the 'Backward Areas'. Mostly hilly, and containing large forests, they were governed, under the Government of India Act, 1935, as excluded and partially excluded areas. Such areas were exempted from ordinary laws of government and protected from intervention of outsiders to different degrees. The Constituent Assembly brought some of the areas under normal administration and provided for specialized administration of the rest under the Fifth and the Sixth Schedules.

#### Check Your Progress: 5

1. How did the Constituent Assembly resolve the dilemma of the form of Fundamental Rights in the Constitution of India?

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2. How was a balance struck in the Constitution among the rights and aspirations of the various sections of the population?

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## 6.7 LET US SUM UP

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Rights of the Indian citizens were framed in the Constituent Assembly of India after elaborate discussions and debates. The moving spirit behind the rights was the adherence to the principle of human equality and dignity which was denied to Indians during colonial rule. A commitment to ideas of equality, liberty and justice for all was endorsed in the Objectives Resolutions of the Constituent Assembly. The Fundamental Rights Subcommittee working in association with committees like the Minority Rights Subcommittee was entrusted with the important task of formulating the fundamental rights of the people of India. Though there were differences over the form of rights and their scope, in the final analysis consensus emerged on certain points. For instance, Rights were to be worded positively, and as such would be legally enforceable or



justiciable. The judiciary would be entrusted with the power of judicial review and be the independent protector of the rights of the people. Certain rights like those relating to education and workers' rights were believed to be more in the nature of social and economic policy. These rights were seen as not amenable to legal enforcement. Thus, it turned out that the Fundamental Rights incorporated rights which were political in nature while the Directive Principles comprised the social and economic rights. Rights were granted to all Indians without any discrimination. A balance was, however, sought between the rights of various sections of the population. Religious minorities were given due consideration and special care was taken to provide for advancement of the weaker and backward sections of the society. Scheduled castes and tribes were thus given rights to overcome the disabilities they had suffered historically. Unlimited scope of rights was not preferred. Each right was hedged in with conditions which limited it for reasons of law and order, security and integrity, and public morality etc. of the country.

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## 6.8 KEY WORDS

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**Constitution:** Broadly speaking, constitutions are a set of rules which may be written or unwritten. These rules provide the framework for the powers and functions of the various institutions/organs of the government and the relationship between the state and the citizen.

**Constituent Assembly:** A group of people elected, or chosen on the basis of some other representative principle. This group is entrusted with the task of drawing/writing a constitution.

**Preamble (to the constitution):** An introduction setting out the aims and objectives of a Constitution.

**Satyagraha:** The term literally means demand for truth. In Gandhian terminology, the term acquires the significance of a moral force justifying resistance to forces of injustice.

**Sovereign:** Supreme; who does not derive power from any one else and is herself/himself the source of power.

**Swaraj:** The term literally means self-rule, freedom or self-determination.

**Hedged in:** bound

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## 6.9 SOME USEFUL BOOKS

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*S.K. Chaube, Constituent Assembly of India, PPH, New Delhi, 1973.*

*Granville Austin, The Indian Constitution: Cornerstone of a Nation, Oxford University Press, London, latest edition.*

*M.V. Pylee, Constitutional History of India, 1600-1950, Asia Publishing House, Bombay, 1957.*

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## 6.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. See Section 6.3. Your answer should focus on nature of people's resistance and role played by the Indian National Congress.



**Check Your Progress 2**

1. See subsection 6.3.2. Your answers should include references of the Simon Commission and the Nehru Report.
2. See subsection 6.3.3. Your answer should mention the failure of the government of India Act of 1935 to meet the people's aspirations.

**Check Your Progress 3**

1. See section 6.4 and subsection 6.4.1. Your answer should refer to the 'August Offer' and the Cripps Mission.
2. See subsection 6.4.2. Your answer should refer to the role of the Constituent Assembly's Advisory Committee and Subcommittees.

**Check Your Progress 4**

1. See Section 6.5 and subsection 6.5.1.
2. See subsections 6.5.3 and 6.5.4.

**Check Your Progress 5**

1. See section 6.6.
2. See section 6.6.

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# UNIT 7 FUNDAMENTAL RIGHTS AND THE DIRECTIVE PRINCIPLES

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## Structure

- 7.0 Objectives
- 7.1 Introduction
- 7.2 The Constitution as the Source of Rights
- 7.3 Fundamental Rights as Human Rights
  - 7.3.1 Constitution and the Caste System
  - 7.3.2 Constitution and the Indian Women
  - 7.3.3 Liberty from All Types of Bondage
  - 7.3.4 Special Status of Fundamental Rights
  - 7.3.5 Right to Equality
  - 7.3.6 Right to Freedom
  - 7.3.7 Right against Exploitation
  - 7.3.8 Right to Constitutional Remedies
  - 7.3.9 Religious and Minority Rights
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  - 7.3.11 Equality with Social Justice
- 7.4 Directive Principles of State Policy
  - 7.4.1 Commitment to the Individual and the Community
- 7.5 Fundamental Duties
  - 7.5.1 Implications of Inclusion of Fundamental Duties
  - 7.5.2 Concept of Duty as a part of Indian Political Tradition
  - 7.5.3 Recent Literature on the Importance of Duties
  - 7.5.4 Range and Type of Duties
- 7.6 Roads to a Human Existence
  - 7.6.1 Inadequacies of Fundamental Rights and Directive Principles
  - 7.6.2 Preventive Detention and Violation of Fundamental Rights
  - 7.6.3 Violation of the Rights of the Poor and the Disadvantaged
  - 7.6.4 Human Rights and People's Struggles
  - 7.6.5 Role played by an Activist Judiciary
  - 7.6.6 Role of the National Commission for Women
  - 7.6.7 National Human Rights Commission (NHRC)
- 7.7 Let Us Sum Up
- 7.8 Key Words
- 7.9 Some Useful Books
- 7.10 Answers to Check Your Progress Exercises

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## 7.0 OBJECTIVES

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In this Unit we shall:

- study the manner in which human rights are assured by the Constitution,
- explore Parts III and IV of the Constitution on Fundamental Rights and Directive Principles, respectively, to understand the *nature* of rights guaranteed,
- explore the section on Fundamental Duties to assess their *implications for the rights* guaranteed in the previous sections, and
- analyse the *extent* to which the right to human dignity sought by such constitutional guarantees has been achieved.

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## 7.1 INTRODUCTION

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Both the Fundamental Rights in Part III and the Directive Principles in Part IV of the Constitution seek to bring into practice the principles of human rights assuring to each individual a life of dignity. The idea of rights as a claim to a life of freedom and dignity, irrespective of one's caste, race, birth, class, gender etc, became influential in the struggle against the colonial rule. The colonial rule was based on the 'rule of difference'. This meant that while the rule of law and the rights to liberty and equality were assured within Britain, the same principles did not apply in the colonies. The struggle for national liberation upheld the principles of equality, and considered it rightful to resist an 'immoral' rule which denied the life of dignity to the colonised people. The movement for national liberation sought to bring in conditions where the Indian people could be assured rights by virtue of being human. The Fundamental Rights and Directive Principles are reflections of this aspiration. In the sections which follow, we shall elaborate on the manner in which human dignity and equality are sought in both these parts.

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## 7.2 THE CONSTITUTION AS THE SOURCE OF RIGHTS

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The principles of human dignity and equality in the Constitution have been enshrined in the provision of some fundamental rights to all Indians and the promise of ushering in conditions in which these rights can be effective. By assuring these basic conditions of dignified human existence within a framework of rights, protected by a democratic government working within the framework of the rule of law, the Constitution transformed the status of the people of India. Thus (a) Indians are no longer colonial subjects and as citizens of India are free and equal members of a sovereign nation, and (b) A large majority of Indians deprived of dignified human existence within oppressive caste and feudal structures became, for the first time, equal citizens of the nation.

It is frequently claimed that the Preamble, Fundamental Rights and Directive Principles embody the values of freedom, equality, and economic and social justice which are necessary for the effective exercise of rights. In the Preamble of the Constitution, for instance, the people of India 'give to themselves' the Constitution and make the 'solemn' declaration to 'secure to all its citizens', justice, liberty and equality, and fraternity 'assuring the dignity of the individual'. The people of India are made the source of all authority. The government derives the authority to rule from the people and governs to uphold the rule of law. The Constitution thus makes it amply clear that the emerging nation was to be characterised by democratic processes where the relationship among people, and between the people and the state was bound by mutual trust and the obligation to respect the rights of citizens.

### Check Your Progress 1

1. How does the Constitution assure dignity and rights to the people of India?

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## 7.3 FUNDAMENTAL RIGHTS AS HUMAN RIGHTS

We pointed out in the previous section the difference which the Constitution made to the status of Indians by making them free and equal citizens of a sovereign nation. This implied that every member of the national community was equal in all respects. The status of citizen thus redefined in several ways the relationship among people, and that of the people with the state.

### 7.3.1 Constitution and the Caste System

It assured first of all a 'horizontal' equality among people, ironing out the inequalities which had historically permeated the social structure in India. Historically, the caste system has determined social relations in India and contributed to the unequal distribution of privileges and power in society. It created a hierarchy of purity and pollution so that those at the bottom of this hierarchy of castes were forced to live a life of indignity and servility. These social inequalities were also reflected in the pattern of ownership of the means of production and livelihood. A feudal relationship of production thus permitted the exploitation of peasants and labourers by the owners of land who also belonged to the upper castes. Struggles against colonial rule frequently took the form of resistance against the combined repression of the brahmanical-feudal-colonial rulers. They focussed attention on freedom from the repressive caste and feudal system and a life of dignity where opportunities for education, occupation and improvement of economic status would be available to all.

### 7.3.2 Constitution and the Indian Women

Apart from the injustices of an iniquitous caste system, the Constitution has also sought to erase injustices and inequalities suffered by women. Historically entrenched patriarchal structures have generated the belief that women have separate spheres of activity and their biological constitution and emotional qualities make them unsuitable for public life. Such beliefs have for innumerable years denied women access to economic, political and educational opportunities. The large scale participation by women in freedom struggle and their simultaneous struggle to break the barriers to educational opportunities and political rights from the latter half of the nineteenth century paved the ground for the explicit mention of gender equality in the Constitution.

### 7.3.3 Liberty from All Types of Bondage

We have since our school days been taught to think of India as a nation with a plurality of cultures and religious beliefs. The Constitution has sought to give due freedom to religious communities to preserve their ideas and culture.

Part III of the Constitution on Fundamental Rights aims to give liberty from bondage of caste and class, equality for all irrespective of caste, gender and religion, and social justice. It has sought to give effect to the promise which the citizens make in the Preamble i.e. to assure a life of liberty, equality, justice and dignity.

### 7.3.4 Special Status of Fundamental Rights

It is important to point out that after fundamental rights enshrined in the constitution, no special status. They set parameters of obligation and responsibility which a government owes to its citizens. If the state fails in its obligation to assure the rights to many, the latter can appeal to the courts and they in turn can instruct the government to restore the



rights. It is in this sense that the Fundamental Rights are 'justiciable' and here lies the difference in the ways in which Fundamental Rights and Directive Principles have been incorporated in the Constitution.

Further, Article 13 explicitly lays down that the Fundamental Rights intend to protect these inherent rights and freedom of individual from any arbitrary violations by the State. Clause 2 of Article 13 states that the 'State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause, shall to the extent of the contravention, be void.' Articles 12 to 35 which constitute the Chapter on Fundamental Rights have been categorised into six groups viz., (a) Right to Equality (Articles 14 to 18), (b) Right to Freedom (Articles 19 to 22), (c) Right against Exploitation (Articles 23 and 24), (d) Right to Freedom of Religion (Articles 25 to 28), (e) Cultural and Educational Rights, (Articles 29 and 30), and (f) Right to Constitutional Remedies (Articles 32 to 35). Let us take up each group separately.

### **7.3.5 Right to Equality**

The Right to Equality guaranteed by Articles 14 to 18 has two important elements: (a) it subscribes to the ideal of equality of all human beings, and (b) it also recognises that certain conditions viz a person's caste, restrict equality in real life. The Preamble declares that 'equality of status and opportunity' shall be given to every citizen. It implies that equality should not be merely formal but adequate and positive steps should be taken by the state to make it substantive. Thus, Article 14 promises to every citizen 'equality before the law or the equal protection of law'. Article 15 assures that 'the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth' and Article 16 likewise guarantees 'equality of opportunity in matters of public employment'. These articles, as we can see, assure a formal equality of status among individuals. In order to make this formal status effective, the articles carry clauses which aim at erasing inequalities which are brought about by circumstances of caste, gender, religion etc. Thus, Clause 3 in Article 15 reserves for the State the discretion to provide special provisions for women and children. Clause 4 added by the Constitution (First Amendment) Act, 1951 authorises the state to make special provisions for the advancement of the socially and educationally backward classes of citizens, i.e., for the Scheduled Castes and Scheduled Tribes. Article 17 abolishes 'untouchability', and forbids its practice in any form. The Untouchability (Offences) Act 1955 and its later form, Protection of Civil Rights Act, 1976, are the parliamentary laws which have sought to give effect to this principle in the Constitution.

### **7.3.6 Right to Freedom**

The Right to Freedom constituted by Articles 19 to 22 give six basic freedoms: (a) freedom of speech and expression; (b) freedom to assemble peaceably and without arms; (c) freedom to form associations or unions; (d) freedom to move freely throughout the territory of India; (e) freedom to reside and settle in any part of the territory of India; and (f) freedom to practice any profession, or carry on any occupation, trade or business. Clauses 2 to 6 of the Article, however, subject these freedoms to 'reasonable restrictions' by the state. The state is thus empowered to restrict these freedoms in the interest of the 'sovereignty and integrity of India', 'security of the state', 'public order', and 'general interest of the public'. Articles 20, 21 and 22 give to citizens 'protection in respect of conviction of offences', 'protection of life and personal liberty' and 'protection against arrests and detention in certain cases', respectively. It is important to point out here that Article 22 provides for certain 'protections' or rights of the arrested or detained persons viz., right to be informed of the grounds of arrest, right to consult and be defended by a lawyer, right to be presented before a magistrate within 24 hours etc. These rights are, however, withheld from

'enemy aliens' and persons who are 'arrested or detained under any law providing for preventive detention' [Article 22, Clause 3(b)]. It is thus ironical that the fundamental right to freedom carries within itself the conditions under which it can be dismantled. The history of the numerous laws of Preventive Detention in India from the Maintenance of Internal Security Act (MISA, 1971) through National Security Act (NSA, 1980) and Terrorist and Disruptive Activities (prevention) Act (TADA, 1985), has shown that more often than not these laws have been used by the ruling powers indiscriminately. Often they have been used to quell political opposition and for purposes other than those stated as the objects of the Acts.

### **7.3.7 Right against Exploitation**

Articles 23 and 4 are categorised as Right against Exploitation and assure important guarantees against 'traffic in human beings' and 'forced labour'. Slavery and other forms of servitude like 'begar' and 'bonded labour' have violated the dignity of entire communities or groups of people held in servility for generations. Article 23 is significant since it protects the right of children below 14 years against employment in factories, mines or other hazardous workplaces. It is important to point out again that despite these Constitutional provisions, exploitation of child labour in life-threatening and debilitating conditions, like fireworks industry and carpet making industry, continues unabated.

### **7.3.8 Right to Constitutional Remedies**

Articles 32, 33, 34 and 35 titled Right to Constitutional Remedies give to the citizens the right to move the Supreme Court 'for the enforcement of the rights conferred' in Part III of the Constitution (Article 32). They also confer on the Parliament the power to modify the Fundamental Rights in their application to the Armed Forces, or in areas under Martial Law and also to enact laws to give effect to the Fundamental Rights.

