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HUMAN RIGHTS ADMINISTRATION IN INDIA

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INTRODUCTION

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Human rights are inherent in all human beings irrespective of caste, creed, colour, sex or societal status. These rights are essential for their existence, freedom and dignity. Human rights may also be referred to as basic rights, inherent rights, natural rights and birth rights. Though are embodied in separate international instruments, these they are perceived as forming a whole. A definition of human duties has to be observed along with human rights.

Human rights and its evolution has always been a topic of debate throughout the world. The notion of human rights can be witnessed in all major religious texts and precepts. The presence of the notion of human rights is perceptible and notable universally across different societies. The Universal Declaration of Human Rights is preceded by an eventful historical development that culminated in the proclamation of the declaration. Some of the events that punctuate the history of human rights include, notably, Magna Carta (1215), American Declaration (1776), French Declaration of Human Rights (1789), and UN Charter (1945). The immediate events that impelled the proclamation of the Universal Declaration were the massive human rights violations in World War II, which convinced the world community that there were certain rights that human beings around the world were entitled to, and which must be safeguarded.

It was noticed that most violations occurred in times of wars, civil or national. Many national leaders protested against the gross violation of human rights by the ruling countries. In India too, the roots of the human rights movement can be traced to the freedom struggle and the nationalist leaders were the frontrunners of the same. This book, *Human Rights Administration in India*, discusses the status and administration of human rights in the Indian context.

The book is divided into fourteen units that follow the self-instruction mode with each unit beginning with an Introduction to the unit, followed by an outline of the Objectives. The detailed content is then presented in a simple but structured manner interspersed with Check Your Progress Questions to test the student's understanding of the topic. A Summary along with a list of Key Words and a set of Self Assessment Questions and Exercises is also provided at the end of each unit for recapitulation.

BLOCK - I
MEANING, NATURE, CONCEPTS AND EVOLUTION

Human Rights

UNIT 1 HUMAN RIGHTS

NOTES

Structure

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1.0 INTRODUCTION

Human rights are fundamental rights that human being are accorded by virtue of being human and are inviolable by the state or any other individual. The Universal Declaration on Human Rights that was implemented in 1948, lays down the fundamental rights to be protected around the world and works for the implementation and protection of rights such as civil, political, social and economic rights. Several other documents, treaties and organizations are committed towards the implementation of human rights in body and spirit. Some of these are International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and so on. Human rights are classified into several categories such as the three generations of Human Rights wherein the first generation rights stand for civil and political rights, second generation right are concerned with social, economic and cultural rights and third generation rights stand for group rights. This unit provides an analysis of the concept, meaning, characteristics and the classification of human rights.

1.1 OBJECTIVES

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

- Understand the concept, meaning and characteristics of human rights
- Analyze the classification of human rights

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1.2 CONCEPT OF HUMAN RIGHTS

Human rights are comprehensive, and applicable to every individual. Respect for individual rights needs to be upheld at all times irrespective of circumstances and political system. Human rights consist of minimum entitlement that a government must provide and protect. They are fundamental in the sense that they cannot be denied under any circumstances. Men and women are equal in maintaining a society. Members of a society depend on each other to grow and live their lives. Around this societal system, men and women, and activities big or small, revolve. As far as rights and dignity are concerned, all men and women are equal in the eyes of the law. Mankind's conscience and reasoning are the foundations of human rights. The term '**human rights**' in general, refers to the civil rights, civil liberties, political rights and social and economic rights of a human being.

The Universal Declaration of Human Rights was implemented on December 10, 1948 and is officially recognized by most countries. It includes individual's rights, which can be classified into the following:

- **Civil rights:** They refer to freedom from slavery and servitude, torture and inhuman punishment, and arbitrary arrest and imprisonment: freedom of speech, faith, opinion and expression: right to life, security, justice, ownership, and assembly.
- **Political rights:** They refer to the right to vote and nominate for public office: right to form and join political parties.
- **Social and economic rights:** These refer to the right to education, work, food, shelter, and medical care. These rights establish the 'new' rights, which range from the right to economic welfare and security to the right to share and to live the life of a civilized being.

The concept of human rights implies that a human being is equal in the eyes of the law irrespective of his or her caste, creed, colour, nationality, etc. Thus, 'equality' and 'dignity' are the fundamental principles of human rights. Human rights should not be compromised on as these have been enshrined in the Constitution of India. As members of society, we need to create a conducive environment, not only for normal residents but also for the downtrodden and the needy. Every single individual should be able to grow mentally, physically, and socially and should lead a happy life. This can only be achieved if we respect each other's individuality and self-respect and treat others as we would like others to treat us.

Human Rights and Corresponding Duties

Human rights, just like other rights, involve parallel duties and/or obligations, in order to make sure that these rights are realized. For example, if a right is in the form of a claim, then it becomes mandatory that the officials not in favour of that particular claim be identified and made accountable for the realization of the right.



To get a better understanding of this, take for example, the right to freedom of religion. If a person living in a particular area is denied the right to freedom of practising his or her religion by the local authorities, he or she can approach the court. Here, it is the right of the individual to practise his or her religion, while it is the duty of the officials to allow it. Another simpler example is, suppose you have borrowed ₹100 from a friend. Now it becomes his right to payment, whereas it becomes your duty to pay him. This can also be seen the other way round. A citizen, in order to have his or her rights fulfilled, has to discharge certain duties towards the State. Constitutions of some countries of the world contain provisions for Fundamental Duties. The inclusion of Fundamental Duties in our Constitution also brings it in line with Article 29(1) of the Universal Declaration of Human Rights which says: 'Everyone has duties to the community in which alone the free and full development of the personality is possible.' Exercise of fundamental rights entails duties to the community, which ensures the free and full development of human personality.

To get a clearer picture of the duties of a citizen, the Constitution of India lays down ten fundamental duties, which are incorporated in article 51A, Part IVA of the Constitution. Inserted by the Constitution (Forty-Second Amendment) Act, 1976, it was part of a large number of changes brought about during the Emergency. However, after the end of the Emergency, when the new Parliament reviewed the whole position and in most cases restored the pre-emergency position, article 51A was the one that emerged unscathed because it was considered by all parties to be an unexceptionable charter of principles, which citizens could usefully absorb, and practise.

The most important task before us is to reconcile the claims of the individual citizen and those of the civic society. To achieve this, it is important to orient the individual citizen to be conscious of his social and citizenship responsibilities. We should also shape the society in such a way that we all become solicitous and considerate of the inalienable rights of our fellow citizens. Therefore, awareness of our citizenship duties is as important as awareness of our rights. Every right implies a corresponding duty but every duty does not imply a corresponding right. Man does not live for himself alone. He lives for the good of others as well as of himself. It is this knowledge of what is right and wrong that makes a man responsible to himself and to the society and this knowledge is inculcated by imbibing and clearly understanding one's citizenship duties. The fundamental duties are the foundations of human dignity and national character. If every citizen performs his duties irrespective of considerations of caste, creed, colour and language, most of the malaise of the present day polity could be contained, if not eradicated, and the society as a whole uplifted. Rich or poor, in power or out of power, obedience to citizenship duty, at all costs and risks, is the essence of civilized life.

Following are the ten fundamental duties of the citizen of India:

- To abide by the Constitution and respect its ideals which inspired our national struggle for freedom.

Human Rights

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- To uphold and protect the Sovereignty, Unity and Integrity of India.
- To defend the country and render national service when called upon to do so.
- To promote harmony and spirit of common brotherhood, amongst all people of India and to renounce practices derogatory to the dignity of women.
- To value and preserve the rich heritage of our composite culture.
- To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.
- To develop scientific temper, humanism and spirit of enquiry and reform.
- To safeguard public property and to abjure violence.
- To strive towards excellence in all spheres of individual and collective activity.
- To provide Education to Children is the duty of the parents.

1.2.1 Meaning of Human Rights

The concept of human rights is quite old. A general view of human rights considers all human beings to be equal. Human rights are inherent, individual and automatically exercised.

At the global level, the legal standard of human rights was adopted in 1948 in the UN Universal Declaration of Human Rights. Later on, in 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were codified. The content and scope of human rights are still debatable. Some limit these rights to the traditional civil liberties and political freedoms while others talk of a broader concept that includes social and economic rights. Human rights are important for all individuals and the ideological starting point of these rights is respect for human dignity and the final purpose is that it is a guarantee of basic rights. The international and national community has initiated steps time and again to advocate and safeguard human rights in various ways. Now we shall understand how international human rights laws have evolved since the creation of the United Nations and the different ways to promote and protect them.

Every human being is entitled to some basic rights, which are neither created nor can be withdrawn. These rights are commonly known as human rights. These rights are justified as moral norms and exist as shared norms of humanity. These are natural rights based on reasons or legalese. However, no consensus is available for the exact nature of what may or may not be called a human right.

According to *businessdictionary.com*, human rights are fundamental rights, which humans have by the fact of being human, and which are neither created nor can be abrogated by any government. Several international conventions and treaties

support them (such as the United Nation's Universal Declaration of Human rights, 1948).

John Locke (1632–1704), popularly called the Father of Classical Liberalism, defined human rights as absolute moral claims or entitlements to life, liberty and property. One of the finest expressions of human rights is in the US Declaration of Rights (1776) which states that 'all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety. These rights are also referred to as the fundamental rights.

Chief Justice of India, J.S. Verma (1978) stated that 'human dignity is the quintessence of human rights. Every right vital for protecting and maintaining the dignity of individuals and creating conditions in which every human being can develop his or her personality to the fullest extent, may be termed human rights. However, dignity has never been precisely defined on the basis of consensus, but it accords roughly with justice and good society. The World Conference on Human Rights (1993), held in Vienna declared that all human rights are derived from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms.

Dr. Durga Das Basu (2008) defines human rights as those minimum rights, which every individual must have against the State or other public authority by virtue of his being a member of human family, irrespective of any other consideration. Thus, it could be understood from these definitions that human rights are those rights, which are inherent to a person because he or she is a human being. These rights are a means to human dignity. They are provided to all men and women everywhere at all times.

Human beings should be protected against unjust and mortifying treatment by fellow human beings. Arbitrary power cannot be operated on any individual. A State or any other such organized community can realize human rights. However, when in a state of anarchy, due to lawlessness and chaos, the human rights may not be invoked. These rights are required for the holistic development of human beings in society and should be protected and made available at all costs. Human rights are indivisible and interdependent, and there is no differentiation in the typology of human rights.

The Universal Declaration of Human Rights has not categorized human rights but simply enumerated them in different articles. The human rights can be classified as follows:

1. Civil and political rights, and
2. Economic, social and cultural rights

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Civil and political rights: These rights are described in Articles 3 to 21 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR). Civil rights or liberties are referred to as those rights that relate to the protection of the right to life and personal liberty. These are essential for living a dignified life. Right to life, liberty and security of persons, right to privacy, home and correspondence, right to own property, freedom from torture, inhuman and degrading treatment, freedom of thought, conscience and religion and freedom of movement are inclusive of these rights. Political rights allow a person to participate in the state governance. The right to vote, right to take part in the conduct of public affairs, directly or through chosen representatives are some of the instances of political rights.

Civil and political rights can be protected by the State. They are cost-free and in case the State or country decides, these rights can be promptly provided. These rights are justifiable real legal rights.

Economic, social and cultural rights: These rights are described in articles 22 to 28 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Economic, social and cultural rights (also called 'freedom to') guarantee the bare necessities of life to human beings. The existence of human beings may be threatened in the absence of these rights. Right to adequate food, clothing, housing and adequate standard of living, freedom from hunger, right to work, right to social security, right to physical and mental health and right to education are included in this category of rights. These are positive rights; which means that these require positive entitlements by the State. These rights are massive investments and are by nature progressive. Social and economic rights cannot be measured quantitatively and it is difficult to determine if these have been breached.

Three Generation Rights

Karel Vasak (1977), a French jurist, has categorized human rights into three generations. The first comprises civil and political rights which have been derived from reformist theories associated with the French, English and American Revolutions of the 17th and the 18th centuries. These rights were initially described at the international level by the Universal Declaration of Human Rights, 1948 and provided a place in the international law in Articles 3 to 21 of the Universal Declaration.

The second generation of human rights came into existence after World War I. These are associated with equality and were fundamentally economic, social and cultural in nature. The second generation rights include the right to be employed, right to housing, etc. They are also incorporated in the Universal Declaration of Human Rights, and also demonstrated in Articles 22 to 27 of the Universal Declaration, and the International Covenant on Economic, Social and Cultural Rights.

The third generation of human rights are much more than just civil or social rights. These have been articulated in important international law documents such as the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment and the 1992 Rio Declaration on Environment and Development. However, the term ‘third-generation’ is basically informal and does not appear in legally binding documents. These include a wide range of rights such as:

- Group and collective rights
- Right to self-determination
- Right to economic and social development
- Right to a healthy environment
- Right to natural resources
- Right to communicate and communication rights
- Right to participation in cultural heritage
- Right to intergenerational equity and sustainability

The third generation has been the topic of various debates and it is not recognized politically or legally.

Table 1.1 explains the three generations of human rights:

Table 1.1 Three Generations of Human Rights from

	First generation	Second generation	Third generation
Name	Civil and political rights	Economic, social and cultural rights	Collective rights
Example	Right to life, liberty and security privacy, home and correspondence, own property, freedom from torture, freedom of thought, conscience and religion and freedom of movement	Right to adequate food, clothing, housing and adequate standard of living, freedom from hunger, right to work, right to social security, right to physical and mental health and right to education	Right to self determination, economic and social development, healthy environment, natural resources

Characteristics of Human Rights

As per the United Nations System and Human Rights (2000), human rights are legally guaranteed by human rights law, protecting individuals and groups against actions that interfere with fundamental freedoms and human dignity. The highlighting features of human rights are given below:

- These are assured by international standards
- These are legally covered and binding

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- The major concern of human rights is the dignity of an individual
- These can compel the State or the officials to provide a certain right
- These cannot be dispensed or denied
- These are universally acceptable

Human rights are the basic natural rights that stem from human dignity and have some peculiar characteristics. These are described as follows:

1. **Internationalism:** United Nations Charter, the Universal Declaration of Human Rights, the Vienna Declaration of Human Rights, etc., guarantee respect for human dignity and the right to pursue happiness. These efforts have been agreed on internationally making human rights a subject of international concern. All the countries are expected to observe these rights equally and with sincerity. Consequently, the guarantee of human rights is given not only by individual States but by the international community as a whole. It is a vital and ever-increasing issue. It has become the common ideology of the whole international community that is beyond State borders.
2. **Universality:** Human rights go hand in hand with the progress of human society and have always been a universal concern of human beings in various international documents. The dignity, worth and right to happiness of all must be accepted without any condition or clause. Race, colour, gender, language, religion, political opinion, nation, social position, property, origin or other circumstances should not be used for discrimination. Moreover, nobody can be discriminated against because of membership in a particular self-governed or dependent state, nor limited in his rights because of political, legislative or international position. They are objectively accorded regardless of anyone's will.
3. **Inheritance:** Human rights guarantee human dignity because they were given originally to the people recognized them as natural inherent rights. Human rights are not granted in accordance with any law or by any State.
4. **Absoluteness:** Human rights are inalienable rights. So, they are recognized universally and are absolute rights. The essence of human personality, human dignity and worth, confirms them to be inviolable. As such the State must guarantee the people's dignity, respect and happiness by preventing any law, which would do otherwise.
5. **Inviolability:** Human rights cannot be violated as they are inherent and are internationally enforced. Furthermore, the guarantee of human rights is the duty of the State. The State should neither alienate these rights nor, limit or violate them.
6. **Permanence:** Human rights are not to be guaranteed temporarily for a certain period of time but should permanently be assured of. The dignity and worth of human beings does not change over time by the status or position.



7. **Individuality:** Human rights have their basis in people's dignity, worth and happiness. Every human being is independent and each person possesses a right to be independent which cannot be taken away in lieu of any other thing. Every person has the right to determine his or her own destiny, which is a prerequisite of personal right. In simple terms, human rights are neither a subject of a nation nor of a collective body, but of the individual.
8. **Self-determination:** All people have the right to self-determination on the basis of inherent human dignity. It means that all people freely determine their own political position and independence, seek their own economic, social and cultural development.

As human dignity, worth and happiness are intrinsic to personal rights, these rights, therefore, become a necessary prerequisite for the individuals to determine their own destiny.
9. **Self-evidence:** Men are born equal and with certain fixed, inherent, inalienable rights, including the right to life, freedom and happiness. This is accepted as a self-evident truth.
10. **Fundamental:** Human rights include the principle of obtaining a guarantee of human dignity, worth and happiness. It is a fundamental norm and produces a basic principle, which has become a standard for analyzing the essence of effectiveness of laws and ordinances. Thus, it should be considered a standard of human dignity and worth as far as it is included both in establishing the laws and analyzing them.

1.2.2 Nature of Human Rights

Human rights are rights that one has simply because one is human. They are regarded as universal, equal and inalienable and are held by all human beings regardless of any distinctions. The following are some important characteristics of human rights:

- Human rights are founded on respect for the dignity and worth of each person
- Human rights are universal. In other words, they belong to everyone everywhere. They must be applied equally and without discrimination to all people
- Human rights are inalienable which means that human rights of persons cannot be taken away other than in specific conditions as prescribed by law. For example, the right to liberty can be restricted if a person is found guilty of a crime by a court of law
- Human rights are indivisible, interrelated and interdependent. It is not enough to respect some human rights and ignore others. As a result of their interrelatedness, the violation of one right will often affect the respect of several other rights. There is no hierarchy between different sets of rights.

Human Rights

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All human rights should therefore be regarded as having equal importance and of being equally essential to respect for the dignity and worth of every person

Article 38 of the International Court of Justice (ICJ) statute stipulates that its international law decisions will be based on

- International conventions
- International custom
- General principles of law recognized by civilized nations
- Judicial decisions and the teachings of the most highly qualified publicists of the various nations

This has gained wide acceptance as customary law definition of sources of international law. These four sources are accepted as international law's primary material sources and used by international tribunals to settle disputes. Even with regard to international human rights law, the above four elements serve as sources for.

The creation of the United Nations provided gave an impetus for the development and adoption of international human rights conventions. Several instruments have been adopted at a regional level in order to meet regional needs and aspirations. Most States have also adopted constitutions and other laws to protect basic human rights whose language is influenced by the international human rights law which consists mainly of treaties and customs, declarations, guidelines and principles.

Human rights are legally guaranteed by human rights law, protecting individuals and groups against actions which infringe their rights. They are expressed in treaties, customary international law, bodies of principles and other sources of law. Treaties and other sources of law formally recognize human rights, regulate their exercise and provide for their enforcement and other ancillary matters. Human rights are inalienable in the case of a grave emergency which threatens the life of a nation, the International Covenant on Civil and Political Rights 1966 Article 4(1) provides that a country may derogate from certain rights under certain conditions. Such derogations are permitted only to the extent necessary for the situation and may never involve discrimination based on race, colour, sex, language, religion or social origin. However, in accordance with Article 4, paragraph 3 of the International Covenant on Civil and Political Rights (ICCPR), certain human rights may never be suspended or restricted even in situations of war and armed conflict. These include the right to life, freedom from torture, freedom from enslavement or servitude and freedom of thought, conscience and religion. In their strongest sense, rights are justified claims to the protection of a person's significant interests. When the rights are effective, this protection is provided as something that is owed to a person for his own benefit. The upholding of rights is thus essential for human dignity.

While introducing human rights, they are often categorized into first, second and third generation rights by academics. The first generation rights stand for civil and political rights which include, inter alia, the right to life and the right to be free from torture and slavery, while the second generation rights stand for economic, social and cultural rights, which include, amongst others, the right to education, health, food, housing and work. The third generation rights are group rights, viz., the right to peace and the right to environment etc.

Civil and political rights are often regarded as negative rights which do not require the infusion of resources for their realization. For instance, when it comes to rights like the right to life, the right to be free from torture and other civil and political rights, it is stated that all that the State has to do is not to interfere with them. On the other hand, economic, social and cultural rights, like the right to education, health and work are regarded as 'positive' rights which require the State to take legislative, executive, judicial and other measures to ensure their realization. As they require huge resources, international conventions and laws dealing with economic, social and cultural rights provide that they have to be realized progressively over a period of time. The above mentioned distinction is not a rigorous one as certain civil and political rights like the 'right to remedy' and the 'right to vote' require the State to set up appropriate institutions for delivery by the criminal justice system or for conducting elections. Therefore, there is no other particular significance attached to this classification of rights into different generations.

States have the prime responsibility to protect, promote and ensure the enjoyment of human rights of individuals. Many of these rights are owed by States to all people within their territories, while certain rights are owed by a State to particular groups of people: for example, the right to vote in elections is only owed to citizens of a State. State responsibilities include the obligation to take proactive measures to ensure that human rights are protected by providing effective remedies for persons whose rights are violated, as well as measures against violating the rights of persons within its territory. Under international law, the enjoyment of certain rights can be restricted in specific circumstances. For example, if an individual is found guilty of a crime after a fair trial, the State may lawfully restrict a person's freedom of movement by imprisonment. Restrictions on civil and political rights may only be imposed if the limitation is determined by law but only for the purposes of securing due recognition of the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Economic, social and cultural rights may be limited by law, but only insofar as the limitation is compatible with the nature of the rights and solely to promote the general welfare in a democratic society. . . .In addition, in times of armed conflict where humanitarian law applies, human rights law continues to afford protection.

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Check Your Progress

1. When was the Universal Declaration of Human Rights implemented?
2. Where are the ten fundamental rights incorporated?
3. Where are economic, social and cultural rights described?
4. What are second generation of human rights?
5. Why can't human rights be violated?
6. What are the state responsibilities with regard to human rights?

1.3 CLASSIFICATION OF HUMAN RIGHTS

All human beings are born equal. They all have equal access to privileges by virtue of their being human irrespective of their caste, creed, colour, sex, nationality or any other consideration. The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as “rights derived from the inherent dignity of the human person.”

Human rights can be classified into three broad types and include:

- Civil and Political Human Rights
- Economic, Social and Cultural Human Rights
- Development Oriented Human Rights

We shall discuss the different types of human rights in brief below.

Civil and Political Human Rights

The Civil and Political Human Rights were among the first human rights to be recognized and codified. Civil and political rights form the original and main part of international human rights. They comprise the first portion of the 1948 Universal Declaration of Human Rights and were strengthened in the seventeenth, eighteenth and nineteenth centuries and assured civil and political liberties to people across the world. The Civil and Political Human Rights are collectively known as ‘Liberty Oriented Human Rights’ as they provide, protect and guarantee individual liberty to an individual against the State and its agencies. Liberty rights also referred to as Blue Rights are the First Generation of Human Rights.

Civil and political human rights are very indispensable part of any democracy. These are the rights that guarantee equal social opportunities and protection under the law, irrespective of race, religion, or any other characteristics.

Civil rights include the ensuring of peoples’ physical and mental integrity, life, and safety; protection from discrimination on grounds such as race, gender, sexual orientation, gender identity, national origin, color, age, political affiliation, ethnicity,

religion, and disability; and individual rights such as privacy and the freedom of thought, speech, religion, press, assembly, and movement.

Political rights include natural justice (procedural fairness) in law, such as the rights of the accused, including the right to a fair trial; due process; the right to seek redress or a legal remedy; and rights of participation in civil society and politics such as freedom of association, the right to assemble, the right to petition, the right of self-defence, and the right to vote.

Economic, Social and Cultural Human Rights

Economic, Social and Cultural Human Rights form the second portion of the 1948 Universal Declaration of Human Rights and are recognized and protected in international and regional human rights instruments. Member states have a legal obligation to respect, protect and fulfil economic, social and cultural rights and are expected to take “progressive action” towards their fulfilment.

Economic, social and cultural rights include the rights to adequate food, to adequate housing, to education, to health, to social security, to take part in cultural life, to water and sanitation, and to work.

Right to Food

According to the *Committee on Economic, Social and Cultural Rights – General Comment no. 12, Right to Food*, the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”

The right to food has four important elements that include availability, accessibility, adequacy and sustainability of food.

- **Availability:** Food should be obtainable from natural resources, either through the production of food, by cultivating land or animal husbandry, or through other ways like fishing, hunting or gathering. Food should be on sale in markets and shops.
- **Accessibility:** Food must be affordable. Individuals should be able to have an adequate diet without compromising on other basic needs, such as school fees, medicines or rent. Food should be accessible to the physically vulnerable, including children, sick people, people with disabilities and the elderly. Food must also be available to people in remote areas, to victims of armed conflicts or natural disasters, and to prisoners.
- **Adequacy:** Food must satisfy dietary needs, taking into account a person’s age, living conditions, health, occupation, sex, etc. Food should be safe for human consumption and free from adverse substances.

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- **Sustainability:** Food should be accessible for both present and future generations.

Right to Adequate Housing

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According to *Committee on Economic, Social and Cultural Rights – General Comment No. 4*, every human being whether man, woman, child or youth has a right to adequate housing which goes beyond the four walls and a roof. It includes right to sustain a safe and secure home and community in which to live in peace and dignity.

Legal security of tenure, affordability, habitability, availability of services, materials, facilities and infrastructure, accessibility, location and cultural adequacy are important elements of Right to Adequate Housing accorded within the ambit of Economic, Social and Cultural rights.

Right to Health

According to Committee on Economic, Social and Cultural Rights, the right to health is “an inclusive right extending not only to timely and appropriate health care but also to the **underlying determinants** of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information.

The key aspects of right to health include Accessibility, Availability, **Participation**, Accountability, Acceptability and Good Quality.

Right to Water and Sanitation

The Human Rights Council observes, “*The human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity*”.

According to the Council:

The water supply for each person must be **sufficient and continuous** to cover personal and domestic uses, which comprise water for drinking, washing clothes, food preparation and personal and household hygiene.

Water for personal and domestic uses must be **safe and acceptable**. It must be free from elements that constitute a threat to a person’s health. Water must also be of an acceptable colour, odour and taste to ensure that individuals will not resort to polluted alternatives that may look more attractive.

Water and sanitation facilities must be **physically accessible and within safe reach** for all sections of the population, taking into account the needs of particular groups, including persons with disabilities, women, children and the elderly.

Water services must be **affordable to all**. No individual or group should be denied access to safe drinking water because they cannot afford to pay.

Human Rights

Right to Social Security

The right to social security is recognized in numerous human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and is crucial for guaranteeing a life in dignity. A fundamental human right, social security is a potent tool to combat discrimination and an essential instrument for reducing poverty and promoting social inclusion. It aims to provide income security and support at every stage of life for everyone, with particular attention to the most marginalized.

Availability, adequacy, affordability and accessibility are the key aspects of right to social security as mentioned in various human rights instruments.

Development Oriented Human Rights

The Declaration on the Right to Development was proclaimed by the United Nations General Assembly (UNGA) in the year 1986 under resolution 41/128.

According to Article 1.1, Declaration on the Right to Development, “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

The right includes:

- people-centred development, identifying “the human person” as the central subject, participant and beneficiary of development;
- a human rights-based approach specifically requiring that development is to be carried out in a manner “in which all human rights and fundamental freedoms can be fully realized”;
- participation, calling for the “active, free and meaningful participation” of people in development;
- equity, underlining the need for “the fair distribution of the benefits” of development;
- non-discrimination, permitting “no distinction as to race, sex, language or religion”; and
- self-determination, the declaration integrates self-determination, including full sovereignty over natural resources, as a constituent element of the right to development

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Check Your Progress

7. Why are Civil and Political Human Rights known as ‘liberty oriented human rights’?
8. State the important elements of Right to Adequate Housing.
9. List the key aspects of the Right to Health.
10. What does the right to social security aim to provide?

1.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The Universal Declaration of Human Rights was implemented on December 10, 1948
2. The Constitution of India lays down ten fundamental duties, which are incorporated in article 51A, Part IVA of the Constitution.
3. Economic, social and cultural rights are described in articles 22 to 28 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR).
4. The second generation of human rights came into existence after World War I. These are associated with equality and were fundamentally economic, social and cultural in nature. The second generation rights include the right to be employed, right to housing, etc.
5. Human rights cannot be violated as they are inherent and are internationally enforced. Furthermore, the guarantee of human rights is the duty of the State. The State should neither alienate these rights nor, limit or violate them.
6. State responsibilities include the obligation to take pro-active measures to ensure that human rights are protected by providing effective remedies for persons whose rights are violated, as well as measures against violating the rights of persons within its territory.
7. The Civil and Political Human Rights are collectively known as ‘liberty oriented human rights’ as they provide, protect and guarantee individual liberty to an individual against the State and its agencies.
8. Legal security of tenure, affordability, habitability, availability of services, materials, facilities and infrastructure, accessibility, location and cultural adequacy are important elements of Right to Adequate Housing accorded within the ambit of Economic, Social and Cultural rights.
9. The key aspects of right to health include Accessibility, Availability, Participation, Accountability, Acceptability and Good Quality.

10. The right to social security aims to provide income security and support at every stage of life for everyone, with particular attention to the most marginalized.

Human Rights

1.5 SUMMARY

- Human rights are comprehensive, and applicable to every individual. Respect for individual rights needs to be upheld at all times irrespective of circumstances and political system.
- The term ‘human rights’ in general, refers to the civil rights, civil liberties, political rights and social and economic rights of a human being. The Universal Declaration of Human Rights was implemented on December 10, 1948 and is officially recognized by most countries.
- The concept of human rights implies that a human being is equal in the eyes of the law irrespective of his or her caste, creed, colour, nationality, etc. Thus, ‘equality’ and ‘dignity’ are the fundamental principles of human rights.
- The Constitution of India lays down ten fundamental duties, which are incorporated in article 51A, Part IVA of the Constitution. Inserted by the Constitution (Forty-Second Amendment) Act, 1976, it was part of a large number of changes brought about during the Emergency.
- At the global level, the legal standard of human rights was adopted in 1948 in the UN Universal Declaration of Human Rights. Later on, in 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were codified.
- John Locke (1632–1704), popularly called the Father of Classical Liberalism, defined human rights as absolute moral claims or entitlements to life, liberty and property.
- Civil and political rights are described in Articles 3 to 21 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR). Civil rights or liberties are referred to as those rights that relate to the protection of the right to life and personal liberty.
- Economic, social and cultural rights are described in articles 22 to 28 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Economic, social and cultural rights (also called ‘freedom to’) guarantee the bare necessities of life to human beings.
- United Nations Charter, the Universal Declaration of Human Rights, the Vienna Declaration of Human Rights, etc., guarantee respect for human dignity and the right to pursue happiness.

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- Human rights are inalienable rights. So, they are recognized universally and are absolute rights.
- Human rights include the principle of obtaining a guarantee of human dignity, worth and happiness. It is a fundamental norm and produces a basic principle, which has become a standard for analyzing the essence of effectiveness of laws and ordinances.
- Human rights are inalienable in the case of a grave emergency which threatens the life of a nation, the International Covenant on Civil and Political Rights 1966 Article 4(1) provides that a country may derogate from certain rights under certain conditions.
- Restrictions on civil and political rights may only be imposed if the limitation is determined by law but only for the purposes of securing due recognition of the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- Political rights include natural justice (procedural fairness) in law, such as the rights of the accused, including the right to a fair trial; due process; the right to seek redress or a legal remedy; and rights of participation in civil society and politics such as freedom of association, the right to assemble, the right to petition, the right of self-defence, and the right to vote.
- According to the *Committee on Economic, Social and Cultural Rights – General Comment no. 12, Right to Food*, the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”
- The Human Rights Council observes, “The human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity”.
- A fundamental human right, social security is a potent tool to combat discrimination and an essential instrument for reducing poverty and promoting social inclusion.
- The Declaration on the Right to Development was proclaimed by the United Nations General Assembly (UNGA) in the year 1986 under resolution 41/128.

1.6 KEY WORDS

- **Human rights:** These are fundamental rights, which humans have by the fact of being human, and which are neither created nor can be abrogated by any government.

- **Social and economic rights:** These refer to the right to education, work, food, shelter, and medical care. These rights establish the ‘new’ rights, which range from the right to economic welfare and security to the right to share and to live the life of a civilized being.
- **Universal Declaration of Human Rights (UDHR):** It is an international document adopted by the United Nations General Assembly that enshrines the rights and freedoms of all human beings. It was accepted by the General Assembly as Resolution 217 at its third session on 10 December, 1948 at the Palais de Chaillot in Paris, France.
- **International Covenant on Economic, Social and Cultural Rights (ICESCR):** It is a multilateral treaty adopted by the United Nations General Assembly on 16 December, 1966 through GA. Resolution 2200A (XXI). It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to the Non-Self-Governing and Trust Territories and individuals.

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1.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the three types of individual rights.
2. What does Article 29(1) of the Universal Declaration of Human Rights state?
3. List any five fundamental rights.
4. What are civil and political rights essential for?
5. List any three highlighting features of human rights.
6. What do civil rights include?
7. What does the right to development include?

Long-Answer Questions

1. Discuss the remarks made on the concept of human rights by some eminent personalities.
2. Elaborate upon the three generations of rights.
3. Explain some of the characteristics of human rights.
4. Evaluate the concept of negative and positive rights.
5. Discuss the four elements of Right to Food.
6. Examine the remarks of the Human Rights Council on the right to water and sanitation.

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1.8 FURTHER READINGS

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UNIT 2 EVOLUTION OF THE CONCEPT OF HUMAN RIGHTS

*Evolution of the Concept
of Human Rights*

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Structure

- 2.0 Introduction
- 2.1 Objectives
- 2.2 Evolution
 - 2.2.1 Generational Classification of Human Rights
 - 2.2.2 Bases of Human Rights
 - 2.2.3 Theories of Evolution of Human Rights
 - 2.2.4 Unity in Diversity
 - 2.2.5 Ethics
- 2.3 League of Nations
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 - 2.3.5 Members
 - 2.3.6 Resolving Territorial Disputes
- 2.4 Answers to Check Your Progress Questions
- 2.5 Summary
- 2.6 Key Words
- 2.7 Self Assessment Questions and Exercises
- 2.8 further readings

2.0 INTRODUCTION

Human rights encompass rights ranging from social, economic, cultural and political to civil rights. The concept of human rights evolved over centuries with some significant human rights declarations such as the Magna Carta, Habeas Corpus Act, the American Bill of Rights among a host of several other declarations and events. The atrocities inflicted during the World Wars brought about a realization regarding the importance of basic human rights in the world. The Indian Constitution provides fundamental rights for ensuring justice and a life of dignity for the citizens. This unit provides an in-depth analysis of the evolution of human rights, various institutions indulged in the task of safeguarding these rights and the provisions of the fundamental rights provided by the Constitution of India.

2.1 OBJECTIVES

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

- Analyze the evolution of human rights

- Discuss the categories of human rights and the institutions set up for their safeguard
- Understand the objectives and functions of the League of Nations

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2.2 EVOLUTION

According to the first human rights theory, i.e., the Classical Theory of Natural Rights, the Supreme Being, i.e., God was considered the source of human rights.

All the human beings are entitled to certain rights that are inherent to them by nature and not the result of any law or government body. Many countries at the time of the two world wars experienced heavy casualties and the human sufferings that were the result of these two wars, showed the world how significant human rights were to humanity.

During the Greek period, the concept of human rights did not exist. It was assumed that differences between human beings were the law of nature. Greeks believed that it was natural for one person to be the superior of another. Natural inequality was popularized in order to justify socio-political inequalities. Due to this, slavery was openly accepted during the Greek period.

The human rights concept began evolving in the 13th century. This concept was initially established in 1215, when the feudal barons protested against King John of England. The result of this rebellion was the Magna Carta. Other popular human rights declarations include the Habeas Corpus Act and many more. The human rights concept is the result of the post 17th century liberal political thought.

The Middle Ages, dominated by monarchy, the Roman Catholic System of Church, Government or jurisdiction of the Pope and feudalistic society was not in favour of human rights and its implementation. Most of the vocabulary of human rights today is inherited from the 18th century Europe. An important milestone in the genealogy of human rights was the abolition of slavery in the British Empire in 1825. The United States abolished slavery in 1850. In 1945, the Charter of the United Nations in support of human rights set up a Human Rights Commission. This was followed by the Universal Declaration of Human Rights, which was adopted by the General Assembly of the United Nations in 1948.

The period from 1995–2004 was declared as the Human Rights Decade. The year 1958 was observed as the international year of human rights. Every year, 10 December is celebrated as the International Human Rights Day. The French Declaration of the Rights of Man and of the Citizen of 1789 and the American Bill of Rights of 1791 are two important examples of the human rights declarations. A number of independent states adopted these principles in the 19th century. Later, social and economic rights also came into existence. These were collectively called human rights. However, earlier due to several factors, the human rights were restricted or all together eliminated in many countries around the world.

During the 20th century, colonialism, imperialism, World War I, rise of totalitarian regimes, Nazism, fascism, World War II and the practice of apartheid led to gross violation of the basic human rights. They proved that governments of some countries alone could not protect the human rights that should be made available to every individual. In 1919, the League of Nations came into existence aiming to promote international cooperation and to achieve international peace and security' by imposing obligations on the countries around the world to avoid war and adhere to an international rule of law. Its failure in enforcing an international order was evident with the outbreak of World War II, resulting in its dissolution in 1946. The International Labour Organization (ILO) established in 1919 sought to promote social justice as a prerequisite for 'universal and lasting peace' and laid down basic, humane, and just conditions of work to be ensured by all Members to the ILO.

In 1946, ILO became the first specialized agency of the United Nations. However, it was only in the aftermath of the gruesome World War II that the need to acknowledge and safeguard human rights was articulated at the global level in the form of the Universal Declaration of Human Rights, 1948. The new concept that emerged, i.e., of equality between civil-political and socioeconomic rights, formed the basis of most of the institutions that were established post Second World War. The institutions and the many sub-institutes not only emphasized on civil and political rights but also on socio-economic rights. Two important examples of this are the Bonn Constitution of 1949 and the Italian Constitution of 1948. More and more countries in Europe are now ensuring that their governments provide the basic as well as the socio-economic rights. In the past few years, countries around the world have taken steps to pass constitution amendments or parliamentary laws to make human rights all-inclusive.

2.2.1 Generational Classification of Human Rights

Let us discuss the general classification of human rights.

Three Generation Rights

The use of the term 'generation' was never meant to imply any distinct historical difference or hierarchy of one generation over another. The use of generation is

largely due to the complementary nature of all human rights. The 'first generation' of human rights in the 17th and 18th century were represented by the civil and political rights of the individuals or the liberty-oriented rights. In other words, civil and political rights are usually called 'first-generation rights' and provide for certain basic guarantees for an individual in his or her relationship with the State; they involve the inviolability of the individual against any invasive action by the State. These are distinct from 'second-generation rights', which generally require action by the State to provide certain basic needs or amenities to an individual. In other words, civil and political rights demand freedom from coercive action by the State against an individual, while economic, social, and cultural rights necessitate

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certain actions and provisions by the State in order for it to fulfill its obligations. First-generation rights are described in Articles 3 to 21 of the Universal Declaration while Articles 22 to 27 contain second-generation rights.

The 'second generation' human rights correspond to the protection of economic, social and cultural rights. They are known as security oriented as they provide for social, economic and cultural security. They are more positive in nature than negative. The 'third generation' human rights are also called 'solidarity rights'. They are concerned with the rights of groups and people, rather than of individuals.

Not every international community accepts them. Third generation rights have been developed to enhance the relationship between individuals, the society, and the State. Third-generation rights include: the right to self-determination; right to development; right to participate in and benefit from the common heritage of mankind; and the right to a healthy environment, amongst many other collective rights.

Civil and Political Rights

The term 'civil rights' is derived from the Latin term 'ius civis' (rights of citizens). In Rome, the citizens could either be free (libertas) or servile (servitus), however all citizens enjoyed certain rights. These rights included the freedom of religion after the Edict of Milan in 313 AD.

As per the forerunners of Kett's Rebellion (1549), 'all bonded men may be made free, for God made all free with his precious blood-shedding'. Sir Edward Coke, English common law judge of the 17th century, once again brought back the idea that human beings since the introduction of the Magna Carta and various other declarations have been provided the above mentioned rights. In 1968, Sir

Edward Coke's 'Petition of Rights' was accepted by the Parliament. This particular document clearly mentioned that Englishmen had certain 'rights and liberties'. In 1641, the Massachusetts Body of Liberties passed the early Bill of Rights.

John Milton, an English author, in 1644 used the phrase 'civil liberties' in *Areopagitica*. In 1657, Oliver Cromwell used the term in his speech. Civil rights or liberties are referred to those rights which are related to safeguarding the right to life and personal liberty. They are essential for a person so that he/she may live a dignified life. These rights include right to life, liberty and security of persons, right to privacy, home and correspondence, right to own property, freedom from torture, inhuman and degrading treatment, freedom of thought, conscience and religion and freedom of movement. The civil rights of people ensure that their physical safety and integrity is maintained and they are protected from discrimination based on physical or mental disability, gender, caste, colour or sexual orientation. Civil rights also include freedom of thought and conscience, right to speech and expression, freedom to practice religion, etc.

As discussed earlier, political rights may be referred to the rights that permit a person to take part in the formulation of the government of a State. In other

words, they refer to the right to vote and nominate for public office. Thus, right to vote, right to be elected at periodic elections, right to take part in the conduct of public affairs, directly or through chosen representatives are instances of political rights. Political rights basically comprise those rights that allow individuals the right to a fair judgment. These list out rights of the accused person, right to a fair trial and the right to seek redress or a legal remedy. Political rights also include freedom of association, right to assemble, right to petition and right to vote. The civil and political rights are for ensuring that an individual is not denied participation in the formation of the government of a State. These rights also safeguard individuals from unfair practices of the government or other institutions.

The civil and political rights are intimately related to modern democracy.

The protection of these rights would help the success of democracy. These rights are:

- (1) The rights to life, liberty and security of person;
- (2) Freedom from slavery and torture;
- (3) Equality before the law;
- (4) Protection against arbitrary arrest, detention or exile;
- (5) The Right to a fair trial;
- (6) The Right to own property;
- (7) The Right to political participation;
- (8) The Right to marriage;
- (9) The fundamental freedoms of thought, conscience and religion, opinion and expression;
- (10) Freedom of peaceful assembly and association;
- (11) The Right to take part in the government of his/her country, directly or through freely chosen representatives.

The nature of civil and political rights may be different but they are interrelated and interwoven, and therefore, it does not appear logical to differentiate between them. This reason alone led to the formulation of one covenant covering both civil as well as political rights. This covenant is called the International Covenant on Civil and Political Rights. These rights are the rights of the first generation, which are derived from the reformist theories of the 17th and 18th century. These theories were the result of the English, American and French revolutions. Civil and political rights (also sometimes called freedom from) are the rights which are also termed negative rights as a government is required to sustain from doing those activities that would violate them. Specifically these rights protect citizens from acts of murder, torture, cruel and unusual punishment, ex post facto legislation, the denial of habeas corpus and imprisonment without the required legal process. Notable point in these rights is that they are capable of immediate and full realization without significant costs being incurred.

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International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) was established on 16 December 1966 and is a multilateral treaty adopted by the United Nations General Assembly. The covenant came into existence on 23 March 1976. It ensures that its parties value all the civil and political rights. The Human Rights Committee is responsible for keeping a tab on the ICCPR to ensure that each and every right is enforced. A State, one year after it has been admitted into the covenant, will have to give an account of the implementation of the rights to the ICCPR. After this, the covenant as and when required asks the States to submit a report, which is usually after every four years. The covenant assembles either in New York or Geneva and conducts three meetings every year.

The ICCPR comprises 53 articles in total, which are divided into six parts. The parts 1, 2 and 3 describe the different rights and freedom. The remaining three parts include the procedures for implementing the rights to ensure that these are realized. Final clauses are also included in the remaining three parts.

Article 1 of the ICCPR discusses the right of people to self-determination. It states that all people have the right to freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resource without prejudice to any obligations arising out of international economic co-operation, based upon the principles of mutual benefit and international law. The Article further states that in no case may a people be deprived of its own means of subsistence, and that the State parties shall promote the realization of the right of self-determination and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

The Covenant on Economic, Social and Cultural Rights also stipulated the above provisions under Article 1, Part II stipulated rights and obligations of the States party to the Covenant. It included the obligations of the States to take the steps essential to incorporate the provisions of the Covenant in domestic laws and to implement such legislative or other measures as may be required to give effect to the rights recognized in the Covenant. It is the duty of the State to make sure that the rights of men and women are equally recognized and the enjoyment of all civil and political rights are assured.

Substantive Rights

Part III deals with the specific rights of the individuals and the obligations of the State parties.

1. The right to life (Article 6)
2. Freedom from inhuman or degrading treatment (Article 7)
3. Freedom from slavery, servitude and forced labour (Article 8)
4. Right to liberty and security (Article 9)

5. Right of detenu to be treated with humanity (Article 10)
6. Freedom from imprisonment for inability to fulfill a contractual obligation (Article 11)
7. Freedom of movement and to choose his residence (Article 12)
8. Freedom of aliens from arbitrary expulsion (Article 13)
9. Right to a fair trial (Article 14)
10. Non-retroactive application of criminal law (Article 15)
11. Right to recognition as a person before the law (Article 16)
12. Right to privacy, family, home or correspondence (Article 17)
13. Freedom of thought, conscience and religion (Article 18)
14. Freedom of opinion and expression (Article 19)
15. Prohibition of propaganda of war (Article 20)
16. Right of peaceful assembly (Article 21)
17. Freedom of association (Article 22)
18. Right to marry and found a family (Article 23)
19. Rights of the child (Article 24)
20. Right to take part in the conduct of public affairs, to vote and to be elected (Article 25)
21. Equality before the law (Article 26)
22. Rights of minorities (Article 27)

The above rights set forth in the Covenant are not absolute and are subject to certain limitations. While the formulation of the limitations differed in so far as details are concerned from article to article, it could be said that by and large the Covenant provided that rights, which should not be subjected to any restrictions except those which were provided by law, and were necessary to protect national security, public order, public health or morals or the rights and freedoms of others.

Economic, Social and Cultural Rights

Economic, social and cultural rights guarantee minimum necessities of life to human beings. In the absence of these rights, the existence of human beings is likely to be endangered. Right to adequate food, clothing, housing and good standard of living and freedom from hunger, right to work, right to social security, right to physical and mental health and right to education are included in this category of rights.

These rights are included in the International Covenant on Economic, Social and Cultural Rights. Economic, social and cultural rights are fundamentally based on the concept of social equality. Realization of these rights, which are generally called the rights of second generation, have evolved slowly. They are clear only as general principles and not as specific rules.

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Economic, social and cultural rights are basically socioeconomic human rights, like the right to education, the right to housing, and the right to health. Economic, social and cultural rights are recognized and safeguarded by international and regional human rights instruments. The States that have acquired membership are legally responsible for respecting, protecting and fulfilling economic, social and cultural rights. They are also expected to undertake 'progressive action' to ensure the fulfillment of these rights. These rights called positive rights require active intervention, not abstentions on the part of States.

These rights are, therefore, a contrast to the first generation of civil and political rights, with human rights conceived more in positive (right to) than negative (freedom from) terms. In order to acquire these rights a major commitment of resources is required and therefore, their realization cannot be immediate as in the case of civil and political rights.

A large number of economic, social and cultural rights are recognized by the Universal Declaration on Human Rights and the primary international legal source of these rights is the International Covenant on Economic, Social and Cultural Rights (ICESCR). The economic, social and cultural rights of women and children, which are recognized by the ICESCR, are protected by the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. The Convention on the Elimination of All Forms of Racial Discrimination forbids discrimination which may be based on racial or ethnic origin in relation to a number of economic, social and cultural rights.

International Covenant on Economic, Social and Cultural Rights

The United Nations General Assembly acknowledged a multilateral treaty called the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 16 December 1966 and it became effective from 3 January 1976. This covenant is engaged in providing economic, social and cultural rights to every individual. It also provides labour rights as well as the right to health, the right to education, and the right to an adequate standard of living. The United Nations committee on Economic, Social and Cultural Rights audits this covenant.

The International Covenant on Economic, Social and Cultural Rights consists of 31 Articles that are divided into five parts. Part I deals with the rights of peoples to self-determination as provided in Article I of the Covenant on Civil and Political Rights. Other rights of the individuals are enumerated in Part III of the Covenant which include the following rights:

1. Right to work (Article 6)
2. Right to just and favourable conditions of work (Article 7)
3. Right to form and join trade unions (Article 8)
4. Right to social security (Article 9)
5. Right relating to motherhood and childhood, marriage and the family (Article 10)

6. Right to adequate food, clothing, housing and standard of living and freedom from hunger (Article 11)
7. Right to physical and mental health (Article 12)
8. Right to education including a plan for implementing compulsory primary education (Article 13)
9. Right relating to science and culture

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Part II of the covenant outlines the responsibilities of the Member States. Article II of the covenant says that each Member State should take necessary steps both individually and collectively through international cooperation and assistance, in order to ensure that the rights of the people are realized. It is the duty of the Member States to ensure complete realization of these rights by appropriate means, predominantly by the adoption of the legislative measures. It appears from the above provision that the States are not under an obligation to abide by the provisions of the Covenant immediately, i.e., from the date of ratification of the Covenant. Therefore, the covenant has provided the standard, which the Member States are required to achieve in future.

Its provisions shall be implemented progressively by the States depending on the resources available to them. Thus, the covenant is basically a convention that specifies and promotes objectives more than the standards and it requires the implementation of these not all at once but over a period of time. The covenants are important because these recognize the significance of the rights of every individual. The appropriate rights and duties of individuals is the foundation of peace, freedom and justice in this world. It is an obligation of the States to provide these rights to the individuals as they are derived from the inherent dignity of a human being; and also because they are essential for the development of one's personality.

The Concept of Liberty

Liberty is a human right and is the condition of being free from restrictions or control. It also means having the right and the power to act according to one's own will without causing any harm to the interests of others. While liberty means having the power to act according to one's own choice, it should be taken into consideration that it is not causing any damage to the environment around or to other peoples' liberty and freedom. The social condition of being protected in a legal and physical way so that one can be free from confinement, forced labour or unjust servitude is known as liberty. In order to enjoy liberty, it is necessary to get protection from unjust or undue control and any kind of unnecessary interference from religious or government authorities. Those countries which have the Bill of Rights protecting and guarding their liberty should protect it more carefully.

The guidelines and rules of common sense, ethical standards and reason define the boundaries of one's liberty. The word 'liberty' can be referred to in different ways and is mentioned in the constitution of the United States many times.

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They are included as: 'To secure the blessings of liberty...'; 'Life, liberty, and the pursuit of happiness'; 'Life, liberty and property'. The term is used to denote a sum total of specific liberties and they are:

1. **Economic liberty:** be in agreement with or adopt the profession of one's choice
2. **Personal liberty:** to appear and leave as one wishes to, or to obey one's conscience
3. **Political liberty:** to take part in voting and select and choose one's Government
4. **Civil liberty:** to enjoy freedom that is not under any regulation, nor is under protection of the constitution
5. **Social and Cultural liberty:** to be empowered to select one's colleagues and be treated with respect.

History shows that liberty varies with time and place. Before the Habeas Corpus Act, 1679, a person in England could be caught and put in jail for indefinite time without any trial or hearing. Before the Protestant Reformation, there was no concept of freedom of conscience. There was no practice of right to vote.

Only when like-minded people join together to demand for special privileges for themselves can they attain liberty. In England, the major move was the Magna Carta which was issued in the year 1215. The charter was signed between King John and the barons in order to limit his powers by law and for the safeguarding of the privileges of the barons and the subjects of the king.

The Concept of Equality

Equality means being equal in the society and having the same rights as other people in the society. The concept of equality is divided into three parts. They are social equality, economic equality and gender equality.

Social Equality

Social equality refers to the state of affairs when all the people within a certain group or society have the same social status in a certain respect. Through social equality, one gains equal rights under the law, such as the right to vote, freedom of speech, property rights, etc. Equal opportunities and obligations are also included within the concept of social equality. To achieve social equality, social class or caste boundaries should be eliminated and there should not be any kind of social discrimination in matters of social and economic status. For instance, discrimination in matters of gender, sexual orientation, caste or class, income or property should not lead to unequal treatment and result in reduced opportunities. Perfect social equality in a society is an ideal situation and cannot be said to be found in any society in the world today. There are many reasons for this. The main reasons include foreign politics, immigration/emigration and national politics. It has also been found out that in complex systems, horizontal inequality arises.

The social inequality that existed in medieval Europe can be quoted as a counterexample to social equality. In medieval Europe, a person's social and legal rights were determined by a person's estate, usually inherited. For example, if a person is a clergy, he can use his social standing to get lenient punishment for some crime he had done. Women have been during earlier times and even today in some countries are denied access to higher education even if they are capable of paying the tuition fees. In the 19th century in Europe, if permission for female enrollment was even granted, women had to apply for 'an exemption from gender'. Without that they could not gain admission.

During the apartheid-era in South Africa, both the blacks and whites had access to healthcare and public services, but the standard of services was very different. The health care arrangements made for the blacks did not meet the same standards as those for the whites. This reveals that there was enforced social inequality.

Gender Equality

Gender equality has been defined by the various world bodies in terms of human rights, specially the rights of women and economic development. Gender equality has been defined by the UNICEF as 'leveling the playing field for girls and women by ensuring that all children have equal opportunity to develop their talents.'

It has been declared by the United Nations Population Fund that women have a right to equality. 'Gender equity' is one of the goals of the United Nations Millennium Project. The project claims, 'Every single Goal is directly related to women's rights, and societies where women are not afforded equal rights as men can never achieve development in a sustainable manner.'

To achieve gender equality, the suffragette movement started in the late 19th century in the western countries. Changes were also seen in women's property rights in marriage. Another movement took place in the 1960s for gender equality. It focused on women's liberation and feminism. As a result of the movement, changes were made to the laws.

The movement towards gender equality, especially in Western countries, began with the suffragette movement of the late-19th century. Then there was a change in relation to a woman's property rights in marriage. In the 1960s, a more general movement for gender equality developed based on women's liberation and feminism. The actual changes in attitudes continued to focus on specific issues.

The movement also led to changes to laws related to general anti-sex discrimination laws. There was also a cultural shift in the attitude to equality in education opportunities for both boy and girls. It also resulted in changes to social views regarding the 'equal pay for equal work' for both men and women in many countries. For instance, in many countries now, women are permitted to work in armed forces, the police force and also to be fire fighters. Nowadays, the number of women getting involved in politics is also increasing. On the other hand, men are now getting involved in occupations which were earlier considered to be 'female

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occupations'. Moreover, the role of child rearing is also not confined as a female role. Other changes that have been seen in the society are the non-automatic taking by a woman of her husband's surname on marriage and also the wife having the option of pursuing her career after marriage. However, many people are of the opinion that the objectives of gender equality have still been not achieved in many countries, mostly in non-Western countries. Many people, feminist and not, still do not regard the objective of gender equality as having been achieved, especially in non-Western countries. Ideas for gender equality have been put forward time and again but they have not been popularly adopted every time. For instance, issues related to top freedom rights have still remained a marginal issue.

Promotion of gender equality is seen as encouraging the economic prosperity of a country. People have realized that it plays an important role in the economic prosperity of a country. For instance, in the year 2008, the nations of the Arab world which do not allow equality of opportunity to women have been warned that if they do not allow gender equality, they would not be able to regain their first rank of global leaders in learning, culture and commerce. For the promotion of gender equality and to fight against sex discrimination, the European Union established the European Institute for Gender Equality (EIGE) in Vilnius, Lithuania. In India the Constitution of India under Article 15(3) and 16(4) provides for the upliftment of the women in the country through providing reservation in education and in service to them respectively.

Economic Equality

Economic equality means offering equal opportunity to the people to work. It has been seen that because of the social structure and the widespread social illness, various sections of the society are not being able to work of high repute which is a form of discrimination. It is necessary that the people should have equal opportunity to work without having to face discrimination because of discrimination in sex, case, creed and religion. Economic equality involves the following aspects:

- Equal opportunity
- Equal pay for equal work
- Healthy and hygienic working condition
- Appropriate chance for future progress

The Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) talk about economic equality. The Constitution of India in the Article 16 talks about equal opportunity in employment and thus it is recognized as a Fundamental Right and in Article 39(d) it provides for equal pay for equal work.

2.2.2 Bases of Human Rights

The initial point of conception of human rights can be located in the notion of 'natural rights' that was propounded in the 17th century by John Locke, who

urged that certain rights are 'natural' to individuals on the basis of being human. He asserted that these have existed even before the development of societies and emergence of the State. Proponents of natural rights urged that natural rights are inherent to an individual simply because he or she belongs to the human species and not because he or she is a citizen of a particular country. Its tone was radical and in its ultimate employment, was revolutionary. Historically, the rising commercial/middle class made the demand for individual rights, which was the result of industrial revolution. The American Independence Movement of 1776 and the French Revolution of 1789 were inspired by the ideal of natural rights and both movements sought to challenge governments that curtailed the natural rights of people.' The Preamble to the American Declaration of Independence, 1776 reads:

All men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their Safety and Happiness.

However, it was during the French Revolution in 1789 that natural rights were elevated to the status of legal rights with the formulation of the 'Declaration of the Rights of Man.' The Declaration defined the 'natural and imprescriptible rights of man' as 'liberty, property, security and resistance to oppression.' The American Bill of Rights in 1791 also incorporated natural rights. The above conception of natural rights was deployed in several political and social movements through the 19th century. For instance, the Suffragette Movement was based on the natural equality between a man and a woman. The different views of various thinkers were put forward regarding bases of rights, according to which, various theories have been propounded.

2.2.3 Theories of Evolution of Human Rights

The main theories are:

1. Theory of Natural Rights
2. Theory of Legal Rights
3. Historical Theory of Rights
4. Moral Theory of Rights
5. Social Welfare Theory of Rights
6. Liberal Individualistic Theory of Rights
7. Marxist Theory of Rights

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Theory of Natural Rights

The Theory of Natural Rights, which is the earliest human rights theory, stated that the main source of all rights of mankind was the Supreme Being, i.e., God. This theory is also called the 'Classical Theory of Natural Rights'. Each individual on this earth has rights, which are not the result of the government policies or law but of nature. It is argued that the legitimacy of government rested on the respect that it accorded to these rights. Natural rights were derived from natural law and were propagated by social contract writers like Hobbes. They assumed that man had certain natural rights before the origin of the State and he surrendered some of them to a superior authority, i.e., civil society, in order to safeguard the rest of them. Hobbes considered right to life as a natural right.

Foremost among the proponents of natural rights doctrine was John Locke (1689). Locke stated that 'all individuals were endowed by nature with the inherent rights to life. Liberty and property which were their own could not be removed or abrogated by the State.' Since the 17th and 18th centuries there has been a powerful opinion in the West attached to the idea that man possesses certain rights 'by nature', irrespective of any particular social, legal or political order and that these rights can be demonstrated by reason. Rights, according to this theory, were attributed to an individual as if these were an intrinsic property of him or her. In short, rights are inherent in the personality of man. They are inalienable, immutable and sacred from the day of his birth and are nontransferable throughout his life time. The rights belong to man independent of society and the state.

Legal Theory of Rights

The Legal Theory maintained that rights are not natural but the creation of the State. Only that which the law gives is a right. Rights are not absolute or inherent in man, they are artificial in the sense that they become rights only when they are determined and secured by the State. We find traces of this theory in the writings of Hobbes who held that the right of every individual is that of self-preservation and this right could best be preserved by the State. The legal bases of rights imply three things:

- (i) The State defines and lays down a bill of rights. Rights are not prior to the State but the State is the source of the right
- (ii) The State lays down a legal framework which guarantees the rights. It is the State which enforces the enjoyment of rights
- (iii) As the law creates and sustains rights, so whenever the content of the law changes, the substance of rights also changes. The legal theory states that the rights may not necessarily be created by the State, but without recognition and protection of the rights by the state, these are not valid.

Historical Theory of Rights

The Historical theory was represented by Savigny and Puchta in Germany, Sir Henry Maine and Edmund Burke in England and James Carter in the USA. All of them maintained that the character of the State, the law and rights is historical. According to this theory, law, State and rights are neither based upon the arbitrary creation of human will nor a product of nature but a product of history. They represent the manifestation of a certain genius, particularly national consciousness. Rights are the crystallization of 'historical development'. The principles which were applicable to law could be applicable to rights as well, i.e., rights are relative to time and place and to particular people. Rights are to be found not by reason but in the historical process. The idea of universal individual could be traced by the historical development of rights, reforms are impossible, if historical process are not allowed to work without any hindrances, the idea of a transcendental natural order should be replaced by the idea of an order immanent in the historical process.

Moral Theory of Rights

According to this theory, rights derive their justification from a code of morality shared by the members of a community and are enforced by the conscience of the individual. The main supporters of this theory were Rousseau, Kant, Hegel, Green and Bosanquet. The moral theory associates rights with the achievement of moral freedom of man as member of the society. According to this theory, the basis or rights is not natural or legal but a moral value and a moral object, every right is derived from one basic right, right to personality. Rights are rooted in the personality of the individual. **Rights** are powers which an individual claims from the society on a moral plane and are recognized and enforced by the state through its law. The inner development of man does not depend upon the State; it is the sole concern of the individual himself. The function of the State is to help in creating the conditions in which the individual can achieve his moral freedom. Rights are thus the external conditions, recognized by the society and enforced by the State, for the moral uplift of man. Since everybody in the society has a similar aim, i.e., to develop his or her personality, it implies that rights arise only in the society and the rights of the individual are to be in harmony with those of others. In other words, rights are linked with the individual good and the common good of the society. Rights are recognized by the society and enforced by the State.

Social Welfare Theory of Rights

The concept of social welfare was recognized by positive liberal writers of the late 19th and early 20th century like T.H. Green, G.D.H. Cole, L.T. Hobhouse, Harold Laski, Ernest Barker, etc. According to this theory, a law, custom and natural rights should all yield to what is socially useful or socially desirable.

According to Hobhouse, '**Genuine rights** are conditions of social welfare and the various rights the owe their validity to the functions they perform in the

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harmonious development of society'. Harold Laski in his book *A Grammar of Politics* wrote, 'rights are the conditions of social life without which no man can seek to be himself at his best'. The State exists to make possible that achievement and it is only by maintaining rights that such an end can be achieved. Explaining the characteristics of his theory, he writes that the question of rights emerges only in the society. Although it is the claim of an individual, however, it is a claim which he or she shares with others. Hence rights are related to common ends. The State, by guaranteeing these claims helps the individual in attaining his own well-being as well as the well-being of others.

Individual good is an integral part of social good. Secondly, rights are correlative with functions. The enjoyment of rights can be justified by the functions an individual performs in terms of his contributions to the social end.

Thirdly, rights are a claim upon the State and the State should create conditions for the realization of these rights. In this context, the State can put certain limitations on the rights in the interest of social welfare, but if these restrictions become unreasonable, it loses its moral authority and the individual does not only have a right but also certain duties towards the State. Fourthly, being the conditions of social welfare.

In short, the social welfare theory believes that rights are conditions of social welfare, the question of rights emerges in the society; no individual has any right against the welfare of the society. Rights are given to the individual so that he can contribute to the social good from the individual good. If the State is made popular due to the rights it provides, the rights are known by the amount of social welfare they can achieve.