### **7.3.9 Religious and Minority Rights**

Let us now turn to Articles 25 to 30. It is often said that Articles 14 to 24 cater to the rights of individuals while Articles 25 to 30 concern themselves with the special rights of religious-cultural communities. A closer reading of the articles would, however, show that there is in fact, no separation and the seemingly individual catering rights are interwoven with a commitment to community rights. If, for example, one looks at Articles 14 and 15, one sees that they assure equality before the law for every citizen and seek to substantiate this equality by prohibiting discrimination based on caste, religion, race etc, thus mitigating differences provided by social contexts. Articles 25 to 30 concern themselves with freedom of religion and minority rights assuring freedom of conscience, the freedom to religious communities to establish and maintain religious institutions and to 'manage their own affairs in matters of religion', to acquire and administer property, impart religious education, preserve their language, script, culture etc. This cluster of rights deals explicitly with the rights of religious and cultural communities and minority groups and also forms the basis of the rights of religious communities to administer themselves in civil matters, i.e., matters relating to marriage, divorce, property, custody, inheritance etc, by their own 'personal laws'.

### **7.3.10 Fundamental Rights to All 'Persons'**

It may be pointed out here, that in the tradition of international human rights, the Indian Constitution guarantees some Fundamental Rights to all 'persons' irrespective of whether they are Indian citizens or not. These rights pertain to equality before law and equal protection of all laws

(Article 14), protection in respect of conviction of offences (Article 21), protection against arrest and detention in certain cases (Article 22), freedom of religion (Articles 25-28) etc. Some rights, however, like those pertaining to protection against discrimination on grounds of religion, race, caste, sex or place of birth (Article 15), equality of opportunity in the matter of public employment (Article 16) and freedom of speech and expression, assembly, association, movement, residence and profession (Article 19), can be claimed only by citizens.

### 7.3.11 Equality with Social Justice

The Constitution has thus sought to supplement equality with social justice. Thus, social and religious communities were given the right to be culturally different. Caste communities were compensated for past discriminations and segregation by including them in the body politic as equal citizens. This equality was assured by giving them special provisions to overcome circumstantial disabilities. It was to ensure that communities (e.g. Scheduled Castes or Dalits) which had in the past been victims of social discrimination and continue to be disadvantaged, would be able to compete on equal terms with the rest of society.

#### Check Your Progress 2

1. Equality is an important principle underlying human rights. How has the Constitution sought to mitigate historically rooted inequalities for different sections of people?  
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2. How have the Fundamental Rights in the Constitution assured a dignified human existence to all?  
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## 7.4 DIRECTIVE PRINCIPLES OF STATE POLICY

Articles 36 to 51 in Part IV of the Constitution constitute the Directive Principles of State Policy. The Directive Principles are different from Fundamental Rights in the sense that they are not, as Article 37 puts it, 'enforceable' by any Court. Unlike the Fundamental Rights which are addressed to the citizens who can appeal to the Supreme Court in case of violation of their rights, the Directive Principles are addressed to the State and do not automatically vest in the citizens as a matter of right. They are, 'nevertheless', as Article 37 says, 'fundamental in the governance of the country' and the state is expected to 'apply these principles in making laws'.

The Directive Principles serve as reminders to future governments, to bring about conditions of equality and social justice. Article 38 enjoins the state 'to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all institutions of the national life'. By and large, the Directive Principles envisage an active role of the State in providing a range of socially ameliorative or welfare rights. These include access to an adequate means of livelihood, equal pay for equal work, health and strength of workers, living wage for workers, provision of just and humane conditions



of work, right to work, to education, to public assistance, to equal justice and free legal aid, to adequate nutrition and health etc.

### 7.4.1 Commitment to the Individual and the Community

Like the rights in the previous section, the principles of governance in this section show a 'simultaneous commitment' to both the cultural community and the individual citizen. Article 38, for example, directs the State to commit itself to 'promote the welfare of the people' by promoting a 'social order' in which 'justice, social, economic and political, shall inform all the institutions of the national life'. To achieve this, the State is asked to 'strive to minimise inequalities of income' and also 'eliminate inequalities in status, facilities and opportunities'. The significant reminder, however, is that this justice and equality is to be achieved 'not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations'. Article 46 likewise instructs the State to 'promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled Castes and Tribes' and 'protect them from social injustice and all forms of exploitation'.

#### Check Your Progress 3

1. How do Directive Principles substantiate the rights already assured by the Fundamental Rights?

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## 7.5 FUNDAMENTAL DUTIES

Following the recommendations of Swaran Singh Committee, a new section, Part IV A, on Fundamental Duties, was added to the Constitution. It consists of a single Article (51 A) containing a charter of ten Fundamental Duties for citizens. The legal status of Fundamental Duties is quite similar to Directive Principles, which as we know, are instructions addressed to the State, and it is not legally bound to follow these instructions. The Fundamental Duties are also in the nature of instructions, but addressed to the citizens; they too have no legal sanction in the sense that the State is not expected to monitor the citizens to see if the duties are being carried out.

The underlying principle of Fundamental Duties appears to be that the individual exercising their rights must respect the rights of other members of the community. Thus, a person cannot injure the religious sentiments of another person by way of speech or writing and assert that they are protected by their right to freedom of expression under Article 19. Although there are no provisions in the Constitution for their enforcement, any law seeking to prohibit the violation of Fundamental Duties, can be upheld by the Courts, even if the law restricts a Fundamental Right. We may also point out here that under the provisions of Article 31 C, a law seeking to implement the Directive Principles, and imposing in the process a restriction on a Fundamental Right, would similarly be upheld by the Courts.

### 7.5.1 Implications of Inclusion of Fundamental Duties

Before coming to the specific duties listed in the section on Fundamental Duties, let us examine the implications of its inclusion. The insertion of a specific section on duties lays down some



obligations which a citizen is expected to fulfill while enjoying their Fundamental Rights. It also declares adherence to Article 29 (1) of the Universal Declaration of Human Rights which holds that 'Everyone has duties to the community in which alone the free and full development of his personality is possible'. The Constitutions of Japan, USSR and China have separate charters on Rights.

It may be mentioned, however, that irrespective of the specific duties added by Article 51 A, the Constitution shows an expectation of 'responsible' participation by the people. It inheres, for example, in the promise which the 'people of India' make in the Preamble, to each other and to the nation. Thus, the pledge to constitute India into a 'Sovereign, Socialist, Secular, Democratic Republic' involves 'securing to all its citizens' justice, liberty, equality and fraternity. This in turn is geared towards achieving the 'dignity of the individual' and 'national integrity'.

Most Fundamental Rights provided by the Constitution are an expression of this 'solemn resolve' of the people of India as declared in the Preamble. They include, therefore, a corresponding duty so that the aims of equality, liberty, justice etc. are secured in a manner that the dignity of the individual is not affronted and national integrity not compromised. The various rights to freedom in the Constitution would, for example, involve corresponding duties whereby the exercise of this right does not encroach on similar rights of others or endanger national security, public order, etc. Also, the Directive Principles which aim at building a just society also give expression to the promise which the people of India made to each other in the Preamble. Even before the insertion of Article 51 A, therefore, the Supreme Court observed that it was 'fallacy to think that under our Constitution there are only rights and no duties. The provisions in Part IV enable the Legislatures to impose various duties on the citizens. The mandate of our Constitution is to build a welfare society and that object may be achieved to the extent that Directive Principles are implemented by legislation' (*Chandra Bhavan vs. State of Mysore*, 1970, S.C., 2042).

## 7.5.2 Concept of Duty as a Part of Indian Political Tradition

The idea that duties and rights go together and that one cannot expect to enjoy rights without allowing oneself to be subject to obligations is part of the political tradition in India, where the notion of *dharma* (duty), whether *rajadharma* of the king or a reciprocal *dharma* of the *praja* took precedence over the notion of *adhiakar* (right). Gandhi, for example, asserted what he learned from his 'illiterate but wise mother', that 'all rights to be deserved and preserved come from duty well done'. 'Thus the very right to live accrues to us', expressed Gandhi, 'when we do the duty of citizenship to the world. From this one fundamental statement, perhaps it is easy enough to define duties of man and woman and correlate every right to some corresponding duty to be first performed.' (M.K. Gandhi *The Harijan*, 7 June 1948).

## 7.5.3 Recent Literature on the Importance of Duties

A strand in a growing body of literature on 'citizenship and rights' has also emphasised the importance of duties in the assurance of rights. These writings stress that 'active' and 'responsible' participation in public life is required to usher in conditions of social justice, equality and human dignity. Responsible participation would manifest itself in diverse social situations viz., **how citizens view or act in the midst of competing forms of national, regional, ethnic, or religious identities; their ability to work with others who are different from themselves; their desire to participate in the political process to promote the public good and hold political authorities accountable; their willingness to show self-restraint and exercise personal responsibility in their economic demands and personal choices which affect their health and environment etc.**

## 7.5.4 Range and Type of Duties

The duties which are incorporated in the Indian Constitution by the Forty Second Amendment range from asking individuals to develop their personalities to seeking a meaningful role for the nation in the world order. Some of these duties enjoining individuals to strive towards 'excellence' and developing 'scientific temper' or safeguarding 'public property' appear generally to instill sincerity and responsibility. A general slant is, however, towards imbibing a sense of national commonality. It is thus a duty of every citizen of India to respect symbols of national unity like the national flag, the constitution and the National Anthem, and sources of common heritage like the 'national struggle for freedom' and the tradition of 'composite culture'. Citizens are also expected to preserve the 'sovereignty' and 'unity' of the country not only by pledging to 'defend' the country and offering 'national service' but also by spreading a feeling of 'common brotherhood'.

### Check Your Progress 4

1. '..... all rights to be deserved and preserved come from duty well done'. How has the notion of duties influenced the manner in which rights are understood?

## 7.6 ROADS TO A HUMAN EXISTENCE

A number of factors viz., inadequacies within the Constitution, and social-economic inequalities of caste, class, religion, gender etc, make a uniform application of human rights difficult. The State may also fail to provide the resources for the realisation of human rights and alternatively, it may, through its institutions become an aggressor and violator of rights. A number of scholars feel that the sections on Fundamental Rights and Directive Principles are inadequate in protecting human dignity.

### 7.6.1 Inadequacies of Fundamental Rights and Directive Principles

A.R.Desai emphasises that not only are rights not *reserved* to the people, there is no preservation of the Fundamental Rights already guaranteed to them. The Constitution itself provides the procedure for their amendment and over-riding by the State. Further, the Directive Principles are not addressed to the people. The people cannot, therefore, have the courts instruct the government to provide for humane conditions of life. Again, asserts Desai, while there is no explicit system of accountability for the State, the people are given some 'fundamental duties' which could be used by governments to abridge people's rights. Finally, the fact that certain rights such as rights to work, shelter, education and medical amenities are not made 'fundamental' denies the poor the essential conditions for a truly human existence. Large sections of 'toiling' masses i.e. the socially and economically underprivileged, including women, are forced thus to live in conditions in which their human rights remain unrealised.

### 7.6.2 Preventive Detention and Violation of Fundamental Rights

Coupled with this are the extraordinary powers of policing which the State acquires under the provision for preventive detention, ironically in Part III of the Constitution (Article 22).

Preventive detention is intended as a 'protective' measure whereby the government can arrest a person to prevent the commission of a crime. Experiences with preventive detention laws like MISA, NSA, and TADA, have shown that frequently these laws are used to bypass normal legal procedures and detain innocent persons, often political rivals, without trial, for long periods.

### **7.6.3 Violation of the Rights of the Poor and the Disadvantaged**

The rights of the poor and the disadvantaged, including women, children, dalits, tribals and minorities are frequently violated. Despite the existence of Commissions to look after the interests of specific groups, viz., the Minorities Commission, the National Commission for Women, etc., and the enactment of laws like the Prevention of Atrocities Act, 1989 to stop offences against dalits and tribals, and Prevention of Immoral Traffic Act, the Sati Prevention Act, Dowry Prohibition Act etc, crimes against dalits and women have not ceased. Similarly, despite the Bonded Labour (Regulation and Abolition) Act, 1979 banning bonded labour, and various labour laws (Regulation of Industrial Disputes Act and the Trade Union Act), and provisions against child labour, the exploitation of these sections has not abated.

### **7.6.4 Human Rights and People's Struggles**

This, however, does not mean that human rights is a static category. The history of human rights as a system of equality against hierarchical and ascriptive inequalities has shown that rights are substantiated by people's struggles. Workers movements worldwide have contributed towards the regulation of work hours, amelioration of work conditions and welfare measures for industrial workers. Popular movements and struggles to redefine and enlarge the frontiers of human rights have also occurred in India. The women's movement, the dalit movement, the environmental movement, the peasant movement etc have had important bearings on the definition of the nature and substance of rights. The struggles by the people of Narmada valley against the building of Sardar Sarovar Dam, for example, highlights the right of the people of the valley to protest against their displacement and their refusal to give up their identity, history, culture and means of livelihood.

### **7.6.5 Role played by an Activist Judiciary**

Over the years a number of governmental institutions have also contributed towards the broadening of the scope of citizens' rights. In recent years, the Supreme Court has positively responded to the Social Action Litigations (SALs) and Public Interest Litigations (PILs) brought by Non-Governmental Organisations (NGOs) or concerned individuals, adding new facets to human rights. From the late 1970s, for instance, the Supreme Court reversed the existing legal attitude towards prisoners to give them 'all rights enjoyed by free citizens except those which explicitly taken away by the terms of their sentence' (*Charles Sobraj vs. Superintendent, Central Jail, Tihar*, AIR, 1978, SC, 1514). It has similarly passed orders prohibiting child labour, sexual harassment of women and protection of environment.

### **7.6.6 Role of the National Commission for Women**

The *National Commission for Women*, set up in 1992, under a Parliamentary Act (The National Commission for Women Act, 1990) has concerned itself with women's rights under the Constitution and issues of women's socio-economic conditions, freath and violence against them. Over the years, the comission has taken up casus of vioiennce torture and harassnent of women including molestation, rape, dowry related violence, custodial rape and death, torture and harassment within fannily, in the workplace, and issues of women's legal and political rights for investigation and redemption.



### 7.6.7 National Human Rights Commission (NHRC)

The *National Human Rights Commission* is another institution established by an Act of Parliament (The National Human Rights Act, 1993) to inquire into violations of people's rights. Institutions like the National Commission for Women and National Human Rights Commission when effectively used or pressurised by the people, could contribute towards supplementing human rights.

#### Check Your Progress 5

1. How can human rights as enshrined in the Constitution be made effective?

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## 7.7 LET US SUM UP

The Constitution of India laid down an elaborate set of rights for the people of India. The idea that there are certain basic rights essential for a human existence which inhere in the individual are manifested in Part III of the Constitution on Fundamental Rights. This part assures to the people equality and freedom. The Directive Principles seek to make these rights substantive by enjoining future governments to bring in conditions of social and economic justice. The Fundamental Duties attempt to instill among individuals a sense of responsibility towards fellow members of the community. It may, however, be noted that rights depend not only on sensitive exercise by individuals, but also on the will of the government to enforce them. For several people rights are not available owing to their circumstances of birth, class, gender etc. Frequently, the State may itself become the aggressor and restrict the rights of people. Rights, however, are not static and a long history of struggle has always accompanied their enhancement.

## 7.8 KEYWORDS

**Ascriptive hierarchies:** refers to systems where conditions of birth would determine the hierarchical organisation of people. Caste system is an example of ascriptive hierarchy.

**Citizens:** Citizens are full and equal members of a political community living in a nation-state.

**Ethnicity:** Ethnicity is commonly understood as a form of distinctive cultural identity encompassing values and traditions. It involves a sentiment of loyalty towards a population, cultural group(s) or territorial area.

**Gender:** Unlike sex which is indicative of biological difference, gender refers to social and cultural distinction between men and women. According to feminists, gender discriminations take place when biological differences become the basis for different, dependent and subservient social roles and positions for women.

**Preamble (to the Constitution):** A document setting out the ideals, aims and objects which the constitution makers intended to realise through the Constitution.



**Race:** A scientifically and politically controversial category, race refers to biological (genetic) differences which supposedly distinguish one group of people from another. For long, race has been used to explain cultural differences among people, and the attribution of civilisational inferiority and backwardness to some and superiority to others.

**Suffrage:** The right to vote, or the exercising of that right.

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## 7.9 SOME USEFUL BOOKS

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D.D.Basu, *Introduction to the Constitution of India*, Wadhwa and Company, Nagpur, latest edition.