Liberal-Individualistic Theory of Rights

The liberal-individualistic theory of rights has come to be dominated by the view of John Rawls and Robert Nozick. These have achieved much prominence in liberal tradition and have been instrumental in influencing other writers like Dworkin, Galstone. They represent two dominant socio-economic views of our times. While Nozick represents the classic liberal view of free market, free trade capitalism and minimalist State, Rawls represents the Keynesian tradition of liberal egalitarianism. He appeals to those who believe in the desirability, efficiency and future of capitalist market maintaining that the latter cannot function well and will generate serious inequalities. He wants to find efficient ways to address those inadequacies without altering the essential nature of the system.

According to Robert Nozic, American Libertarian philosopher, the theory of rights derived from principle of natural right of 'self-ownership' which means treating people as they are an end in themselves. One of the popular Nozic quotes is given below:

'The individuals have rights and there are things no person or groups may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do. How much room do individual rights leave for the state?'

Society must respect these rights because individuals are ends and not means. Rights affirm the separate existence of man, and taken seriously, they mean that the individual are the resources of some other persons. Respect for rights is respecting people's claim to be equal.

John Rawls, American philosopher, uses the words 'rights' and 'justice' interchangeably. According to him, all account of rights must be embedded in justice. Rights belong to all disinterested political-individuals beyond the veil of ignorance. However, they had no natural rights except those which they choose unanimously in their original position. They were accepted because of the considered judgment of people. By basic liberties, Rawls means the standard civil and political rights recognized by the liberal democracies such as right to vote, right to run for offices, due process of law, free speech, etc. But what is important for him is that rights should guarantee a fair share of economic resources.

Hence the second category gives certain egalitarian rights to citizens. The social and economic inequalities should be so regulated that those with least material goods, such as income, wealth education, etc., will get a larger share.

Marxist Theory of Rights

Marx was the first person who talked about exploitation of labourers or violation of workers' rights. He claimed that the law of nature was idealistic as well as historical. Hence, the 17th and 18th century bourgeois revolutionaries' claims that rights were inalienable and imprescriptible were unsustainable and indefensible. As per Marx, rights were a result of the middle-class capitalist society.

As per the Marxist theory, the fundamental nature of a human being was social and that he or she made use of his or her ability to fulfil needs. The Marxist doctrine states that an individual's ability to do or achieve something can only be conceived if he or she reverts back to being social. However, an individual can only become truly social when he or she lives in a purely communist society, which does not allow any kind of class conflict and where the means of production are enjoyed by all. As such, these rights can only be social and economic, since they are directed towards the reduction of the means of production to common control. The need for rights disappears, since each individual will be in a free and spontaneous relationship with all other individuals. The Marxian analysis is the most detailed examination of the process of capitalist development. Marx contributed to the theory of economic development in three ways. He provided a thorough economic interpretation of history, specified the motivational forces of capitalist development, and gave suggestions for an alternative path of planned economic development. If

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one interprets history, materialistically, he or she will find that every historical event has been a product of the on-going conflict between the various classes of the society. The reason of this conflict is due to the clash between the relation of production and its mode. Therefore, Marx advised that it was beneficial to have a planned economy, wherein a central planning agency would formulate plans for everything. To him, communistic form of society is better for greater economic growth, stability and happiness.

The analysis of different theories and views developed by very important jurists and economists shows that though there are differences of opinion in defining the term human rights, all are uniform in emphasizing the fact that there should not be any human rights violation. Each also agrees that human rights violations cause significant damage to the whole economy by reducing an individual's welfare and happiness.

2.2.4 Unity in Diversity

Rather than the positive qualities of unity, and productive and constructive energy necessary for the sustainment of human societies, today's social and political environment highlights the negative qualities of destruction, disunity and difference. Due to these negative forces and processes, people are losing their roots of existence from the natural world, of which they are a part. The concept of unity in diversity includes unity without uniformity and diversity without fragmentation. Human beings have a unique responsibility towards the environment because the human condition is informed by an inherent connection with their natural surroundings, of whose resources they partake. It is essential to protect the environment in order to ensure a harmonious and peaceful human existence. The phenomenon of unity in diversity is not a new one. Its roots can be traced back to hundreds of years ago in non-western cultures. We can find the existence of such phenomenon among the indigenous peoples in the Taoist societies and North America in 400-500 B.C. It has been an inherent concept in the pre-modern western culture in the organic conceptions of the universe that have been apparent since the ancient Greek and Roman civilizations through medieval Europe and into the Roman era. In any civilization, unity in diversity can be seen as the highest possible attainment and it is an indication of the noblest possibilities of humanity. However, this attainment is not easy to achieve. It needs passionate concern for choice in an environment of social trust. There are two aspects of the phenomenon of unity in diversity. They are biodiversity and cultural diversity.

Cultural Diversity

People belonging to different communities can learn more about each other through multicultural events. This in turn offers the people a chance to understand the diversity that exists in the human community. However, due to the increasing

promotion of cultural diversity, people within a single group feel more attached to their ethnic roots which in turn lead to conflict among and within different groups.

Conflicts can arise if the diversity is considered as threat to the preservation of one's own traditions. If there is the prevalence of disharmony among individuals because of adherence to tradition expressions of culture, then it is necessary to study these traditions in light of a changing world. If a re-examination of cultural practices is done, it will reveal the main reason why it was developed in the first place. This might help in clearing various misconceptions and offer resolution to contemporary conflicts. Such analysis will help in understanding why certain cultural traits are so important for a certain group and why culture is such a significant part of human existence.

Every person must try to understand and accept the differences in relation to others within a social context. This will give meaning to individual existence. However, in the struggle to update oneself to meet the changing circumstances, it should be taken care of that one doesn't let go off the traditional outlook and culture and get bonded with maladaptive institutions that are destructive for human psyche itself.

2.2.5 Ethics

Individuals within a society are guided by certain values and social norms. This helps their interaction with fellow human beings, communities and their environment. These values and social norms come under the concept of morality. In every interaction of human beings with other human beings and communities, important values are at stake. There are various rules and norms for the protection of these values. Duties and responsibilities are also related to social roles and positions for fostering these values and furthering such rules. The moral factors are generally linked to various religious practices and social power structures. The systematic and critical analysis of morality as well as of the moral factors guiding human conduct within a society is known as ethics. When ethical analysis of rules, duties and moral values are done, it is important also to assess the relationship of people to basic human interests. Moral reasoning delves into the argument whether the practices that have been legitimated by law, religion or politics are worthy of recognition or not. If we look into the development of ethics in the past century, we will come to the conclusion that the development of ethics has been characterized by a tendency to overthrow and revalue the moral conventions which have determined the relationship and the interaction of human beings with each other and the environment. The resistance of tendencies of marketization, globalization and technologization is a recent task of ethics. These concepts threaten to erode bio diversity and are also dangerous for cultural diversity. These tendencies though are regarded as value neutral, they carry hidden assumptions which are possible sources of abuse and inequity.

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Check Your Progress

1. List two examples of human rights declarations.
2. What are 'first-generation' rights?
3. Which conventions protect the economic, social and cultural rights of women and children?
4. What should be done to achieve social equality?
5. Which two dominant socio-economic views of our times do Novick and Rawls represent?
6. How did Marx contribute to the theory of economic development?

2.3 LEAGUE OF NATIONS

League of Nations was formed as the first permanent international security organization. The main objective of the league was to preserve world peace and order. It was an inter-governmental organization founded as a result of the Paris Peace Conference. The League of Nations was functional for the period from 28 September 1914 to 23 February 1935. It had 58 member countries.

2.3.1 Origin

During the 20th century, the world polarized into two major power blocs through alliances between great European powers. These alliances came into command in 1914, i.e., at the start of the First World War, drawing all the major European powers into the war. By the time the wars ended in November 1918, it had a profound impact, affecting the social, political and economic fibre of Europe and inflicted a psychological and physical damage on the continent and its people. Antiwar sentiment rose across the world. Some sovereign states also entered into war for their own benefit.

The Paris Peace Conference was meant to ensure and build an everlasting peace accord after World War I was a major landmark. The Covenant of the League of Nations was conjured up and drafted with the aid of a special commission, and the League was established by Part I of the Treaty of Versailles. On 28 June 1919, 44 states agreed to sign the Covenant. This included 31 states which had participated in the war on the side of the Triple Entente or connected with it during the combat and military conflict.

2.3.2 Goals

The primary goals, as stated in the Covenant of the League of Nations, included the following:

- Preventing war through collective security and disarmament
- Settling international disputes through negotiation and arbitration

Other goals in this and related treaties included:

- Labour conditions
- Just treatment of native inhabitants
- Trafficking in persons and drugs
- Arms trade
- Global health
- Prisoners of war
- Protection of minorities in Europe

2.3.3 Span

Since the League of Nations did not possess its own armed forces, it had to depend on the Major Powers to enforce and ensure compliance to its resolutions, and to ensure that in case of need it will be provided with army. Many a time it so happened that the Major Powers were not often willing to offer military help.

During the Second Italo-Abyssinian War, the League accused Italian soldiers of targeting Red Cross medical tents but Benito Mussolini responded that ‘the League is very well when sparrows shout, but no good at all when eagles fall out’.

Languages and symbols

The official languages of the League of Nations were French, English and Spanish (from 1920). The League considered adopting Esperanto as their working language and actively encouraged its use but it did not materialize.

Emblem

In 1939, the League of Nations had a semi-official emblem — Two five-pointed stars within a blue pentagon. They symbolized the Earth’s five continents and five races. A bow on top and at the bottom displayed the name in English and French. As a mark of general acceptance, this symbol was used on the edifice of the New York World’s Fair around 1939 and 1940.

Postal department

The League had a very lively postal department. Huge volumes of post were generated from the head offices, the dedicated agencies, and at worldwide conferences and meets. In many instances, special envelopes or overprinted mail and postage stamps were used.

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2.3.4 Principal Organs

The three constitutional bodies of the League were as follows:

- The Assembly
- The Council
- The Permanent Secretariat (headed by the general secretary and based in Geneva)
- The Permanent Court of International Justice
- The International Labour Organization



Fig. 2.1 Palace of Nations, Geneva, the League's Headquarters from 1929 until its Dissolution

The reason why the League established numerous auxiliary agencies and commissions was that the covenant visualized that various questions of a more or less technical character would come up in the course of time and some responsible agencies should be there to find solutions of specific nature. Also, unanimity was required for the decisions of both – the Assembly and the Council, except in matters of procedure and some other specific cases, such as the admission of new Members to the League. This general regulation concerning unanimity was the recognition of national sovereignty.

Secretariat

The Permanent Secretariat, established at the Head Office of the League at Geneva, comprised of a group of experts in various fields and spheres under the direction of the General Secretary.

The principle sections of the Secretariat were as follows:

- Political
- Financial
- Economics
- Transit
- Minorities

- Administration
- Mandates
- Disarmament
- Health
- Social
- Legal
- Information

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Staff

The staff of the League's secretariat was accountable for preparing the itinerary for the Council and Assembly meetings and conferences and also publishing information and intelligence for the meetings and other scheduled and daily matters, successfully acting as the civil service for the League.

Assembly

The Assembly comprised of council of all members of the League. Every state was allowed to a maximum of three members who were like representatives and one vote. The special functions of the Assembly were: the joining of new Members, the customary and periodical election of members who were not permanent Members of the council, the election of the committee of the judges of the permanent court, and the control of the budget. In effect, the Assembly had become the universal directing power and nucleus of force of the League actions.

Permanent Court of International Justice

Despite the fact that the Covenant had made provisions for The Permanent Court of International Justice, it was ultimately the Council and Assembly who established its constitution. Its judges were elected by the Council and Assembly, and the budget was provided by the Assembly. The Court was composed of eleven judges and four deputy-judges, elected for a period of nine years.

International Labour Organization

The International Labour Organization (ILO) was created in 1919. It was formed on the basis of part XIII of the Treaty of Versailles and went on to become a part of the League's operations.

Health Organization

The League's health organization had three bodies:

- **A health bureau:** containing permanent officials of the League
- **General advisory council or conference:** an executive section consisting of medical experts
- A health committee

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Committee on Intellectual cooperation

The League of Nations dedicated serious consideration to the question of international intellectual cooperation right from the stage of inception. The actual work of the Committee included enquiry into the conditions of intellectual life, creation of national committees for intellectual cooperation, assistance to countries where it was felt that the intellectual life was endangered, cooperation with international intellectual organizations and protection of intellectual property.



Fig. 2.2 A Map of the World in the Years 1920–1945, which Shows the League of Nations Members During its History

Slavery Commission

The Slavery Commission sought to eliminate slavery and slave trading across the world, and fought forced prostitution.

Committee for the study of the legal status of women

The Committee for the Study of the Legal Status of Women sought to make an examination into the condition of women all over the world.

2.3.5 Members

The League had 42 founding members. Until it was dissolved in 1946, 23 (or 24, counting Free France) remained members. In the founding year itself, six other states joined, out of which only two remained members throughout the League's existence. An additional 15 countries joined in later years of the League.

2.3.6 Resolving Territorial Disputes

The outcome of World War I left many issues to be established between nations, including the exact position of national boundaries, which country and particular regions would be joined. Most of these questions were handled by the victorious allied powers in bodies such as the Allied Supreme Council.

Albania

When the Paris Peace Conference was held in 1919, the issue of the frontiers of Albania had not been settled, being left to the League to be decided and by September 1921 had not yet been determined. This created an unbalanced situation with Greek troops repeatedly crossing into Albanian territory while carrying on military operations in the south. The Yugoslavian forces occupied, after clashes with Albanian tribesmen, far into the northern part of the country.

As a part of the solution, the League sent a commission of representatives from various powers to the region. In November 1921, the League decided that the frontiers of Albania should be the same as they had been in 1913 with three minor changes that favoured Yugoslavia. Yugoslav forces withdrew a few weeks later, even though under protest. Mussolini sent a warship to shell the Greek island of Corfu and Italian forces occupied Corfu on 31 August 1923. This contravened the League's covenant so Greece appealed to the League to deal with the situation.

Aland Islands

Aland is a cluster of approximately 6,500 islands halfway between Sweden and Finland. These islands are entirely Swedish speaking, but in 1809, Sweden lost both Finland and the Aland Islands Russia (Soviet Union). During the confusion of the October Russian Revolution, in December 1917, Finland affirmed independence, and the majority of the Alanders wanted the islands to become an element or a part of Sweden again. However, the Finnish government conceived this differently. They said that these islands should be a division of their new nation, since the Russians had integrated the Aland in the Grand Duchy of Finland which was formed in 1809. The stand-off had increased in great degree by 1920 to such an extent that there was a clear imminence of war. The British government took forward the issue to the League's Council, however Finland declined any intervention by the League as they thought of this as a domestic issue and did not want an external solution for the matter. The League created a small board to make a decision if the League should examine the matter any further. After the positive response a neutral commission was created. In June 1921, the League announced its verdict; the islands were to remain a part of Finland but with guaranteed protection of the islanders, including demilitarization. Sweden's conceded to the decision, though reluctantly, this agreement became the first European international agreement concluded directly through the League.

Check Your Progress

7. What was the official emblem of the League of Nations?
8. Why did the League of Nations establish numerous auxiliary agencies?
9. What verdict did the League give regarding Aland Island dispute?

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2.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The French Declaration of the Rights of Man and of the Citizen of 1789 and the American Bill of Rights of 1791 are two important examples of the human rights declarations.
2. Civil and political rights are usually called ‘first-generation rights’ and provide for certain basic guarantees for an individual in his or her relationship with the State; they involve the inviolability of the individual against any invasive action by the State.
3. The economic, social and cultural rights of women and children, which are recognized by the ICESCR, are protected by the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.
4. To achieve social equality, social class or caste boundaries should be eliminated and there should not be any kind of social discrimination in matters of social and economic status.
5. While Nozick represents the classic liberal view of free market, free trade capitalism and minimalist State, Rawls represents the Keynesian tradition of liberal egalitarianism.
6. Marx contributed to the theory of economic development in three ways. He provided a thorough economic interpretation of history, specified the motivational forces of capitalist development, and gave suggestions for an alternative path of planned economic development.
7. In 1939, the League of Nations had a semi-official emblem — Two five-pointed stars within a blue pentagon. They symbolized the Earth’s five continents and five races. A bow on top and at the bottom displayed the name in English and French.
8. The League established numerous auxiliary agencies and commissions because the covenant visualized that various questions of a more or less technical character would come up in the course of time and some responsible agencies should be there to find solutions of specific nature.
9. In June 1921, the League announced its verdict regarding the Aland Islands dispute; the islands were to remain a part of Finland but with guaranteed protection of the islanders, including demilitarization.

2.5 SUMMARY

- The human rights concept began evolving in the 13th century. This concept was initially established in 1215, when the feudal barons protested against

King John of England. The result of this rebellion was the Magna Carta. Other popular human rights declarations include the Habeas Corpus Act and many more.

- During the 20th century, colonialism, imperialism, World War I, rise of totalitarian regimes, Nazism, fascism, World War II and the practice of apartheid led to gross violation of the basic human rights.
- The International Labour Organization (ILO) established in 1919 sought to promote social justice as a prerequisite for 'universal and lasting peace' and laid down basic, humane, and just conditions of work to be ensured by all Members to the ILO.
- The 'second generation' human rights correspond to the protection of economic, social and cultural rights. They are known as security oriented as they provide for social, economic and cultural security. They are more positive in nature than negative.
- The term 'civil rights' is derived from the Latin term 'ius civis' (rights of citizens). In Rome, the citizens could either be free (libertas) or servile (servitus), however all citizens enjoyed certain rights. These rights included the freedom of religion after the Edict of Milan in 313 AD.
- The ICCPR comprises 53 articles in total, which are divided into six parts. The parts 1, 2 and 3 describe the different rights and freedom. The remaining three parts include the procedures for implementing the rights to ensure that these are realized. Final clauses are also included in the remaining three parts.
- In order to enjoy liberty, it is necessary to get protection from unjust or undue control and any kind of unnecessary interference from religious or government authorities.
- Gender equality has been defined by the UNICEF as 'leveling the playing field for girls and women by ensuring that all children have equal opportunity to develop their talents.'
- The Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) talk about economic equality.
- The initial point of conception of human rights can be located in the notion of 'natural rights' that was propounded in the 17th century by John Locke, who urged that certain rights are 'natural' to individuals on the basis of being human.
- The Theory of Natural Rights, which is the earliest human rights theory, stated that the main source of all rights of mankind was the Supreme Being, i.e., God. This theory is also called the 'Classical Theory of Natural Rights'.
- According to the Historical Theory, law, State and rights are neither based upon the arbitrary creation of human will nor a product of nature but a

*Evolution of the Concept
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product of history. They represent the manifestation of a certain genius, particularly national consciousness.

- The concept of social welfare was recognized by positive liberal writers of the late 19th and early 20th century like T.H. Green, G.D.H. Cole, L.T. Hobhouse, Harold Laski, Ernest Barker, etc. According to this theory, a law, custom and natural rights should all yield to what is socially useful or socially desirable.
- The resistance of tendencies of marketization, globalization and technologization is a recent task of ethics. These concepts threaten to erode bio diversity and are also dangerous for cultural diversity.
- League of Nations was formed as the first permanent international security organization. The main objective of the league was to preserve world peace and order.
- The Covenant of the League of Nations was conjured up and drafted with the aid of a special commission, and the League of Nations was established by Part I of the Treaty of Versailles.
- Despite the fact that the Covenant had made provisions for The Permanent Court of International Justice, it was ultimately the Council and Assembly who established its constitution.
- The outcome of World War I left many issues to be established between nations, including the exact position of national boundaries, which country and particular regions would be joined.

2.6 KEY WORDS

- **Political rights:** These refer to the rights that permit a person to take part in the formulation of the government of a State. In other words, they refer to the right to vote and nominate for public office.
- **Habeas Corpus Act, 1679:** It is an Act of Parliament in England during the reign of King Charles II. It was passed to define and strengthen the ancient prerogative writ of *habeas corpus* which required a court to examine the lawfulness of a prisoner's detention and thus prevent unlawful or arbitrary imprisonment.
- **Totalitarianism:** It is a form of government that attempts to assert total control over the lives of its citizens. It is characterized by strong central rule that attempts to control and direct all aspects of individual life through coercion and repression.
- **Social equality:** It refers to the state of affairs when all the people within a certain group or society have the same social status in a certain respect.

2.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

*Evolution of the Concept
of Human Rights*

Short-Answer Questions

1. Write a short note on 'third generation' rights.
2. What are the provisions of Article I of ICCPR?
3. What changes did the Suffragette Movement result in?
4. What does the legal theory of rights imply?
5. List the primary goals stated in the Covenant of the League of Nations.
6. Write a short note on the Committee on Intellectual Cooperation.

Long-Answer Questions

1. Discuss the evolution of civil and political rights.
2. Analyze the bases of human rights.
3. Elaborate upon the moral theory of rights.
4. Explain the Liberal-Individualistic theory of rights.
5. Discuss the resolution of the issue of the frontier in Albania.

2.8 FURTHER READINGS

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BLOCK - II
UNIVERSAL DECLARATION OF HUMAN RIGHTS
AND ITS COVENANT

UNIT 3 UNIVERSAL
DECLARATION OF HUMAN
RIGHTS

Structure

- 3.0 Introduction
- 3.1 Objectives
- 3.2 Universal Declaration of Human Rights Act of 1948
- 3.3 Fundamental Rights of Indian Constitution
- 3.4 Answers To Check Your Progress Questions
- 3.5 Summary
- 3.6 Key Words
- 3.7 Self Assessment Questions and Exercises
- 3.8 Further Readings

3.0 INTRODUCTION

The United Nations Charter proposed the concept of 'inherent dignity' and 'equality and inalienability of rights to every member of the human community.' Treating these human rights values as 'the base of freedom, justice and peace all over the world', is essential for all undertakings of the United Nations.

At present, the United Nations consists of 192 member nations, all of which belong to the General Assembly. The General Assembly manages the finances of the UN. It makes non-obligatory suggestions and administers and elects members of other UN divisions. It has the ultimate authority to vote for the adoption of human rights declarations and conventions, which are also known as treaties or covenants. For instance, in 1948 when the UN Commission on Human Rights had concluded its draft of Universal Declaration of Human Rights, the General Assembly voted in support of its adoption. This unit will discuss this universal declaration of Human Rights in detail.



3.1 OBJECTIVES

*Universal Declaration of
Human Rights*

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

- Discuss the provisions and significance of Universal Declaration of Human Rights
- Analyze Fundamental Rights of the Indian Constitution

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3.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS ACT OF 1948

Rene Cassin of France, Charles Malik of Lebanon and Eleanor Roosevelt of the US were associated with the drafting of UDHR. India also participated in the drafting process and was represented by Mr. Hansa Mehta. The UN General Assembly passed a resolution adopting UDHR on 10 December 1948, with 48 states voting in favour and 8 countries abstaining, viz., Saudi Arabia, South Africa, and the Soviet Union together with 4 East European republics and a Soviet Republic whose votes it controlled.

The preamble to UDHR speaks of inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. The member states pledge to achieve in co-operation with UN the promotion of universal respect for and observance of human rights and fundamental freedoms. The General Assembly proclaimed, UDHR as a common standard of achievement for all people and all nations.

Brief Overview of Articles of UDHR

The UDHR covers civil and political rights such as the right to life, right not to be subjected to torture, equality before the law, fair trial, freedom of movement, and freedom of thought, conscience, religion, opinion and expression. The rights outlined in the UDHR also include economic, social and cultural rights such as the right to food, clothing, housing and health, social security, work, equal pay for equal work, form trade unions and education.

Article 1 All human beings are born free and equal in dignity and rights

Article 2 Non-discrimination in the enjoyment of rights listed in UDHR

Article 3 Right to life, liberty and security of person

Article 4 Prohibition of slavery

Article 5 No torture or cruel, inhuman, degrading treatment or punishment

Article 6 Recognition as a person before law



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Article 7 Equality before law and equal protection of law

Article 8 Right to an effective remedy by competent tribunal for violation of rights

Article 9 No arbitrary arrest, detention or exile

Article 10 Full equality to a fair and public hearing by independent tribunal

Article 11 Right to fair trial

Article 12 No interference in privacy, family, home

Article 13 Freedom of movement and residence within borders of each State

Article 14 Right to seek asylum in other countries

Article 15 Right to nationality

Article 16 Right to marriage and to found a family

Article 17 Right to property; no arbitrary deprivation of property

Article 18 Freedom of thought, conscience and religion

Article 19 Right to freedom of opinion and expression

Article 20 Right to freedom of peaceful assembly and association

Article 21 Political right to vote

Article 22 Right to social security

Article 23 Right to work, equal pay for equal work, just remuneration, join trade unions

Article 24 Right to rest and leisure

Article 25 Right to an adequate standard of living

Article 26 Right to education

Article 27 Right to participate in the cultural life of the community

Article 28 Social and international orders in which rights can be realized.

Article 29 Duties to the community

Article 30 No act aimed at destruction of rights in UDHR.

Significance of UDHR

Between 1948–1976, UDHR was the only broad-based human rights instrument which was available; widely known and frequently invoked. According to Henry Steiner and Philip Alston, to this day UDHR retains its symbolism, rhetorical force and significance in human rights movement. It is the parent document, the initial burst of enthusiasm, terser, more general and grander than the treaties, in some sense the constitution of the entire movement. It remains the single most invoked human rights instrument.

The rights set forth in the UDHR have been reiterated and affirmed in numerous international human rights treaties dealing with specific populations or with specific rights and freedoms. The rights have also been incorporated into regional human rights treaties and documents such as a *European Convention of Human Rights*, *European Social Charter*, *African Charter of Human and Peoples Rights*, and *Helsinki Accords*.

The UDHR is aspirational in character and recommendatory rather than—in a formal sense—binding. It is an authoritative statement of basic rights to which all are entitled. It represents a major milestone in human progress, bringing to realization to the UN charter principle that universal respect for human rights is the common concern of all governments and all people. In addition, it serves as a common conscience for the world and a standard against which the attitudes of societies and governments can be measured.

As a Manifesto with primarily moral authority, UDHR is accepted almost universally as a gauge by which governments can measure their progress in the protection of human rights. It was invoked constantly in the UN General Assembly, Security Council and other international organizations. It is quoted in international legal instruments and contains a comprehensive and common vision of inalienable human rights. In other words, UDHR represents a shared understanding of what constitutes the inalienable rights and freedoms of all human beings in every corner of the globe. UDHR is the primary international articulation of the fundamental and inalienable rights of all members of the human family. It represents the first comprehensive agreement among nations as to the specific rights and freedoms of all human beings. It is invoked in a score of national constitutions, inspired and sometimes become part of national legislation in many countries, and has been cited with approval in national courts.

Those who adopted the UDHR did not imagine it to be a legally binding document, but its legal impact is wider. Internationally, it has been accepted as essential legal code. Dozens of legally binding international treaties are based on the principles set forth in the UDHR, and the document has been cited as justification for numerous United Nations actions, including acts of the Security Council. Originally intended as a ‘common standard of achievement for all people and all nations’, over the past sixty years the *Universal Declaration* has become a cornerstone of customary international law, and all governments are now bound to apply its principles.

UN Secretary General, Ban Ki Moon observed on the significance of UDHR as follows:

- The extraordinary vision and determination of the drafters produced a document that for the first time set out universal human rights for all people in an individual context.

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Now available in more than 360 languages, the declaration is the most translated document in the world — a testament to its universal nature and reach.

- It has inspired the constitutions of many newly independent states and many new democracies.
- It has become a yardstick by which we measure respect for what we know, or should know, as right and wrong.

On the significance of **UDHR**, former UN High Commissioner for Human Rights Louise Arbour, observed as follows:

- In a post-war, world scarred by the holocaust, divided by colonialism and wracked by inequality, a charter setting out the first global and solemn commitment to the inherent dignity and equality of all human beings, regardless of colour, creed or origin, was a bold and daring undertaking, one that was not certain to succeed.
- It has led to an extensive infrastructure of the protection of all the fundamental freedoms, we are all entitled to. It is a tribute to the vision of the drafters of the declaration and to the many human rights defenders, who have struggled over the last six decades to make that vision a reality.
- This struggle is far from over, and therein lies the power of the declaration: It is a living document that will continue to inspire generations to come.

Check Your Progress

1. What does the preamble to UDHR speak of?
2. What did Ban Ki Moon observe on the significance of UDHR?

3.3 FUNDAMENTAL RIGHTS OF INDIAN CONSTITUTION

Fundamental rights are the basic rights which are necessary for the welfare of the people. These rights are regarded as fundamental because they are most essential for the attainment by the individual or for his full intellectual, moral or spiritual status.

Origin and Development of Fundamental Rights

Part III of the Constitution of India is described as the Magna Carta of India. In 1214, King John of England gave assurance to the people for protecting their liberties in the form of Magna Carta. It is the first written document relating to the fundamental rights of individuals. Thereafter the Bill of Rights was written which contained all important rights and liberties of the people of England. After a hundred years, France adopted a Declaration of Rights of Man and citizens which contain

the natural, inalienable and sacred rights of people. After England and France, United States of America brought Bill of Rights. The United States of America was the first nation to incorporate the Bill of Rights in the Constitution and give the constitutional status to the rights of the people.

The framers of the Constitution of India have adopted the fundamental rights from the United States of America. The inclusion of fundamental rights in the Indian Constitution is in accordance with the modern democratic thought. In case of *A.K. Gopalan v State of Madras*, AIR1950SC27, the Supreme Court of India said that the aim of having declaration of fundamental right is that certain elementary rights, such as, right to life liberty, freedom of speech, freedom of faith and so on should be regarded as inviolable under all conditions and that the shifting majority in Legislature of the country should not have a free hand in interfering with these fundamental rights.

Need for Fundamental Rights

Fundamental rights are very essential for protecting individuals against the arbitrary exercise of power by the state. These rights have been enshrined in the constitution of India to ensure equality among all the individuals and to protect their right to freedom, right to life, right to food, right to religious freedom, right against exploitation and many other rights. These rights are guaranteed for the protection of public as well as private rights.

The Supreme Court of India has stressed upon the fundamental rights in case of *Maneka Gandhi v Union of India* and said that 'these fundamental rights represent the basic values cherished by the people of this country (India) since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. 'They weave a 'pattern of guarantee' on the basic structure of human rights, and impose negative obligations on the state not to encroach on individual liberty in its various dimensions.

There was a need for the inclusion of fundamental rights in the constitution of India because these rights are essential for individuals for attaining their full intellectual, moral and spiritual status. It is a reminder to the state that it has to respect and protect certain basic rights of the individuals. The main object behind including Part III in the Constitution of India was to establish the rule of law.

When can Fundamental Rights be Suspended?

The fundamental rights guaranteed under Part III are not absolute rights and can be suspended by the government in case of emergency. According to Article 358 of the Constitution Article 19 will automatically suspended on the proclamation of emergency by the President of India on the ground of war or external aggression. The President of India may suspend any fundamental right in the period of emergency except Articles 20 and 21.

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Rights Available only Against State

Fundamental rights are available only against state and not against any individual. These rights are guaranteed to be enforced against the state and not against individuals. These rights are for the protection of individuals against arbitrary state action and to establish the rule of law. If any right is violated then an action can be brought against the state. These fundamental rights are a guarantee against state action as distinguished from the actions of the private actors/individuals which is sufficiently protected by the ordinary laws of the land.

Classification of Rights

Articles 12 to 35 of the Indian Constitution cover the Fundamental Rights of the citizen of the country. These Fundamental Rights enshrined in Part III indicate that all the citizens are equally treated by the nation irrespective of caste, sex and creed. The fundamental rights enumerated in Part III of the Constitution can be classified as follows:

Definition of State (Article 12): Article 12 defines the term state as used in different Articles in Part III of the Constitution. As the fundamental rights are available against state only therefore it was essential to define the state.