A.R.Desai, 'Empowering the Sovereign Citizens of India: Some Constitutional Obstacles' in Abha Avasthi ed. *Social and Cultural Diversities*, D.P. Mukerji in Memoriam, Rawat Publications, Jaipur, 1997.

Subhash Kashyap, *Citizens and the Constitution*, Publications Division, Government of India, Delhi, 1997.

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## 7.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. See Section 7.2. Your answer should make mention of the Preamble, the Fundamental Rights and Directive Principles of State Policy.

### Check Your Progress 2

1. See Section 7.3. Your answer should make special mention of relevant constitutional provisions for Scheduled Castes and Tribes.
2. See Section 7.3 and especially, subsection 7.3.10.

### Check Your Progress 3

1. See Section 7.4.

### Check Your Progress 4

1. See Section 7.5 and especially, subsections 7.5.2 and 7.5.3.

### Check Your Progress 5

1. See Section 7.6 and especially, subsections 7.6.4 - 7.6.7.

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# UNIT 8 MECHANISMS FOR HUMAN RIGHTS PROTECTION

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## Structure

- 8.0 Objectives
- 8.1 Introduction
- 8.2 Human Rights and the Law
- 8.3 Special Institutions to Protect Human Rights
  - 8.3.1 The National Human Rights Commission (NHRC)
    - (a) Powers and Functions
    - (b) The Functioning/ Role of NHRC
  - 8.3.2 The National Commission for Women (NCW)
    - (a) Functions of the NCW
    - (b) First Seven Years of NCW's Functioning
  - 8.3.3 The National Commission for Scheduled Castes and Scheduled Tribes
  - 8.3.4 The National Commission for Minorities (NCM)
  - 8.3.5 The National Commission for Backward Classes (NCBC)
- 8.4 International and Regional Machinery
  - 8.4.1 Human Rights Committee (HRC) on India's Reports
  - 8.4.2 How to Promote Human Rights
- 8.5 Let Us Sum Up
- 8.6 Key Words
- 8.7 Some Useful Books
- 8.8 Answers to Check Your Progress Exercises

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## 8.0 OBJECTIVES

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The main objectives of this unit are to familiarise you with:

- how human rights are being violated in everyday life,
- the reasons for establishing special statutory institutions for human rights protection
- the powers, functions and the role of the National Commission for Women and the National Human Rights Commission, and
- the powers, functions and role of the National Commission for SCs and STs, the National Commission for Minorities and the National Commission for Backward Classes.

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## 8.1 INTRODUCTION

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The last two units have given you a fairly good idea about the evolution of the concept of human rights in India, especially in the context of the freedom struggle. You have learnt how this evolution has taken a concrete shape in the provisions of the Constitution. While the inclusion of a comprehensive bill of rights in the Constitution is a remarkable development, the human rights situation in India does not match with the precepts / standards laid down. The situation gives rise to a cause for concern.

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## 8.2 HUMAN RIGHTS AND THE LAW

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Under Article 32 of the Constitution, the individual has the right to move the Supreme Court of India for the enforcement of his / her rights. The apex court is vested with wide constitutional

powers in this regard. They include the power to issue directions, orders or writs for the enforcement of human rights. Under Article 226 of the constitution, the state high courts too have identical powers. Despite the right to constitutional remedies, all fundamental rights of all persons are not enforced for various reasons; such as high court fees (besides that of a lawyer) and huge backlog of pending cases. It should be mentioned that cases of gross violations of human rights do not end by mere incorporation of human rights provisions or the right to constitutional remedies in the Constitution or by enacting laws for their enforcement. The constitutional rights can be guaranteed only through special administrative or institutional measures. Rights can be enforced by the force of law. General training and education about the significance of human rights to law-enforcing agencies like the police and para-military personnel, also helps in improving human rights situation.

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## **8.3 SPECIAL INSTITUTIONS TO PROTECT HUMAN RIGHTS**

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During the last five decades, the Indian government has set up several special institutions under different acts of parliament to give effect to the constitutional provisions of human rights of all persons, including those of the disadvantaged and weaker sections of the society. Let us look at the powers, functions and working of these institutions.

### **8.3.1 The National Human Rights Commission (NHRC)**

Due to constant international criticism of human rights record in the country, specially in the terrorism or insurgency affected areas, the Indian Government established an NHRC, initially on 12 October, 1993, under the Protection of the Human Rights Ordinance of 28 September, 1993. The parliament subsequently passed an Act to replace the ordinance. The NHRC has more members, and broader powers compared to other commissions in the field of human rights. It has eight members a chairperson (a former chief justice of India), a present or former judge of the supreme court, a present or former chief justice of a high court, two members from among persons knowledgeable in the area of human rights, and the chairpersons of the NCW, National Commission for SCs and STs, and the NCM. Appointment of the chairperson and other members (except the last three) is made through a process of consultation encompassing even the leaders of opposition of both the Houses of Parliament. Another significant feature is that the NHRC chairperson and the first four categories of members are appointed for a period of five years.

#### **(a) Powers and Functions**

NHRC has been assigned broad powers and functions.

It can inquire, on its own or on a petition presented to it by a victim or any person on his behalf, into complaints of :

- i) Violation or abetment of human rights; or
  - ii) Negligence, in the prevention of such violation, by a public servant
- It may intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.
  - It may visit, under intimation to a state government, any jail or any other institution under the control of the state government concerned, where persons are detained or lodged for purposes of treatment, reformation or protection, to study the living conditions of the inmates and make recommendations thereon.
  - It may review the safe guards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.



- It may review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- It may study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- It may undertake and promote research in the field of human rights; spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- It may encourage the efforts of non-governmental organizations and institutions working in the field of human rights. It may also undertake such other functions as it may consider necessary for the promotion of human rights.

## **(b) The Functioning / Role of NHRC**

During the years 1993-98, the NHRC has made great progress in effectively enforcing human rights. It has had many accomplishments and made many significant recommendations for changes in the laws as well as the Protection of Human Rights Act, 1993. Let us look at them briefly.

Within a month of its inception on 1 November, 1993, the NHRC, on its own, took cognisance of newspaper reports of the killing of as many as 43 civilians in and around Bijbehara (near Srinagar) in Jammu and Kashmir (J&K) firing by the para-military force, the Border Security Force (BSF). It happened a few weeks earlier during siege of the sacred shrine of Hazratbal in Srinagar by the militants. These militants aimed at inflaming the religious passions of the people. In the resultant tension, the BSF had apparently ran berserk. After examining the findings of a magisterial inquiry by the state government and the Staff Court of Enquiry set up by the BSF, the Commission asked the government to launch prosecution against 14 BSF personnel against whom disciplinary proceedings had been launched. The government accepted the NHRC recommendations and took action against the offending personnel, including a few officers.

The J&K Government paid ex-gratia compensation to each of the dependants of the 31 killed in the firing. Compensation was also paid to 44 injured persons. In this regard, the Commission organised training courses for BSF in Human Rights and Humanitarian Law with participation of the International Committee of the Red Cross.

It was due to the constant campaigning by the NHRC against the Terrorist and Disruptive Activities (Prevention) Act (TADA) that the government decided not to revive it when its term expired in May 1995. It may be recalled that TADA, which was in force for ten years, was meant to deal with the insurgency situation in Punjab and J&K and was to be a temporary measure. But unfortunately it was invoked, rather misused, by most of the states, even by those which were not affected by terrorism. There are still hundreds of TADA cases pending in the courts and the NHRC is pursuing its campaign for their early disposal.

Custodial violence and death is another area which has caught the attention of the NHRC. The huge increase in the number of cases / complaints considered by it, from 276 in 1994-95 to 11,153 in 1995-96, only showed the awareness among the people of the human rights situation in the country and the willingness of the victims to approach the NHRC for relief. As many as 444 custodial deaths were examined by the NHRC during 1995-96, besides 39 cases of disappearance of persons arrested by the police. Quite a few fatalities, 308, were of persons in judicial custody. Other police 'excesses' probed by the NHRC included torture of the suspects during investigation to extract confessions.



Due to persistent goading by the NHRC, in October 1997, the government acceded to the UN Convention against Torture and other Forms of Cruel, Inhuman and Degrading Treatment of Punishment (though it is yet to be ratified).

Although the Commission has a statutory bar not to inquire into cases of incidents of violations of human rights that occurred more than a year ago, its inquiry of mass cremations of more than 2,000 bodies of persons killed by the Punjab police during 1991-93 in fake encounters is worth recording. When the matter was under investigation by the NHRC, the union government in fact, questioned its jurisdiction in view of the one-year time limit set by the Protection of Human Rights Act. When the commission rejected the objection, the government had got the inquiry stayed to enable it to appeal to the Supreme Court. The apex court subsequently ruled that the Commission had jurisdiction not only to deal with the matter, but also added that "any compensation awarded by the Commission (to the dependants of the victims) shall be binding and payable"

### Check Your Progress 1

1. List some of the major powers and functions of the NHRC.

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2. Identify three major accomplishments of the NHRC.

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### 8.3.2 The National Commission for Women (NCW)

The NCW was constituted on 31 January, 1992 in pursuance of the National Commission for Women Act, 1990. It consists of a chairperson and five other members and holds office for three years. It performs multifarious functions.

#### (a) Functions of NCW

It may investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws. It does present to the central government, annually and at such other times as the Commission may deem fit, reports upon the working of these safeguards. It makes, in such reports, recommendations for the effective implementation of the safeguards for improving the conditions of women by the union or any state. It reviews, from time to time, the existing provisions of the Constitution and other laws affecting women and recommends legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations. It takes up the cases of violations of the provisions of the Constitution and of other laws relating to women with the appropriate authorities. It looks into complaints and takes notice of matters relating to—

- i) deprivation of women's rights;
- ii) non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development; and

- iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women.

NCW takes up the issues arising out of such matters with appropriate authorities. It calls for special studies or investigations into specific problems or situations arising out of discrimination and atrocities so as to recommend strategies for their removal. It undertakes promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity. It participates in and advises on the planning process of socio-economic development of women. It evaluates the progress of the development of women under the union and any state. It inspects or gets inspected a jail, remand home, women's institution or other places of custody, where women are kept as prisoners or otherwise, and takes up with the concerned authorities remedial actions, if found necessary. It funds litigation involving issues affecting a large body of women. It makes periodical reports to the government on any matter pertaining to women and in particular, various difficulties under which women toil.

#### **(b) First Seven Years of NCW's Functioning**

During the first seven years (1992-98) of its existence, the NCW has been actively striving to achieve equity, equality and justice. It has been pursuing gender justice through intervention in cases of violation of equality laws, denial of opportunities and deprivation of women's rights. It arranges counselling and assistance to women victims of atrocities and women in distress all over the country.

In order to deal with various complaints and cases that are brought to the commission from time to time, it has established a Counselling and Pre-Litigation Cell. During the said period about 3000 cases have been dealt with successfully. These complaints generally relate to cases pertaining to dowry harassment/ atrocity, torture/cruelty, rape, bigamy, gender discrimination, right to property, harassment at workplace, maintenance and divorce petitions.

It has launched specific initiatives to amend laws inadequate to women's interests in different areas such as dowry, rape, custody, property rights, marriage, divorce, maintenance, etc. It organises its endeavours through NGOs, **Parivarik Mahila Lok Adalats and Legal Awareness Campaigns**. It has a special mandate to solve the problems of the girl child, prostitutes, widows and women in custody as also to counter obscenity in the media. Transfer of technology to rural women is another of its thrust areas.

The NCW is also concerned with political issues relating to women. It supported the nation-wide campaign for political empowerment of women through representation in all legislative and decision-making bodies from grassroots level (panchayat) to the parliament. In this regard, it organised Panchayat Level Legal Literacy and Awareness Programmes to educate grassroots women in Panchayati Raj. Also, it sponsored research studies to examine the impact of women in panchayats and their problems.

On economic issues, its activities include, among others, conducting study on employment of women, employment equality and impact of economic reforms. The Commission also probes employment opportunities for women in export-oriented industries and unorganised sectors. It strives to generate employment for slum women. Its concerns include assisting in organising vocational training and starting Grain Banks to provide credit to women to make them economically self-reliant.

### 8.3.3 The National Commission for Scheduled Castes (SCs) and Scheduled Tribes (STs)

Though the Constitution establishes right to equality and prohibits discrimination based on caste, race, religion, sex or birth besides outlawing the age-old practice of untouchability, the ex-untouchables/ SCs/ Dalits have not been fully integrated into the social mainstream. Their rights are being violated every day. To bring social equality / justice, constitutional and administrative safeguards were provided through the preferential policies commonly known as 'Reservation Policy' (in jobs, educational places and legislatures). The parliament passed three acts with a view to effectively enforce Article 17 of the Constitution, which abolishes untouchability. These acts are the Untouchability (Offences) Act of 1955, as amended by the Protection of Civil Rights Act, 1976, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. These Acts prescribe penalty for offences / atrocities against dalits.

In 1950, a special officer designated as the Commissioner for SCs and STs was appointed under Article 338 of the Constitution to investigate all matters relating to the safeguards provided for these disadvantaged and weaker sections of the society. Subsequently, it was felt that, instead of a single special officer, a high-level five-member commission would be a more effective arrangement. Accordingly, in 1990, the National Commission for SCs and STs was constituted for the protection, welfare, socio-economic development and advancement of the SCs and STs and to evaluate the working of such safeguards. It is empowered to inquire into specific complaints of deprivation of rights of these people. It presents to the President of India annual reports upon the working of these safeguards and makes recommendations for undertaking measures necessary for the effective implementation of the safeguards.

#### Check Your Progress 2

1. What are the concrete measures initiated by the NCW?

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2. List the functions of the National Commission for Scheduled Castes and Tribes.

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### 8.3.4 The National Commission For Minorities (NCM)

With a view to ensuring effective enforcement of the implementation of constitutional provisions relating to minorities, a National Commission for Minorities was created in 1978, which was given statutory status in 1992. According to the government notification, these minorities include the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis). Presently, the NCM consists of a chairperson, a vice-chairperson and five members—belonging mostly to the minority communities. The chairperson and members hold office for three years. The commission performs, among others, the following functions:

- evaluate the progress of the development of minorities under the union and states;
- monitor the working of the safeguards provided in the Constitution and in laws enacted by



the parliament and the state legislatures;

- make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the central government or the state governments;
- look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;
- studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;
- conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;
- suggest appropriate measures in respect of any minority to be undertaken by the central government or the state government; and
- make periodical or special reports to the central government on any matter pertaining to minorities and in particular, difficulties confronted by them.

### **8.3.5 The National Commission for Backward Classes (NCBC)**

The NCBC was created under The National Commission for Backward Classes Act, 1993. This commission was established upon the implementation of the Mandal Commission recommendations reserving 27% of jobs in central services to the persons belonging to other backward classes (OBCs). According to the 1993 Act, 'Backward Classes' means such backward classes of citizens other than the SCs and the STs as may be specified by the central government in the lists drawn from time to time.

The NCBC consists of a chairperson (a sitting or former judge of the supreme court or of a high court) a social scientist and two persons having special knowledge in matters relating to BCs and a member-secretary who is, or has been, a secretary-level civil servant with the union government. These members hold office for a term of three years.

The Commission's main function includes the examination of requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists prepared by the central government and tender advice on the matter. Such advice of the Commission is ordinarily binding upon the government. The central government is mandated to revise these lists at the interval of every ten years with a view to excluding or including new backward classes. While undertaking such revisions, the government shall consult the Commission.

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## **8.4 INTERNATIONAL AND REGIONAL MACHINERY**

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India has ratified international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention Against Torture in 1979, 1992 and 1997 respectively. The Indian Government is required to submit periodically reports to the treaty monitoring bodies under these UN Covenants / Conventions.

### **8.4.1 Human Rights Committee (HRC) on India's Reports**

Under Article 40 of the ICCPR, the ratifying states of the covenant are obliged to submit periodic reports to the HRC. These reports are expected to describe measures adopted to give effect to the rights recognised in the covenant and on the progress made in the enjoyment of these rights.