Article 12 says, 'In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.' According to Article 12 state includes the following:

- (i) The Government and Parliament of India, i.e., the Executive and Legislature of the Union;
- (ii) The Government and Legislature of Each State i.e., the Executive and Legislature of states;
- (iii) All local or other authorities within the territory of India;
- (iv) All local or other authorities under the control of the Government of India.

The actions of these organs and authorities can be challenged in the court in case of violation of fundamental rights.

Laws of inconsistent with or in derogation of the Fundamental Rights (Article 13):

Article 13 says that, '(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void. (2) 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. (3) In this Article, unless the context otherwise requires,— (a) 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of

law; (b) 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. (4) Nothing in this Article shall apply to any amendment of this Constitution made under Article 368.'

Article 13 provides for judicial review of all the legislations in India past as well as future. This power has been conferred on the high courts and the supreme court of India, which can declare a law unconstitutional if it is inconsistent with any provision of Part III of the Constitution. Judicial review is the power of the court to examine a law and to declare it unconstitutional if it violates the fundamental rights of the people. Judicial review is interposition of the judicial restraint on the executive as well as the legislative organs of the government.

1. Right to Equality (Articles 14–18)

Articles 14 to 18 of the Constitution guarantee the right to equality to every citizen of India.

Article 14 embodies the general principle of right to equality before law. **Article 14** says that, 'the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.' Article 14 talks about equality before law and equal protection of law. The equality before law does not mean absolute equality among all the human beings. It means that every one shall be treated as equals and not receive any special privileges on the ground of birth creed, etc. According to Dr Jennings, 'equality before law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinction of race, religion, wealth, social status or political influence.' On the other hand equal protection of law means that all the persons should be treated alike in the similar circumstances.

The equal protection of law guaranteed by **Article 14** does not mean that all the laws should apply to all persons. It does not mean that every law must have universal application for all persons or not by nature, attainment or circumstances in the same position. The varying needs of the different classes of persons often require separate treatment.

In case of *Abdul Rehman v Pinto*, AIR 1951Hyd.11, the Andhra Pradesh high court held that from the very nature of the society, there should be different laws in different places and the legislature controls the policy and enacts laws in the best interest of the safety and security of the state. The court further held that, in fact identical treatment in unequal circumstances would amount to inequality. So a reasonable classification is necessary for the progress of society. So Article 14 talks about equality and forbids class legislation but it does not forbid classification.

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However, the classification must not be arbitrary, artificial or evasive and must be just and reasonable.

In case of *E.P. Royappa v State of Tamil Nadu*, AIR 1974SC555, the Supreme Court of India held that, “equality is a dynamic concept with many aspects and dimensions and cannot be ‘cribbed, cabined or confined’ within traditional or doctrinaire limits. From a positive point of view, equality is antithetic to arbitrariness.

In fact equality and arbitrariness are sworn enemies; one belong to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it. That is unequal both according to political logic and constitutional law and therefore violative of Article 14. In case of *Maneka Gandhi v Union of India*, AIR1978SC597, Bhagwati J. said that, “equality is dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence.”

So the doctrine of classification is merely a judicial formula for determining whether the legislative or executive action is arbitrary and therefore constitutes denial of equality. Article 14 is a guarantee against arbitrariness and if an action of state is arbitrary it cannot be justified even on the basis of doctrine of classification. So if an act of state is arbitrary it is unequal and therefore violative of Article 14.

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth or any of them (Article 15)

Article 15 says that

‘(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.(3) Nothing in this Article shall prevent the State from making any special provision for women and children. (4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.(5) Nothing in this Article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.’

Article 15 provides for a particular application of the general principle set down in Article 14. When the discrimination is based upon any of the grounds mentioned in Article 15, the reasonableness of classification will be tested under Article 14. The guarantee under Article 15 is available only to the citizens of India and not every person whether citizen or not as in Article 14. Clause (1) of Article 15 directs the state not to discriminate against a citizen only on the ground of religion, race, caste, sex, place of birth or any of them. The second clause prohibits the state as well as citizens from making such discrimination on access to shops, public restaurants, hotels and places of public entertainment or on the use of wells, tanks, bathing ghats, roads and places of public resort which are maintained wholly or partly out of State funds or which are dedicated to the use of the general public. Third clause empowers the state to make special provisions for the benefit of women and children. Fourth clause which was added by Constitution (First Amendment) Act, 1951 is an exception to Article 15 and 29(2) and empowers the state to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Article 15 was once again amended in 2005 by the Constitution (Ninety-third Amendment) Act, 2005, to add clause 5. Under clause 5 the state is enabled for making any special provisions relating to the admission to educational institutions including private educational institutions, whether aided or unaided by the State, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes, other than the minority educational institutions referred to in clause (1) of Article 30.

Equality of opportunity in matters of public employment (Article 16)

Article 16 of the constitution talks about equality of opportunity in matters of public employment. It says that, '(1) there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. (3) Nothing in this Article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment. (4) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. (4A) Nothing in this Article shall prevent the State from making any provision for reservation [in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the

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State.(4B) Nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year. (5) Nothing in this Article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.'

Article 16 provides equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. It prohibits the state from making any discrimination on the grounds of only of religion, race, caste, sex, descent, place of birth, residence or any of them, in respect of any employment or office under the State. Article 16 (1) and (2) applies only in respect of employment or office under the state. Clauses (3), (4), (4A), (4B), (5) provide exception to the general rule of equality of opportunity. Clause 4 enables the State for making any provision for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the State, in the opinion of the State. Clause (4A) enables the State from making any provision for reservation in matters of promotion, in favour of the Scheduled Castes and the Scheduled Tribes which, are not adequately represented in the services under the State in the opinion of the State. Article 16 was amended in 2000 by the Constitution (Eighty-first Amendment) Act, 2000, and clause 4B was inserted seeks to end 50% limit for Scheduled Castes, the Scheduled Tribe and other backward classes in backlog vacancies which could not be filled up due to the non-availability of eligible candidates of these categories in the previous year or years. Clause (5) saves a law from the operation of clauses (1) and (2) which provides for the incumbent of any religious qualification for appointment and the state is required to appoint a person professing a particular religion or belonging to a particular denomination for being the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body.

Article 16 deals with the employment and appointment under the state and does not deal with the discrimination like Article 15. Article 16 guarantees equality of opportunity in matter of appointment in state services. It does not prevent the state from prescribing the necessary qualifications and selective tests for recruitment of government services. The qualification prescribed may besides mental excellence include physical fitness sense of discipline, moral integrity and loyalty to the state.

Abolition of untouchability (Article 17)

Article 17 provides that, 'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law.'

Article 17 abolishes untouchability and forbids its practice in any form. If untouchability is practiced then it is an offence and punishable in accordance with the law. The Parliament has enacted Untouchability (Offences) Act, 1955 amended by Untouchability (Offences) Amendment Act, 1976 in order to make the law more stringent to remove untouchability from the society.

Abolition of Titles (Article 18)

Article (Offences) 18 provides that, '(1) No title, not being a military or academic distinction, shall be conferred by the State. (2) No citizen of India shall accept any title from any foreign State. (3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State. (4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.'

Article 18 prohibits the state from conferring titles to anybody whether citizen or non-citizen. However, military and academic distinctions are exempted from the prohibition. This Article not only prohibits the state from conferring the titles but also prohibits the citizens from accepting title from any foreign state. Constitution, under Article 18, also prohibits anyone who is not a citizen of India who is holding any office of profit or trust under the State to accept any title from any foreign State without the consent of the President.

2. Right to freedom (Articles 19–22)

Right to freedom is one of the most important of all the fundamental rights. Articles 19 to 22 deal with different aspects of this basic right.

Protection of certain rights regarding freedom of speech, etc. (Article 19)

Article 19 provides that,

(1) All citizens shall have the right (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; (g) to practice any profession, or to carry on any occupation, trade or business. (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. (3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing

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law in so far as it imposes, or prevent the State from making any law imposing, in the interests of 4[the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause. (4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of 4[the sovereignty and Protection of certain rights regarding freedom of speech, etc.

(5) Nothing in 1[sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe. (6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said subclause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, (i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

The rights granted under Article 19 are available only to the citizen of India.

Article 19 guarantees following six fundamental freedoms to the citizens of India:

- (i) Freedom of speech and expression
- (ii) Freedom of Assembly
- (iii) Freedom to form Association
- (iv) Freedom of Movement
- (v) Freedom to reside and to settle
- (vi) Freedom of profession, occupation, trade or business.

However, these six freedoms are not absolute and reasonable restrictions can be imposed upon these freedoms. The restrictions to restrain these freedoms cannot be arbitrary therefore a restriction to be constitutionally valid must fulfill these two tests:

- (i) The restriction must be for the purpose mentioned in clauses 2 to 6 of Article 19.
- (ii) The restriction must be reasonable.

Test of Reasonable Restriction: the restrictions on the rights under Article 19 can only be imposed by law and not executive or departmental instructions. Reasonable restriction under Article 19 (6) means that the restriction imposed on

a person in the enjoyment of his right should not be arbitrary or of an excessive nature beyond what is required in the interest of public. In case of *Chintamani Rao v State of M. P.*, AIR1951SC118, the supreme court of India held that a law which arbitrarily or excessively invades the rights if a person cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the right guaranteed under Article 19(1) and the social control in 19(6), it must be held to be wanting in quality. In this the Supreme Court has down the following guidelines for determining the reasonableness of restrictions:

- (1) It is the courts and not the legislature which has to judge the finally whether a restriction is reasonable or not.
- (2) The term 'reasonable restriction' in Article 19(6) connotes that the limitation imposed on a person in the enjoyment of his right should not be arbitrary or of an excessive nature beyond what is required in the interest of public. The word 'reasonable' implies intelligent care and deliberation that is the choice which reason dictates.
- (3) There is no exact standard or general pattern of reasonableness that can be laid down for all cases. Each case is to be judged on its own merits. The standard varies with the nature of the rights infringed, the underlying purpose of the restriction imposed, the extent and the urgency of the evil sought to be remedied, the disproportion of the imposition, and the prevailing conditions at the time.

In case of *N.B Khare v State of Punjab*, AIR1960SSC211, the Supreme Court held that the restriction must be reasonable from the substantial as well as procedural standpoint.

(i) Freedom of Speech and Expression [(Articles 19(1)(a) and 19 (2)]

Freedom of speech and expression is indispensable. Freedom of speech and expression means to express one own opinion freely by words of mouth, writing, printing, pictures or by any other means. The freedom of speech and expression includes the expression of one idea through any communicable medium or visible representation.¹ In case of *Romesh Thaper v State of Madras*, AIR1950SC124, the Supreme Court observed that, "freedom of speech lay the foundation of all democratic organizations, for without free political discussion no public education so essential for the proper functioning of the process of popular government is possible." Freedom of speech and expression also includes freedom of press. The Supreme Court in *Romesh Thaper* case² said that the expression connotes publication and thus the freedom of press is included in this category. Free propagation of ideas is the necessary objective and this may be done through the press. The freedom of propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. The freedom of speech and expression helps the individuals in attaining the self fulfillment and assist in the discovery of truth. It strengthens the capacity of individuals to participate in decision making and also provides a mechanism by which it would

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be possible to establish a reasonable balance between the stability and social change.

The freedom of speech and expression includes right to propagate one's views: The Supreme Court examined the scope of freedom of speech and expression in *Life Insurance Corporation of India v Manubhai D. Shah*, (1992)3SCC637 and observed that, 'the freedom of speech and expression must be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio visual instrumentalities. It therefore includes the right to propagate one's views through any other communication channel, e.g. the radio and the television. Every citizen of this country therefore has the right to air his views through the printing and electronic media subject to permissible restrictions imposed under Article 19 (2) of the Constitution.'

The freedom of speech and expression includes freedom to silence: The supreme court of India has held in National Anthem case³ that the freedom of speech and expression also includes the freedom to silence.

In this case three children belonging to Jehovah were expelled from the school for refusing to sing the national anthem. The circular issued by the director of Public instruction Kerala had made it obligatory for the students to sing national anthem in the school. In this case the children stood up respectfully when the national anthem being sung at their school but they did not join in singing it. They refused to sing the national anthem as according to them it was against their religious belief which does not permit them to join any ritual except their prayer to Jehovah, their god. They challenged the validity of their expulsion before the Kerala High Court which upheld their expulsion as valid on the ground that it was their fundamental duty to sing the national anthem. On appeal the Supreme Court held that there was no law under which their fundamental right under Article 19(1) (a) could be curtailed. The right under Article 19(1)(a) can only be regulated by law and on the grounds mentioned in the Constitution and not by executive instructions. They did not commit any offence under the Prevention of Insults National Honour Act, 1971, because they stood up respectfully when the national anthem was being sung. Accordingly, it was held that the children's expulsion from the school was a violation of their fundamental right under Article 19(1) (a) which also includes the freedom of silence. The judgment of the will have far reaching consequences. It is likely to be interpreted as a license by all to disregard the national anthem which is the symbol of our national unity in the name of religion. Freedom of speech and expression has nothing to do with a person refusing to sing the national anthem.

Commercial Advertisement: Commercial advertisement is also a part of freedom of speech and expression. In case of *Tata Press Ltd. v Mahanagar Telephone Nigam Ltd.*, (1995)5SCC139, the Supreme Court held the commercial speech (advertisement) is a part of the freedom of speech and expression granted under Article 19(1)(a) of the Constitution. It can only be restricted on the grounds specified in Clause 2 of Article 19, such as in the interests

of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. The court made it clear that the commercial advertisements which are deceptive, unfair, misleading, and untruthful could be regulated by the government. Commercial speech cannot be denied the protection of Article 19 (1)(a) of the Constitution merely because the same are issued by businessmen.

Freedom of the press: Freedom of the Press is also included under **Article 19(1)(a)** of the Constitution. In case of *Indian Express News Papers v Union of India* (1985)1SCC641, the Supreme Court speaking about the freedom of press observed that, 'the expression 'freedom of the press' has not been used in 19, but it is comprehended with in 19(1)(a). The expression means freedom from interference, from authority, which would have the effect of interference with the content and circulations of newspapers. There cannot be any interference with that freedom in the name of public interest. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Freedom of press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of the press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate.'

In another case *Printers (Mysore) Ltd. v Assistant Commercial Tax Officer*, (1994)2SCC434 the Supreme Court has held that no sales tax can be imposed on sale of newspapers in the country. However, the court clarified that this does not mean that press is immune either from taxation or from general law relating to industrial relations or from the state regulation of condition of service of its employees.

The prohibition is upon the imposition of any restriction to disseminate information and to the circulation of newspaper. The court further held that freedom of press stands at the higher footing than other enterprises.

In *Sakal Papers Ltd. v Union of India* AIR1962SC305, the Supreme Court of India held that the right of freedom of speech and expression cannot be taken away with the object of placing restrictions on the business activity of a citizen. Freedom of speech can only be retracted on the grounds mentioned in Clause (2) of Article 19. It cannot like the freedom to carry on business, be curtailed in the interests of the general public.

In *Bennet Colman and Co. v Union of India* AIR1973SC106, the Supreme Court held that freedom of the press is both quantitative and qualitative. Freedom lies both in circulation and in content. The news print policy which permits news papers to increase circulation by reducing the number of pages, page area and periodicity, prohibits them to increase the number of pages page area and periodicity by reducing circulation. These restrictions restrict the newspapers in adjusting their page number and circulation.

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Odyssey Communications Pvt. Ltd. v Lok Vidayan Sanghatana (1988) 3SCC410, it was held that the rights of a citizen to exhibit films on the Doordarshan, on the terms and conditions imposed by the Doordarshan is part of the fundamental right of freedom of speech and expression guaranteed under Article 19(1) (a), which can be curtailed only on the grounds mentioned in Article 19(2).

Grounds of restrictions: clause (2) Article 19 contains the grounds on which restrictions on the freedom of speech and expression can be imposed:

1. The security of the state
2. Friendly relations with foreign states
3. Public order
4. Decency or morality
5. Contempt of court,
6. Defamation
7. Incitement to an offence
8. The sovereignty and integrity of India

1. The security of the state: Under Article 19(2) reasonable restriction can be imposed on freedom of speech and expression on the ground of the security of the State. In case of *Romesh Thaper v State of Madras*, AIR 1950SC124, Supreme Court held that the term 'security of state' refers only to serious insurrection and not ordinary breaches of public order or public safety.

2. Friendly relations with foreign states: This ground was added by Constitution (1st Amendment) Act, 1951 to prohibit the unrestrained malicious propaganda against a foreign friendly state which may jeopardize the good relations between India and that friendly state.

3. Public order: This ground was added by Constitution (1st Amendment) Act, 1951 to meet the situation arose from the supreme courts' decision in *Romesh Thaper* case in which the supreme court held that 'public order' is an expression of wide connotation and signifies that the state of tranquility which prevails among the member of political society as a result of internal regulations enforced by the government.

4. Decency or morality: decency or morality is another ground on which a reasonable restriction can be imposed upon the exercise of the right of freedom of speech and expression. Indecency under the Constitution of India is identical with the word obscenity under English law. Section 292, 293, 294, 295 and 297 of the IPC, "Sale, etc., of obscene books, etc. (1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all

relevant circumstances, to read, see or hear the matter contained or embodied in it. (2) Whoever-(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, reduces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or (b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or (c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or (d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or (e) offers or attempts to do any act which is an offence under this section, shall be punished 1[on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.’

Exception- ‘This section does not extend to-(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure-(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or (ii) which is kept or used bona fide for religious purposes; (b) any representation sculptured, engraved, painted or otherwise represented on or in (i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or (ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.’

5 Section 293, IPC, ‘Sale, etc., of obscene objects to young person-Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees. 6 294IPC, ‘Obscene acts and songs- Whoever, to the annoyance of others, (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be

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punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Indian Penal code provides for restriction on the freedom of speech and expression in the interest of decency and morality. These sections prohibit the sale or distribution or exhibition of the words etc. in public places. But Indian Penal Code does not lay down any test for determination of obscenity. In case of *Ranjit D. Udeshi v State of Maharashtra*, AIR 1965 SC 881, the Supreme Court accepted the test laid down in English case of *R. v Hicklin* to judge the obscenity of a matter.

5. Contempt of court: Another ground on which the restriction on freedom of speech and expression can be imposed is on the ground of contempt of court. Section 2 of the Contempt of Court Act, 1971 defines contempt of court to mean civil contempt or criminal contempt. Section 2 (b) says that civil contempt means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court. Section 2(c) says criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which (i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or (ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

However, the following acts do not amount to contempt of court:

- (i) Innocent publication and distribution of nay matter;
- (ii) Publication of fair and accurate report of judicial proceedings;
- (iii) Fair criticism of judicial act;
- (iv) Complain against presiding officer made in good faith.
- (v) Publication of fair information relating to proceeding in chambers or in camera.

6. Defamation: Defamation is a ground to restrict the freedom of speech and expression. Any statement which injures the reputation of someone amounts to deflation of that person. Section 499 contains criminal law regarding defamation. An action under law of torts can also be brought for defamation.

7. Incitement to an offence: This ground by Constitution (1st Amendment) Act, 1951 to impose a reasonable restriction on the freedom of speech and expression.

8. Integrity and sovereignty of India: This ground imposing restriction on the freedom of speech and expression was added by the Constitution (Sixteenth Amendment) Act, 1963.

(ii) Freedom of Assembly

Article 19(1) (b) guarantees to all citizens of India right, 'to assemble peaceably and without arms'. The right of assembly includes the right to hold meetings and to

take out processions. This right is however subject to some restrictions which are as follows:

1. The assembly must be peaceable;
2. It must be unarmed;
3. Reasonable restrictions can be imposed under clause (3) of Article 19.

The right of assembly is implied in the very idea of the democratic government. The right of assembly thus includes right to hold meetings, and to take processions. This right, like other rights is not absolute but restrictive. The assembly must be nonviolent and must not cause any breach of public peace. If the assembly is disorderly or riotous then it is not protected under Article 19(1) (b) and reasonable restrictions may be imposed under clause (3) of Article 19 in the interests of sovereignty and integrity of India or public order.

If an assembly becomes unlawful it can be dispersed. Chapter VIII of the Indian Penal Code lays down the conditions when an assembly becomes unlawful. Under section 141 of the Indian Penal Code, an assembly of five or more persons becomes an unlawful assembly if the common object of the persons composing assembly is:

- (a) To resist the execution of any law or legal process;
- (b) To commit any mischief or criminal trespass;
- (c) Obtaining possession of any property by force;
- (d) To compel a person to do what he is not legally bound to do or omit which he is legally entitled to do;
- (e) To overawe the government by means of criminal force or show of criminal force or any public servant in the exercise of his lawful powers.

An assembly which was not unlawful when assembled may subsequently become unlawful if it becomes violent or is likely to result in disturbance.

(iii) Freedom to form Association [Article 19(1)(c) and 19(4)]

Article 19(1) of the Constitution of India guarantees to all the citizens of India the right 'to form associations and unions'. Under clause (4) of Article 19, however, the state may by law impose reasonable restriction on these rights in the interest of public order or morality or the sovereignty and integrity of India.

The right guaranteed is not merely the right to form association but also to continue with the association as such. The freedom to form association implies also the freedom to form or not to form, to join or not join, an association or union.

Restrictions on the freedom of association: the right of association, like other individual freedom is not unrestricted. **Clause (4) of Article 19** empowers the state to impose reasonable restrictions on the right of freedom of association and union in the interest of 'public order' or 'morality' or 'sovereignty or integrity' of

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India. It saves existing laws in so far as they are not inconsistent with fundamental rights of association.

(iv) Freedom of Movement [Article 19(1)(d) and 19(5)]

Article 19(1) (d) guarantees all citizens of India 'to move freely throughout the territory of India.' This right is subject to certain restrictions mentioned under Article 19(5) which provide restriction on the ground of in the interest of public and in the interest of any schedule tribe.

Article 19(1)(d).

(v) Freedom of Residence [Article 19(1)(e) and 19(5)]

According to Article 19(1) (e) every citizen of India has the right 'to reside and settle in any part of the territory of India'. This right is subject to certain restrictions mentioned under Article 19(5) which provide restriction on the ground of in the interest of public and in the interest of any schedule tribe. Article 19(1) (e). The object of the clause (6) is to remove internal barriers within India or any of its parts.

(vi) Freedom of Profession, Occupation, Trade or Business (Article 19(1)(g) and 19(6))

Article 19(1) (g) provides freedom to practice any profession, or to carry on any occupation, trade or business. Article 19(6) imposes reasonable restrictions on this freedom on the grounds of (i) the interests of the general public, (ii) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or (iii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Protection in respect of Conviction for Offenses (Article 20)

Article 20 of the Indian Constitution provides the following safeguards to the persons accused of crimes:

- (a) *Ex-post facto* law (Clause 1, Article 20)
- (b) Double jeopardy (Clause 2, Article 20)
- (c) Prohibition against Self-incrimination (Clause 3, Article 20)

Protection against Ex-post facto law Article 20 (1) says that, '(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.' Article 20(1) imposes a limitation on the law making power of the legislature. Ordinarily a legislature can make prospective as well as retrospective laws; clause (1) of Article 20 prohibits the

legislature to make retrospective criminal laws. However it does not prohibit the imposition of civil liability retrospective i.e. with effect from past date. So a tax can be imposed retrospectively.

An ex-post facto law is a law which imposes penalties retrospectively, i.e. on acts already done and increases the penalty for such acts. The first part of clause (1) provides that, 'No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence'. This means that if an act is not an offence at the date of its commission it cannot be an offence at the date subsequent to its commission.

The second part of Clause (1) protects a person from a 'a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence'. In *Kedar Nath v State of West Bengal*, AIR1953SC404, the accused committed an offence in 1947 which under the Act then in force was punishable imprisonment or fine or both. The Act was amended in 1949 which enhances the punishment for the same offence by an additional fine equivalent to the amount of money procured by the accused through the offence. The Supreme Court held that the enhanced punishment could not be applicable to the act committed by the accused in 1947 and hence set aside the additional fine imposed by the amended act.

But the accused can take advantage of the beneficial provisions of the ex post facto laws. In *Ratan Lal v State of Punjab*, AIR1965SC444, a boy of sixteen year old was convicted for committing an offence of house trespass and outraging the modesty of a girl aged seven years. The magistrate sentenced him for six months rigorous imprisonment and also imposed fine. After the judgment of the magistrate, the Probation of Offenders' Act, 1958 came into force. It provided that a person below 21 years of age should not ordinarily be sentenced to imprisonment. The Supreme Court held that the rule of beneficial interpretation required that ex-post facto law could be applied to reduce the punishment. So an ex-post facto law which is beneficial to the accused is not prohibited by Clause (1) of Article 20.

(b) Double jeopardy (Clause 2, Article 20): the constitution under Article 20(2) says that, '(2) No person shall be prosecuted and punished for the same offence more than once.' This clause embodies the common law rule of *nemo debet bis vexari* which means that no man should be put twice in peril for the same offence if he is prosecuted again for the same offence for which he has already been prosecuted, he can take complete defense of his for mere acquittal or conviction. In *Maqbool Hussain v State of Bombay*, AIR1953SC325, the appellant brought some gold into India and he did not declare that he had brought gold with him to the customs authorities on the airport. The customs authorities' confiscated the gold under the Sea Customs Act. He was later charged for having committed an offence under the Foreign Exchange Regulations Act. The appellant contended that, the second prosecution was in violation of Article 20(2) as it was for the same offence.

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The court held that Sea Custom Authorities were not a court or judicial tribunal and the adjudging of confiscation under the Sea Customs Act did not constitute a judgment of judicial character necessary to take the plea of the double jeopardy, hence the prosecution under the Foreign Exchange Regulation Act is not barred.

Article 20(2) will have no application where judgment is not for the same offense. Thus if the offenses are distinct the rule of double jeopardy will not apply. Clause (2) of Article 20 does not apply where the person is prosecuted and punished for the second time and subsequent proceeding is mere continuation of the previous proceeding, example in the case of an appeal against acquittal.

Protection against self-incrimination Article 20(3): Article 20(3) provides that No person accused of any offence shall be compelled to be a witness against himself. The fundamental rule of criminal jurisprudence against self-incrimination has been raised to a rule of constitutional law in Article 20 (3). This guarantee extends to any person accused of an offense and prohibits all kind of compulsions to make him a witness against himself. In case *M.P. Sharma v Satish Chandra*, AIR 1954SC300, and the Supreme Court observed that this right embodies the following essentials:

- (i) It is a right pertaining to a person who is accused of an offense.
- (ii) It is a protection against compulsion to be a witness.
- (iii) It is a protection against such compulsion relating to is giving evidence against him.

Protection of life and personal liberty (Article 21): Article 21 of the constitution says that, 'No person shall be deprived of his life or personal liberty except according to procedure established by law.' prior to Maneka Gandhi's decision⁷, Article 21 guaranteed the right to life and personal liberty to citizens only against the arbitrary actions of the executive, and not from legislative actions. The state could interfere with the liberty of citizens if it could support its actions by a valid law. But after the Maneka Gandhi's decision, Article 21 now protects the right of life and personal liberty of citizens not only from the executive actions but also from the legislative actions. A person can be deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and second there must be a procedure prescribed by that law, provided that the procedure is just, fair and reasonable. The right guaranteed in Article 21 is available to citizens as well as noncitizens.

In case of *A.K. Gopalan v Union of India*, (1950) SC27, the supreme court held that the personal liberty in Article 21 means nothing more than the liberty of the physical body, that is, freedom from arrest and detention without the authority of law. In Maneka Gandhi's case the Supreme Court overruled the Gopalans's case and has widened the scope of the words 'personal liberty' considerably. Bhagwati J. in this case observed that 'the expression personal liberty

in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under 19.' He further said that the attempt of the court should be to expand the reach and ambit of fundamental rights rather than to attenuate their meaning and content by a process of judicial construction.' The court laid down great stress on the procedural safeguards. The procedure must satisfy the requirements of natural justice i.e., it must be just fair and reasonable.

In *Kharak Singh v State of U.P.*, AIR1963SC1295, it was held that the expression life was not limited to bodily restraint or confinement to prison only but something more than animal existence.

Right to life also includes right to travel abroad. In *Satwant Singh v Assistant Passport Officer, New Delhi*, AIR1967SC1379 the Supreme Court held that the right to travel abroad is a part of a person's personal liberty within the meaning of Article 21.

Procedure established by law: In *Maneka Gandhi's* case the Supreme Court held that mere prescription of some kind of procedure is not enough to comply with the mandate of Article 21. The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary; otherwise it should not be on procedure at all and all the requirements of Article 21 would not be satisfied.

Right to live with human dignity: Right to life also includes right to live with human dignity. In *Maneka Gandhi's* case the Supreme Court held that the right to live is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. The Supreme Court has elaborated the same view in various other cases. In *Francis Coralie v Union Territory of Delhi*, AIR1978SC597, the Supreme Court held that the right to live is not restricted to mere animal existence. It means something more than just physical survival. The court said that, 'the right to live is not confined to the protection of any faculty or limb through which life is enjoyed or soul communicates with the outside world but it also includes the right to live with human dignity, and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse form, freely moving about and mixing and commingling with fellow human beings.'

In another case of *Peoples Union for Democratic Rights v Union of India*, AIR1982SC1473, the supreme court held that the non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live human dignity and violative of Article 21 of the Constitution. In *Chandra Raja Kumari v Police Commissioner Hyderabad* AIR1998AP302, the Supreme Court held that the right to live includes right to live with human dignity or decency.

In *State of Maharashtra v Chandrabhan*, (1983)3SCC387, the supreme court struck down a provision of Bombay Civil Services Rule, 1959, which

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provided for payment of only a nominal subsistence allowance of ₹ 1 per month to a suspended government servant upon his conviction during the pendency of appeal as unconstitutional on the ground that it was violative of Article 21 of the Constitution.

Right to livelihood: Right to life includes right to livelihood. In case of *Olga Tellis v Bombay Municipal Corporation*, AIR1986SC180, popularly known as *Pavement Dwellers Case* the Supreme Court held that the word life under Article 21 includes the right to livelihood also. The court said that, it does not mean merely that the life cannot be extinguished or taken away as for example by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect of right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Article 39(a) and 41 require the state to secure to the citizen an adequate means of livelihood and the right to work, therefore the right to livelihood cannot be excluded from right to life.

In the case of *D.K. Yadav v JMA Industries*⁸ the Supreme Court held that the right to life enshrined under Article 21 includes the right to livelihood therefore termination of the service of a worker without giving him reasonable opportunity of being heard is unjust, arbitrary and illegal.

Right to Privacy: The Supreme Court of India has held in various cases that right to privacy is a part of right to life. In case of *R. Rajagopal v State of Tamil Nadu*⁹ popularly known as *Auto Shanker Case*. The Supreme Court held that right to privacy or right to be let alone is guaranteed by Article 21 of the Constitution. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood etc. No one can publish anything concerning the above matters without his consent truthful or otherwise. If he does so he would be violating the rights of the person concerned and would be liable in action for damages. In another case *Mr. 'X' v Hospital 'Z'*¹⁰ the Supreme Court held that although the right to privacy is a fundamental right under Article 21 of the Constitution but is not an absolute and restrictions can be imposed on it for the prevention of crime, disorder or protection of health or morals or protection of rights and freedoms of others. The Supreme Court further held that by disclosing that the appellant was suffering from AIDS the doctors had not violated the right to privacy of the appellant guaranteed under Article 21. The Court held that although the right to privacy is a fundamental right under Article 21, but it is not an absolute right and retractions can be imposed on it. The right to marry is an essential element of right to privacy but is not absolute. Marriage is the sacred union, legally permissible of two healthy bodies of opposite sexes. Every system of matrimonial law provides that if person is suffering from venereal disease in a communicable form, it will be open to the other partner in the marriage to seek divorce. If a person is suffering from that

disease even prior to the marriage, he has no right to marry so long as he is not fully cured of the disease.

Right to Die- (not a fundamental right under Article 21): The question whether the right to die is included in Article 21 of the constitution came for consideration for the first time before the Bombay High Court in *State of Maharashtra v Maruty Sripati Dubal*¹¹ the Bombay high court held that the right to life guaranteed under Article 21 includes the right to die, and consequently the court struck down section 309 of IPC which provides punishment for attempt to commit suicide by a person as unconstitutional.

On the other hand, the Andhra Pradesh High Court in *Chenna Jagadeeswar v State of A.P.*,¹² held that the right to die is not a fundamental right within the meaning of Article 21 and hence section 309 is not unconstitutional. In *P. Ratinam v Union of India*, (1994)3SCC394, the Supreme Court held that section 309 of IPC is violative of Article 21 and hence it is void. A person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking. The court said that, 'section 309 of the IPC was a cruel and irrational provision'.

In *Gian Kaur v State of Punjab*, (1996)2SCC648, a five judge constitutional bench of the supreme court has overruled the P. Ratinam's case and held that the right to life under Article 21 of the constitution does not include right to die or right to be killed. The right to die is inherently inconsistent with the right to life as is death with life. The court said that, "any aspect of life which makes it dignified may be read into Article 21 of the constitution but not that which extinguishes it and is, therefore inconsistent with the continued existence of life resulting in effacing the right itself. The right to life is natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and incompatible and inconsistent with the concept of right to life."

Protection of Ecology and Environmental Pollution

In *rural litigation and Entitlement Kendra v State of UP*, (1985)2SCC431 the court ordered the closure of certain lime stone quarries on the ground that there are serious deficiencies regarding safety and hazardous in them.

In *Sriram Food and Fertilizers Case*¹³ the Supreme Court directed the company manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workman and people living in its neighborhood, to take all necessary safety measures before reopening the plant.

In *M.C. Mehta v Union of India*, (1987) 4SCC463, the Supreme Court ordered the closure of tanneries at Jajman near Kanpur polluting the River Ganga. In case of *Vellore Citizens v Welfare Forum Union of India*, (1996)5SCC650, the supreme court held that industries though are of vital importance to the countries development, but they cannot be allowed to destroy the ecology, degrade the environment and pose a health hazard and cannot be permitted to continue their operation unless they setup pollution control devices. Kuldip Singh J. said that,

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‘principle of sustainable development has to be adopted as a balancing concept between ecology and development. Precautionary principle and polluter pays principle are essential feature of sustainable development and has to be adopted.’

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Right to Education

Right to education has become a fundamental right under Article 21A of the constitution. This Article has been added by the Constitution (86th Amendment) Act, 2001.

In case of *Mohini Jain v State of Karnataka*, (1992)3SCC666, popularly known as Captivation Fee case, the supreme court has held that right to education is fundamental right under Article 21 of the constitution which cannot be denied to a citizen by charging higher fee known as the captivation fee. The right education flows directly from right to life.

Protection against arrest and detention in certain cases (Article 22)

Article 22 says that,

(1) No person who is arrested shall be detained in custody without being informed, as soon as may not be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate. (3) Nothing in clauses (1) and (2) shall apply- (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention. (4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless-(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or (b) such person is detained in accordance with the provisions of any law made by Parliament under sub clauses (a) and (b) of clause (7) (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. (6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers being against the public interest to disclose.

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(7) Parliament may by law prescribe: (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4); (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and (c) the procedure to be followed by an Advisory Board in an inquiry under [sub-clause (a) of clause(4)].

Article 22 deals with two different matters (1) persons arrested under ordinary law of crimes and (2) persons detained under the law of preventive detentions. The first two clauses of the Article deal with detention under the ordinary law of crimes and lay down the procedure which has to be followed when a man is arrested and the remaining clauses (3),(4),(5)(6) deal with persons detained under a preventive detention law and lay down the procedure which is to be followed when a person is detained under the law.

Rights of arrested persons under ordinary laws: Clauses (1) and (2) of Article 22 guarantees four rights on the persons who arrested for any offense under an ordinary law:

1. The right to be informed as soon as may be of the ground of arrest;
2. The right to consult and to be represented by the lawyer of his own choice;
3. The right to be produced before a Magistrate within 24 hours;
4. The freedom from detention beyond the said period except by the order of the Magistrate.

These rights are available to both citizens as well as non-citizens and not to persons arrested and detained under any law providing for preventive detention.

Preventive detention laws: Clauses (4) to (7) of Article 22 provide the procedure to be followed if a person is arrested under the law of preventive detention.

Constitutional safeguards against preventive detention: Though the Constitution has recognized the need of laws as to preventive detention, it has also provided safeguards to mitigate their harshness by placing fetters on legislative powers conferred on the Legislature. Clauses (4) to (7) guarantee the following safeguards to a person arrested under preventive detention laws:

- (a) Review by Advisory Board
 - (b) Communication of grounds of detention to detenu
 - (c) Detenu's right of representation
- (a) Review by Advisory Board:** According to clause (4) of Article 22 as amended by the 44th Amendment Act, 1978 provides that a person cannot be detained for more than two months without obtaining the opinion of advisory board.

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(b) Communication of grounds of detention to detainee: Article 22(5) gives two rights to the detainee: (1) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall communicate to such person the grounds of arrest (2) give him the earliest opportunity of making a representation against the order.

(c) Detainee's right of representation: the other right given to the detainee is that he should be given the earliest opportunity of making a representation against detention order.

3. Right against exploitation (Articles 23 and 24)

Prohibition of traffic in human beings and forced labour (Article 23): Article 23 says that, Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.(2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Traffic in human beings means selling and buying men and women like goods and includes immoral traffic in women and children for immoral and other purposes. **Article 23** protects the individual not only against the state but also private citizens. It imposes an obligation on the states to take steps to abolish evils of traffic in human beings and *begar* and other similar forms of forced labour wherever they are found. **Article 23** prohibits the system of forced labour because it is a form of force labour within the meaning of Article 23.

In case of *Peoples Union for Democratic Rights v union of India*, AIR1982SC1943, the Supreme Court held that the scope of Article 23 is wide and unlimited and strikes at traffic in human beings and *begar* and other forms of forced labour.

Article 23(2) contains an exception to the rule in Clause (1) and provides that the state is empowered to impose compulsory services for public purposes. But in imposing such compulsory services the state cannot make any discrimination on the ground only of religion, race, caste or class or any of them.

Prohibition of employment of children in factories, etc. (Article 24):

Article 24 provides that, 'No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.' Article 24 prohibits the employment of children below the age of 14 years in factories and hazardous employment. This provision is embodied in the constitution to safeguard the life of children. In case of *M.C. Mehta v Union of India*, AIR1997SC699, the Supreme Court held that children below the age of 14 years cannot be employed in any hazardous industry, mines or other works.

4. Right to Freedom (Articles 25–28)

Universal Declaration of
Human Rights

Though India is a secular state, it has provided right of religious freedom. Provisions have been made in the Constitution of India under Article 25–28 for protecting and safeguarding the right to freedom of religion.

Freedom of conscience and free profession, practice and propagation of religion (Article 25): Article 25 provides that, (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. *Explanation I.*—the wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion. *Explanation II.*—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

So Article 25 guarantees every person freedom of conscience and free profession, practice and propagation of religion. But the right guaranteed under Article 25 is not absolute and subject to: (1) public order, morality and health and (2) regulation of economic, financial, political, and secular activities associated with religious practices, (3) social welfare and social reforms.

Freedom to manage religious affairs (Article 26): Article 26 provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the following rights:

- (a) To establish and maintain institutions for religious and charitable purposes;
- (b) To manage its own affairs in matters of religion;
- (c) To own and acquire movable and immovable property; and
- (d) To administer such property in accordance with law.

The right guaranteed under Article 25 is an individual right while the right guaranteed under Article 26 is the right of an organized body like religious denominations or any other section thereof.

Freedom from taxes for promotion of any particular religion

(Article 27): Article 27 provides that, 'No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.' This Article emphasizes on the secular character of the state. The public money collected by way of taxes can be spent by the state for the promotion of any particular religion.

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Prohibition of religious instructions in state-aided institutions

(Article 28): Article 28 says that, (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds. (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. (3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Article 28 mentions four types of educational institutions:

1. Institutions wholly maintained by the state;
2. Institutions recognized by the states;
3. Institutions that are receiving aid out of the state fund;
4. Institutions that are administered by the state but are established under any trust or endowment.

5. Cultural and educational rights (Articles 29 and 30)

Article 29 provides that, '(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.'

Article 29(1) guarantees the citizens of India residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. A minority community can preserve its language, script or culture through educational institutions. This right is guaranteed to them by Article 30(1) which says that, 'all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.'

Which is further protected by Article 30 (2) which says that, 'the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.'

The supreme court of India has interpreted the rights guaranteed under Articles 29 and 30 in various important cases. Some of the most important cases in which the rights of minorities have been defined by the Supreme Court can be discussed as follows:

In case of *Anjuman-E-Islam v The State of Karnataka and Ors. (2001) 9SCC465* the appellant, a minority institution, filed an application against non-

grant of affiliation of Karnataka State University under section 53 of the Karnataka State University Act, 1976. Appellant have earlier filed the application seeking affiliation to start the B.Ed. College for the academic year 1980–81. The request of the appellant came to be rejected on the ground that the policy of the Government does not permit grant of affiliation to start any new B.Ed. college during the 8th Plan period. The supreme court of India held that the claim of the appellant has to be considered for grant of affiliation keeping in view the state of affairs which prevailed during the academic year 1980–82. The Court said that, ‘We cannot countenance the claim of the appellant that being a minority institution the general policy decision of the Government placing an embargo on the opening of new institutions cannot stand in the way of the appellant’s application being granted. The claim of the appellant has to be considered for grant of affiliation keeping in view the state of affairs which prevailed during the academic year 1980–82’.

In another case *Ashok Kumar Thakur v Union of India* (MANU/SC/1397/2008); the Supreme Court held that the minority institutions are also entitled to the exercise of fundamental rights under Article 19 (1) (g) of the constitution whether they be aided or unaided and in the case of Article 15(5), the minority educational institutions, whether aided or unaided, are excluded from the purview of Article 15(5) of the Constitution.

In *Bal Patil and Ors. v Union of India and Ors* (2005)6SCC690, an appeal was filed against the decision of High Court of Bombay. The appellant, which is an organization representing a section of Jain community, approached the Supreme Court by writ petition seeking issuance of a mandamus/direction to the Central Government to notify ‘Jains’ as a minority community under section 2(c) of the National Commission for Minorities Act, 1992. The Supreme Court held that Central Government will have no role to play in conferring minority status at Central level and respective State Government may consider the claims of Jains for grant of minority status.

Before the Central Government takes decision on claims of Jains as a minority under section 2(c) of the Act, the identification has to be done on a state basis. The power of Central Government has to be exercised not merely on the advice and recommendation of the Commission but on consideration of the social, cultural and religious conditions of the Jain community in each state. Statistical data produced to show that a community is numerically a minority cannot be the sole criterion. If it is found that a majority of the members of the community belong to the affluent class of industrialists, businessmen, professionals and propertied class, it may not be necessary to notify them under the Act as such and extend any special treatment or protection to them as minority.’ The court further said that, ‘the provisions contained in the group of Articles 25 to 30 are a protective umbrella against the possible deprivations of fundamental right of religious freedoms of religious and linguistic minorities.

The court also held that role of Minority Commission should be not to enlarge the list of minority communities on the contrary it should reduce the list.

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In case of *Board of Secondary Education Public & Teacher's Training v Jt. Director Public Institution, Sagar & others* (MANU/SC/1277/1998); it was held by the Supreme Court that right to administer is incidental to Art. 30. The denial of such right tantamount to violation of Art. 30.

In case of *Bramchari Sidheswar Shai and Ors. v State of West Bengal and Ors.* MANU/SC/0413/1995 AIR 1995SC2089, the Ramakrishna Mission had established educational institutions to which approval and affiliation were granted by the Government and the University. The dispute arose as regards the composition of the Governing Body, viz., whether the Government's nominee would be associated on a standard pattern? Ramakrishna Mission claimed minority status being a denomination. In that perspective, this Court while rejecting the claim of the Mission as a minority institution under Article 30(1) upheld its denomination character within the meaning of Article 26(a) of the Constitution. It was held that it being a denomination was entitled to administer the educational institutions.

In the case of *Christ The King Cathedral v John Ancheril and Ors.* (2001) 6SCC170 notifications were issued under Section 25 exempting all Churches and Mosques belonging to minority religions from provisions of Sections 4, 5, 7, 8, 11 and 13 of Kerala Building (Lease and Rent Control) Act, 1965. The High Court of Kerala quashed the notification on ground that notifications resulted in arbitrary exercise of discretionary power conferred upon a statutory authority as there was no material before Government to exercise such exemption. High Court further held that power of exemption to be exercised only in public interest or for any other sufficient cause. An appeal was filed in the Supreme Court on the ground that public religious or charitable endowments or trusts constitute a well recognize group which not only serve public purpose but are governed by objects for which they are built thus clearly distinguishing themselves from buildings owned by private landlord. The Supreme Court of India set aside order of High Court set aside. The court held that the purpose of Act was to prevent unreasonable eviction and to control rent. If a building belonging to public trust or religious institution was exempted from Act the purpose of trust can be carried out much better. building belonging to public trust or religious institution was exempted from Act the purpose of trust can be carried out much better.

In *Committee of Management Kanya Junior High School Bal Vidya Mandir, Etah, U.P. v Sachin U.P. Basic Shiksha Parishad, Alld, U.P. & Ors.* (MANU/SC/3685/2006); the Supreme Court held that only because a person belonging to a particular religion manages institution, it would not *ipso facto* make the institution run and administer by minority community. It has to be decided by appropriate authority.

In *Father Thomas Shingare & Ors. v State of Maharashtra & Ors* (MANU/SC/0789/2001); the Supreme Court held that the state cannot impose any restriction on the rights of the minorities to administer educational institutions so long as such institutions are unaided by the state, except to the extent of ensuring excellence in education.

In *G. Vallikumari v Andhra Education Society & Ors.* (2010) 2SCC497; the Supreme Court held that the educational institute is a linguistic minority and it cannot be doubted that although discipline control over the teachers of minority educational institution is with the management, regulation can be imposed for ensuring proper conditions of service for teachers and fair procedure in matter of disciplinary actions. It is an endeavour of the Court to strike a balance between constitutional obligation to protect what is secured to the minorities and social necessity to protect the members of the staff against arbitrariness and victimization.

In *Govt. of A.P. and Anr. v J.B. Educational Society and Ors.* (2005) 3SCC212, the Supreme Court held that under Andhra Pradesh Education Act, 1982 educational agency means anybody of persons including that of religious or linguistic minority entrusted with the establishment and maintenance of a private educational institution of a minority educational institution.

In another important case *Islamic Academy of Education and Another v State of Karnataka* (AIR2003SC3724), the petitioners were private unaided institutions established by society, trust or persons belonging to the minority community based on religion or language. The Supreme Court held that the right to establish an institution is subject to reasonable restrictions. The minorities have a fundamental right to establish and administer educational institutions of their own choice. Thus, the state government would not interfere in such a right as long as admissions are on a transparent basis and the merit is adequately taken care of. Further, the court observed that there can be no fixing of a rigid fee structure by the government as the institution is allowed to generate surplus fund for the growth of educational institution.

In *Jilubhai Nanbhai Khacha v State of Gujarat & Ors.* (MANU/SC/0033/1995), Supreme Court held that for the acquisition of the property of minority educational institution, the measure is that the state should ensure that the amount fixed or determined under section law would not restrict or abrogate the right guaranteed by Art. 30(1).

In *Lily Kurian v University Appellate Tribunals & Ors.* (MANU/SC/1041/1997), the Supreme Court held that the protection of minorities which is granted under Article 30(1) is subject to the regulatory power of the State. This regulatory power, however, is for the purpose of preventing mal administration or for promoting better administration of the minority institution or for its benefit. But if it impairs the right of a minority to administer the institution, it cannot be justified on the ground that such interference is in public interest. Interference would be justified only if it is in the interest of the minority concerned.

In case of *Manager, St. Thomas U.P. School, Kerala & Ors.* (MANU/SC/0052/2002); the Supreme Court held that minority institution have right to administer under Article 30(1) and since the school established is conclusively proved to be established by Christian minority, they have a right to manage their own affairs. The court said that the right to establish an institution would include a

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case where ‘a single philanthropic individual with his own means, founds the institution’.

In *Misbah Alam Sheikh v State of Maharashtra and Others* (MANU/SC/0330/1997); it was held by the Supreme Court that abolishing of minority commission by the state cannot be regarded as *malafide* as state were not under compulsion to constitute a commission called ‘Minority Commission’ and thus in the absence of any statutory provision the decision of State for abolishment of Minority Commission is in accordance of law. The Court observed that,

.....Section 3 of the National Commission for Minorities Act. 1992, for short the Act, provides that the Central Government shall constitute a body to be known as “the National Commission’ for Minorities to exercise the powers conferred on, and to perform the functions assigned to it, under the Act. Section 9 of the Act in Chapter III envisages the functions of the Commission. The Commission shall perform all or any of the following functions, namely, (a) to evaluate the progress of the development of minorities under the Union and States; (b) to monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures; (c) make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments,....

Sub-section (2) postulates that the Central Government shall cause the recommendations referred to in Clause 9 (c) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for non-acceptance, if any, of any of such recommendations. Thus, it could be seen that under the statute, as rightly conceded by the learned counsel for the appellant, there is no statutory compulsion, on the part of the State

Government, to constitute a Commission called ‘the Minority Commission’ in the State. On the other hand, by operation of Section 3 read with Section 9, it is the duty of the Central Government to constitute a National Commission and it shall be the duty and responsibility of the National Commission to ensure compliance of the principles and programmes evaluated in Section 9 of the Act protecting the interest of the minorities for their development and working of the safeguards provided to them in the Constitution and the law enacted by the

Parliament as well as the State Legislatures. The object, thereby, is to integrate them in the national main stream in the united and integrated Bharat providing facilities and opportunities to improve their economic and social status and empowerment.....

In *N. Ahmad v The Manager, Emjay High School and Others* (MANU/SC/O588/1998); it was held by the Supreme Court that the management of minority are free to choose qualified person as headmaster under Art. 30(1) and such right cannot be chiselled out through a legislative act or executive action.

In *P.A. Inmamdaar v State of Maharashtra and Anr.* (MANU/SC/0482/2005), the Supreme Court held that Article 30 (1) enacted to give additional protection to minorities but they are not absolute rights and are subject to reasonable restrictions in the interest of general public and in the interest of minority institution. The court said that the admission has to be made on merits and centralised system of entrance needs to be adopted. Every institution is free to devise its own fee structure but it can be regulated in the interest of profiteering.

In *R. Sulochna Devi v D.M. Sujatha and Ors.* (MANU/SC/0853/2004); the Supreme Court held that courts shall be loathe in interfering with the choice of the management in the selection of the Principal candidate with reference to the educational institutions under the Management of the minority institutions.

In case of *Rajesh Kumar Gupta and Ors v State of U.P. and Ors* (2005) 5SCC172.43, the question was whether the provisions of Article 350-A of the Constitution of India are attracted in the present case, the court held that as there was no material to show that the case of any linguistic minority was involved, hence the High Court rightly held that Article 350-A was not violated.

In case of *Sarbanda Sonowal v Union of India* AIR 2005 SC 2920 it was contended that due to certain provisions of Illegal Migrant (Determining by Tribunal) Act, 1983, the spectre looms large of the indigenous people of Assam being reduced to a minority in their home state and their cultural survival will be in jeopardy. The

Court held those provisions violative of Art.29 (1) of the constitution. In *Secretary, Cannanore District Muslim Educational Association, Kanpur v State of Kerala and Ors* 2010(5)SCALE184 the court held that it appears that the appellant is a religious minority and being a religious minority the appellant has a fundamental right to establish and administer educational institutions of its choice in view of the clear mandate of Article 30.

In *Shri Adi Visheshwara of Kashi Viswanath Temple, Varanasi v State of U. P. & Ors.* (1997) 4SCC606, the Supreme Court held that the appellant-temple was not denominational temple. Further, the protection of Articles 25 and 26 are not available to Hindus as community but as denominational sect or section. Thus, there cannot be protection available to the temple under Art. 29(1).

In *St. Johns Teachers Training Institute v Registered Director, National Council For Teacher Education* (MANU/SC/0092/2003); in this case an application was made by Christian Minorities Teacher Training Institute seeking permission for starting a course in educational training without obtaining NOC from State Govt.

The Supreme Court held that, it being practically impossible for regional committee to obtain relevant data itself for granting recognition to institutions; requirement of obtaining NOC from the State govt is a necessary requirement.

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In *State of Bihar and others v Syed Asad Raza and Others* AIR 1997SC2425. In this case Maulana Azad College, Ranchi established in 1970 is a minority institution. The minority status is given by the State Government. The court held that by operation of Clause (1) of Article 30, all minorities, whether based on religion or language, shall have the right to establish an educational institutions of their own choice and under Clause (2) of Article 30, the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. Therefore, it could be seen that on establishment of an educational institution by the minority, the competent authority is bound to sanction grant-in-aid subject to such regulations as may be available under law to regulate the recruitment of service administration, use of fund etc.

In *T. M. Pai Foundation v State of Karnataka & Ors.* (20028SCC481), in this case the Supreme Court held that a balance has to be made between the rights of minority student to take admission in the minority institution vis-à-vis the meritorious student. While answering the question regarding the meaning and content of the expression minority in Article 30 of the Constitution of India, the Supreme Court held that linguistic and religious minorities are covered by the expression minority under Article 30 of the Constitution. Since reorganization of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put on a par in Article 30, have to be considered state-wise. The court also said that, 'as a result of the insertion of Entry 25 into List III, Parliament can now legislate in relation to education, which was only a State subject previously.'

The jurisdiction of Parliament is to make laws for the whole or a part of India. It is well recognized that geographical classification is not violative of Article 14. It would, therefore, be possible that, with respect to a particular State or group of States, Parliament may legislate in relation to education. However, Article 30 gives the right to a linguistic or religious minority of a state to establish and administer educational institutions of their choice. The minority for the purpose of Article 30 cannot have different meanings depending upon who is legislating.' The Court further said that, 'Language being the basis for the establishment of different States for the purposes of Article 30, a 'linguistic minority' will have to be determined in relation to the state in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put on a par in Article 30.' The court observed that, 'the State has to be regarded as the unit for determining 'linguistic minority' vis-à-vis Article 30, then with 'religious minority' being on the same footing, it is the State in relation to which the majority or minority status will have to be determined.'

In *The society of St. Joseph's College v Union of India & Ors.* (MANU/SC/0735/2001) the Supreme Court held that Art. 31(1 A) requires that State

should make specific law to provide compulsory acquisition of property of minority educational institution; without making specific laws the acquisition cannot be held proper.

In case of *Usha Mehta and Ors v State of Maharashtra and Ors.* (2004) 6SCC264 the supreme court held that the right of minorities to establish and administer educational institutions of their choice under Article 30(1) r/w Article 29(1) does not include right to have choice of medium of instruction. The court held that it was difficult to read Articles 29 and 30 in such a way to contain negative right to exclude learning of regional language. The court observed that, 'the State can impose reasonable regulations on the institutions covering Article 30 for protecting the larger interest of the State and the nation. The 'choice' that could be exercised by the minority community or group is subject to such reasonable regulations imposed by the State. While imposing regulations, the State shall be cautious not to destroy the minority character of institutions.'

In case of *Vallikumari v Andhra Education Society and Ors.* AIR2010SC1105 the question was whether Section 8(2) of the Delhi School Education Act, 1973 is not applicable to the aided religious/linguistic minority institutions, established under Article 30(1) of the Constitution of India. The Supreme Court held that section 8(1), (3), (4) and (5) of the Act do not violate the right of the minorities to establish and administer their educational institutions. However, Section 8(2) interferes with the said right of the minorities and is, therefore, inapplicable to private recognized aided/unaided minority educational institutions.

6. Right to constitutional remedies (Articles 32–35)

Article 32 to 35 deals with the right to constitutional remedies.

Remedies for enforcement of rights conferred by this Part (Article 32): Article 32 gives the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III. The Supreme Court empowered to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

Any person can apply under Article 32 of the constitution against violation of any fundamental right of any person. It is not necessary that the person whose right has been violated can only apply for the enforcement of his rights; rather anyone can apply on his behalf through public interest litigation.

Under Article 33 powers has been given to Parliament to modify the rights conferred by this Part in their application to Forces, etc. Article 34 provides for restriction on rights conferred by this Part while martial law is in force in any area. Article 3 gives power to Parliament to make legislation to give effect to the provisions of this Part.

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Check Your Progress

3. What change was made in Article 16 by the Constitution Eighty First Amendment Act?
4. What does the expression 'freedom of the press' mean?
5. What was Supreme Court's verdict in *Mohini Jain v State of Karnataka* case?
6. Which matters does Article 22 deal with?
7. What obligation does Article 23 impose on the states?

**3.4 ANSWERS TO CHECK YOUR PROGRESS
QUESTIONS**

1. The preamble to UDHR speaks of inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.
2. UN Secretary General, Ban Ki Moon observed on the significance of UDHR as follows:
"The extraordinary vision and determination of the drafters produced a document that for the first time set out universal human rights for all people in an individual context".
3. Article 16 was amended in 2000 by the Constitution (Eighty-first Amendment) Act, 2000, and clause 4B was inserted seeks to end 50% limit for Scheduled Castes, the Scheduled Tribe and other backward classes in backlog vacancies which could not be filled up due to the non-availability of eligible candidates of these categories in the previous year or years.
4. The expression means freedom from interference, from authority, which would have the effect of interference with the content and circulations of newspapers.
5. In case of *Mohini Jain v State of Karnataka*, (1992)3SCC666 the supreme court has held that right to education is fundamental right under Article 21 of the constitution which cannot be denied to a citizen by charging higher fee known as the captivation fee. The right education flows directly from right to life.
6. Article 22 deals with two different matters (1) persons arrested under ordinary law of crimes and (2) persons detained under the law of preventive detentions.
7. Article 23 imposes an obligation on the states to take steps to abolish evils of traffic in human beings and *begar* and other similar forms of forced labour wherever they are found.

3.5 SUMMARY

Universal Declaration of
Human Rights

- The preamble to UDHR speaks of inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.
- The UDHR covers civil and political rights such as the right to life, right not to be subjected to torture, equality before the law, fair trial, freedom of movement, and freedom of thought, conscience, religion, opinion and expression.
- As a Manifesto with primarily moral authority, UDHR is accepted almost universally as a gauge by which governments can measure their progress in the protection of human rights. It was invoked constantly in the UN General Assembly, Security Council and other international organizations.
- In 1214 King John of England gave assurance to the people for protecting their liberties in the form of Magna Carta. It is the first written document relating to the fundamental rights of individuals.
- Fundamental rights are available only against state and not against any individual. These rights are for the protection of individuals against arbitrary state action and to establish the rule of law.
- **Article 14** says that, ‘the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.’
- When the discrimination is based upon any of the ground mentioned in Article 15, the reasonableness of classification will be tested under Article 14.
- **Article 16** provides equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- **Article 18** prohibits the state from conferring titles to anybody whether citizen or non-citizen. However, military and academic distinctions are exempted from the prohibition.
- In case of *Tata Press Ltd. v Mahanagar Telephone Nigam Ltd.*, (1995)5SCC139, the Supreme Court held the commercial speech (advertisement) is a part of the freedom of speech and expression granted under Article 19(1)(a) of the Constitution.
- Under **Article 19(2)** reasonable restriction can be imposed on freedom of speech and expression on the ground of the security of the State.
- **Article 19(1) (d)** guarantees all citizens of India ‘to move freely throughout the territory of India.’
- Double jeopardy (Clause 2, Article 20): the constitution under Article 20(2) says that, ‘(2) No person shall be prosecuted and punished for the same offence more than once.’

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- **Article 21** of the constitution says that, ‘No person shall be deprived of his life or personal liberty except according to procedure established by law.’
- Right to life also includes right to travel abroad. In *Satwant Singh v Assistant Passport Officer, New Delhi*, AIR 1967 SC 1379 the Supreme Court held that the right to travel abroad is a part of a person’s personal liberty within the meaning of Article 21.
- In rural litigation and Entitlement *Kendra v State of UP*, (1985) 2 SCC 431 the court ordered the closure of certain lime stone quarries on the ground that there are serious deficiencies regarding safety and hazardous in them.
- Right to education has become a fundamental right under Article 21A of the constitution. This Article has been added by the Constitution (86th Amendment) Act, 2001.
- According to clause (4) of Article 22 as amended by the 44th Amendment Act, 1978 provides that a person cannot be detained for more than two months without obtaining the opinion of advisory board.
- Though India is a secular state, it has provided right of religious freedom. Provisions have been made in the Constitution of India under Article 25–28 for protecting and safeguarding the right to freedom of religion.
- In *Father Thomas Shingare & Ors. v State of Maharashtra & Ors* (MANU/SC/0789/2001); the Supreme Court held that the state cannot impose any restriction on the rights of the minorities to administer educational institutions so long as such institutions are unaided by the state, except to the extent of ensuring excellence in education.
- In *R. Sulochna Devi v D.M. Sujatha and Ors.* (MANU/SC/0853/2004); the Supreme Court held that courts shall be loathe in interfering with the choice of the management in the selection of the Principal candidate with reference to the educational institutions under the Management of the minority institutions.
- Article 32 gives the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III. The Supreme Court empowered to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

3.6 KEY WORDS

- **Magna Carta:** It is a royal charter of rights agreed to by King John of England at Runnymede, near Windsor, on 15 June 1215.
- **Fundamental Rights:** These are a group of rights that have been recognized by a high degree of protection from encroachment. These rights

are specifically identified in a Constitution, or have been found under Due Process of law.

- **Nemo debet bis vexari:** It is a law which means that no man should be put twice in peril for the same offence if he is prosecuted again for the same offence for which he has already been prosecuted, he can take complete defense of his for mere acquittal or conviction.
- **Detenu:** It refers to a person held in custody; a detainee.

Universal Declaration of
Human Rights

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3.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Which rights does the UDHR cover?
2. When can fundamental rights be suspended?
3. List the grounds on which restrictions can be imposed on freedom of speech and expression.
4. What verdict did the supreme court give in *State of Maharashtra v Chandrabhan* case?
5. List the types of educational institutions mentioned in Article 28.
6. What rights does Article 30 give to citizens?

Long-Answer Questions

1. Discuss the significance of UDHR.
2. Elaborate upon the provisions of Article 19.
3. Analyze the provisions of Protection *against Ex-post facto* law, Article 20 (1).
4. Discuss some cases related to cultural and educational rights.

3.8 FURTHER READINGS

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UNIT 4 INTERNATIONAL COVENANT ON POLITICAL AND CIVIL RIGHTS

Structure

- 4.0 Introduction
- 4.1 Objectives
- 4.2 International Movements for the Protection of Human Rights
 - 4.2.1 Provisions of First Option Protocol
 - 4.2.2 Second Optional Protocol
- 4.3 Answers to Check Your Progress Questions
- 4.4 Summary
- 4.5 Key Words
- 4.6 Self Assessment Questions and Exercises
- 4.7 Further Readings

4.0 INTRODUCTION

Since human beings are rational, they have created certain rights for themselves that are inalienable and fundamental. These rights are generally known as ‘human rights’. These rights become operative at birth and begin with a human being’s existence.