So far India has submitted three reports under ICCPR, though it has been a regular defaulter in submitting them on time. It submitted its first report in 1983. The second and the third reports were submitted in 1989 and 1995. India's third report was considered by the HRC in July 1997. The committee's comments and observations on the third report indicate that the human rights situation is far from satisfactory in India.

The Committee noted with concern the continued severe social discrimination against SCs, STs, OBCs and ethnic and national minorities. It regretted the de-facto perpetuation of the caste system entrenching social differences. In this regard, the Committee recommended measures to be adopted including education programmes to combat all forms of discrimination against these vulnerable groups.

Discussing the status of women in India, the committee noted: (i) under-representation of women in public life, and (ii) religion-based personal laws violating rights of women to equality. It recommended enactment of personal laws fully compatible with the covenant. Given the human rights norms of cultural pluralism, reforming community based personal laws is imperative to ensure gender justice.

The Committee expressed its continued concern at the reliance on special powers under laws like the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in disturbed areas. It also showed concern at the severe human rights violations by the security forces acting under these laws as well as by the paramilitary and insurgent groups.

The Committee recommended removal of restrictions on the NHRC from investigating direct complaints against the armed forces and the limitation of one-year period within which complaints must be lodged. It also recommended encouraging all states to establish Human Rights Commissions.

Concern was expressed at allegations that security forces do not always respect the rule of law in general, and particularly in the context of custodial deaths, rape and torture. Among the recommendations were mandatory judicial inquiry into cases of disappearance, death or rape in police custody and "training and education in the field of human rights to law-enforcement officers, custodial officers, members of security and armed forces, as well as judges and lawyers".

The committee noted with concern the continued detention of 1600 people under the provision of the lapsed TADA.

In the concluding para, India's attention was drawn to the requirement, according to rules, that the "next periodic report, due on 31 December 2001, should contain material which responds to all these concluding observations". The Committee further requested that "these concluding observations be widely disseminated among the public at large in all parts of India".

#### **8.4.2 How to Promote Human Rights**

In the absence of a regional machinery and not so effective international bodies, especially the UN Human Rights Committee, the responsibility of national institutions becomes all the more important for protecting human rights of their citizens. Moreover, the regional and international mechanisms merely stimulate the national governments, as the primary responsibility of implementing human rights provisions lies with the states concerned as per the international conventions. The international / regional efforts supplement the national endeavours through dialogue, discourses, networking, education and exchange of information etc.

All reports of the national and international bodies should be placed in the country's legislatures and properly discussed.

### Check Your Progress 3

- 1 Discuss the Human Rights Committee recommendations on India's human rights situation.

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## 8.5 LET US SUM UP

In this unit, you have read about the various mechanisms for the protection of human rights in our country. You have also learnt about such mechanisms existing at the regional and international levels. After going through this unit, you should be in a position to explain the role, power and functions of certain special institutions that are there in India for protecting human rights. For instance, the National Human Rights Commission (NHRC), the National Commission for Women (NCW), the National Commission for Scheduled Castes and Tribes etc. This unit is designed to help you develop an awareness about protection of your basic rights granted by the country's Constitution and guaranteed under international human rights **instrument** of which India is a signatory to.

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## 8.6 KEY WORDS

**Bigamy:** The act of going through a marriage ceremony with a person when one is already lawfully married to another person

**Equity:** A set of legal principles designed to provide more satisfactory justice when an adequate remedy was not available under law

**Litigation:** The taking of legal action by a litigant. The field of law that is concerned with all contentious matters

**Statute:** A law enacted by a parliament or legislative body

**Writ:** A written command of the state, usually issued by a court, to an official or other person

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## 8.7 SOME USEFUL BOOKS

India and Human Rights (New Delhi: Lok Sabha Secretariat, 1998).

K.P. Saksena (ed.), *Human Rights: Fifty Years of India's Independence* (New Delhi : Gyan Publishing House, 1999).

*Human Rights in India – The Updated Amnesty International Report* (New Delhi: Vistaar Publications, 1993).

Annual Reports of NHRC, NCW, NCSC & STs.

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## 8.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. See subsection 8.3.1 (A).
2. See subsection 8.3.2 (B)

### Check Your Progress 2

1. See subsection 8.3.2.
2. See subsection 8.3.3.

### Check Your Progress 3

1. See subsection 8.4.1.



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# **AECHRD**

**Human Rights-Society  
and Development**

**Block**

## **8**

### **THREATS TO HUMAN RIGHTS**

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## UNIT 12 HUMAN RIGHTS AND THE STATE

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### 12.0 Objectives

#### 12.1 Introduction

#### 12.2 Anecdote

##### 12.2.1 Inferences from the anecdote

#### 12.3 Fundamental Rights and Directive Principles of the Indian Constitution

#### 12.4 Violation of Individual Rights: Acts of the Executive

##### 12.4.1 Encounters and custodial deaths, torture

#### 12.5 Democratic Rights

#### 12.6 Judicial Activism and Violation of Rights

#### 12.7 Understanding Human Rights in a Wider Perspective

#### 12.8 Let Us Sum Up

#### 12.9 Key Words

#### 12.10 Answers to Check Your Progress Exercises

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### 12.0 OBJECTIVES

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We have been studying that protection of human rights is one of the prime duties of a liberal welfare state. Besides knowing in what ways the State can protect the rights, we have also observed instances of violation of human rights by the agencies of the State.

In this Unit, we will most importantly be:

- analyzing a recent real episode of human rights violation in Delhi.
- looking at ways which give the rule of law power over the executive.

After reading this unit you would be able to:

- know how the State violates individual's human rights
  - recognize the expanding interpretation of Human Rights
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### 12.1 INTRODUCTION

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Human Rights constitute the foundation for men and women to lead a civilized life. Liberal democracies all over the world have guaranteed a variety of rights so that their citizens lead a healthy life. In India, demand for fundamental rights had been voiced during the nationalist struggle itself. So, after 1947, the Constituent Assembly took upon itself the responsibility of framing chapters on Fundamental Rights and made it a pivotal point for the life of its citizens. It was accorded so much importance that all other provisions and activities came to be either directly or indirectly influenced by it. However, over the years, the succeeding governments both at the Centres and in the States began to curtail the citizens' freedoms through legislations. Many of such acts became harmful to the very personhood of individuals. We will study in this unit how individual freedoms become abridged. We will also be looking at which agencies curtail the human freedom and civil rights. At the same time, we come to know about gradually expanding meaning and interpretation of Human Rights.

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## 12.2 ANECDOTE

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Ramzan lived and died in the jhuggis of New Seemapuri in Delhi. He was a rag picker who hailed from Bangladesh and came here as a refugee - maybe even an illegal immigrant. Ramzan did not only have to fill his own stomach, he had to support his family back home. On top of that fact his very citizenship was in doubt, he was also a resident of what is officially designated as an unauthorized settlement - a jhuggi jhonpri (hutment) cluster. Caught gambling one day, he was picked up by the police and died in custody. The Sub-Divisional Magistrate's inquiry established it as a case of accidental death. Despite public protest, there was no investigation ordered into Ramzan's death in March 1992. [*Capital Crimes: Deaths in Police Custody, Delhi 1980-1997, People's Union for Democratic Rights (PUDR) Delhi, March 1998*]

### 12.2.1 Inferences from the Anecdote

There are a number of strands in this little story that will help us to understand the overpowering role of the machine called State in the violation of rights. Human rights, or rights in general, are in classical liberal political theory, attributes of the human individual. They are considered to be therefore, an inalienable part of the individual's person. Protecting these rights as the guarantor and executor, is the state. It is the state and the law that is supposed to ensure that the right of every person is protected from violation by others or by the state itself.

And yet, we see here a series of violations - all committed by the long arm of the state:

1. An individual who is probably a refugee of the Bangladesh war and came to live in this country for safety and livelihood, and whose stay here was sanctioned as a consequence of a formal understanding between the two governments, suddenly becomes "an illegal immigrant". There is no proof required. There can be no proof - if at all the person held a piece of identification paper at any time in the past it was probably nibbled away by mice or washed away or lost in the jhuggi - who knows! In the days when this drama was enacted there was a big campaign ongoing to turn the refugees into "infiltrators". This drama was already acquiring a different form - that of common sense. In this "common sense", a combination of being Bengali (not necessarily Bangladeshi!) and Muslim readily makes one into an infiltrator. (Today that common sense is in place and the fate of the Ramzan's is much more seriously threatened today than it ever was.)
2. The individual concerned was picked up for a petty offence - and it is not even clear why gambling is an offence when it involves petty sums whereas it becomes a respectable profession while dealing in crores in the financial markets. For this offence, the individual was beaten to death. The state - the guarantor of his rights - itself turned to be the enemy of his very person. Was it because Ramzan was a non-citizen, an illegal "infiltrator", who had to be deprived of his life - or that his death simply did not matter as a consequence? Would the state and its personnel have been any bit more respectful of Ramzan's right to life, had he been a *bona fide* citizen? Considering the record, the number and the ways in which the apparatus of the state deprives individuals of their lives - this is not a guesswork that can be sustained. Human rights groups in Andhra Pradesh, for instance, have recorded nearly 900 killings by police encounters during 1990 and 1996. ( *In Search of Democratic Space*, Committee of Concerned Citizens, Hyderabad, August 1998.) We shall see below the reality of the phenomenon of "encounters" as exposed by the Tarkunde Commission many years ago. The fact is that it really does not differentiate between its citizen and non-citizen victims beyond a point.
3. Ramzan could well have been Ram Chander, but as long as he was a jhuggi dweller this is an aspect that does not matter. The jhuggi jhonpri is an "unauthorized" settlement - beyond and

outside the law and hence punishable. We shall also see below how the question of human rights denial to the residents of urban slums and squatter settlements happens in a more generalized form.

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## 12.3 FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF THE INDIAN CONSTITUTION

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There are seven freedoms provided as fundamental rights in the Indian Constitution that form the basis of all human rights available to the Indian citizen. They are encoded in Articles 14 to 22 as you would have already seen in the earlier block. You may also have read in the earlier block that there are, apart from these, certain other rights like those against exploitation, of freedom of religion and belief, of cultural and education that are available to individual citizens and groups of citizens. There are also the Directive Principles of State Policy whose provisions are, of course, non-justiciable (that which can not be challenged in a court of law.) However, even the justiciable fundamental rights enshrined in it can be abridged and contravened in a number of ways - legal and illegal. We shall see some of the ways in which these happen.

### Check Your Progress 1

1. When was the Bangladesh Liberation war fought?  
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2. What did the Tarkunde Commission Enquire into?  
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3. Are the Directive Principles of State Policy justiciable?  
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## 12.4 VIOLATION OF INDIVIDUAL RIGHTS: ACTS OF THE EXECUTIVE

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The Constitution itself gives the Executive and the Legislature enough opportunities to limit suspend and annul them in spite of the existence of Fundamental Rights. Rule by ordinances can be carried on by extending these term after term. Emergency can be imposed either under the pretext of external threat or of internal disorder.

One of the major ways in which rights of individuals may be annulled is through the provision of **Preventive Detention**. According to the *State of Human Rights in India, 1996* (Legal Resources for Social Action, Chengalpattu, undated), about forty preventive detention laws exist in the statute books in India. The first of these was *The Preventive Detention Act, 1950*, which



was in force till 1969. *The Armed Forces (Special Powers) Act 1958* has been used extensively in the seven states of the North-East. *The Maintenance of Internal Security Act, 1971* was in force till 1978 and was used extensively against the political opponents of the then existing regime. Laws like the *Defence of India Act* were enacted after the promulgation of internal Emergency in June 1975. *The Jammu and Kashmir Public Safety Act* came into force in 1978, the *Assam Preventive Detention Act* and the *National Security Act, 1980* were both instituted in 1980 and the latter still continues to exist in the statute book. *The Armed Forces (Punjab and Chandigarh) Special Powers Act* and the *Punjab Disturbed Areas Act* were passed in 1983, followed by the *Terrorist and Affected Areas (Special Courts) Act, 1984*. A full decade after the Emergency, probably the most notorious of them all - the TADA or the *Terrorist and Disruptive Activities (Prevention) Act, 1985* came into force. The last mentioned law created new procedures, new hierarchies, new restrictions on the life and liberties of the people, according to the Report. An individual can be kept under detention for two years and this period can be indefinitely extended on the same grounds, any number of times. It shifted the onus of proof on to the accused completely upturning the fundamental norms of justice. Ordinary courts were barred to individuals arrested under the Act. *The Jammu and Kashmir Disturbed Areas Act, 1990* also vests the armed forces with huge arbitrary powers to arrest and abrogate the civil liberties of individuals.

It may in fact, be useful to remember that in the years since it came into force, over 400 writ petitions, special leave petitions and appeals challenging the constitutionality of the TADA were filed in the Supreme Court. The National Commission on Human Rights also actively campaigned for the repeal of this law. The appeals were finally heard by a constitution bench of the SC in February/ March 1994 after what has been termed as "nine years of legislated violence" (*Striking Terror- The Tamil Nadu Prevention of Terrorist Activities Bill and Its Implications*, PUHR, Delhi, July 1998) and three judgements were delivered - the majority judgements by three judges and two minority ones. The main judgement noted that the business of notifying entire states as 'terrorist-affected' areas and of never denotifying was wrong and could only be done on the recommendations of a review committee. It also noted that the definition of 'abettment' was too wide and could include anyone who had no knowledge that s/he was assisting terrorists. A later judgement also ruled that the entitlement to bail was an 'indefeasible and absolute right' of an accused if the chargesheet was not filed within 180 days of arrest. These aspects of the judgement of the highest court of the land will give you an indication of how the preventive detention provisions are used or misused. How without filing of charge sheets, the accused are kept in detention, refused bail and how definitions of 'abettment' are so wide there may actually be more people behind bars who may have nothing to do with terrorist activities. If areas are notified arbitrarily and without any compulsion to denotify within a specific period, the area of operation of such a law can be extended at will. The latest in the series of such preventive detention laws is *The Tamil Nadu Prevention of Terrorist Activities Bill (POTA)* that actually flouts all the recommendations of the above-mentioned TADA judgement. In fact, the same TADA judgement states that 'terrorism' only falls in the ambit of 'Defence of India' and therefore is the sole jurisdiction of Parliament. Yet, the POTA is introduced by a state government which is legally not competent to do so. An indication of the arbitrariness of the preventive detention laws can be had from the fact that in nine years, of the 76,166 persons arrested only 843, that is 1.11 percent could be convicted. Let us bear in mind that in these convictions, 'confessions' made to police officers were also considered as evidence - a matter on which subsequently the Constitution Bench of the SC was divided 3:2. Despite this, no evidence could be brought against over 38,000 who were either discharged or acquitted.

#### **12.4.1 Encounters and Custodial Deaths, Torture**

We have referred to 'encounters' above in connection with the 900 killings in AP in the first six years of the 1990s. It was during the Janata Government's rule in April 1977, that a commission

headed by Justice V.M. Tarkunde was set up by Jaya Prakash Narayan as the head of the Citizens for Democracy, to inquire into over a hundred such cases reported in which naxalite activists were killed during the Emergency. In the course of its painstaking investigations, the Tarkunde Commission reached the conclusion that the 'encounters' were stage-managed and that all of them were cold blooded murders. It was actually discovered that the police themselves picked up political activists, took them to the jungles, tied them to the trees and shot them dead and then issue statements that they had to open fire in self-defense. The dead bodies were cremated or buried and never handed over to the relatives. (P. A. Sebastian, "The Shifting Modalities of Struggle - The Setting up of the Human Rights Tribunal" in S. Kothari and H. Sethi (ed.) *Rethinking Human Rights*, New Horizons Press, New York and Lokayan, New Delhi 1989). In the two reports submitted by the commission, it was made clear that while the victims were killed in cold blood, in none of the cases did the state administration hold an inquest as stipulated under Section 174 of the Criminal Procedure Code. This was pretty much the pattern of political killings in the urban setting of West Bengal in the period after 1969 especially after 1972, and the art was perfected later by the AP police. After 1980, this practice has been widely used in Tamil Nadu also. It was in the aftermath of a bomb explosion in August 1980 near Tirupattur of North Arcot district. "In the thirteen months that followed, 18 young men joined the ranks of liquidated 'extremists'. Half of them were dalits, the rest of them belonged to the most backward castes. All of them came from peasant and artisan stock. Thirteen of them were killed in 'encounters'...; one succumbed to brutal attack of the police; another was tortured to death in broad daylight; one was pushed down from a running vehicle and two persons 'disappeared' from police custody." (K. Manoharan, "Encounter Deaths in Tamil Nadu" in A.R. Desai ed. *Violation of Democratic Rights in India*, Popular Prakashan, Bombay 1986).