Human rights are inherent in all human beings irrespective of caste, creed, colour, sex or societal status. These rights are essential for their existence, freedom and dignity. Human rights may be also referred to as basic rights, inherent rights, natural rights and birth rights. Though embodied in separate international instruments, they are perceived as forming a whole. A definition of human duties has to be observed along with human rights.

This unit will be helpful in learning the concept of human rights as it has evolved over the years, its foundations and the efforts at the international forum towards freedom and justice for all human beings. The unit highlights the role played by the Universal Declaration of Human Rights (UDHR) in the promotion of human rights in the world.

The UDHR is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948. It sets out, for the first time, fundamental human rights to be universally protected. The UDHR is preceded by an eventful historical development that culminated in the proclamation of the Declaration. Some of the events that punctuate the history of human rights include, notably, Magna Carta

(1215), American Declaration (1776), French Declaration of Human Rights (1789), and UN Charter (1945). The immediate events that impelled the proclamation of the Universal Declaration were the massive human rights violations in World War II, which convinced the world community that there were certain rights that human beings around the world were entitled to, and which must be safeguarded.

*International Covenant
on Political and Civil
Rights*

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4.1 OBJECTIVES

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

- Discuss the International Movements for the Protection of Human Rights
- Analyze Human Rights and provisions of Universal Declaration of Human Rights
- Understand the provisions of International Covenant on Civil and Political Rights

4.2 INTERNATIONAL MOVEMENTS FOR THE PROTECTION OF HUMAN RIGHTS

The doctrine of human rights in international practice, within international law, global and regional institutions, in the policies of states and in the activities of nongovernmental organizations, has been a cornerstone of public policy around the world. *The idea of human rights* states, “if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights.”

Despite this, the strong claims made by the doctrine of human rights continue to provoke considerable skepticism and debates about the content, nature and justifications of human rights to this day. Indeed, the question of what is meant by a “right” is itself controversial and the subject of continued philosophical debate.

During the past several decades, the international human rights movement has had a crucial hand in the struggle against totalitarian regimes, cruelties in wars, and crimes against humanity. Today, it grapples with the war against terror and subsequent abuses of government power.

Universal Declaration of Human Rights (UDHR)

After the United Nations Charter came into force, the most important task before the United Nations was the implementation of the principles of the universal respect and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion as laid down under **Article 55** of the UN Charter.

The Economic and Social Council (ECOSOC) recommended before the General Assembly that the purpose of the UN with regard to the promotion and

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observation of human rights could be fulfilled only if provision was made for an International Bill of Rights and for its implementation, in the year 1946. The General Assembly referred the matter to the ECOSOC for the preparation of the International Bill of Rights. ECOSOC referred the matter to the Commission on Human Rights with guidelines for the preparation of the document.

The Commission on Human Rights appointed a Drafting Committee for preparing the International Bill of Rights. The Drafting Committee in its first Session (Jan 9-25, 1947), prepared a preliminary draft of the International Bill of Rights which was submitted before the Commission on Human Rights in the Second Session (Dec 2-17, 1947). The Commission, due to the differences of opinion as to its forms and contents, decided to apply the term 'International Bill of Rights' to a series of documents. The Commission decided to draw up two sets of documents simultaneously, i.e., a draft declaration of a declaration of general principles on human rights, and a draft convention, which would be a convention on such specific rights as would lend themselves to binding legal obligations. The Commission established working groups to prepare the documents. After submission of reports by the working groups, the Commission forwarded these reports to the governments of the member countries for their comments. On receiving comments from the governments the

Commission endorsed the matter to the Drafting Committee to re-draft the documents (Declaration). The Committee re-drafted the entire Declaration. The Commission in its Third Session (June, 1948) discussed the report and finally adopted a draft of the Declaration for submission to the ECOSOC. The ECOSOC submitted the draft before the General Assembly. The General Assembly adopted the report through a resolution (Resolution 217 (iii) December 10, 1948) known as the Universal Declaration of Human Rights in Geneva. The Declaration consisted of 30 Articles with a Preamble.

UDHR elucidated the UN Charter provisions and defined expressly certain human rights and fundamental freedoms which need to be protected. It may be noted that 'Human Rights Day' is also celebrated all over the world on 10 December marking the adoption of the Declaration.

Preamble of UDHR

The preamble speaks of inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice, and peace in the world. Member states pledge to achieve, in co-operation with the UN, the promotion of universal respect and observance of human rights and fundamental freedoms. The

Preamble states the following: Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

The Preamble proclaims the Declaration as a common standard of achievement of all peoples and all nations. If this proclamation is to be interpreted as a recommendation, a question arises as to whom this recommendation has been made. It is not addressed either to the Members or to the States or to the Governments. To ease the confusion Kelsen says that the General Assembly recommends to every individual and every organ of the society to do something with respect to the human rights laid down in the Declaration.

Human Rights and Provisions of UDHR

The objective of UDHR is to promote and safeguard various rights of human beings. The UDHR with various provisions enumerates the basic postulates and principles of human rights in a most comprehensive manner. It deals not only with civil and political rights, but with social and economic rights as well.

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1. General provisions

Article 1

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

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.

2. Civil and political rights

Article 3

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

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

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

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

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Article 16

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

- (1) Everyone has the right to own property alone as well as in association with others.

Article 18

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

Article 19

- (1) Everyone has the right to freedom of opinion and expression
- (2) No one shall be arbitrarily deprived of his property.

This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 21

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

3. Economic, social and cultural rights

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Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

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Article 23

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

- (1) Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental

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freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

4. Concluding provisions

Article 28

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

Article 29

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

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

Significance of UDHR

UDHR is the primary international articulation of the fundamental and inalienable rights of all members of the human family. It represents the first comprehensive agreement among nations as to the specific rights and freedoms of all human beings.

Among others, these include civil and political rights, such as the right not to be subjected to torture, to equality before the law, to a fair trial, to freedom of movement, to asylum and to freedom of thought, conscience, religion, opinion, and expression.

The rights outlined in the UDHR also include economic, social, and cultural rights such as the right to food, clothing, housing, and medical care, to social security, to work, to equal pay for equal work, to form trade unions and to education. Besides, it subsumes a comprehensive and common vision of inalienable human rights and shared understanding of what constitutes the inalienable rights and freedoms of all human beings in every corner of the globe.

The rights set forth in the UDHR have been reiterated and affirmed in numerous international human rights treaties dealing with specific populations or with specific rights and freedoms. The rights have also been incorporated into regional human rights treaties and documents, such as the 'European Convention of Human Rights,' the 'European Social Charter,' the 'African Charter of Human and Peoples Rights,' and the 'Helsinki Accords.' According to Henry Steiner and Philip Alston, to this day it retains its symbolism, rhetorical force, and significance in human rights movement.

It is the parent document, the initial burst of enthusiasm, terser, more general, and grander than the treaties, in some sense the constitution of the entire movement. It remains the single most invoked human rights instrument. The Declaration is inspirational and recommendatory rather than being, in a formal sense, binding. It is an authoritative statement of basic rights to which all are entitled. It represents a major milestone in human progress, bringing to realization to the charter principle that universal respect for human rights is the common concern of all governments and all peoples, and serves as conscience for the world and a standard against which the attitudes of societies and governments can be measured. It is accepted almost universally as a gauge by which governments can measure their progress in the protection of human rights. Invoked constantly in General Assembly, Security Council and other organs, it is quoted in international legal instruments.

In this way the main objective of UDHR is to present the ideals of human rights and freedoms in order to inspire everybody to work for their progressive realization.

Binding effect of UDHR

Those who adopted the UDHR did not imagine it to be a legally binding document but its legal impact is wider. Internationally, it has been accepted as an essential legal code. Dozens of legally binding international treaties are based on the principles set forth in the UDHR, and the document has been cited as justification for numerous United Nations actions, including acts of the Security Council. Originally intended as a 'common standard of achievement for all peoples and all nations, over the past sixty years the Universal Declaration has become a cornerstone of customary international law, and all governments are now bound to apply its principles.

The Declaration was not intended to be legally binding and therefore it did not impose any legal obligations on the States to give effect to its provisions. From a legal point of view, it was only a recommendation and was not strictly binding on

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the States. It has legal value inasmuch as it contains an authoritative interpretation of the provisions of the Charter. The General Assembly has declared (Resolution 2625 (XXV), dated 24 October, 1970) that the Charter precepts embodied in the Declaration constitutes basic principles of International Law.

Influence of UDHR

The UDHR is a primary proclamation of the international community's commitment to human rights as a common standard of achievement for all peoples and for all nations. It has been the source of inspiration and has been the basis for the UN in making advances in a standard setting as contained in a number of international human rights treaties. It has inspired a number of declarations and international conventions concluded under the auspices of the UN and of the specialized agencies. It has been a fundamental source of inspiration for all national and international efforts to promote and protect human rights and fundamental freedoms. It has provided a fountain upon which the human rights treaties rest. The Declaration as a whole or its different Articles have been frequently quoted in the resolutions of the General Assembly as justification for action taken by the United Nations.

Its provisions have also influenced various national constitutions, national legislations, regulations and policies that protect fundamental human rights. These domestic manifestations include direct reference to the UDHR or incorporation of its provisions. The Declaration is frequently cited in support of judicial decisions which upheld a particular right guaranteed under domestic constitutions or statutes.

UDHR as a customary international law

At the time of adoption of UDHR it was agreed that it would not impose any legal obligation on the member States. The Declaration has been invoked so many times both within and outside the UN and because of general acceptance and common legal opinion, it has been asserted that whatever the intention of its authors may have been, some of the provisions have grown into customary law of nations, and therefore are binding on all States. If the UDHR is regarded to have acquired the status of customary rules it would imply that the subject covered by it, at least in principle, shall be governed by international law and is thus outside the domestic jurisdiction of the concerned states.

The view that the UDHR has acquired the character of customary rule of international law is difficult to accept in view of insufficient State practice. However, it may be said that some provisions of UDHR do reflect customary international law, e.g., Articles 1, 2 and 7 expressing right to equality, Article 4 consisting provision against slavery, Article 5 consisting provision against torture, Article 9 consisting provision against arbitrary arrest and detention.

India and UDHR

India is a signatory to the UDHR. The UDHR came into existence in the year 1948 and the Constitution of India came into existence in the year 1950. The

different provisions of UDHR constituting various human rights and the fundamental rights enshrined under Part III of the Constitution of India are similar. The Indian Constitution is widely held to have provided the model for the latter's human rights guarantees.

The Apex Court of India in many cases has viewed that the UDHR is not a legally binding instrument but the founders of our Indian Constitution have shown their foresight about the provisions of UDHR by incorporating Part III consisting of fundamental rights. For example in cases like the *Kesvanand Bharti v. State of Kerala* and, *Chariman, Railway Board and others v. Mrs. Chandrima Das*, the SC has observed that the UDHR has a moral code of conduct that has been adopted by the General Assembly of the UN. The applicability of the UDHR and principles thereof may have to be read, if need be, into domestic jurisprudence.

Limitations of UDHR

The UDHR is deficient in three aspects. Firstly, it is not binding on States as law but rather a UN recommendation to States. Secondly, some of its provisions are as general as that of Article 55 of the UN Charter. Thirdly, the Declaration offered no means of implementation other than State goodwill.

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

The International Bill of Rights constitutes three international treaties and conventions established by the United Nations. These include the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, 1966 (ICCPR), and the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), with the two optional protocols of ICCPR. The UDHR has already been discussed in the previous sub-section. This sub-section deals with the ICCPR.

The ICESCR will be discussed in the next unit.

The ICCPR talks about the rights related with the civil and political rights. The ICCPR also prohibits torture, inhumane or degrading treatment, slavery or involuntary servitude, arbitrary arrest and detention, and the use of debtors' prisons. In addition, it guarantees the rights of children and prohibits discrimination based on race, sex, color, national origin, or language.

The General Assembly adopted a resolution on 10 December 1948 [the day the UDHR was adopted] urging the UN Commission on Human Rights to draft a treaty which would give legal force to the Declaration. In 1951, the Commission produced a draft covenant which it sent to its parent body, the Economic and Social Council.

Seeing the difficulties in embodying in one covenant two different categories of rights, the Council urged the General Assembly (GA) to approve the drafting of two covenants. The Assembly agreed, and requested the Commission to proceed. The Commission complied and produced two draft covenants—one on civil and

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political rights, the other on economic, social and cultural rights, the first with two optional protocols, providing also for measures of review of implementation of the Covenant provisions.

On 16 December 1966, the Assembly voted unanimously to adopt the three instruments and open them for signature. The instruments, after their ratification by 35 UN Member State, entered into force in 1976. On 15 December 1989, by a vote of 59 in favour to 26 against, with 48 abstentions, the GA adopted the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty. This Second Optional Protocol came into force in July 1991.

As of 2004, 151 State parties adhered to the Covenant. The ICCPR was sent to the US Senate for ratification in 1978, but the United State finally agreed to comply with it after years of delay on September 8, 1992. So far 151 States have adhered to the First Optional Protocol to the Covenant that allows individuals from adhering State to file complaints with the eighteen-member UN Human Rights Committee, which is the institution created by the Covenant for monitoring and implementing the CCPR.

The Covenant on Civil and Political Rights sets up a Human Rights Committee to consider progress reports from States which have ratified the Covenant. The Committee may also hear complaints by such State that other State which have ratified the Covenant have failed in upholding the obligations under the Covenant. Under Optional Protocol I to ICCPR, individuals under certain circumstances may file complaints of human rights violations by ratifying State.

Among the rights of nation-States specified in the ICCPR are the right of self-determination, the right of free trade, and the right to subsistence. The rights of individuals in the ICCPR include the right to legal recourse when one's rights have been violated; the right to life, liberty, and freedom of movement; the right to equality before the law; due process rights in criminal proceedings; the right to privacy; and freedom of thought, conscience, religion, expression, assembly, and association.

The ICCPR allows State to suspend (or derogate) some of these rights in the event of a temporary civil emergency, but lists those rights that shall not be subject to derogation. Non-derogable rights include the right to life; the prohibition of torture and slavery; freedom of thought, conscience, and religion; and the prohibition of categorical discrimination. The abolition of the death penalty in the Second Optional

Protocol is non-derogable for nation-State that have ratified this provision. UN Human Rights Committee, which is the institution created by the Covenant for monitoring and implementing the ICCPR hears complaints from individuals in closed meetings where the identity of all complainants is protected. All findings of the Committee are public and included in its annual report to the UN General Assembly.

The Second Optional Protocol to the ICCPR focusses on the abolition of the death penalty, and has been ratified by fifty state parties. The United State has not ratified either optional protocol.

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Drafting and overview of ICCPR

On the recommendation of the Third Committee, the General Assembly on 16 December, 1966 adopted the two covenants viz., International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). It also adopted an Optional Protocol to the International Covenant on Civil and Political Rights. The General Assembly on 15 December, 1989 adopted the Second Optional Protocol to the ICCPR aiming at the abolition of death penalty.

With the adoption of the covenants and two optional protocols, the United Nations completed the task of formulating the international standard of human rights of the individuals. They together along with the UDHR are regarded to have constituted International Bill of Human Rights. Thus, the United Nations fulfilled one of the main objects which it had cherished at the time of existence. The covenants and the protocols embody legal, moral, and political values. They are legal because they involve the implementation of rights and obligations. They are moral because they are a value-based system and preserve human dignity. They are political in the larger sense of the word.

The ICCPR consists of 53 Articles and is divided into six parts. While in Parts I, II and III various rights and freedoms are enumerate, the other three parts are devoted with implementation procedures for effective realization of these rights along with the final provision. The ICCPR may be classified into following categories:

- (a) Preamble
- (b) General Articles (Articles 1 to 3 and 5)
- (c) Rights to emergency (Article 4)
- (d) Substantive Rights (Articles 6 to 27)
- (e) Implementation or Enforcement Machinery (Articles 28 to 45)
- (f) Interpretation of Saving Provision (Articles 46 to 47)
- (g) Final or Concluding provisions, regarding ratification, of accession of the covenant, amendments, etc. (48 to 53)

Provisions of ICCPR

Preamble

The preamble State that the State Parties to the present Covenant, considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that, in accordance with the Universal Declaration of

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

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

PART I: General Provisions

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The State Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Right to Emergency

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other State Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

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2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III: Substantive Rights

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this Article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour; (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court; (c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:
- (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

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2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the

extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

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Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (order public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this Article shall authorize State Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

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Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. State Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors?
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those State in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the

other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

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PART IV: Implementation or Enforcement Machinery

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the State Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in Article 28 and nominated for the purpose by the State Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with Article 34, the Secretary-General of the United Nations shall address a written invitation to the State Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the State Parties which have nominated them, and shall submit it to the State Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the State Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that

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meeting, for which two thirds of the State Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of State Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in Article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in Accordance with Article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the State Parties to the present Covenant, which may within two months submit nominations in accordance with Article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the State Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with Article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that Article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be reelected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
 - (a) Twelve members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.

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Article 40

1. The State Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the State Parties concerned; (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the State Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the State Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from State Parties to the present Covenant.
5. The State Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this Article.

Article 41

1. A State Party to the present Covenant may at any time declare under this Article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this Article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this Article shall be dealt with in accordance with the following procedure:
 - (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party.

Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which

should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

- (b) If the matter is not adjusted to the satisfaction of both State Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
 - (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
 - (d) The Committee shall hold closed meetings when examining communications under this Article;
 - (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the State Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;
 - (f) In any matter referred to it, the Committee may call upon the State Parties concerned, referred to in subparagraph (b), to supply any relevant information;
 - (g) The State Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;
 - (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
 - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
 - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the State Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the State Parties concerned.
2. The provisions of this Article shall come into force when ten State Parties to the present Covenant have made declarations under paragraph I of this Article. Such declarations shall be deposited by the State Parties with the Secretary-General of the United Nations, who shall transmit copies thereof

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to the other State Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this Article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with Article 41 is not resolved to the satisfaction of the State Parties concerned, the Committee may, with the prior consent of the State Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the State Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the State Parties concerned. If the State Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the State Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under Article 41.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the State Parties concerned.
5. The secretariat provided in accordance with Article 36 shall also service the commissions appointed under this Article.
6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the State Parties concerned to supply any other relevant information.
7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the State Parties concerned:

- (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
 - (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
 - (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the State Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the State Parties concerned;
 - (d) If the Commission's report is submitted under subparagraph (c), the State Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.
8. The provisions of this Article are without prejudice to the responsibilities of the Committee under Article 41.
9. The State Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the State Parties concerned, in accordance with paragraph 9 of this Article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under Article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the State Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

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Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V: Interpretation or Saving Provision

Article 46

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

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI: Concluding Provisions

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this Article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all State which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession,

the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

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Article 50

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

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Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the State Parties to the present Covenant with a request that they notify him whether they favour a conference of State Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the State Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the State Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the State Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those State Parties which have accepted them, other State Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

1. Irrespective of the notifications made under Article 48, paragraph 5, the Secretary-General of the United Nations shall inform all State referred to in paragraph I of the same Article of the following particulars:
 - (a) Signatures, ratifications and accessions under Article 48;
 - (b) The date of the entry into force of the present Covenant under Article 49 and the date of the entry into force of any amendments under Article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in Article 48.

Optional protocols to ICCPR

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This section explains the optional protocols to ICCPR.

1. First Optional Protocol

The First Optional Protocol to ICCPR is an international treaty establishing an individual complaint mechanism for the International Covenant on Civil and Political Rights (ICCPR). It was adopted by the UN General Assembly on 16 December 1966, and came into force on 23 March 1976. As of September 2009, it has 113 parties.

State Parties to First Option Protocol

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

4.2.1 Provisions of First Option Protocol

Article 1

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

Article 2

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

Article 3

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

Article 4

1. Subject to the provisions of Article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.
2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.
2. The Committee shall not consider any communication from an individual unless it has ascertained that:
 - (a) The same matter is not being examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.
3. The Committee shall hold closed meetings when examining communications under the present Protocol.
4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under Article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

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2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all State which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

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

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the State Parties to the present Protocol with a request that they notify him whether they favour a conference of State Parties for the purpose of considering and voting upon the proposal. In the event that at least one-third of the State Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the State Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the State Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those State Parties which have accepted them, other State Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

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Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under Article 2 before the effective date of denunciation.

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Article 13

Irrespective of the notifications made under Article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all State referred to in article 48, paragraph I, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under Article 8;
- (b) The date of the entry into force of the present Protocol under Article 9 and the date of the entry into force of any amendments under Article 11;
- (c) Denunciations under Article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all State referred to in Article 48 of the Covenant.

4.2.2 Second Optional Protocol

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty is a side agreement to the International Covenant on Civil and Political Rights. It was created on 15 December 1989, and entered into force on 11 July 1991. As of August 2009, the Optional Protocol had 72 State parties. In addition, 3 State (Guinea-Bissau,

Poland, and São Tomé and Príncipe) have signed, but not yet ratified the Protocol.

The Optional Protocol commits its members to the abolition of the death penalty within their borders, though Article 2.1 allows parties to make a reservation allowing execution for grave crimes in times of war. Cyprus, Malta and Spain

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initially made such reservations, and subsequently withdrew them. Azerbaijan and Greece still retain this reservation on their implementation of the protocol, despite both having banned the death penalty in all circumstances.

State Parties to Second Option Protocol

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights, Recalling Article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and Article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966.

Noting that Article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable, Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life, Desirous to undertake hereby an international commitment to abolish the death penalty,

Provisions of Second Option Protocol

Article 1

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

Article 2

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.
2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.
3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Article 3

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

Article 4

With respect to the State Parties to the Covenant that have made a declaration under Article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 5

With respect to the State Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 6

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.
2. Without prejudice to the possibility of a reservation under Article 2 of the present Protocol, the right guaranteed in Article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under Article 4 of the Covenant.

Article 7

1. The present Protocol is open for signature by any State that has signed the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all State that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 8

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

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2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 9

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

Article 10

The Secretary-General of the United Nations shall inform all State referred to in Article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Reservations, communications and notifications under Article 2 of the present Protocol;
- (b) Statements made under articles 4 or 5 of the present Protocol;
- (c) Signatures, ratifications and accessions under Article 7 of the present Protocol;
- (d) The date of the entry into force of the present Protocol under Article 8 thereof.

Article 11

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all State referred to in Article 48 of the Covenant. International Covenant on Civil and Political Rights, 1966 (ICCPR)

Check Your Progress

1. Which two sets of documents did the Commission on Human Rights draw?
2. What does the UDHR represent?
3. List the treaties that have incorporated the rights set forth in UDHR.
4. Which are some of the provisions of UDHR that reflect customary international law?
5. What are the provisions of Article 20 of ICCPR?
6. What is the First Optional Protocol to ICCPR?
7. How shall amendments come into force as per Article 11 of First Option Protocol?

4.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

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1. The Commission of Human Rights decided to draw up two sets of documents simultaneously, i.e., a draft declaration of a declaration of general principles on human rights, and a draft convention, which would be a convention on such specific rights as would lend themselves to binding legal obligations.
2. The UDHR represents the first comprehensive agreement among nations as to the specific rights and freedoms of all human beings.
3. The treaties and document that have incorporated the rights set forth in UDHR are the 'European Convention of Human Rights,' the 'European Social Charter,' the 'African Charter of Human and Peoples Rights,' and the 'Helsinki Accords.'
4. Some provisions of UDHR that reflect customary international law are Articles 1, 2 and 7 expressing right to equality, Article 4 consisting provision against slavery, Article 5 consisting provision against torture, Article 9 consisting provision against arbitrary arrest and detention.
5. The provisions of Article 20 of ICCPR are:
 - (i) Any propaganda for war shall be prohibited by law.
 - (ii) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.
6. The First Optional Protocol to ICCPR is an international treaty establishing an individual complaint mechanism for the International Covenant on Civil and Political Rights (ICCPR). It was adopted by the UN General Assembly on 16 December 1966, and came into force on 23 March 1976. As of September 2009, it has 113 parties.
7. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the State Parties to the present Protocol in accordance with their respective constitutional processes.

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4.4 SUMMARY

- During the past several decades, the international human rights movement has had a crucial hand in the struggle against totalitarian regimes, cruelties in wars, and crimes against humanity.
- The Commission on Human Rights appointed a Drafting Committee for preparing the International Bill of Rights. The Drafting Committee in its first Session (Jan 9-25, 1947), prepared a preliminary draft of the International

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Bill of Rights which was submitted before the Commission on Human Rights in the Second Session (Dec 2-17, 1947).

- The UDHR with various provisions enumerates the basic postulates and principles of human rights in a most comprehensive manner. It deals not only with civil and political rights, but with social and economic rights as well.
- As per Article 18 of UDHR, everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
- The rights outlined in the UDHR also include economic, social, and cultural rights such as the right to food, clothing, housing, and medical care, to social security, to work, to equal pay for equal work, to form trade unions and to education.
- The General Assembly has declared (Resolution 2625 (XXV), dated 24 October, 1970) that the Charter precepts embodied in the Declaration constitutes basic principles of International Law.
- If the UDHR is regarded to have acquired the status of customary rules it would imply that the subject covered by it, at least in principle, shall be governed by international law and is thus outside the domestic jurisdiction of the concerned states.
- The ICCPR prohibits torture, inhumane or degrading treatment, slavery or involuntary servitude, arbitrary arrest and detention, and the use of debtors' prisons.
- Among the rights of nation-States specified in the ICCPR are the right of self-determination, the right of free trade, and the right to subsistence.
- The Second Optional Protocol to the ICCPR focusses on the abolition of the death penalty, and has been ratified by fifty state parties. The United State has not ratified either optional protocol.
- Article 26 of ICCPR states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.
- Article 42 of the ICCPR states that the members of the Commission shall serve in their personal capacity. They shall not be nationals of the State Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under Article 41.
- Article 2 of First Option Protocol states that Subject to the provisions of Article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty is a side agreement to the International Covenant on Civil and Political Rights. It was created on 15 December 1989, and entered into force on 11 July 1991.
- Article 3 of Second Option Protocol states that the State Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with Article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

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4.5 KEY WORDS

- **Helsinki Accords:** It was the document signed at the closing meeting of the third phase of the Conference on Security and Co-operation in Europe held in Helsinki, Finland, during 30 July – 1 August 1975 to reduce tension between the Soviet and Western blocs.
- **Non-Derogable Rights:** These are the rights that cannot be suspended under any circumstances, not even during an emergency. These are the right to life, the right to be free from torture and other inhumane or degrading treatment or punishment, the right to be free from slavery or servitude and the right to be free from retroactive application of penal laws.
- **Substantive Rights:** These involve a right to the substance of being human (life, liberty, happiness), rather than a right to a procedure to enforce that right, which is defined by procedural law.

4.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What does Article 25 of the UDHR state?
2. List the limitations of UDHR.
3. What are the three international treaties and conventions that the American Bill of Rights constitutes?
4. List the categories of ICCPR.
5. Write a short note on Article 34 of the ICCPR.
6. List the provisions in Article 9 of the First Option Protocol.
7. Write a short note on Second Optional Protocol to the International Covenant on Civil and Political Rights.

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Long-Answer Questions

1. Discuss the provisions of UDHR on civil and political rights.
2. Analyze the influence of UDHR.
3. Explain the provisions of Article 14 of ICCPR.
4. Discuss the provisions made under Article 42 of the ICCPR.

4.7 FURTHER READINGS

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UNIT 5 OVERVIEW OF THE INTERNATIONAL COVENANT ON SOCIO- ECONOMIC AND CULTURAL RIGHTS

*Overview of the
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on Socio-Economic and
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Structure

- 5.0 Introduction
- 5.1 Objectives
- 5.2 International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)
- 5.3 Optional Protocol to Socio-Economic and Cultural Rights
- 5.4 Answers to Check Your Progress Questions
- 5.5 Summary
- 5.6 Key Words
- 5.7 Self Assessment Questions and Exercises
- 5.8 Further Readings

5.0 INTRODUCTION

The International Covenant on Socio-Economic and Cultural Rights (ICESCR) is a multi-lateral treaty that works for the realization of its aim to achieve the implementation of human rights across the world. It widens the realm of human rights by including rights such as social, economic and cultural. These include the right to work, right to an adequate standard of living which includes the right to food, health and housing, right to mental and physical health, right to a healthy environment, right to education and so on. These rights create a basis for the overall welfare and betterment of individuals in a society. In this unit, an analysis of the provisions and articles of the ICESCR has been provided.

5.1 OBJECTIVES

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

- Understand the organization, provisions and articles of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Discuss the complaint filing procedure in the Optional Protocol to Socio-Economic and Cultural Rights

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5.2 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966 (ICESCR)

The third important document of the 'International Bill of Rights' is the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), which came into force on 3 January, 1976. This Covenant deals with the rights of humans in order to recognize the new rights which are essential for the development and survival of mankind in a more dignified manner. The Covenant increases the realm of rights from civil and political to economic, social and cultural rights.

The importance of the Covenants lies in the fact that they recognize the inherent dignity and the equal and inalienable rights of all members of the human family which is the foundation of freedom, justice and peace in the World. It is an obligation of the State to provide these rights to the individuals as they derive from the inherent dignity of the human person, and also because they are essential for the development of one's personality.

According to UNDP, a fifth of the developing world's population goes hungry every night, a quarter lacks access to even a basic necessity like safe drinking water, and a third lives in a state of abject poverty at such a margin of human existence that words simply fail to describe it. Over 1 billion people live in circumstances of extreme poverty, homelessness, hunger and malnutrition, unemployment, illiteracy and chronic ill-health. More than 1.5 billion lack access to clean drinking water and sanitation; some 500 million children do not have access to even primary education; and more than 1 billion adults cannot read and write. This massive scale of marginalization, in spite of continued global economic growth and development, raises serious questions, not only in relation to development, but also in relation to basic human rights.

Drafting and Overview of ICESCR

On the recommendation of the Third Committee, the General Assembly on 16 December, 1966 adopted the two Covenants viz., International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

The ICESCR is composed of 31 Articles which are divided in five parts. Part I deals with the rights of peoples to self-determination as provided in Article 1 of the ICCPR. Part II of the Covenant laid down the undertakings of the State Parties to the Covenant. Article 2 provided that each State Party undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means including particularly the adoption of legislative

measures. Other rights of the individuals are enumerated in Part III. The provisions of the ICESCR are classified as follows:

1. Preamble
2. General Provisions (Articles 1–5)
3. Substantive Rights (Articles 6–15)
4. Provisions for Implementation (Articles 16–25)
5. Concluding Provisions (Articles 25–31)

The Covenant has set the standard which the State Parties are required to achieve in future. Its provisions shall be implemented progressively by the State depending on the resources available to them. The Covenant is a promotional convention stipulating objectives more than standards and requiring implementation over time rather than all at once. This is also true to the ICCPR.

Provisions of ICESCR

This section deals with the various provisions of ICESCR.

Preamble

According to the Preamble, the State Parties to the present Covenant, considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, recognizing that these rights derive from the inherent dignity of the human person, recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights, considering the obligation of State under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant, agree upon the following articles:

General Provisions

PART I

Article 1

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

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2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The State Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

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

Article 4

The State Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any

act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Substantive Rights

PART III

Article 6

1. The State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

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

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

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Article 8

1. The State Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this Article shall authorize State Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

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

Article 10

The State Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

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

Article 11

1. The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The State Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - (a) 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 utilization of natural resources;
 - (b) 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.

Article 12

1. The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

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Article 13

1. The State Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The State Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this Article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this Article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within

two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The State Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The State Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The State Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Provisions for Implementation

PART IV

Article 16

1. The State Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from State Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The State Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and

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Social Council within one year of the entry into force of the present Covenant after consultation with the State Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

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

Article 20

The State Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under Article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the State Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with

furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

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

Article 24

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

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Concluding Provisions

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this Article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

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Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

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

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the State Parties to the present Covenant with a request that they notify him whether they favour a conference of State Parties for the purpose of considering and voting upon the proposals. In the event that at least one-third of the State Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the State Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the State Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those State Parties which have accepted them, other State Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under Article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same Article of the following particulars:

- (a) Signatures, ratifications and accessions under Article 26.
- (b) The date of the entry into force of the present Covenant under Article 27 and the date of the entry into force of any amendments under Article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in Article 26.