Already in the above descriptions you can see the lurking phenomena of custodial deaths and Torture. The very act of being lodged in jail is one of a series of deprivations of various human rights - of fundamental rights guaranteed by the Constitution. Prisoners do not lose their human/fundamental rights simply because they are held in incarceration as their "rights are inherent in them and inalienable". "Human rights are to be associated with life not with liberty." (LRSA report) This is the profound meaning of the philosophy of human rights. The Supreme Court of India in the *Charles Shobraj vs. Tihar* has affirmed that prisoners have all the rights of any free citizen except to the extent that the situation of incarceration truncates his ability to enjoy them to the fullest. Apart from the various international conventions against torture and regarding the treatment of prisoners, there are rights enshrined in Part III of the Constitution, the Prisoners Act, 1894 and the Jail Manual. Apart from solitary confinement, fettering, keeping prisoners hungry, abusing women prisoners and such like, there are extreme cases of perversity. In one shocking incident that came before the Delhi High Court, a jail superintendent had engraved his name with red hot iron on the body of a prisoner when the latter refused to pay a bribe. So the 'institution' of torture is not meant for the political opponents of the regime alone but exists at a more quotidian and generalized level. Many of the deaths which take place as a result of such torture and third degree methods, occur after the victims are released because the police knows that after the merciless beatings it is hazardous to keep them in lock-up, that they can die any moment. In some investigations conducted in the post-Emergency period, it was discovered how torture has actually been institutionalized, especially in Punjab and Haryana in the form of the Central Interrogation Agencies (CIA) - who true to their name specialized in interrogation and not investigation. (Sudip Mazumdar, "Deaths In Police Custody" in A.R. Desai, *Op.Cit.*) Since many of those are simply picked up and the arrests were not even on record, when the victim died, the CIA simply denied having seen him/her. Nor, therefore, is torture something that exists only in the stories of the nazi concentration camps or of Stalinist labour camps. Normal democratic societies like India have as much claim to it as anybody else.



It may also be interesting to note that the overwhelming majority of prison inmates are under trials - the figure sometimes going up to as high as 90 percent, but on the average remaining near 60 to 70 percent. It has been estimated that although most of them are there for petty offences, they are lodged in jails as under trials for periods longer than would be their maximum punishment under the law for that particular crime. In the case of 30 under trials who were held in Bombay jails for over 7 years, the legal punishment for their offences were far less. This incident came to light in October 1995 and the High Court ordered their release following the publication of an article in the press. Many of them are in jails because, says the LRSA report, they could not purchase their freedom with bail - the procedure for which is highly unsatisfactory and suffers from a property-oriented approach. Overcrowding in these jails is the norm and the conditions are therefore unhygienic and simply unlivable. The **Mulla Committee**, headed by former justice A.N. Mulla appointed in 1980, noted in its reports submitted in 1983, that the majority of the people lodged in jails were people belonging to the underprivileged sections - and mainly from rural and agricultural backgrounds.

Even as India ratified the international convention against torture in June 1997, after dithering for 13 years, the number of custodial deaths countrywide rose sharply. According to the Home Ministry figures, as compared to 444 deaths in 1995-96, there were 889 deaths in 1996-97 government (these figures include those in judicial custody). Of these 889, 700 hundred deaths occurred in judicial custody alone. The PUDR has documented 93 cases of custodial deaths between 1980 and 1997, in the capital city itself. In the case of women, the abuses often take the form of **custodial rape**. There have been a number of cases that have come to light in recent years and some of them such as the notorious Rameeza Bee and Mathura rape cases which eventually became landmark events in the growth of the women's movement in the country. These were issues that provided a crucial mobilizational impetus, along with questions of dowry deaths, in the early 1980s, for the emergence of a strong and politically vigorous women's movement.

In the cases of such deaths/torture/rape, we get a glimpse of a dimension of Ramzan's story. Most of them live precarious lives as migrants struggling for adequate livelihood. Any attempt to find a livelihood, or create one, says the report, involves the violation of one rule or another - and failure to do so pushes some of them in to the world of petty crimes. In the ten cases of custodial rape investigated by the PUDR between 1989 and 1994, too, we can see the same socio-economic profile of the victims - wife of autorikshaw driver, Bangladeshi immigrant, wife of DTC driver, wife of factory worker, Nepali migrant, Himachali migrant in resettlement colony and so on. (*Custodial Rape - A Report on the Aftermath*, PUDR, Delhi, May 1994). In this connection, certain amendments to the Criminal procedure Code that have been hanging fire are now seen to be in urgent need to be pushed. For over a decade, these have not been considered but now some of them are being segregated and considered. These are ones that specially relate to the **rights of women prisoners**. They relate to prohibition of arrest of a woman after sunset and before sunrise except in exceptional circumstances, casting obligation on the police to give intimation of the arrest of the person and the place where s/he is being held to anyone nominated by him/her and medical examination of a person accused of rape. Occasionally the urgency of the situation is recognized and adhoc decisions are taken to rectify the situation as in the case of the Madhya Pradesh government's decision in 1995 to release all undertrial women who had spent more than five years in jail.

## Check Your Progress 2

1. What were the distinguishing features of the TADA?  
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2. What important findings have been made by the LRSA Report?  
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.....  
.....
3. When did India ratify the International Convention against Torture?  
.....  
.....  
.....

### What is "Torture"?

According to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment of the UN General Assembly Resolution 39/46 of December, 10, 1984, "Torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing or is suspected of having committed, or intimidating or coercing him or a third person, for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

*Supreme Court's interpretation of immunity from cruel and unusual punishment.* As there is no specific provision in the constitution of India against cruel and unusual punishment, the Supreme Court has given immunity after a combined reading of Articles 14, 19, and 21. The Supreme Court is for using torture and cruelty to suit a matured, advanced and progressive society with standards of decency in vogue.

## 12.5 DEMOCRATIC RIGHTS

But let us now look beyond these specifically civil liberties issues - issues that are framed in the Fundamental Rights section of the Indian Constitution and are therefore justiciable - to the more general democratic rights issues. There may or may not be a direct contravention of fundamental rights involved here but they are affected nevertheless, howsoever indirectly. Here we cannot catalogue all such legalized attacks but only indicatively refer to the more notorious central legislations/ordinances.

It was in the beginning of the 1980s, especially after the fall of the Janata Government, that some of the most stringent news laws were enacted. We have already mentioned the NSA being enacted in December 1980. Close on its heels, came the *Essential Services Maintenance Act (ESMA)* in



September 1981. It was meant to check labour unrest particularly in the so-called essential services - fourteen of which were listed in the act. As a matter of fact, in a couple of months before it became an act, it had already been promulgated as an ordinance. Strike, the Labour Minister had proclaimed, is a luxury in a poor country! And what were the essential services? Any service connected with post & telegraphs, telephones, railways, airports, shipping, customs, armed forces, hospitals, public conservancy and sanitation, banking, oilfields, mint-security-press and elections to the parliament and state legislatures were all pronounced to be essential. One could of course stretch the meaning of "any service connected to" in any way convenient. Strike, of course was defined as "cessation of work", "refusal to continue to work" or even "refusal to accept employment", worse, also 'refusal to work overtime'. More importantly, it included any other conduct "which is likely to result in cessation or substantial retardation of work in any essential service." As was rightly remarked by a scholar, a farmer in Bengal refusing to sell paddy at unremunerative prices, a labourer working on Asiad refusing to work unless paid minimum wages or a tribal in Chhattisgarh refusing to fell timber for a pittance, a teacher refusing to accept employment as a police informer, a journalist refusing to write government handouts - all could be charged under this act with either obstructing production or the normal work of the government. (Suresh Sharma, "Strike-ban Ordinance: A Lawless Law" in A.R. Desai, Op. Cit.). Shortly after that, the government proposed to drastically amend the *Industrial Disputes Act 1947* and the *Indian Trade Unions Act 1926*, and to introduce *The Hospital and Other Institutions (Settlement of Disputes) Bill*. The amendment to the ID Act sought to remove hospital, educational institutions and such others from the purview of the Act, which were sought to be covered by the separate Act mentioned above. It also made strikes and other form of protest illegal and punishable under the law. The amendment to the TU Act gave wide powers to the Registrar of Trade unions in terms of granting recognition. The Hospital and Other Institutions Bill sought to introduce a separate bureaucracy to deal with and arbitrate disputes within these institutions - appeals against whose decisions were not to be allowed. Many of these proposals eventually fell through in the face of stiff resistance and opposition from parties, trade unions and the public at large. Some other local ones like the *Bihar Press Bill* which sought to place severe restrictions on the freedom of the press - an extension of the freedom of expression - had also be withdrawn due to public outcry and large-scale protests.

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## 12.6 JUDICIAL ACTIVISM AND THE VIOLATION OF RIGHTS

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Strange though it may sound, some of the more recent attacks on the human rights - defined in the wider sense - of sections of the people have come from orders from the hyperactive judiciary, the very institution entrusted with the task of protecting them. The most well-known cases are those where there has been recently, an open conflict between two different sets of rights: say, the right of the people of Delhi to a clean environment and the right of the workers to their livelihood. Though the apparent conflict between the demands for a clean environment and the rights of workers or the poor has emerged as a more generalized one in recent years, it was in Delhi that it recently acquired a dimension that forced it onto the arena of public debate. The Supreme Court in its order in July 1996 order the closure of 168 hazardous and noxious industries. Immediately the result was that close to 50,000 workers were on the streets without jobs. Many starved, some attempted/committed suicide and one of them committed public self-immolation. The question was: why did the court, in the eleven years of the case proceedings not once ask the workers' side of the story; why did it not try to work out any other method in any serious way; why did it not make any explicit demand from the offending, profit-making owners, to submit a detailed plan for relocation stating clearly what they would do with the workforce? It was felt therefore, that the conflict between two sets of rights was not all that real - that the real conflict was between two different interests, namely, that of profit and wages.

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## 12.7 UNDERSTANDING HUMAN RIGHTS IN A WIDER PERSPECTIVE

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In subsequent times, the increased awareness of human rights has led to many other important issues being framed as human rights questions. So the refusal to hold elections to various representative bodies, attempts to gag the freedom of press and expression, the specific attacks on women's rights, the question of dalits' struggle for dignity and self-respect have all been seen as constituting the wider field of human rights violations. The displacement of tribal and other rural populations from their land by mega-development projects have also increasingly been articulated in the language of human rights - of the right over their land and resources and the right, therefore to be consulted in the overall orientation of development. The right to peaceful and dignified life of people of various communities is also widely seen as threatened by endemic communal and sectarian violence under the benign eye of the state. The massacres of Muslims in Maliana perpetrated by the notorious Provincial Armed Constabulary of UP or the massacres of the Sikhs in Delhi in 1984, under the watchful eye of the police have been cited as important indicators of the fact that communal strife is no longer about a clash between two otherwise equal communities - that the state is implicated in every one of these.

### Check Your Progress 3

1. State whether the following are true or false:

(a) The ESMA came into force in 1981,

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

(b) The National Security Act came into force in December 1977.

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.....  
.....

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## 12.8 LET US SUM UP

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We had seen through a real incident, how a poor slum dweller became a target for the police and how he was killed after being victimized. We had also studied the extent of deaths in police custody and the number of tragedies suffered by women prisoners in jails. Added to these human rights violations committed by the Executive against the codes of manuals and recommendations of different committees, we also witness to Judiciary's expanding role which reflects elitism more than concern for the poor. All these have a common thread - that is, in the name of protecting the interests of the State or a group of people, larger interests of people, mostly of the poorer sections and the under privileged have become compromised. On the one hand, we have the civil liberties organizations expanding but on the other there is an increasing violation of rights by the State and its agencies. Although such a development is only expected of democracy with an active Civil Society, yet, with globalization, the sphere of citizens' rights also needs to be enlarged. Good and responsible governance in today's world ensures that both the state and the citizen - groups constantly engage in mutual consultation to arrive at consensus. To ensure this, larger number of citizens should become educated of their rights and duties. An enlightened citizenship is the best guarantee of the Fundamental Rights enshrined in the Indian Constitution.

Fruits of such a project will come in the form of more political space (than hitherto enjoyed) to the people.

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## 12.9 KEY WORDS

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**Detenue:** A person who is detained for arrest.

### Work exercises

Carefully note the arguments of the Supreme Court of India and the State governments of M.P. and Gujarat and those of the Narmada Bachao Andolan. (NBA) about the need for Big Dams in the country.

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## 12.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your progress 1

1. 1970-1
2. Tarkur.de Commission enquired into 'encounters' and deaths
3. No, they are non-justiciable.

### Check Your Progress 2

1. The distinguishing features of TADA were: its new features and characteristics, setting up of new hierarchies, and imposing new restrictions on the life and liberties of the people like detention of an arrested person upto 2 years and grounds for expansion of his/her imprisonment. The arrested were also prevented from approaching ordinary courts to seek justice.
2. It recommended that human rights be associated with life and not necessarily with liberty. Thus the meaning of the philosophy of Human Rights was defined.
3. India acceded to the Convention against Torture in June 1997; it remains to be ratified however.

### Check Your Progress 3

1. (a) True      (b) False



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# UNIT 13 THREATS TO HUMAN RIGHTS FROM SOCIAL INSTITUTIONS

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## Structure

- 13.0 Objectives
- 13.1 Introduction
- 13.2 Denial of Rights to Women Within Their Families
- 13.3 Violence Within the Family: Responses from Women's Activists
- 13.4 Problems of Realising Legal Safeguards
- 13.5 Communalisation of Domestic Violence Against Women
- 13.6 Muslim Single Women's Difficulties
- 13.7 Result of Communalisation of Laws and Politics
- 13.8 Let Us Sum Up
- 13.9 Keywords
- 13.10 Answers to Check Your Progress Exercises

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## 13.0 OBJECTIVES

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After reading this Unit, you would be able to:

- identify which institutions violate women's rights,
- understand how women's rights are violated within the confines of their homes,
- find out why the police refuses to register cases regarding domestic violence,
- appreciate difficulties faced by women's,
- activists in getting women speak up, inspite of launching mass movements,
- understand how communal politics affects women's personal lives in Mumbai city,
- figure out the specific social problems of Muslim single women in Mumbai city, and
- understand what common difficulties women and children are often faced with.

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## 13.1 INTRODUCTION

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By now you may be aware that the very idea of rights is meant to mark out a sphere where the individual is protected from violation by others. In other words, it is meant to delimit the ways in which the individual can be subjected to various violations by others - other individuals, the state, or other social institutions. This means that the individual is not in the first place autonomous, s/he does not *have rights* to begin with; they are meant to demarcate a desirable sphere of individual freedom or autonomy. It has been the contention of the women's movement in India that the family as a social institution forms a major source of human rights violation, especially in relation to the rights of women. In addition, social institutions including the community, form a major source of violation of justice and equality. The oppression that women face within these structures is often made **invisible**, as the family and the community remain outside the realm of focus, being consigned to the '**private**' domain. Now, there can be a myriad ways in which the rights of individuals maybe violated within either the family or the community (here this term includes caste, religious, or any other form of community). For instance, denial



of children's rights against sexual abuse or of the rights of individual males within a community to, say, marry a woman of their own choice could be some commonplace instances.

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### 13.2 DENIAL OF HUMAN RIGHTS TO WOMEN INSIDE THEIR FAMILIES

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A human rights group notes:

"It is relatively easy to document the exploitation and oppression that women face in our country, particularly women of the labouring class, are subjected to outside the home. But it is a very difficult task to attempt to document their condition within the home. The reason is that here the oppression is **invisible** for the most part; it takes place within the four walls of the home, and is treated as a "family" or "private" matter. *The negligence of the rights of women inside the family is due to the fact that the problems of women within the family get personalised...* This individualisation of a social problem is not an accidental outcome of social ignorance, but part of the social values that govern contemporary society." (*Inside the Family: A Report on Democratic Rights of Women*. People's Union for Democratic Rights.(PUDR) Delhi. 1987).