Check Your Progress

1. What does the ICESCR deal with?
2. List the provisions of ICESCR.
3. What does Article 3 of the ICESCR state?

5.3 OPTIONAL PROTOCOL TO SOCIO-ECONOMIC AND CULTURAL RIGHTS

Economic, Social and Cultural Rights are accorded to all the citizens across the world. However, there are instances where people cannot receive justice in their respective countries for any violations. In such cases they can bring a complaint to the UN Committee on Economic, Social and Cultural Rights (CESCR). The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) is an international treaty that allows victims of violation of economic, social and cultural rights, to present complaints at the international level.

The OP-ICESCR works as a powerful means for advocacy with all countries having the obligation to respect, protect and fulfil ESCR. The OP-ICESCR underpins that the violations of any ESCR must be handled foremost in their own country, but also at the international level if required. The OP-ICESCR provides advocates a tool to push for improvements in their own legal system, as well as for laws and policies that protect and advance ESCR.

The Optional Protocol includes three procedures:

1. A complaints procedure
2. An inquiries procedure
3. An inter-State complaints procedure

The Complaints Procedure

- Provides an opportunity to seek remedy and compensation in individual cases when a State violates ESCR;

*Overview of the
International Covenant
on Socio-Economic and
Cultural Rights*

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- Provides the possibility to access a procedure to seek justice at the international level when access to justice at the national level has been denied;
- Provides the CESCR with an opportunity to advance new jurisprudence (legal interpretation about the content of State's obligations) on ESCR;
- Provides a legal mechanism within which contributions of claimants, States, third parties and the Committee itself can help to further define and clarify the nature and scope of the ESCR protected under the ICESCR.

The complaint can be filed by:

- Individuals or groups of individuals, who allege to be victims of violations of the ICESCR and who have not found effective remedies within their own country, can file a complaint. In addition, third persons may file complaints on behalf of these individuals or groups of individuals with their consent.
- Third persons may file complaints on behalf of presumed victims, without their consent, but must justify acting on their behalf.

2. The Inquiry Procedure

When a State Party agrees to be bound by the inquiry procedure, the Committee will also be able to initiate and conduct investigations into grave or systematic violations of ESCR. This procedure adds to the complaints and periodic reporting procedures as it:

- Allows the Committee to respond in a timely fashion to serious violations taking place within a State Party instead of waiting until the State's next periodic report to the CESCR is submitted;
- Offers a means to adequately address systematic or widespread violations of ESCR in cases where individual complaints are not adequate to reflect the extent of the situation;
- Addresses situations where individuals or groups are unable to submit complaints due to practical constraints or fear of reprisals.

3. The Inter-State Complaints Procedure

The OP-ICESCR also includes a second opt-in procedure, the inter-State complaints procedure. States that opt for this procedure can make complaints against other States Parties and have complaints made against them.

Check Your Progress

4. What is the OP-ICESCR?
5. List the procedures of the Optional Protocol.

5.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The ICESCR deals with the rights of humans in order to recognize the new rights which are essential for the development and survival of mankind in a more dignified manner.
2. The provisions of the ICESCR are classified as follows:
 - (i) Preamble
 - (ii) General Provisions (Articles 1–5)
 - (iii) Substantive Rights (Articles 6–15)
 - (iv) Provisions for Implementation (Articles 16–25)
 - (v) Concluding Provisions (Articles 25–31)
3. Article 3 of the ICESCR states the following: The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.
4. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) is an international treaty that allows victims of violation of economic, social and cultural rights, to present complaints at the international level.
5. The Optional Protocol includes three procedures:
 - A complaints procedure
 - An inquiries procedure
 - An inter-State complaints procedure

5.5 SUMMARY

- The third important document of the ‘International Bill of Rights’ is the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), which came into force on 3 January, 1976.
- The importance of the Covenants lies in the fact that they recognize the inherent dignity and the equal and inalienable rights of all members of the human family which is the foundation of freedom, justice and peace in the World.
- According to UNDP, a fifth of the developing world’s population goes hungry every night, a quarter lacks access to even a basic necessity like safe drinking water, and a third lives in a state of abject poverty at such a margin of human existence that words simply fail to describe it.

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- The ICESCR is composed of 31 Articles which are divided in five parts. Part I deals with the rights of peoples to self-determination as provided in Article 1 of the ICCPR. Part II of the Covenant laid down the undertakings of the State Parties to the Covenant.
- The Covenant has set the standard which the State Parties are required to achieve in future. Its provisions shall be implemented progressively by the State depending on the resources available to them.
- As per Article 2 of the Covenant, each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
- Article 6 of the Covenant states that the State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
- Article 9: The State Parties to the present Covenant recognize the right of everyone to social security, including social insurance.
- Article 12 of the Covenant states that the State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- Article 12 states that the State Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
- Article 15 states that the State Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
- Article 21: The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the State Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

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- Article 25 states that nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.
- Economic, Social and Cultural Rights are accorded to all the citizens across the world. However, there are instances where people cannot receive justice in their respective countries for any violations. In such cases they can bring a complaint to the UN Committee on Economic, Social and Cultural Rights (CESCR).
- The OP-ICESCR works as a powerful means for advocacy with all countries having the obligation to respect, protect and fulfil ESCR.
- The Complaints Procedure provides an opportunity to seek remedy and compensation in individual cases when a State violates ESCR. It provides advocates a tool to push for improvements in their own legal system, as well as for laws and policies that protect and advance ESCR.
- When a State Party agrees to be bound by the inquiry procedure, the Committee will also be able to initiate and conduct investigations into grave or systematic violations of ESCR.

5.6 KEY WORDS

- **United Nations Development Programme (UNDP):** It is the United Nations' global development network. It promotes technical and investment cooperation among nations and advocates for change and connects countries to knowledge, experience and resources to help people build a better life for themselves.
- **Substantive Rights:** These are basic human rights possessed by people in an ordered society and include rights granted by natural law as well as the substantive law.
- **Economic, Social, and Cultural Rights:** These include the human right to work, the right to an adequate standard of living, including food, clothing, and housing, the right to physical and mental health, the right to social security, the right to a healthy environment, and the right to education.
- **First Optional Protocol to the International Covenant on Civil and Political Rights:** It is an international treaty establishing an individual complaint mechanism for the International Covenant on Civil and Political Rights.

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5.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Name the two Covenants adopted by the General Assembly in 1966.
2. Write a short note on the organization of the ICESCR.
3. State the provisions of Article 19 of the ICESCR.
4. Write a short note on Article 30 of the Covenant.
5. What does the OP-ICESCR underpin?
6. Who can file complaints in the Optional Protocol?

Long-Answer Questions

1. Discuss the provisions of Article 6 and 7 of the ICESCR.
2. Elaborate upon the provision of Article 13 of the ICESCR.
3. Explain Article 26 and 29 of the ICESCR.
4. Evaluate the complaint procedure of the Optional Protocol.

5.8 FURTHER READINGS

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UNIT 6 UNITED NATIONS HUMAN RIGHTS COUNCIL

*United Nations Human
Rights Council*

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Structure

- 6.0 Introduction
- 6.1 Objectives
- 6.2 UN Human Rights Council: Power and Functions
- 6.3 Answers to Check Your Progress Questions
- 6.4 Summary
- 6.5 Key Words
- 6.6 Self Assessment Questions and Exercises
- 6.7 Further Readings

6.0 INTRODUCTION

The United Nations Human Rights Council (UNHRC) is an international body with its headquarters in Geneva, Switzerland that aims to promote and protect human rights across the world. It also investigates cases of human rights violation in its member countries. Important issues addressed by the organization are freedom of expression, freedom of association and assembly, freedom of belief and religion, the rights of racial and ethnic minorities and so on. It uses a periodic review mechanism in order to assess the situation of human rights in its member nations. It has an advisory committee that ruminates over the issues that need attention and provide the Council with recommendations and advise. This unit provides an analysis of the organization and structure of the UNHRC.

6.1 OBJECTIVES

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

- Understand the organization and membership of the UN Human Rights Council.
- Analyze the procedure for filing complaints to the Council

6.2 UN HUMAN RIGHTS COUNCIL: POWER AND FUNCTIONS

Soon after the adoption of the UN charter, the Economic and Social council set up the Commission on Human Rights. During six decades of its existence between 1946 and 2006, the Commission on Human Rights helped draft the International Bill of Human Rights and many other legally binding human rights conventions as

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well as non-binding standards. Insofar as development of normative standards were concerned, its achievements are impressive. However, there were allegations of lack of consistency, adoption of double standards, politicization which emphasized the need for reform of the UN Human Rights system. Then the Secretary General of the United Nations, Kofi Annan, constituted a High Level Panel on Threats, challenges to UN System which submitted a report entitled, 'In larger freedom'. Following this, the UN General Assembly Summit in 2005 decided to replace the Commission on Human Rights with the Human Rights Council. The Commission on Human Rights was asked to conclude its work at its 62nd session, and the Commission was abolished on 16 June 2006. The first meeting of the Human Rights Council was convened on 19 June 2006.

The Preamble to General Assembly Resolution constituting the Human Rights Council noted as follows:

- Recognizing the work undertaken by the Commission on Human Rights and the need to preserve and build on its achievements and to redress its shortcomings.
- Recognizing the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicizing.
- Reaffirming the commitment to strengthen the United Nations human rights machinery, with the aim of ensuring effective enjoyment by the of the human rights, and civil, political, economic, social and cultural rights including the right to development, and to that end, the resolve to create a Human Rights Council.

The Human Rights Council, based in Geneva, is a subsidiary organ of the General Assembly Guiding Principles for HRC.

The Work of the Human Rights Council shall be guided by the principles of:

- Universality
- Impartiality
- Objectivity
- Non-selectivity
- Constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights.

The Functions of HR Council are to:

- Promote human rights education and learning.
- Serve as a forum for dialogue on thematic issues on all human rights.
- Make recommendations to the GA for the further development of international HR law.
- Promote the full implementation of human rights obligations undertaken by the member states and follow-up to the goals and commitments related

to the promotion and protection of human rights emanating from UN conferences and summits.

- Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each member state of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all states; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session.
- Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies.
- Assume the role and responsibilities of the Commission on Human Rights relating to the work of the OHCHR.
- Work in close cooperation in the field of human rights with governments, regional organizations, national human rights institutions and civil society.
- Make recommendations with regard to the promotion and protection of human rights.
- Submit an annual report to the General Assembly.

In other words, the Human Rights Council will be responsible for promoting universal respect for and protection of all human rights and fundamental freedoms for all. It will address violations, promote human rights assistance and education, and help develop international human rights law, review the human rights records of the member States, work to prevent abuses, respond to emergencies, and serve as an international forum for dialogue on human rights issues.

Membership of Human Rights Council and Meetings

The Human Rights Council shall consist of forty-seven member states, which shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly. The membership shall be based on equitable geographical distribution, and seats shall be distributed as follows among regional groups:

- Asia (13)
- Africa (13)
- Eastern Europe (6)
- Western Europe
- Other States (7)
- Latin America and the Caribbean (8)

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The Council meets regularly throughout the year and schedules no fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks, and can hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council.

The Members of the HRC serve for a period of three years and shall not be eligible for immediate re-election after two consecutive terms. When electing members of the Council, the member states shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto. The General Assembly, by a two-thirds majority, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights. The members are expected to uphold highest standards of human rights; fully cooperate with Council and be reviewed during their term.

Human Rights Commission and Human Rights Council

There are several significant improvements in the Human Rights Council over its predecessor body. The members of the Commission on Human Rights were really selected behind closed doors and then elected by acclamation. On the other hand, the new members of the Human Rights Council had to compete for seats, and successful candidates needed to win the support of a majority of all member States, in a secret ballot. For the first time ever, candidates gave voluntary commitments to promote and uphold human rights, and will be expected to meet them or else face possible suspension from the Human Rights Council.

While the allegation of double-standards plagued the past commission, the new universal periodic review mechanism (UPR) of the Human Rights Council provides the opportunity to examine the records of all 192 member States of the United Nations. Unlike before, no country, be it howsoever big or mighty, can escape scrutiny. This UPR mechanism promises to be a very powerful tool for human rights advocates worldwide. Unlike earlier Human Rights Commission, in which the members decided which countries HR performance to study, the Council adopted review process to look at all countries including US, Russia and other big countries which previously deflected scrutiny. The Commission on Human Rights limited six-week schedule severely impaired its effectiveness and flexibility. In contrast the Human Rights Council can meet throughout the year. As a result, it is able to undertake preventive initiatives to defuse simmering crises, and to respond quickly to emerging human rights crises.

The Human Rights Council Advisory Committee, which is composed of 18 experts acting in their personal capacity, will function as a think-tank to the Council and work at its direction. Its members have recognized competence and experience in the field of human rights; high moral standing; independence and impartiality. Individuals holding decision-making positions in government or in any other organization or entity are excluded. The elected members of the committee act in

their personal capacity. The Council elects the members of the advisory committee, in secret ballot, from the list of candidates whose names have been presented in accordance with the agreed requirements. The members of the advisory committee serve for a period of three years. They are eligible for re-election once.

The Functions of the Advisory Committee are as follows:

- Provide expertise to the Council in the manner and form requested by the Council, focusing mainly on studies and research-based advice. Further, such expertise shall be rendered only upon the latter's request, in compliance with its resolutions and under its guidance.
- The Advisory Committee is implementation-oriented and the scope of its advice is limited to thematic issues pertaining to the mandate of the Council; namely promotion and protection of all human rights.

Complaint Procedure

A complaint procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances. Earlier 1503 procedure improved so as to ensure that the complaint procedure be impartial, objective, efficient, victims-oriented and conducted in a timely manner.

The procedure will retain its confidential nature, with a view to enhancing cooperation with the State concerned.

The following are the admissibility criteria for communications (complaints):

- A communication related to a violation of human rights and fundamental freedoms, for the purpose of this procedure, shall be admissible
- It has manifestly political motivations and its object is not consistent with the charter of the United Nations, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law; or
- It does not contain a factual description of the alleged violations, including the rights which are alleged to be violated; or
- Its language is abusive. However, such communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language; or
- It is not submitted by a person or a group of persons claiming to be the victim of violations of human rights and fundamental freedoms or by any person or group of persons, including NGOs acting in good faith in accordance with principles of human rights, not resorting to politically motivated stands contrary to the provisions of the charter of the United Nations and claiming to have direct and reliable knowledge of those violations.

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- Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second hand, provided they are accompanied by clear evidence; or
- It is exclusively based on reports disseminated by mass media; or
- It refers to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights; or
- The domestic remedies have not been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.

Check Your Progress

1. Which allegations emphasized the need for reform of the UN Human Rights system?
2. Which principles is the work of Human Rights Council guided by?

6.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The allegations of lack of consistency, adoption of double standards and politicization emphasized the need for reform of the UN Human Rights system.
2. The Work of the Human Rights Council is guided by the principles of:
 - Universality
 - Impartiality
 - Objectivity
 - Non-selectivity
 - Constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights

6.4 SUMMARY

- Soon after the adoption of the UN charter, the Economic and Social council set up the Commission on Human Rights.
- The Commission on Human Rights was asked to conclude its work at its 62nd session, and the Commission was abolished on 16 June 2006.

- The Human Rights Council aims to promote the full implementation of human rights obligations undertaken by the member states and follow-up to the goals and commitments related to the promotion and protection of human rights emanating from UN conferences and summits.
- The Human Rights Council shall consist of forty-seven member states, which shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly.
- The General Assembly, by a two-thirds majority, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights.
- While the allegation of double-standards plagued the past commission, the new universal periodic review mechanism (UPR) of the Human Rights Council provides the opportunity to examine the records of all 192 member States of the United Nations.
- A complaint procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.
- A communication related to a violation of human rights and fundamental freedoms, for the purpose of this procedure, shall be admissible in the Council.

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6.5 KEY WORDS

- **UN Charter:** It is the foundational treaty of the United Nations, an intergovernmental organization. It establishes the purposes, governing structure, and overall framework of the UN system.
- **Universal Periodic Review:** It is a unique mechanism of the Human Rights Council (HRC) aimed at improving the human rights situation on the ground of each of the 193 United Nations (UN) Member States. Under this mechanism, the human rights situation of all UN Member States is reviewed every 5 years.

6.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What is the tenure of HRC members?
2. Write a short note on Human Rights Council Advisory Committee.
3. List some admissibility criteria for communications (complaints).

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Long-Answer Questions

1. Discuss the observations made by the Preamble to the General Assembly Resolution constituting the Human Rights Council.
2. Analyze the functions of the Human Rights Council.

6.7 FURTHER READINGS

Tripathi, T.P. 2012. *An introduction To the Study of Human Rights*. Allahabad: Allahabad Law Agency Publications.

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BLOCK - III
HUMAN RIGHTS ADMINISTRATION

*National Human Rights
Commission in India*

**UNIT 7 NATIONAL HUMAN
RIGHTS COMMISSION IN
INDIA**

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Structure

- 7.0 Introduction
- 7.1 Objectives
- 7.2 NHRC in India: Composition, Powers and Functions
- 7.3 Answers to Check Your Progress Questions
- 7.4 Summary
- 7.5 Key Words
- 7.6 Self Assessment Questions and Exercises
- 7.7 Further Readings

7.0 INTRODUCTION

The most significant purpose of the United Nations is to protect human rights. A peaceful coexistence between states is not possible if there is a violation or breach of human rights on the part of the states. The post-cold war period was marked by a realization by the States to incorporate human rights that have been endorsed by the United Nations. The observance of human rights goes a long way in facilitating good international relations, so countries are making foreign policies that are based on certain basic human rights principles.

Human rights are rooted in ancient Indian ethos and values. Notions of human rights may be found in many religions of the Indian subcontinent. However, traditionally, certain sections of society in India have not enjoyed even minimal protection because of social constraints and disabilities. In the 18th and 19th centuries, there were social reform movements led by Raja Ram Mohan Roy, Ishwar Chandra Vidya Sagar and many others to improve the status of women in society, to allow widow remarriage, and to recognize equality of all regardless of caste-based distinctions. Mahatma Gandhi campaigned against untouchability.

These pre-Independence reform movements continued and gained further momentum even after the country attained Independence. It is important to note that our freedom struggle was also waged to secure our rights.

Human rights are the cornerstones of India's state policy. Various governing bodies and authorities, under the Indian law guarantee fundamental human rights

to the Indian citizens. The unit focuses on the role of the National Human Rights Commission.

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7.1 OBJECTIVES

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

- Analyze the composition, powers and functions of National Human Rights Commission in India
- Discuss the process of Accreditation by SCA (Sub-Committee on Accreditation)

7.2 NHRC IN INDIA: COMPOSITION, POWERS AND FUNCTIONS

In order to safeguard human rights, the Parliament passed the Protection of Human Rights Act in 1993 for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts. The National Human Rights Commission accordingly came into existence on 12 October, 1993. The State Human Rights Commissions have also been set up in 18 States.

Several National Commissions have also been created for Women, Minorities, Scheduled Castes and Scheduled Tribes. Their Chairpersons are deemed Members of the National Human Rights Commission. A few years back, the Union Government also set up the National Commission for the Protection of Children's Rights and National Commission for De-notified Tribes. Many States have also constituted State Commissions for Scheduled Castes, Scheduled Tribes, Women and Minorities.

The NHRC consists of:

- A Chairperson who has been a Chief Justice of the Supreme Court
- One Member who is, or has been, a Judge of the Supreme Court
- One Member who is, or has been, the Chief Justice of a High Court
- Two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights

The Chairpersons of the National Commissions for Minorities, Scheduled Castes, Scheduled Tribes and Women are deemed to be Members of the Commission for certain functions specified under the Act.

The status and conditions of service of Chairperson of NHRC are the same as that of the Chief Justice of India, and of Members of the commission are those of Judges of the Supreme Court. Thus, the independence of the NHRC is expected

to be the same as that of the Supreme Court of India. This factor alone gives the NHRC a high status and adds strength to its recommendations. The Chairperson and Members are appointed on the recommendations of a High Level Committee, which is politically balanced, being headed by the Prime

Minister of India, with Speaker of Lok Sabha, Deputy Chairman, Rajya Sabha and the Leaders of Opposition of both Houses of Parliament as the members of this committee. The Commission has its own independent Investigation Wing headed by an Officer of the rank of the Director General of Police, which is answerable to the Commission alone.

The functions of the Commission include, among others,

- Inquire into complaints of violation of human rights by a public servant,
- Intervene in any proceeding involving violation of human rights pending before a court,
- Visit jails and other similar institutions and to make recommendations for the improvement of living conditions of the inmates,
- Review of laws and international treaties,
- Research in the field of human rights,
- Spread human rights literacy and promote awareness,
- Encourage the efforts of NGO's.

The functions of SHRCs are same as that of NHRC except that they have a role with relation to entries in List II and III of the Seventh Schedule of the Constitution dealing with State List and Concurrent List. On the other hand, NHRC has jurisdiction over all entries in the Union, State and Concurrent Lists. In particular, it is significant to note that SHRCs have no jurisdiction over violations committed by the personnel of armed forces, which is the sole responsibility of the National Human Rights Commission.

NHRC is a recommendatory body; however, 95 per cent of its recommendations are generally accepted. Section 18(b) of Protection of Human Rights Act, 1993 provides that NHRC may approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary. Section 20 of the Act provides that government shall table annual reports and special reports of NHRC along with action taken and reasons for the non-acceptance of recommendations.

Insofar as violations by personnel of armed forces are concerned, there is a limited procedure laid down in Section 19 of the Protection of Human Rights Act, 1993. In such cases, the Commission may, either on its own motion or on receipt of a petition, seek a report from the Central Government. After receipt, the commission may either not proceed or make its recommendations to that Government. The Central Government shall inform action taken within 3 months.

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The NHRC can receive complaints through a letter, telegram, fax, email or one can go on to on NHRC website and lodge a complaint online. The complaint can be in English, Hindi or other Indian languages. In the first six months of its existence between October 93 and March 94, NHRC received about 496 complaints which grew steadily. The Commission receives about 100,000 complaints every year now.

The Parliament has recently passed the Protection of Human Rights (Amendment) Act, 2006. The main amendments carried out in the Protection of Human Rights Act, 1993 relate to:

- Strengthening the investigative machinery available with Human Rights Commissions,
- Empowering the Commission to recommend award of compensation, etc., even during the course of enquiry,
- Empowering the NHRC to undertake visits to jails even without intimation to the State Governments, and
- Strengthening the procedure for recording of evidence of witnesses.

In pursuance of its statutory responsibility to review laws, the Commission reviewed over 30 laws and made recommendations. They include, among others, the following:

The Terrorists and Disruptive Activities (Prevention) Act, 1985 (TADA); The Prevention of Terrorism Bill, 2000; The Prevention of Terrorism Ordinance, 2001 (POTO); Freedom of Information Act; Domestic Violence Bill; The Child Marriage Restraint Act; National Rural Employment Guarantee Bill, 2004; Food Safety & Standard Bill, 2005 and Bill on issues related to Trafficking.

The National Human Rights Commission took a number of important initiatives with regard to access to Health Services, quality assurance in mental health, HIV/AIDS, food security, atrocities against the SCs, and trafficking, systemic reforms in police establishment of Human Rights cells in police headquarters, visits to prisons, mental hospitals and government run homes.

In addition, NHRC also recommended that Human Rights Education be incorporated in the formal education system. As a result, the subject of human rights has been introduced in the curriculum of educational institutions.

Certificates, Post-Graduate, Diploma and Degree courses in human rights have been introduced in over 20 universities. Human rights sensitization and training is being provided to civil servants, personnel of army and para-military forces, judicial officers and prison officials.

Some important achievements of the NHRC include interventions and significant results obtained in Gujarat riots, Punjab mass cremations case and Orissa starvation deaths. It took a bold stand on caste discrimination at the World Conference against Racism in Durban. It also intervened with success in Orissa Super cyclone, Gujarat and J&K earthquakes, and Tsunami disasters.

The NHRC issued guidelines on a wide range of subjects including custodial deaths, fake encounters, arrests, rights of prisoners, etc. The NHRC's role is that of a facilitator to facilitate the efforts of the Central Government, State Governments and other public authorities in ensuring good and humane governance, by making appropriate recommendations from time to time. In this regard, it acts as a catalyst. It has been monitoring the elimination of child labour, bonded labour, trafficking in women and children, manual scavenging, public health, quality assurance in mental hospitals, etc.

The NHRC's role is complementary to that of judiciary. The Supreme Court has referred to the NHRC regarding the monitoring of the elimination of bonded labour, functioning of three mental hospitals, issue of Punjab mass cremations, Orissa starvation deaths and the lifting of the ban on salt iodization.

The NHRC also has an international role. It is a member of the International Coordinating Committee of National Institutions at the UN, Asia Pacific Forum of NHRIs and the Commonwealth Forum of National Human Rights Institutions. The Commission has extended technical assistance to Bangladesh, Nepal, Sri Lanka, South Korea and a number of other countries in the setting up of their Human Rights Commissions. It works in close co-ordination with the office of the UN High Commissioner for Human Rights and other specialized institutions of UN and has been playing a role in Human Rights Council. It also played a key role in the drafting of the UN Convention on Disability.

Vision & Mission

National Human Rights Commission of India was set up under the Protection of Human Rights Act, 1993 by an Act of Parliament for the purpose of protection of human rights. It studies important international instruments and treaties on human rights in order to facilitate their implementation in India in addition to conducting enquiries into human rights violation complaints and negligence of the same by public servants. The functions of the Commission are stated in Section 12 of the Act.

The Commission's responsibilities include ensuring the dissemination of human rights and their awareness along with encouraging the efforts made by stake holders in the direction of improving human rights literacy both at the national and international level. One of the distinguishing features of the NHRC is that its Chairperson is the former Chief Justice of India unlike other National Human Rights Institutes of the world. India is looked upon as a role model in terms of promoting and implementing the implementation of human rights.

Section 2(1)(d) of the Protection of Human Rights Act, 1993 defines Human Rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

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NHRC of India plays an important role in spreading awareness about human rights by coordinating with Human Rights Institutes in different parts of the world. It has hosted, for this purpose, a number of delegations with Human Rights Commissions of different nations, with significant UN bodies and with stake holders such as social activists, lawyers, etc.

Constitution of NHRC

NHRC consists of a Chairperson and a total of eight members of whom four are full time members and the other four are deemed members. The statute lays down qualifications, on the basis of which, the appointment of the Chairperson as well as the members is done.

Specialized Divisions and Staff

There are five Divisions in the Commission. These are

- Law Division,
- Investigation Division
- Policy Research, Projects and Programmes Division
- Training Division
- Administration Division

SCA Accreditation

The Global Alliance of National Human Rights Institutions (GANHRI) grants an 'A' status of accreditation to those National Human Rights Commissions that are reviewed after every five years and are found to be compliant with the Paris Principles mandated by the UN. The National Human Rights Commission, India has been accorded the same for four consecutive terms. On 23rd February, 2018, H.L. Dattu, the Chairperson of NHRC was awarded with the certificate for the aforementioned achievement at an annual meeting of GANHRI in Geneva, Switzerland. Also present on the occasion were Secretary General, Ambuj Sharma and NHRC member Justice P.C. Ghose.

The advantage of the 'A' accreditation is that it facilitates protection and international recognition of the NHRI. Moreover, it also grants participation in the decision-making and the routine activities of the GANHRI in addition to participation in UN mechanisms and the work of Human Rights Council.

The NHRC of India got the 'A' accreditation for the first time in 1999 which it managed to retain in 2006 and 2011. The review process for 2016 was deferred to the second session of 2017 where the Sub Committee on accreditation of GANHRI gave a recommendation for granting the 'A' accreditation to the NHRC of India. A thorough process of review is conducted, post which, the accreditation is awarded through the Sub Committee on Accreditation (SCA). The benchmarks for the process are provided by the UN's Paris Principles. The

Paris Principles were adopted by the UN General Assembly in 1993 which require NHRI's to safeguard human rights by means of investigation of complaints, monitoring activities and promoting human rights through media, education, capacity building, publications and assisting the Government for the fulfilment of the purpose.

The main criteria required to be met by NHRI's is set out by the Paris Principles. These are: Mandate and competence, Autonomy from Government, Independence guaranteed by a Statute or Constitution, Pluralism, Adequate resources; and adequate powers of investigation. The GANHRI found India to be perfect on all of these principles. The Office of the High Commissioner for Human Rights (OHCHR) is a permanent observer on the Sub Committee on Accreditation, SCA and serves as the secretariat to the GANHRI and its SCA. Over the last few years, the accreditation system has been strengthened. Several measures were taken by the GANHRI to improve the process of review such as development of a system that would review NGRI's on a five-year basis; appeal to the NGRI's to maintain a high level of transparency; a more thorough review of applications; recommendations that are more focused; a comprehensive knowledge of SCA recommendations and their wider distribution by the NHRI's so that they contribute properly in the process and can also follow up in country.

Powers and Functions of NHRC

1. NHRC holds the power to investigate grievances related to the violation of human rights either after receiving a petition or without a formal prompting by another party.
2. It holds the authority to intervene in judicial proceedings related to violation of human rights.
3. It holds the power to visit jails or government-controlled facilities in order to check the living conditions of prisoners and to make recommendations for the same.
4. It can recommend remedial steps for improving the provisions and protections provided by the Constitution after reviewing them.
5. NHRC takes on and promotes research in the field of human rights. It works for spreading human rights literacy and an awareness in society regarding safeguards for their protection. For this purpose, it makes use of media, publications, seminars, etc.
6. The Commission gives advice regarding the defense of human rights as per the Constitution or the Statute and takes an independent stance on it.
7. It can grant interim relief to people in such cases as it has been granted with the powers of a civil court.
8. It can recommend payment of damages or compensation as well.
9. It has the power to recommend to both the state and the central governments to take effective steps for preventing the violation of human rights.

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10. The final annual report of the NHRC is submitted to the President of India who causes it to be laid before each House of Parliament.

Covid 19 Initiatives

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Covid-19 initiatives taken by Law Division are listed below:

1. Human Rights Covid-19 advisory to State Government in alignment with WHO/M/o Health and Family Welfare and ICMR guidelines
2. Creation of new incident categories in different nature of Complaints for Violation of Human Rights related to Covid-19
3. Complaints were received online, and cases were registered while functioning work from home.
4. Important role played by Focal Point for Coordinator with State functionaries redressal of grievance during the pandemic.

Covid-19 initiatives taken by SRO unit are listed below:

1. Conducted virtual meetings through web platforms such as WebEx, Google Meet, etc. both within and outside the division.
2. Work was coordinated by means of cloud platforms such as Google Drive, Slack, etc.
3. Worked from home via remote accessing and e-office.
4. Inputs related to Covid-19 pandemic were prepared and received from Special Rapporteurs and Special Monitors of the Commission for sending to Asia Pacific Forum (APF).
5. Report of Special Monitor of NHRC regarding Health & Mental health on Covid-19 was prepared and submitted for consideration of the Commission.
6. Complied with the Covid-19 guidelines issued by the Government of India.

Check Your Progress

1. What step did the Parliament take to safeguard human rights?
2. What is the difference between the NHRC and the SHRCs?
3. List some important achievements of the NHRC.

7.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. In order to safeguard human rights, the Parliament passed the Protection of Human Rights Act in 1993 for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts.

2. The difference between NHRC and SHRCs is that the SHRCs have a role with relation to entries in List II and III of the Seventh Schedule of the Constitution dealing with State List and Concurrent List. On the other hand, NHRC has jurisdiction over all entries in the Union, State and Concurrent Lists.
3. Some important achievements of the NHRC include interventions and significant results obtained in Gujarat riots, Punjab mass cremations case and Orissa starvation deaths. It took a bold stand on caste discrimination at the World Conference against Racism in Durban. It also intervened with success in Orissa Super cyclone, Gujarat and J&K earthquakes, and Tsunami disasters.