At a general, conversational level, rights are seen as inalienable, and universally applicable. These include the right to life, the right to life with dignity, the right to work, among others. However, for women (and children), the concept of human rights remain somewhat elusive, as they remain embedded within given notions of the private. Violence against women is also a manifestation of unequal power relations between men and women and is reflected in many fields of life. For Indian women, violence takes the form of foeticide, infanticide, dowry-related murders, battering, among others. What escalates the violence is the widespread sanction for violence against women, common in many societies. Through such sanctions, women are controlled and subjugated.

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### 13.3 VIOLENCE WITHIN THE FAMILY: RESPONSES FROM WOMEN'S ACTIVISTS

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Let us begin by looking at some voices of women themselves and from the women's movement on issues seen as private matters. The following extract from a poem talks of violence against them:

"I am Chandrika  
I am Gayatri  
I am Fatima, Bani., Uma,  
I am Jayalakshmi, I am Saraswati.  
I am one of those faceless women who die everyday in your  
morning newspapers and go on to become a crime number in the Police Station  
and then a file to be pushed around in the courts..." (Poem published in "*I cry for help.  
no one's there...*" *A Community Campaign to Safeguard a Woman's Right to Live*.  
Pamphlet by Vimochana, Bangalore.)

Sanction for violence is high when it comes to domestic violence. In India, domestic violence is defined legally and socially as physical and mental violence perpetuated against a married woman by the members of her married family, with or without accompanying demands of dowry. Domestic violence is sanctioned because the family is idealised as a unit where the members put love, support and status. However, this definition of domestic violence

misses out the fact that violence against women within the family is not confined to married women alone, but is experienced by single women on a routine manner. The power of the law relegates such violence to the realm of the unspoken, that is, it invisibilises it. It fails to acknowledge that the family is also often a site of oppression for those vulnerable, in this case women and that a number of crimes against women are committed in the home including assault, harassment, rapes and murders.

In many cases, women struggle against domestic violence (as they do against other forms of violence) in their own ways. Often individual struggles waged within the family are not enough. At this point, the role of interventions by outsider agencies assume some relevance. These may take the form of formal and informal structures. The latter include women's organisations, shelter homes, rehabilitation centres, hospitals and doctors. Formal structures comprise of the Criminal Justice System (henceforth CJS), namely the police and the judiciary.

The issue of domestic violence has been one of the major campaigns of the Indian Women's Movement(IWM), in many cities. Here we will cite the campaigns undertaken more specifically in the city of Mumbai. Even within the women's movement, domestic violence has been understood to include violence perpetuated against a married woman by members of her marital family with or without accompanying demands of dowry. It was during the early 1980s that the issues relating to the violations of women's rights within the family came into public focus and big campaigns grew around them, especially around issues of dowry deaths

During the course of the 1980's, various women's groups in Mumbai, Delhi and other cities launched a legal and social campaign around the issue of domestic violence.

The response of the Indian State and the then government, in the 1980's, was to strengthen laws that prohibited dowry and to pass a new law that criminalised domestic violence.<sup>1</sup> Section 498 A of the Indian Penal Code made domestic violence a criminal offence.

Then, in the early 1980's, the efforts around the anti-rape campaigns in different parts of the country gathered momentum. Most of the initial cases taken up were those of custodial rape - important among them being the Mathura rape case and the Rameeza Bee rape case. The campaigns yielded some results in terms of generating publicity and the creation of a public debate around the issue. It was in the course of these public debates that even questions of marital rape, that is rape or forced intercourse within marriage, started coming into focus. In Mumbai and Delhi, this campaign was accompanied by the exposure of domestic violence as a reality in the lives of several hundreds and thousands of women. *The Forum Against Oppression of Women* in Mumbai discovered, for instance, in its report *Moving, But Not Quite There...* that protests against marital violence and death exceeded those against rape.

There are several reasons for this. The above publication, for example, noted that this may have been because the sheer number of women who were getting murdered or beaten within their own homes was far more than the women who were getting raped or at least those who were willing to press legal charges. The stigma attached to a rape victim is also, of course, far more than the stigma attached to a battered woman. In addition, there is a greater sense of identification with victims of domestic violence than with rape victims. This perhaps, also had to do, with the experience of violence suffered individually by activists, or a closeness with women who had done so. Their own mothers, sisters, friends had also been facing violence within marriage.

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1. These laws are amendments to the Dowry Prohibition Act, 1961 and the introduction of Section 498A, Indian Penal Code and 113A and B, Criminal Procedure Code. See Appendix for more details.

The experience of Women's Centre, a feminist support centre, aimed primarily at working with women in distress also underlines the fact that violence at home is a "reality cutting across class, community/ religion/ linguistic lines." In other words, the understanding is that domestic violence is a shared destiny of women within marriage. (Ammu Abraham, Case Studies from the Women's Centre, Mumbai, in Maitreyi Krishna Raj ed., *Women and Violence. A Country Report. A Study Sponsored by UNESCO. ROWS/SNDT. Mumbai. 1991.*)

The focus of the campaigns in the 1980's was to break the silence around domestic violations and violence. Some women came forward, sharing the pain of the violence suffered by them with other women. There was a conscious effort to do so, and through this process, to forge links between all women, those who had suffered and those who had escaped.

You will need to understand that since this entire domain of violence within the family was such sensitive and therefore a forbidden one that most of our information on this issue comes only through the voices of women who were finding their new community by sharing their pain among themselves. There are no academic tracts that make available any kind of 'disinterested' and 'objective' information. One woman wrote about this process:

"I was sharing my deep and painful experiences with a group of women I hardly knew. But I had a feeling that they would understand since they were committed to fighting against the oppression of women. The issues that we were involved with at that time - rape and wife murders - did not affect us directly. I felt that sharing our own personal experiences, problems and struggles would strengthen the group and the bond would become stronger... I thought, 'If I am ashamed to share my personal experience at a broader political level, then I would be a hypocrite.'" (Flavia Agnes, *My Story...Our Story of Rebuilding Broken Lives*. Majlis, Mumbai. 1990 )

The process of breaking the silence was no doubt painful for the survivors of violence, but the newly created groups tried to create a space within which the women could articulate their anguish and regain strength. Support took on several forms. It meant giving battered women shelter, sometimes in the homes of the activists, and helping them find employment. It sometimes took the form of extra-legal action - confronting the husband at his workplace or retrieving the woman's belongings.

The women's movement did not always make a distinction between domestic violence and dowry demands. The demand made by the IWM at a national level was that a law be passed that prevented dowry related deaths and violence. Some sections of feminists have, however, begun to feel that this reflects a myopic vision as placing dowry victims in a special category ends up denying legitimacy and recognition to the need for protection against violence on women generally, under all circumstances.

This critique is aimed as a corrective towards evolving a larger understanding of violence against women than the feminist campaign seem to possess. It encompasses a distinction between violence suffered by married women at a general level and dowry related violence. It also includes a perception that violence against women in the home is not restricted to these two categories. As stated before, single women in the home also suffer violence at the hands of other family members.



## Check Your Progress 1

- 1) Why is the domestic violence against women difficult to document?  
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.....  
.....
- 2) What are the forms of violence committed on womanhood?  
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.....  
.....
- 3) What was the message of the poem published in "I Cry for Help, No One's There"?  
.....  
.....  
.....
- 4) Name the two custodial rape cases against women that caught the nation's attention.  
.....  
.....  
.....

## 13.4 PROBLEMS OF REALISING LEGAL SAFEGUARDS

In spite of an enactment of Section 498A IPC, which criminalises domestic violence, women have found that the police refuse to enter cases of domestic violence until they are linked to dowry demands and property disputes. This, in the view of the police, increases the credibility of the case, leading to a number of assault cases to be linked to fictitious dowry demands. What it does is to weaken the case, based as it is partly on falsehoods, leading to acquittals of the accused in court.

A reason put forward for the reluctance of the police to enter cases under Sec. 498A is their stand that most women withdraw such cases. There are several reasons that coerce women into doing so. In many instances, neighbours and family members don't give evidence against the offender, as the matter is seen as a personal issue between the couple. The natal family pressurizes the woman into withdrawing the case with the hope of 'saving' the marriage. There are other considerations as well. Women find that while imprisoning the husband - a potential outcome, if the case is decided in the woman's favor - might serve the ends of abstract 'justice', it may well deny her and the children access to material support from the husband and his family. In other words, the economic vulnerability of women within the household leads to a more general denial of the viability of the law.

The police echoes the social attitude that the marital family should be preserved. The general reluctance to enter cases of violence against women in the home is based at least partly on the desire to preserve the family. This can have different manifestations while dealing with women of different classes. While poorer women are often turned away summarily, middle class women



are advised to return home and not break up the home. The police also threatens clients that they will lose the custody of their children if they leave their house, forcing them into retreat. An activist with a feminist intervention centre points out that not only do the police fail to inform women about their rights, but they also resent the confidence of women who might know the law.

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### 13.5 COMMUNALISATION OF DOMESTIC VIOLENCE AGAINST WOMEN

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In many cases, generally and especially in Mumbai, the situation in the 1990s had acquired a communal overtone. On the one hand, the general communalisation and violence against Muslims, especially following the violence in communal riots in 1992-3, following the demolition of the Babri Masjid has increased the feeling of isolation and fear. The communalisation has another impact, that has direct relevance to minority women in Mumbai. It might be important to explain at this point that the incidence of domestic violence has no direct link with religious identity. Evidence shows that minority women are as victimized by violence in the house as are Hindu women. [Study by *Majlis* on Section 498A.(Unpublished)]. However, the manner in which minority women suffer violence may well be different due to political conditions.

An important aspect of this is brought out in the partisan role played by the police in the communal riots in 1992-1993 in Mumbai. Muslim women have witnessed and experienced police brutality during and after the riots. The complicity of the State in condoning violence against Muslims further isolates the community. According to an activist of Awaaz-e-Niswan, a feminist organization working among Muslim women, the reality of being Muslim in Mumbai places serious constraints on the women. While the police is generally not keen to take cases of domestic violence, if the complainant is a Muslim woman, they rush to arrest the man. Women naturally feel that their problems multiply after going to the police. The police, as a part of the procedure, question the neighbors, who are terrified after having been subjected to torture during the riots which did not spare even innocent ones among them. This is another reason why Muslim women do not report even after being beaten by their husbands.

Some minority women approach women's organisations for support, counseling and legal aid in order to increase their options. In such cases, Muslim women have experienced alienation while narrating their experiences of violence. There are several reasons for this. One, that there are few feminist women's groups that have Muslim women in significant positions or roles. Most women's groups in India are controlled by upper caste Hindu women. Furthermore, women lawyers belong to the upper caste Hindu families. This creates a context wherein Hindu idioms, language and rhetoric are universalised.

Even among many social activists there is a general perception that Muslim women are more oppressed and vulnerable because it is sanctioned by Islam - that they can be given 'talaq' at will by their husbands. Due to a perception of Muslim men as being rapacious, bigamous and violent, there is a belief that Muslim women are fated to suffer. Apathy towards women suffering from domestic violence is thus also couched in communal terms.

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### 13.6 MUSLIM SINGLE WOMEN'S DIFFICULTIES

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While the Muslim married women suffer indignities within the marriage, the situation is exacerbated by the lack of real options in civil society for single women. While the situation for poor and single women in India is dismal, for Muslim women on the verge of singlehood, things

are worse. For instance, finding accommodation is a very real problem in Mumbai, as in other metropolitan cities. To add to the high costs of real estate, after the riots in Mumbai in 1992-93, when Muslim families were targeted, several have relocated to "Muslim" areas. Muslim families find it very difficult to get accommodation in middle class housing societies, even if they are able to pay the prices. These factors have led to a virtual ghettoisation.

Community pressures in such a situation would make it even more difficult for single Muslim women to find accommodation. Given this, many battered single women don't approach police stations to file a case against their spouses, as this step would render them homeless.

In addition, the leaders of the Muslim community push their women in general, into docility and traditional roles, following the riots, community leaders in Muslim dominated areas made speeches where they held the single women of the community particularly responsible for the riots. They were accused of lowering the prestige of the community by not wearing the hijab (purdah or veil) and not praying, according to the Awaaz-e-Niswan.

Thus, the generalised bias and oppression Muslims face as a community also influence the decisions of women not to register cases of domestic violence. Activists working with Muslim women complain that the Muslim women are even denied access to government hospitals, are not given ration cards and that their children are often not able to get admissions in schools. These factors have specific implications for women filing a criminal case, as medical reports are essential for filing a case of violence and a ration card is a proof of identity in such cases. In addition, these factors increase the vulnerability of women who suffer oppression inside the homes, as they are pitted against hostile larger legal structures.

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### **13.7 RESULT OF COMMUNALISATION OF LAWS AND POLITICS**

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The communalisation of this criminal law has grave implications for Muslim women, as they are systematically pushed into a system of control by their families and the community. Communal politics and the economic marginalisation of the community closes options for women, especially those trapped in violent situations.

4) Do Muslim single women also face difficulties?

## 13.8 LET US SUM UP

In the light of our discussion above, we should note that within social institutions, especially within the family, human rights violations, against those most vulnerable, is invisible. It is made invisible because the violations are sanctioned by prevalent social norms. While here we have focused only on violations against women, it is important to point out that women are not the only socially vulnerable category. Both women and children share a common plight – that is any violence against them within the family is understood to be private falling outside the scope of law-enforcing agencies. Children, we have earlier mentioned, form a significant section who potentially and actually face violence - sexual, physical and emotional - either from their parents themselves or the other members of their family or from outsiders.

However, matters like child prostitution as sanctioned by families and communities ('Devdasi' system in Karnataka and among the Baudi tribe in Nepal are a few instances) child sexual abuses, homosexuality and neglect, concern about the well-being of women family members also. An unhappy child and a disfigured childhood seriously affect the mother's psychological health. Though we would study about this subject in another Unit, we should necessarily understand that the welfare and Rights of both the women and children are as closely integrated as are their psyche and emotions. Such an attitude becomes an answer to gender injustice perpetrated on women.

### **How social norms and sanctions justify the violation of rights of women?**

As an example of how social norms sanction the violation of rights, we may here recall some recent instances of caste panchayats executing / beheading in cold blood, the newly wed couples because they defied endogamous caste norms. You can recall that in all these instances the community remained unrepentant and defended the actions undertaken by the panchayats. There have also been the instances of women being stripped and paraded naked through the village, once again by the sanctioned panchayats. During the infamous case of *Sati* in Deorala a decade ago, there were many people who defended the right of the community to follow their customs by actually instigating the woman to sit on the burning pyre of the husband.

### **Work Exercises**

Find out some such cases from the newspapers when you read them everyday and try to list out the arguments put forward in support of these violations. Do you find the violations also not being articulated as rights? In that case, is there some mismatch between the rights of individuals and those of the community?

List out some other ways in which the family or the community may be directly responsible for the violation of the rights of its members - men, women and children. If such be the case of families, don't you think, the larger communities like the nation also violate the rights of its members?



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## 13.9 KEYWORDS

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**Natal Family :** Parental family or family in which a person is born.

**Marital Family :** Family where a married person enters. This family consists of one's in-laws.

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## 13.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

- 1) Because domestic violence is considered to be invisible and takes place within the four walls of a family. It is private and even women themselves think that it comprises their family's prestige if they publicly speak out.
- 2) Foeticide, infanticide, dowry-related murders, rapes, custodial deaths, and battering are physical abuses against women. Women are also subjected to emotional and psychological tortures.
- 3) The message is that violence against women are most often forgotten and neglected. Invisibility of crimes against women is due to peoples' apathy and unconcern regarding women's plight.
- 4) The Rameeza Bee rape case of Hyderabad and the Mathura rape case.

### Check Your Progress 2

- 1) (a) False.
- 2) Refusal of neighbours and family members to give evidence, consideration of a crime as of personal and family matter compulsions to save their marriage, fear of losing a bread winner in their husbands and of inviting uncertainty to themselves and their children and the possibility of social sanctions from the community.
- 3) Awaaz-e-Niswan.
- 4) Yes, they share problems of high costs in real estate prices, and compulsions confining to the Muslim-dominated areas. Their other difficulty is the constant compulsions by their community leaders to adhere to orthodox practices. They are often blamed for being one of the reasons for the communal riots in Mumbai city in 1992-93.



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# UNIT 14 PARA STATAL GROUPS (Terrorists, Fundamentalists, Political Extremists)

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## Structure

- 14.1 Objectives
- 14.2 Introduction
- 14.3 Meaning of Terrorism, Fundamentalism and Extremism
  - 14.3.1 Terrorism/ Terrorist Groups
  - 14.3.2 Distinction between Militancy, Insurgency and Terrorism
  - 14.3.3 Kinds of Terrorist Groups
- 14.4 Fundamentalism: Key Features
  - 14.4.1 Causes and Reasons for the Rise of Fundamentalism and Terrorism
  - 14.4.2 Causes: Preconditions and Precipitants
  - 14.4.3 Reasons
- 14.5 Nature of Threats to Human Rights
  - 14.5.1 Threats from the Terrorist Groups
  - 14.5.2 Threats from the Fundamentalist Groups
  - 14.5.3 Threats from the Anti - Terrorist Forces
- 14.6 Let us Sum Up
- 14.7 Key Words
- 14.8 Some Useful Books
- 14.9 Answers to Check Your Progress Exercises

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## 14.1 OBJECTIVES

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At the outset, we should understand the meaning of 'Para Statal', Groups other than the State but whose effectiveness poses a challenge to the State are called 'Para Statal Groups'. The objective of this unit is to recognize and understand the threats to human rights posed by the groups of terrorists and religious fundamentalists, both directly and indirectly. Directly, they carry out their activities through violence and intimidation, and indirectly, by promoting reactive violence or promoting violence to counterterrorism of the state, i.e., extraordinary measures adopted by the state. After going through this unit, you will be able to:

- define the meaning of terrorism and fundamentalism and identify the difference between the two while spotting out their interconnections.
- comprehend the cause of the escalation of terrorism
- examine the nature of threats posed to human rights by the two kinds of groups separately and together.
- evaluate the threats to human rights posed by counter terrorism (or what is described as state-sponsored terrorism) at the national and international levels; and  
analyse problems of dealing with terrorism and fundamentalism.

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## 14.2 INTRODUCTION

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Until recently the focus of concern for human rights was mainly on violation of these rights by the State and its agencies. Indeed the very origin of international interest in protection of human rights was related to Nazi atrocities in Germany before and during World War II. In fact the most extreme type of terrorism in the twentieth century has been carried out by authoritarian states and

military regimes against their own people. Prominent examples are the regimes under Hitler in Germany, Stalin in Soviet Union, General Franco in Spain, General Pinochet in Chile, Pol Pot in Cambodia and Gen. Yahya Khan in Pakistan. We have discussed in Unit 12 in what manner the state has been a prominent violator of human rights. Most human rights organizations such as the Amnesty International, Human Rights Watch, People's Union for Civil Liberties (PUCL) and People's Union for Democratic Rights (PUDR) focused almost exclusively on excesses by the state. However, the logic and scale of atrocities against innocent people by a variety of terrorist groups in many parts of the world during the last decade has made such groups also the focus of international attention. Therefore, the Vienna Declaration and Programme of Action on Human Rights 1993 included "acts, methods and practices of terrorism" as a serious threat, calling for action to prevent and combat terrorism.

The bombing of US embassies in Kenya and Tanzania in August 1998 which killed 224 people impelled the Western countries to organize international collaboration against the terrorist groups. Recently the UN Security Council called for an international effort to combat terrorism.

Many of the **terrorist groups** at present happen to be **religious fundamentalists** also. Osama bin Laden, the Saudi Arabian billionaire who is reported to have masterminded and financed the bombings in Kenya and Tanzania, for example, believes such actions to be in accordance with the Shariat and they have been carried out by those who love Allah. Those opposed to it consider resorting to extraordinary counter-terrorist measures necessary for dealing with the problem. You may recall in this context, the US Cruise missile attack on Laden's hideout in Afghanistan.

The violation of human rights by the terrorist groups in Indian parts of Kashmir and Punjab and the North East is well known. So is the threat posed by religious fundamentalist groups such as Jamaat-a-Islami and the Taliban or leaders like Sant Bhindranwale in Punjab. It is not easy to pin down, arrest, and prosecute the terrorists according to law. But far more important is the mindset of the functionaries of state. Security forces are not equipped to distinguish between civilians and terrorists because suspicion of the local people is intrinsic to their operations. In dealing with terrorism, they may develop a rationale which is intrinsically blind to human rights. We will discuss the related issues in the course of this lesson.

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## 14.3 MEANING OF TERRORISM, FUNDAMENTALISM, AND EXTREMISM

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Terrorism and fundamentalism are not very clear concepts. Description of a group or an individual as terrorist or fundamentalist involves **not merely a categorization**, but also a **moral judgment**. Such a person is assumed to be irrational and criminal, fanatic and inhuman. Terrorism shows a political bias and forecloses negotiation. One who is labeled a terrorist by one set of people may often be regarded as a freedom fighter or a patriot by another set of people. Shaheed Bhagat Singh was, for example, a deeply respected freedom fighter and revolutionary for most Indians. On the contrary, the British government in India labeled him a dangerous terrorist. Nelson Mandela was treated and imprisoned as a terrorist by the white rulers of South Africa. Yasser Arafat was until recently regarded by the whole western world as a Palestinian terrorist leader. Today most of them have come to recognize that they were legitimate and popular leaders of their people who fought for independence as well as social and political justice. We must be cautious in using this label. Many writers therefore avoid using the term "terrorists" and prefer terms like 'militants', 'extremists' or 'armed fighters'. The Amnesty International chose to describe them as "Oppositional Groups". Similarly the term 'fundamentalist' was considered to be more accusatory than descriptive. It is, therefore, necessary to understand which individuals

and groups could be correctly described as "terrorist", "extremist" and "fundamentalist," i.e., the sense in which we will use the terms in our discussion.

### 14.3.1 Terrorism/Terrorist Groups

Terrorism is a form of violence to create terror for a political purpose. Examining the actors and their actions may be the best available method for distinguishing terrorism and the terrorist from the other extremists. "The crucial element" of a terrorist activity, as a famous Scottish scholar, Paul Wilkinson underlined, is "the deliberate attempt to create fear, intensive fear, in order to coerce the wider target into giving in to what the terrorist wants". It involves:

- (a) deliberate targeting of civilians
- (b) creating intensive fear in the general public with a view to
  - (i) secure unquestioning obedience to the group's commands and desires
  - (ii) stimulate friends and supporters and
  - (iii) provoke counter action by the state.

As against accidental killing of innocent people in an action, a key element of terrorism is a deliberate policy of hurting the non-combatants, i.e., the civilians. It is propaganda by violent action, "making a point by murdering defenseless non-combatants" — low cost and big effect. "Kill one and frighten 10,000," as they say in the Chinese folklore. Blowing up of an aero plane or a bomb blast as in Bombay or killing of bus passengers of a particular community by separating them from the others, are examples of such actions.

Two illustrations of terrorist actions in Punjab from the Amnesty International Report may be useful.

1. The Panthic Committee issues a 13-point programme which included a specific dress for school children. Mrs. Nirmal Kanta, principal of a Government Girls Secondary School at Rajpura, could not implement the order immediately because most pupils came from poor families who could not afford to immediately make new dresses. She appealed for two weeks' time to do so. She was killed at prayer time at school, in the presence of all students. The Babbar Khalsa terrorist group announced that she was killed for "disobeying their orders".
2. "Operation mother tongue", i.e., every work to be done in Punjabi language alone was another of such orders. Principal O.P. Vij of Modi College, Patiala, was killed in his office. The Khalistan Commando force (Panjwar) claiming the responsibility for the killing stated that "though he implemented Punjabi, it was only a show...he was allowing Hindi newspapers in the library."

The two principals were killed not because of personal enmity but as a symbolic reminder of the price of not obeying the orders. Mark Juergensmeyer, a well known American scholar on religious terrorism described it as "performance violence" which invokes the idea of the theatre, that is organizing "dramatic shows".

The terrorist is not a crazy person, but a calculating person. He understands the power of symbolic action for the public and the government on the one hand and for supporters of an ideology, on the other.



Most terrorist groups claim to be fighting for azadi or freedom justice against an unjust state. A legitimizing ideology is necessary to give their actions a purpose and meaning in the eyes of the beholders. It is appropriate, however, to see their actions, rather than proclamations. So long as the targets are exclusively the agents of the state such as the Army and the Police, many in the public may not like to call them "terrorists" but "armed fighters", "guerrilla warriors", or insurgents. However, when innocent civilians are the main targets, there would arise problem in calling them "armed fighters".

A sudden attack and a conspiratorial style are the other characteristics of the terrorist groups. However, their central weapon is creation of fear among the innocent civilian population.

Terrorism may be adopted as a method of action for political objectives when a group of people come to believe that the democratic collective action cannot be effective. But this method may become the very logic of action. What a terrorist fears most is a situation in which the public is no more afraid of him. For example, a terrorist shot an unknown person, a school teacher, going on a bicycle in Rayya town in Punjab. When a friend enquired why was that person killed, the reply was: "the newspaper reports were creating an impression that the Police had gained an upper hand, that the militants were on the run. This is to give the message that we are in the field and are active."

#### 14.3.2 Distinction Between Militancy, Insurgency and Terrorism

**Militancy** refers to violent protests and propaganda, or incitement to violent actions, civil disobedience, sabotage, subversion etc. It may lead to insurgency or terrorism, but may not in itself be labeled as either of the other two.

**Insurgency** is the term used for a largely public-supported regional rebellion, generally including violent action. It is accompanied by a demand for autonomy or a declaration of independence, and subversion or crippling of the law and order machinery and the judiciary. Its distinguishing features are large scale public support for militant resistance against the perceived oppressive state or a government's discrimination against the people of a community or a region.

**Terrorism**, on the other hand, is centered on creation of terror among the common people, bureaucracy and judiciary through deliberate killing of common people. It includes actions like kidnapping and sabotage of public utilities. It generally lacks the voluntary support of the public. In fact, terrorism is the method of desperate elements who have no faith in, or lack the capability to win, public support for their cause. It is observed that groups practicing terrorism end up fighting each other and ultimately harming even that section of the population which they claim to represent.

**N.S. Saksena** drew another distinction between an insurgent and a terrorist. According to him an insurgent is the national of a country who is in revolt against the constitutional government of his country through guerrilla warfare. A terrorist, as against it, may or may not be a national of the country in which he operates. A number of terrorist groups operating in Kashmir are outsiders. They, therefore, cannot be termed as insurgents. Yesterday's insurgents may become today's terrorists. Most terrorists who seem initially to voice the people's anguish and anger against the regime tend to lose sympathy when people notice the inhumanity of their actions or they themselves become the victims. It is less likely, however, for the terrorists to become insurgents.



### 14.3.3 Kinds of Terrorist Groups

#### Ideological Terrorists Groups:

- (a) Groups which resort to terrorist violence for effecting revolutionary change, such as the Naxalite groups in Andhra Pradesh and Bihar
- (b) Groups fighting for political autonomy or self-determination or secession such as United Liberation Front of Assam (ULFA), the former Mizo National Front (MNF), the two National Social Council of Nagaland (NSCN) groups, and the Jammu and Kashmir Liberation Front (JKLF).
- (c) Groups which claim to be fighting for a religious cause, a holy war in the name of God. They may be religious fundamentalists or religious nationalists. The Taliban, the Harkat-ul-Ansar, the Bhindranwale Tiger Force are prominent examples.
- (d) International or Cross Border Terrorist Groups.

USA and Pakistan, for example, sponsored terrorist groups such as the Taliban to fight the domination of Soviet Union in Afghanistan. A number of Pakistan sponsored terrorist groups have been operating in Jammu and Kashmir (J & K) state in India. It is a variety of international politics by other means. Members of such groups may simply be mercenary fighters or persons fired by religious or other passions.

#### State Sponsored Terrorist Groups

The states may sometimes create clandestine groups composed of the surrendered and defected terrorists and other criminal elements to fight against anti-state terrorists. SULFA [(comprising the surrendered cadres of the United Liberation Front of Assam (ULFA)] in Assam and Kuka Parry's group in J&K, mainly aimed at targeting the other terrorists - their former fellows.

#### Local Interest Terrorist Group

The political assertion of the Dalits and landless labourers for their legal rights to minimum wages, under CPI (ML), prompted the landlords in Bihar to constitute armed gangs. Such caste militias as Ranbir Sena, Lorik Sena, Bhoomi Sena and Sunlight Sena targeted Dalits to maintain dominance of the Bhoomihar Thakurs or Yadav and Kurmi landlords.

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## 14.4 FUNDAMENTALISM: KEY FEATURES

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Fundamentalism literally means absolute adherence to the "fundamentals". The term came to be used for the belief and command system of a group of conservative Protestants who tended to define the "fundamentals" of Christianity and the eternal correctness of the scripture - the Bible. Such a group or leader is called fundamentalist. Its key features are as under:

### 1. Anti - modernism

Fundamentalism rises as a revolt against the believed deviation from or dilution of the original God-given norms of thought and behaviour. The Islamic fundamentalists such as the Wahabis, for instance, insisted on the restoration of those features of Islam which were followed during the life time of the Prophet i.e., Sunna based on Arabic customs during 7<sup>th</sup> century. Modern, particularly

western, ideas or secular ideology are viewed as a serious threat to the religious faith. These had to be countered. **John H. Hawley**, therefore, described fundamentalism as “militant anti-modern religious activism.

## **2. Authoritarianism**

A fundamentalist group holds its specific interpretation of the scripture and code of conduct as the only authentic interpretation and thus sacred. So there may be many competing fundamentalist groups within one religion. Many sects and sub sects of Christianity or Islam tend to be in sharp conflict on fundamentals. **M.S. Agwani** points to a variety of fundamentalist groups among Indian Muslims, e.g. Deoband, Nadwah, Tablighi Jamaat, and Jamaat-e-Islami. However, each one self-righteously tends to impose its own interpretation and its revival.

## **3. Totalitarianism**

Fundamentalist commands tend to cover most aspects of daily life of the followers including dress and food, profession and property, marriage and divorce, permitted and prohibited human relations. It prescribes such punishments for deviation as were practiced according to existing customs in the distant past. A woman may, for example, be publicly stoned 101 times by the order of a local Imam for what he considered to be an “illegal marriage.”

## **4. Revivalism and Reconstruction**

Fundamentalism involves not merely revival of the past glory and practices but also a fresh construction through imagination because in fact its purpose is to deal with modern ideas and issues. **Asghar Ali Engineer** shows that many of the fundamentalist commands are not only different from but also opposed to the teachings of the Prophet.

## **5. Less Religious and More Political Motive**

Whereas all religions preach love, care of the weak and helpless, toleration and peace, the essence of the agenda of fundamentalist groups is not tolerance of diversity but unflinching obedience. Most fundamentalists recommend not persuasion but coercion. Their purpose is political domination. Jihad, capture of state power and maintenance of sectarian domination become the primary objectives, not humanitarianism or spirit of religion.

The commands and punishments by the fundamentalist groups are terrorizing in essence. Even when technically they are not a part of terrorist group they pose a threat to human freedom and dignity. At present, however, most of the terrorists groups are also religious fundamentalists. When terrorist violence is believed to be a holy war in the service of God, the threat to human rights becomes far more formidable.

### **Check Your Progress**

Note : Use the space below for your answer.

Distinguish between militancy insurgency and terrorism ?

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.....

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.....

2. Name a few terrorist groups operating in India and distinguish between them.

#### 14.4.1 Causes and Reasons for the Rise of Fundamentalism and Terrorism

The Emergence of the terrorist and the fundamentalist groups is related to a complex network of causes and reasons. These may be different in each case according to history, culture and contemporary social and political situation. By causes, we mean the circumstances which, over a period, create the conditions for terrorist activities, reasons refer to subjective (psychological) factors of why particular individuals or groups opt for terrorist strategy and action. While many may share the objectives or goals for which the terrorists fight, all of them do not join a terrorist group or even approve of the terrorist actions.

#### 14.2.2 Causes: Preconditions and precipitants

Martha Crenshaw distinguishes between preconditions which set the stage for terrorism over the long run and precipitants, i.e., specific immediate factors or situations leading directly to violent resistance and terrorist actions.

Preconditions include factors such as state oppression, economic exploitation, widespread unemployment, discrimination against minorities, corruption and self-serving politicians, loss of faith in the bureaucracy and courts of justice i.e., factors which create deep anxiety and helplessness of the people. These exist over a period of time we will consider a few examples. (a) King Reza Shah's efforts to rebuild Iran in the image of the West created, for example, the environment in which religious revival and fundamentalism of Ayatollah Khomeini acquired the attraction of a special appeal. This became a strong cause or to use Martha Crenshaw's term, 'precondition' for the outbreak of the Revolution in Iran led by the Ayatollah.

(b) Another Contemporary example is the ongoing process of Globalization. Globalization makes society an adjunct of the international market. It tends to delink economy and politics from society. The poor countries tend to submit to the power of Multi-National Corporations (MNCs). This creates a sense of disempowerment and a particular helplessness among small communities and less developed countries. It is not difficult to see therefore why these developing countries, more particularly the marginalized groups, in those countries, are taking rebellious stands against globalization. The violent incidents that occurred at the venue of the world Economic leaders' conference at Seattle (Canada) and at Prague during the World Trade organization conference in mid-2000 was an outcome of the feeling of deprivation felt the marginalized groups.

Precipitants are incidents, such as police firing on peaceful protesters, death in custody or custodial rape, or adverse court judgement on a matter affecting people, that spark off violence.

#### Permissive Causes

These relate to social factors which make terrorism or violence morally and politically justifiable

- (i) "Cultures of Violence": Mark Juergensmeyer considers such cultures or world which views, recommend or approve violence for purposes of personal and community honour as



an important factor. One's inclination for terrorism may be related to social myths and tradition of holy wars and martyrdom in a community, as for example among Shia'h Muslims and in the Sikh community. **Ted Gurr** described habits and beliefs about religious sanctions of violence as "social facilitation".

- (ii) Ideologies of violent struggle may perform a similar function. Separatist nationalism can be a powerful permissive cause. "Annihilation of class enemies" as advocated by factions of CPI (ML) is an example of this.
- (iii) Government's inability or unwillingness to prevent terrorism may in itself be a contributory factor. **Martha Crenshaw**, one of the well-known scholars on terrorist violence regarded this as "the most salient factor in the category of permissive causes."
- (iv) Disaffection of the elite in a community or region is often a more significant cause as against suffering of the masses. As **Crenshaw** observed, "Terrorism is most likely to occur precisely where mass passivity and elite disaffection coincide."
- (v) Direct abetment and support from outside i.e. cross border support for anti-state violence and financial support from immigrants settled in foreign countries may also be a significant permissive cause.
- (vi) State sponsorship of clandestine groups to combat militant/ terrorist opposition to its authority is another kind of permissive cause.
- (vii) Availability of sophisticated weapons. The manufacturers and traders of weapons have to increase their sale. The easy availability of sophisticated arms with the support of the financiers and the international drug mafia create a permissive cause of terrorism. **Frederick Forsyth's** best seller, Dogs of War, is an excellent fictionalized version of such permissiveness.

**Precipitant causes** refer to incidents such as "Operation Blue Star" and demolition of Babri Mosque, which may provoke immediate violent reaction.

#### 14.4.2 Reasons

1. These relate to a group's "rational choice" of terrorist method. This may be based on the assumption that:
  - (i) given the shared objectives and beliefs in the community, it is bound to succeed.
  - (ii) given the relative political weakness of opposition, there is no other choice,
  - (iii) it is a less expensive strategy.
  - (iv) it is necessary for internal discipline of the organization and for gaining the support of the public.
2. Individual motivation for vengeance because of a variety of personal or psychological factors. Case studies show that many young boys doing nothing, having high level of energy, seeking excitement out of a dull life took to terrorism for reasons other than political or religious.



## Check Your Progress 2

1. Identify the general causes and reasons of terrorism.  
.....  
.....  
.....
2. Name of the thinkers who had written about Insurgency and terrorism.  
.....  
.....  
.....

## 14.5 The Nature of Threat to Human Rights

### 14.5.1 Threats from the Terrorist Groups

1. Threat to life, and security. This threat is inherent in the terrorist method and logic, which involves surprise targeting of mostly the innocent people. The well known incidents of the killing of 110 passengers of a train in Punjab by gunfire, spraying of bullets on sleeping immigrant labourers, and the people watching a Ram Lila performance or a bomb blast such as in Bombay in 1993 are examples which cause widespread insecurity.
2. The terrorist groups also identify the "other", as the hated enemy, not only the agents of the state but also a community or groups of people. The ULFA targeted Muslims as "foreigners", Bodos killed Chakmas in particular, the Khalistani terrorists targeted the people belonging to the Hindu community. As a result the people of one community may be forced to migrate to other areas leaving behind their lands, homes and jobs. It is estimated that more than 70,000 Kashmiri Pandits fled Kashmir. Freedom of religion and cultural group rights are also directly threatened.
3. Kidnapping for ransom, torture of suspected informers, extortion of money and rape of women are other known activities of the terrorist groups. There is therefore a threat to the property, privacy of family, and home and above all the honour of persons.
4. Threats to freedom of speech and expression is central to the phenomenon of terrorism. "Words" as Wittgenstein observed, "are deeds". Silencing oppositional opinion as also reporting and propaganda in its favour are the oxygen for the terrorist groups. The murder of Lala Jagat Narain, Chief Editor of Hind Samachar group of papers, was indeed the first categorical message of Khalistani terrorists in Punjab. Warnings and killings of Station Directors of All India Radio, journalists and even newspaper hawkers were powerful ways of imposing their "Press Code". As a consequence the media lost its freedom and as VN Narayanan (Chief Editor, The Tribune) observed "Rule by militant press note had replaced the rule of law" in Punjab during 1989-90.

### 14.5.2 Threats from the Fundamentalist Groups

The threat to human rights from the fundamentalist groups cover a wide range of intimate personal and family issues such as food and dress, marriage and divorce, property and profession,

belief and worship and speech and expression among the followers of the religion and larger issues of democracy and world peace. Since the thrust is on absolute conformity to sacred norms and social customs of the distant past, the most severe onslaught is faced by women. In Afghanistan, under the Taliban, for example, a woman was recently stoned to death, in full view of the public, for trying to leave the country with a man who was not her relative. Another was beaten to death for exposing her arm in the public. In Saudi Arabia driving by women is legally prohibited. Patriarchal value framework is central to religious fundamentalism.

Forced imposition of sectarian values of one sect of a religion holds a direct threat to the value system and practices of those who belong to other sects and sub-sects of that religion. Accordingly, under a Sunni fundamentalist group in Pakistan, Ahmadiya, Shia's and Ismaili Muslims are the target of violent attacks.

People belonging to other religions and cultures - the minority groups in a state — are denied the right to equality of treatment and opportunity as citizens. International dimension of fundamentalist terrorism in our age poses a threat to human rights on a much wider scale.

To sum up, the terrorist and fundamentalist groups pose a direct threat to the following Rights contained in the Universal Declaration of Human Rights which are also guaranteed by the Constitution of India.

1. Right to life, liberty and security of person. (Art.3)
2. Right against torture and cruel, inhuman or degrading treatment or punishment (Art.5)
3. Equal protection of law (Art. 7).
4. Right to an effective remedy by national tribunals (Art. 8).
5. Right against arbitrary arrest and detention (Art.9).
6. Right against punishment without proven guilt (Art. 11).
7. Right against arbitrary interference with a person's privacy, family, home and attack on a person's honour (Art.12).
8. Right to freedom of movement and residence (Art.13).
9. Right to own property (Art.17).
10. Right to freedom of thought, conscience, and religion (Art.19).
11. Right to freedom of peaceful assembly and association (Art.22)
12. Economic, social and cultural rights (Art.22).
13. Right to freely participate in cultural life of the community.

#### **14.5.3 Threats to Human Rights from Anti-Terrorist Forces**

In combating terrorist crimes, democratic governments face a dilemma whether it can be controlled through the normal legal system of checking crime. Intimidation of the police, the judge and the witnesses makes it difficult to apprehend the culprits and to present hard evidence required by the courts for punishment. Let us take one illustration.

In February 1988 four Khalistani terrorists led by Malkiat Singh of Anjala took Dalip Singh and his son Avtar Singh of the same village out and killed Avtar Singh in the presence of his father. The father, Dalip Singh, lodged an FIR. Malkiat Singh was arrested during Operation Black Thunder in June 1988. His confession was recorded on a video tape. Some other evidence was also collected. When Dalip Singh was summoned to the court for recording his evidence, he told the advocate firmly "with tears in his eyes" that he will not give the evidence. Why? "Because they have warned me that if I do, my other two sons would also be killed." Malkiat Singh was

soon after reported killed in a crossfire when a gang of terrorists attacked the police jeep, driving him to the court. Of course, you understand what it means.

Most governments made special laws such as the Terrorist and Disruptive Activities (Prevention) Act (TADA) and set up special courts to deal with terrorism. You may remember that the Rowlatt Act of the British government was this kind of law against which Mahatma Gandhi had launched a big agitation. All such provisions for extraordinary powers to the police and the courts restrict human rights by law. But more serious threats are posed in practice by the contempt which the police officers develop for law. That is why Stanfield Turner, former Director of CIA cautioned US Task Force on Combating Terrorism that in the name of defeating terrorism "we may not become terrorists (ourselves)".

Let us see the nature of threats to human rights both of the suspected and detained culprits and the common people.

1. Liquidation of Suspected Terrorists: Apprehending the perceived terrorists and shooting them in reported (fake) encounters is the most horrible alternative to long and difficult judicial process for punishment. Even making distinction between an actual culprit and an innocent person becomes irrelevant. One human rights organization claimed to have collected evidence of cremation of around 2000 unidentified dead bodies in Punjab. In fact the person who was collecting the evidence was himself picked up by the police and shot dead. In Kashmir an organization of mothers has been agitating for information regarding their "disappeared" sons. Even if someone was actually involved in terrorist activity, liquidation without charging the person for crime, investigation and trial is a serious violation of human rights.
2. Torture of detainees. Third degree torture of suspected and detained culprits and supporters to elicit evidence and confessions is another kind of serious violation of human rights. The international human rights organizations have reported about large scale incidents of torture in more than 80 countries of the world.
3. Detention without trial. More than 14000 people were officially reported in 1993 to be detained under TADA in Punjab alone for many years. Not more than 1 per cent of those were actually convicted after trial.
4. Combing Operations. Combing of whole villages for search operations tends to become no less than terror for the common people than the actual fear of the terrorists. During Operation Woodrose in Punjab, Sikhs youth in general passed through such terror.
5. Mistaken killings. Low level of tolerance of valid protests against police high handedness also poses a threat to human rights. The mowing down of over 60 unarmed protesters (including women and children) in Bij Behara (Kashmir) by security forces is a telling reminder of such a threat.

Such excesses by the security forces become the cause for escalation of terrorism. For example, a number of those who joined the terrorist groups in the Punjab were from among those young boys who had fled their villages because of atrocities and harassment by the security forces during "Operation Woodrose".



### Check Your Progress 3

1. Where was 'Operation Woodrose' conducted?  
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.....  
.....
2. In Pakistan, which are the Islamic sub-sects that exist under threat?  
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.....  
.....
3. In which States of India do the following groups operate?
  - a) ULFA
  - b) MCC
  - c) JKLF
  - d) Peoples' War Groups

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## 14.6 LET US SUM UP

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In this unit you have studied the meaning of terrorism and fundamentalism and the threats to human rights from the terrorist and fundamentalist groups as also from the counter terrorist measures adopted by the state. While it is not always easy to distinguish a terrorist from a militant, or a violent protester against a regime and a freedom fighter, yet we can certainly mark out a terrorist group from a group which takes to the street, against regime's policies. **The deliberate targeting of innocent people to create terror in the public at large distinguishes the terrorist group.** Insurgency refers to a situation of large scale violent resistance by a group of people belonging to a region of the country. They may or may not have widespread public support. The term Fundamentalist groups refers to such minority anti-modern religious groups which want to establish the domination of old scriptural norms of behaviour. These are essentially sectarian, authoritarian and totalitarian. Both kinds of groups that is fundamentalist and terrorist groups are becoming a serious threat to human rights, denying security of life, freedom of thought and expression, of religion, of property and others to the general public at large. No less a threat comes from extreme measures adopted by the states to combat terrorism and fundamentalism. Dealing with these forces requires large scale effort for prevention, and addressing seriously to the causes and conditions that provide a climate to the birth and growth of unrest in a society.

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## 14.7 KEY WORDS

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1. **Authoritarian:** An individual, a group, or a state which wants to influence and control other people's thoughts and actions rather than allowing them to choose and decide things themselves.
2. **Crazy:** An eccentric person; one who is mad with excitement who will be happy to do any action.
3. **Patriarchal:** A system of authority and control by father or the eldest male of the family, tribe or community; also refers to family or society so organized; Domination of male value system.

4. **Revivalism:** Tendency or desire to revive what has gone out of use or practices that were supposed to have been followed in the past.
5. **Totalitarian:** A system of government or a sect which tolerates the existence of only one political party or a sect of a religious group to which all other institutions in the country are subordinated.

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## 14.8 SOME USEFUL BOOKS

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1. Juergensmeyer Mark, *Terror in the Mind of God*, Oxford University Press, New Delhi (forthcoming)
2. Kakkar Sudhir, (1995) *The Colours of Violence*, Penguin Books, New Delhi.
3. Puri, Harish K. (1999) Paramjit Singh Judge and J.S.Sekhon, *Terrorism in Punjab: Understanding Grassroots Reality*, Har-Anand Publishers, Delhi.
4. Shukla K.S. (ed.) (1988) *Collective Violence: Genesis and Response*, Indian Institute of Public Administration, Delhi.

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## 14.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. **Militancy:** Refers to violent protests, or incitement to violent actions or civil disobedience, sabotage Militancy may lead to Insurgency and Terrorism.

**Insurgency:** Generally public supported militancy against a perceived oppression by a State or a social or political group. This is usually accompanied by calls for secession of a part of a country's territory or it may also be to establish a new province within the existing country.

**Terrorism:** Rests on an indiscriminate use of force against a section of the population or the agencies of the State which is perceived to be ruling over that section of the population which the terrorist groups/s claim to represent. Terrorist activities like kidnapping, killing, raping, arson and related crimes aim to create fear among the general population.

2. There are two types of terrorist groups operating in India. (a) Those members are Indians themselves such as groups operating in Tripura or Bihar. And (b) Those who are mercenaries, that is who receive funds, and support including members from abroad, particularly neighboring countries. Examples are Lashkar-e-Toiba, and factions of Hizbul Mujahideen of Jammu & Kashmir or the Deendar-e- Anjuman that planted bombs in Churches of South India.

### Check Your Progress 2

1. Social factors like acute poverty, and hunger, unemployment; prolonged indifference of government to the people's problems; ideologies that preach terrorism, disaffection of the elites, and direct or indirect support from outside the country. Some groups can also be sponsored by the State to apparently counter terrorism but they can themselves lead to the

growth of terrorism. There can also be events that contribute to the development of terrorism.

2. Mark Juergensmeyer, Tedd Gurr, Martha Crenshaw are important thinkers.

### Check Your Progress 3

1. Punjab
2. Ahmediya, Shia, Islamia sub-sects.
3. ULFA-Assam  
MCC- Bihar and Jharkand States  
JKLF - Jammu and Kashmir  
Peoples' War Groups- Andhra Pradesh