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7.4 SUMMARY

- Several National Commissions have also been created for Women, Minorities, Scheduled Castes and Scheduled Tribes. Their Chairpersons are deemed Members of the National Human Rights Commission.
- The status and conditions of service of Chairperson of NHRC are the same as that of the Chief Justice of India, and of Members of the commission are those of Judges of the Supreme Court.
- NHRC is a recommendatory body; however, 95 per cent of its recommendations are generally accepted. Section 18(b) of Protection of Human Rights Act, 1993 provides that NHRC may approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary.
- The National Human Rights Commission took a number of important initiatives with regard to access to Health Services, quality assurance in mental health, HIV/AIDS, food security, atrocities against the SCs, and trafficking, systemic reforms in police establishment of Human Rights cells in police headquarters, visits to prisons, mental hospitals and government run homes.
- The Supreme Court has referred to the NHRC regarding the monitoring of the elimination of bonded labour, functioning of three mental hospitals, issue of Punjab mass cremations, Orissa starvation deaths and the lifting of the ban on salt iodization.
- Section 2(1)(d) of the Protection of Human Rights Act, 1993 defines Human Rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.
- The Paris Principles were adopted by the UN General Assembly in 1993 which require NHRI's to safeguard human rights by means of investigation

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of complaints, monitoring activities and promoting human rights through media, education, capacity building, publications and assisting the Government for the fulfilment of the purpose.

- The Office of the High Commissioner for Human Rights (OHCHR) is a permanent observer on the Sub Committee on Accreditation, SCA and serves as the secretariat to the GANHRI and its SCA.
- NHRC holds the power to investigate grievances related to the violation of human rights either after receiving a petition or without a formal prompting by another party.
- NHRC takes on and promotes research in the field of human rights. It works for spreading human rights literacy and an awareness in society regarding safeguards for their protection. For this purpose, it makes use of media, publications, seminars, etc.

7.5 KEY WORDS

- **Concurrent List:** It is a list of 52 items given in the Seventh Schedule to the Constitution of India. It includes the power to be considered by both the union and state government.
- **Asia Pacific Forum (APF):** It is one of four regional networks of national human rights institutions within the International Co-ordinating Committee of NHRIs.

7.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What does the National Human Rights Commission (NHRC) consist of?
2. List three functions of the NHRC.
3. What do the main amendments carried out in the Protection of Human Rights Act, 1993 relate to?
4. What is the main criteria to be met by NHRIs for SCA accreditation?

Long-Answer Questions

1. Discuss the vision and mission of the NHRC.
2. Analyze the powers and functions of NHRC.

7.7 FURTHER READINGS

- Tripathi, T.P. 2012. *An introduction To the Study of Human Rights*. Allahabad: Allahabad Law Agency Publications.
- Paramasivam, Sivagami. 2010. *Human Rights-A Study*. Salem: Thai Pathippagam.
- Gupta, U.N. 2004. *The Human Rights Conventions and Indian Law*. Delhi: Atlantic Publishers and Distributors.
- Arora. Ramesh K. and Rajni Goyal. 2014. *Indian Public Administration: Institutions and Issues*. New Delhi: New Age international Publishers.

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UNIT 8 STATE HUMAN RIGHTS COMMISSION IN INDIA

Structure

- 8.0 Introduction
- 8.1 Objectives
- 8.2 SHRC: Composition, Powers and Functions
- 8.3 Answers to Check Your Progress Questions
- 8.4 Summary
- 8.5 Key Words
- 8.6 Self Assessment Questions and Exercises
- 8.7 Further Readings

8.0 INTRODUCTION

The Protection of Human Rights Act, 1993 provides for the creation of Human Rights Commissions at the State level. These are aimed at proper monitoring and protection of human rights in addition to inquiring into cases of human rights violation. SHRCs are vested with the power to intervene in proceedings involving allegations of human rights violation with the permission of the Court concerned. They undertake and promote research in the field of human rights and make recommendations to the state governments for the effective implementation of human rights laws. This unit provides an overview of the organization, functions and powers of SHRC.

8.1 OBJECTIVES

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

- Understand the composition of State Human Rights Commission
- Analyze the functions of the commission
- Discuss the working of the commission
- Evaluate the grounds on which SHRCs are criticized

8.2 SHRC: COMPOSITION, POWERS AND FUNCTIONS

The creation of a State Human Rights Commission is provided for in the Protection of Human Rights Act, 1993. A State Human Rights Commission has the power to inquire into cases of human rights violation which are related to subjects of the

State list and Concurrent list as mentioned in the seventh schedule of the Indian Constitution.

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Composition

As per the Human Rights (Amendment) Act, 2006, an SHRC will have three members including a Chairperson who should be a retired Chief Justice of a High Court.

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Qualification for other members

- (i) Should be a serving or retired judge of a High Court or a District Judge in the state with a minimum of seven years experience as District judge.
- (ii) Should be a person having practical experience or knowledge related to human rights.

The Chairpersons and other members are appointed by the Governor of the state concerned on the recommendations of a Committee that has the Chief Minister who is the head of the Committee, the state Home Minister, the speaker and the leader of opposition of the Legislative Assembly. In case the state has a legislative Council, the Chairman and the leader of opposition of the Council will be members of the Committee too.

The tenure of the Chairperson and the members of an SHRC is five years or until they attain the age of seventy years, whichever is earlier. They are not eligible for employment under the state or central government after completion of their tenure with an SHRC. However, they are eligible for another term in the commission subject to the age limit.

Functions of the Commission

The functions of a State Human Rights Commission, according to Protection of Human Rights Act, 1993 are:

- (a) Inquire *suo motu* or on a petition presented to it by a victim or by any other person on the behalf of the victim regarding violation of human rights or negligence by a public servant in discharge of his duty for the prevention of such violation.
- (b) Intervene in proceedings involving allegation of human rights violation before a Court by receiving approval of the Court for the same.
- (c) Visit jails that are under the control of the State Government in order to check the living conditions of prisoners and to make recommendations for the same.
- (d) Recommend remedial steps for improving the provisions and protections provided by the Constitution after reviewing them.
- (e) Review factors that impede enjoyment of human rights including acts of terrorism and recommend remedial measures for them.

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- (f) Undertake and promote research in the field of human rights.
- (g) Spread human rights literacy and an awareness in society regarding safeguards for their protection.
- (h) Promote and encourage the efforts made by NGOs and other institutions in the field of human rights.
- (i) Undertake functions for the promotion of human rights as considered necessary by it.

Working of the Commission

- The Commission has the power to regulate its procedure.
- It enjoys the same power as that of a civil court and its proceedings have a judicial character.
- It has the power to ask for reports or information from state governments and other authorities that are subordinate to them.
- It has the power to demand information from any person subject to any privilege that is claimed under any law that is in force for the time being regarding matters or points relevant to the subject matter of investigation or inquiry. Such matters can be looked into by the Commission within one year of their occurrence.

Criticism

State Human Rights Commissions have limited powers and its functions are limited to giving recommendations or advice. It has not been granted the power to punish the offenders. It cannot provide any compensation or relief to the victim.

The recommendations made by the SHRC are not binding on the state government or any other authority in question though it needs to be informed about the action taken on its recommendations within a month.

Conclusion

There is a need to increase the powers of State Human Rights Commissions so that they can work more effectively in delivering justice to the aggrieved parties. Several ways could be used to increase the powers such as giving the Commissions the power to provide compensations in the form of monetary relief or other appropriate means to the victim. It should also be granted the power to punish the violators of human rights in order to set an example in society that may act as a deterrent to such acts in the future.

Another change that needs to be made is that the interference of state governments in the working of the Commission should be minimized as such interference disrupts the work and delays justice.

Check Your Progress

1. What power does a State Human Rights Commission have?
2. List any two functions of SHRC.

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8.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. A State Human Rights Commission has the power to inquire into cases of human rights violation which are related to subjects of the State list and Concurrent list as mentioned in the seventh schedule of the Indian Constitution.
2. Two functions of SHRC are to:
 - (a) Intervene in proceedings involving allegation of human rights violation before a Court by receiving approval of the Court for the same.
 - (b) Visit jails that are under the control of the State Government in order to check the living conditions of prisoners and to make recommendations for the same.

8.4 SUMMARY

- The creation of a State Human Rights Commission is provided for in the Protection of Human Rights Act, 1993.
- As per the Human Rights (Amendment) Act, 2006, an SHRC will have three members including a Chairperson who should be a retired Chief Justice of a High Court.
- In case the state has a legislative Council, the Chairman and the leader of opposition of the Council will be members of the Committee too.
- SHRC can recommend remedial steps for improving the provisions and protections provided by the Constitution after reviewing them.
- The Commission has the power to ask for reports or information from state governments and other authorities that are subordinate to them.
- State Human Rights Commissions have limited powers and its functions are limited to giving recommendations or advice. It has not been granted the power to punish the offenders.

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- Several ways could be used to increase the powers such as giving the Commissions the power to provide compensations in the form of monetary relief or other appropriate means to the victim. It should also be granted the power to punish the violators of human rights in order to set an example in society that may act as a deterrent to such acts in the future.

8.5 KEY WORDS

- **Seventh Schedule of the Indian Constitution:** It defines and specifies allocation of powers and functions between Union & States. It contains three lists; i.e. 1) Union List, 2) State List and 3) Concurrent List.
- **Suo Motu:** It refers to an action taken by a court of its own accord, without any request by the parties involved.

8.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Who can be the Chairperson of an SHRC?
2. Write a short note on the qualification of other members of SHRC.

Long-Answer Questions

1. Discuss the appointment and tenure of the Chairperson and other members of SHRC.
2. Analyze the working of an SHRC.

8.7 FURTHER READINGS

Tripathi, T.P. 2012. *An introduction To the Study of Human Rights*. Allahabad: Allahabad Law Agency Publications.

Paramasivam, Sivagami. 2010. *Human Rights-A Study*. Salem: Thai Pathippagam.

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Arora. Ramesh K. and Rajni Goyal. 2014. *Indian Public Administration: Institutions and Issues*. New Delhi: New Age international Publishers.

UNIT 9 HUMAN RIGHTS IN POLICE STATIONS

*Human Rights in
Police Stations*

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Structure

- 9.0 Introduction
- 9.1 Objectives
- 9.2 Human Rights in Police Stations and Human Rights Courts
- 9.3 Answers to Check Your Progress Questions
- 9.4 Summary
- 9.5 Key Words
- 9.6 Self Assessment Questions and Exercises
- 9.7 Further Readings

9.0 INTRODUCTION

The police are a constituted body of persons responsible for maintaining law and order, detecting and preventing crimes, restraining unlawful activities and cooperating with the courts for delivering judgements. When the police prevents crimes and metes out justice to people, it helps in the prevention of human rights violation. Similarly, the Courts deliver judgements for the protection of human rights and sometimes intervene in important issues related to these rights with the objective of their protection and enforcement. In this unit, an overview of the protection and enforcement of human rights in police stations and courts has been provided.

9.1 OBJECTIVES

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

- Discuss the protection and enforcement of human rights at police stations
- Analyze the proceedings in courts for human rights protection

9.2 HUMAN RIGHTS IN POLICE STATIONS AND HUMAN RIGHTS COURTS

Let us begin with a discussion on human rights in police stations.

Human Rights at Police Stations

Human rights are essential to the values of a civil society. The Indian Republic has been bestowed with the Constitution to safeguard the rights conferred to every citizen. The fundamental rights are integral to Indian philosophy and the founding

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fathers of the Constitution have guaranteed the same. Our constitution guarantees right to life, liberty, and equality to every citizen irrespective of colour, sex, caste, religion or any other consideration. The Constitution contains a comprehensive list of fundamental rights and covers all the essential civil and political rights for a dignified living. A distinguishing feature of the Indian Constitution is that it provides equal opportunities to all to seek judicial intervention in case of violation of any rights. The role of police therefore becomes very important in prima facie protecting the violations of human rights.

Police is the largest law enforcing agency which has a special responsibility for the protection of human rights. It is the duty of the police that human rights of any citizen are violated by any individual, group or the state itself. By virtue of the power conferred to them as protectors of human rights, the police can use force and facilitate the legal action against the perpetrators of human rights in the country. The men, women, children, poor, destitute, minorities, backward etc. all require support of the police to protect the violations of any of their rights.

Policing is one of the most important requirements of peaceful coexistence of the society. Policing is a practice put in place to maintain social order in the society. It is basically installing ways to control crime in the community. It concentrates on the maintenance of law and order and the prevention and detection of offences.

A review of roles and responsibilities of police suggests the following:

- Prevention and detection of crime
- Maintenance of public order
- Respect for rule of law
- Respect dignity of humans
- Respect for freedom, liberty and rights of citizens

The police play a significant role in this respect as they are charged with the responsibility of maintaining order and enforcing laws. Unfortunately, at times, when discharging their duties, the actions of the police conflict with the human right regulations. The Office of the United Nations High Commissioner for Human Rights has issued guidelines to the police for protecting human rights of the people. The commission engages in providing ample resources for training police officials and making them aware about the human rights violations that might occur while policing.

In India, the National Human Rights Commission (NHRC) has taken several instances of human rights violations of the police while performing their roles and responsibilities.

Since 1971, several committees have been created to list the issues that cripple the police administration vis-à-vis human rights protection. According to them, the following issues prevail in the system that needs utmost attention:

- Unwarranted political interference and politically driven appointments, transfers and promotions;
- Disparate functions performed by an overburdened police force hindering efficiency and domain specialization;
- Lack of genuine empowerment of personnel;
- Lack of independent oversight body; and
- Inadequate collaboration between the police and the prosecutors.

According to Human Rights Watch, an important international agency concerned with the protection and promotion of human rights, police and criminal justice reforms need serious attention. The agency observes that while not excusing abuses, abysmal working conditions for police officers contribute to violations. In order to make the system of policing efficient, lawful and humane, the Government must ensure that police is resourced properly. Also a continuous supervision and monitoring by the Government and legal institutions is a must. The police must abide by the human right regulations to ensure human dignity and involvement of society in policing. This will not only strengthen the bond between the police and society but also create a police-friendly environment.

Human Rights and Courts

Police and courts are very important pillars of the democracy that facilitate human rights protection. The police is responsible for restraining any unlawful activity, probing crime, arresting criminals, preparing charge sheets, helping Courts in summoning witnesses and finally helping the Court deliver judgment. Courts i.e. judiciary, the fourth pillar of the democracy, provides assurance to people living in a lawful manner, enjoy all the rights granted to them by the Constitution.

The right to life, liberty, equality and dignity are the basic fundamental human rights that need to be sternly guarded by the Court, whether it be the Honourable Supreme Court, the Honourable High Courts or the Subordinate Courts functioning at the grass-root level.

In enforcing the human rights, the subordinate Courts have an essential role. They are the first access points for the common man, in the hierarchy of judiciary to test, whether the natural or human rights of people are being addressed and preserved.

In the Indian context the courts are the flag bearer of safeguarding human rights of the citizens by way of involvement in various proceedings. These might include:

- Protection in Criminal Proceedings

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- Protection through Remand Procedure
- Protection through Bail Proceedings
- Protection through Discharge Proceedings
- Protection through Plea-bargaining
- Protection Through Exercise Of Judicial Discretion During Sentencing
- Protection through Legal Aid

Check Your Progress

1. Which rights does our Constitution guarantee?
2. What is the police responsible for?
3. List any five proceedings that courts indulge in for the protection of human rights.

9.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. Our constitution guarantees right to life, liberty, and equality to every citizen irrespective of colour, sex, caste, religion or any other consideration.
2. The police is responsible for restraining any unlawful activity, probing crime, arresting criminals, preparing charge sheets, helping Courts in summoning witnesses and finally helping the Court deliver judgment.
3. The proceedings that the courts indulge in for the protection of human rights include:
 - Protection in Criminal Proceedings
 - Protection through Remand Procedure
 - Protection through Bail Proceedings
 - Protection through Discharge Proceedings
 - Protection through Plea-bargaining

9.4 SUMMARY

- The fundamental rights are integral to Indian philosophy and the founding fathers of the Constitution have guaranteed the same. Our constitution guarantees right to life, liberty, and equality to every citizen irrespective of colour, sex, caste, religion or any other consideration.



- A distinguishing feature of the Indian Constitution is that it provides equal opportunities to all to seek judicial intervention in case of violation of any rights. The role of police therefore becomes very important in prima facie protecting the violations of human rights.
- The men, women, children, poor, destitute, minorities, backward etc. all require support of the police to protect the violations of any of their rights.
- A review of roles and responsibilities of police suggests the following:
 - o Prevention and detection of crime
 - o Maintenance of public order
 - o Respect for rule of law
- The Office of the United Nations High Commissioner for Human Rights has issued guidelines to the police for protecting human rights of the people. The commission engages in providing ample resources for training police officials and making them aware about the human rights violations that might occur while policing.
- Since 1971, several committees have been created to list the issues that cripple the police administration vis-à-vis human rights protection.
- According to Human Rights Watch, an important international agency concerned with the protection and promotion of human rights, police and criminal justice reforms need serious attention.
- The right to life, liberty, equality and dignity are the basic fundamental human rights that need to be sternly guarded by the Court, whether it be the Honourable Supreme Court, the Honourable High Courts or the Subordinate Courts functioning at the grass-root level.
- In enforcing the human rights, the subordinate Courts have an essential role. They are the first access points for the common man, in the hierarchy of judiciary to test, whether the natural or human rights of people are being addressed and preserved.

*Human Rights in
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9.5 KEY WORDS

- **National Human Rights Commission (NHRC):** It is a Statutory public body constituted under the Protection of Human Rights Ordinance of 28 September 1993. It is responsible for the protection and promotion of human rights, defined by the Act as “Rights Relating to Life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.”
- **Plea Bargain:** It is any agreement in a criminal case between the prosecutor and defendant whereby the defendant agrees to plead guilty or nolo contendere to a particular charge in return for some concession from the prosecutor.



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9.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What is a distinguishing feature of the Indian Constitution?
2. What does a review of roles and responsibilities of police suggest?
3. What should the government do to make the system of policing efficient, lawful and humane?

Long-Answer Questions

1. Discuss the role of police in society and in the maintenance of human rights.
2. Analyze the issues related to human rights protection that need utmost attention.

9.7 FURTHER READINGS

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BLOCK - IV
HUMAN RIGHTS ISSUES IN INDIA

Human Rights of Dalits

UNIT 10 HUMAN RIGHTS OF
DALITS

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10.0 INTRODUCTION

Under the caste system, the so called ‘untouchables’ have faced atrocities and discrimination in the country since time immemorial. The root cause of this discrimination is the caste system that reinforces the inhuman treatment meted out to the Dalits. Several efforts have been made to change the situation, such as the anti-caste movements, most notable of these being the Dalit Movement started by B.R. Ambedkar.

A number of measures have been taken by the government to safeguard the rights of Dalits and to protect them. Despite these, the practice of untouchability has not been uprooted completely as it is ingrained in the structure of society. The Constitution provides for provisions that are aimed at the upliftment of Dalits and punishment for offences against them. Moreover, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been enacted and amendments have been made to improve its effectiveness. This unit focuses on the steps taken by the State to safeguard the rights of Dalits.

*Self-Instructional
Material*

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10.1 OBJECTIVES

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

- Analyze the concept of Dalit Rights
- Discuss the Constitutional Safeguards for Scheduled Castes/ Scheduled Tribes
- Understand the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

10.2 DALIT RIGHTS

‘Dalit’ literally means oppressed or ‘broken people’. The centuries old caste system in India is a complex social hierarchy that assigns people a place. Dalits are at the very bottom of this discriminatory social order. In India, society was divided into four varnas namely, Brahmins, kshatriyas, vaishyas and shudras. The brahmanas were the upper most class, after them there were kshatriyas or the ruling class then vaishyas and then shudras who were considered the lowest class, and they were not given any privilege. They were considered as untouchables and this ancient practice continues in India during medieval as well as modern times. Even in today’s India, the Dalits are facing various atrocities in different parts of the country.

The Dalits have historically been poor, deprived of basic human rights, and treated as social inferiors in India. They still face economic, social, cultural, and political discrimination in the name of caste. ‘Dalit’ (Oppressed) is the name which the people belonging to those castes at the very bottom of India’s caste hierarchy have given themselves. Formerly, they were known as untouchables, because their presence was considered to be so polluting that contact with them was to be avoided at all costs. The official label for them has been Scheduled Castes, because if their caste is listed on the government schedule, caste members become eligible for a number of affirmative action benefits and protections. Dalits have chosen the ‘Dalit’ label for themselves for at least three important reasons. First, the label indicates that the condition of the Dalits has not been of their own making or choosing; it is something which has been inflicted upon them by others. Thus, secondly, there is an element of militancy built into the label; Dalits seek to overcome the injustices and indignities forced upon them so as to gain the equality and respect hitherto denied them.

Though the government has taken various measures to prevent the atrocities and to give them a respectable place in society, the people belonging to Dalit class have been scheduled in the Constitution of India and they are referred to as Scheduled Castes Scheduled Tribes. Dalits are the suppressed people at the lost

rung of the cast-based hierarchy. Their inferior occupations and low levels of ascriptive status make them vulnerable for attacks at the hands of upper-caste people. The organizational efforts made by Dalit leadership for uplifting their status are known as Dalit movement. It is a protest against untouchability, casteism and discrimination faced by the Dalits. Dalit movement indicates some trends of protest ideologies which entail—withdrawal and self-organization, high varna status and extolling of non-Aryan culture's virtues, abandoning of Hinduism and embracing other religions like Buddhism and Islam. Mahatma Gandhi in 1923 founded the All India Harijan Sevak Sangh to start education and schools for the Dalits. Another most important Dalit leader. Ambedkar struggled to secure the basic human dignity to the Dalits. The Mahad Satyagraha for the right of water led by him was one of the outstanding movements of the Dalits to win equal social rights.

The role of All India Depressed Classes Association and All India Depressed Classes Federation were the principal organizations which initiated a movement to improve the conditions of the Dalits. These organizations aimed at improving their miserable conditions and to spread education among them. They worked to secure rights of admission to school, drawing water from the public wells, entering the temples and to use the roads.

Although India's Constitution of 1947 abolished the practice of untouchability, the Dalits continue to experience discrimination, segregation, and violence. The laws providing for the welfare of Dalits are often ignored. The government of India maintains that the problems should be handled internally and do not represent a form of racism, while the sections of Dalit intelligentsia seek international attention to the problems they face.

The Dalits, mostly landless agricultural laborers or menial laborers, need greater political voice and participation in political processes to break free from the age old socio-culturally imposed bondage, segregation, and discrimination. Despite the advances brought about by the reservation system, customs and other social practices continue to hinder rapid and all around social emancipation of Dalits. As landless laborers who depend upon the landlord farmers for their livelihood, the Dalits continue to suffer from the traditional caste equations and the landlords continue to profit from it. This system provides fertile ground for atrocities. Only economic empowerment of Dalits, providing them with land and the related wherewithal, can mitigate the social tensions. The caste distinction has not only social but religious sanction. It is based on the Hindu idea that a person's positioning in the social hierarchy is ordained by his or her deeds in the previous life, since Hindus believe in rebirth.

The current social status of an individual depends on the good or bad deeds committed by that individual, his or her *Karma*, and is therefore immutable in this real world. The Dalit movement, in the familiar sense of organized resistance of the untouchables to caste oppression, may not be traced beyond colonial times. However, in a wider sense of the struggle of lower castes against the hegemony of

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Brahminical ideology, it has to coexist with the history of caste itself. The broad framework of caste remaining the same, the Dalit movement could also be seen in a historical continuum with its previous phases. In another sense, it could be taken as the articulation phase of the numerous faceless struggles against the iniquitous socioeconomic formation ordained by the caste system, that has occupied vast spaces of Indian history. By any reckoning it seems to have done well in identifying its friends and foes, putting in place its strategies and tactics and more importantly, carving out a space for itself in every sphere. It kept pace with the changes taking place in socio-political sphere during the colonial times and thus displayed significant learning during this phase. However, it could not do so thereafter when it had to consolidate its gains particularly in the context of substantial changes that befell during the post-independence times.

During this period, it appears to have been eclipsed by the shadow of its own past. In an attempt to grasp certain generalities of the Dalit movement, this paper will try to present a hypothesis that all the predominant attributes that the contemporary Dalit movement tends to reflect, are basically acquired from the circumstances that brought it into existence. In corollary, the hypothesis is extended to state that the Dalit movement did not assimilate any significant learning through changes in these circumstances and so allowed itself to degenerate and to be used by the very set of people whom it intended to fight. While wading through the web of Indian reality around the Dalit movement it is expected to throw up issues the clarity on which is considered prerequisite to chalk out a road map for its liberation.

The mythologized history of India does not provide many clues to the direct rebellions of the oppressed masses against their oppression. But it is inconceivable that they did not take place at all over a long period of two millennia that nibbled at their existence every moment with a 'divine' contrivance called caste. The extraordinary success of this contrivance of social stratification is as much attributable to its own design that effectively obviated coalescence of the oppressed castes and facilitated establishment and maintenance of the ideological hegemony as to its purported divine origination. None could ordinarily raise a question as it meant incurring divine wrath and consequent ruination of the prospects of getting a better birth in their next life. Thus the caste system held society in a metaphysical engagement and at the same time in physical alienation with itself. Materially, it provided for the security of every one through caste professions and psychologically an aspirational space for every caste including the non-caste untouchables to feel superior to some other. Since, this superstructure was pivoted on the religious-ideological foundation, the manifestation of resistance to the caste system always used the metaphysical toolkit that contrived its arguments into the religious form. Right from the early revolts like Buddhism and Jainism down to the Bhakti movement in the medieval age, one finds articulation of opposition to the caste system materializing in a religious-ideological idiom. This trend in fact extends well down to modern times that marks a new awakening of the oppressed castes and the birth of the contemporary Dalit movement. All anti-caste movements thus, from

the beginning to the present, invariably appear engaged in religious or metaphysical confrontation with Brahminism, either in terms of its denouncement or of adoption of some other religion.

The religious discourse is thus a common feature of all the anti-caste movements. For example, the Satnami movement of the Chamars in the Chhattisgarh plains in Eastern Madhya Pradesh that eventually became an independent religious sect (Russel 1916); the Dravid Kazhagam movement of Periyar EVR Ramaswamy Naicker which created a stir by publicly burning the effigy of Rama and celebrating the virtuousness of Ravana; the Nadar Mahajana Sabha in Tamil Nadu (Hardgrave 1969); the Ezhava movement of Narayana Guru which culminated in establishment of a new religious sect called Sree Narayan Dharma Pratipalana Yogam in Kerala (Thomas 1965; Aiyappan 1944; Samuel 1973), and the most pervasive Dalit movement (Zelliot 1969) led by Babasaheb Ambedkar curiously reaching its climax of mass conversion to Buddhism; they all signify an overriding hatred for the religious code of Manu and a proposition of an alternate faith for themselves. It essentially embodied dejection with the Brahminism, which was perceived to be the root cause for their sufferings. The most articulate expression of this dejection is found in Ambedkar's own analyses that holds overthrowing of 'Hindu' religious ideological hegemony as a necessary condition for the liberation of Dalits.

The World Conference against Racism, Xenophobia and Related Intolerance, a United Nations (UN) convention held in Durban, South Africa, from 31 August –7 September 2001, stirred a hornet's nest in India. The Dalit activists and their supporters demanded that India's 2000-year-old caste system be included in the deliberations at the conference and that the United Nations (UN) should pass a resolution condemning the inherent social gradation of the system. The demand to bring this issue before an international forum was countered vociferously by the Indian government, which maintains that the caste system and caste-related discrimination are internal affairs that should be fought within the country. In modern times, though laws have forbidden discrimination against Dalits, the stigma of untouchability continues to isolate millions of members of this group. They are still associated by many upper caste members with a sense of pollution—as having been the workers in charge of functions like disposing of animal carcasses, digging graves, and cleaning latrines and therefore polluted. Despite India's modern democratic government and a 50-year-old Constitution that abolishes the caste system and provides for the rights of the lowest caste, there is much work left to do in order to wipe out the discriminatory practices still prevalent in no small measure.

Check Your Progress

1. What do Dalit trends of protest ideologies entail?
2. What did Ambedkar's Dalit movement embody?

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10.3 CONSTITUTIONAL SAFEGUARDS FOR SCHEDULED CASTES/SCHEDULED TRIBES

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The important Constitutional Safeguards for Scheduled Castes and Tribes are as follows:

(1) Development and Protective Safeguards

Article 46: These safeguards are contained in the Directive Principles of State Policy of the Constitution and a specific provision in Article 46 which is a comprehensive provision comprising both the developmental and regulatory aspects. Article 46 provides that 'The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.'

(2) Social and Economic Safeguards

Article 17: Article 17 of the Constitution provides that untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. To give effect to this Article, Parliament made an enactment viz., Untouchability (Offences) Act, 1955. To make the provisions of this Act more stringent, the Act was amended in 1976 and was also renamed as the Protection of Civil Rights Act, 1955. As provided under the Act, the Government of India also notified the Rules, viz, the PCR Rules, 1977, to carry out the provisions of this Act. As cases of atrocities on

SCs/STs were not covered under the provisions of PCR Act, 1955, Parliament passed another important Act in 1989 for taking specific measures to prevent the atrocities. This Act known as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, became effective from 30 January 1990.

Article 23: Article 23 prohibits traffic in human beings and beggar and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. It does not specifically mention SCs but since majority of bonded labour belong to SCs this Article has a special significance for these communities. In pursuance of this Article, Parliament has enacted the Bonded Labour System (Abolition) Act, 1976. For effective implementation of this Act, the Ministry of Labour is running a Centrally Sponsored Scheme for identification, liberation and rehabilitation of bonded labour.

Article 24: Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. There are Central and State laws to prevent child labour. This Article

is also significant for SCs as a substantial portion of child labour engaged in hazardous jobs belong to these groups.

Article 25(2) (b): Article 25(2) (b) provides that Hindu religious institutions of a public character shall be thrown open to all classes and sections of Hindus. This provision is relevant as some sects of Hindus used to claim that only members of the concerned sects had a right to enter their temples. This was only a subterfuge to prevent entry of SC persons in such temples. For the purpose of this provision the term Hindu includes Sikh, Jain and Buddhist.

Article 244: Clause(1) Provisions of Fifth Schedule shall apply to the administration & control of the Scheduled Areas and Scheduled Tribes in any State other than the states of Assam, Meghalaya, Mizoram and Tripura which are covered under Sixth Schedule, under Clause (2) of this Article.

Article 275: Provides for Grants in-Aid to specified States (STs&SAs) covered under Fifth and Sixth Schedules of the Constitution.

(3) Educational and Cultural Safeguards

Article 15(4): Article 15(4) empowers the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for SCs and STs. This provision was added to the Constitution through the Constitution (First Amendment) Act, 1951, which amended several Articles. This provision has enabled the State to reserve seats for SCs and STs in educational institutions including technical, engineering and medical colleges and in Scientific and Specialized Courses. In this Article as well as in Article 16(4) the term 'backward classes' is used as a generic term and comprises various categories of backward classes, viz., Scheduled Castes, Scheduled Tribes, Other Backward Classes, denotified Communities and Nomadic/Semi nomadic communities.

Article 29: Article 29 deals with the protection of interests of minorities which includes STs.

Article 350: Article 350 deals with the instruction in mother tongue and right to conserve distinct Language, Script or Culture;

(4) Political Safeguards

Article 164(I): It provides that in the States of Bihar, Madhya Pradesh and Orissa there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

Article 330: It provides for reservation of seats for SCs and STs in the Lok Sabha.

Article 332: Article 332 provides for reservation of seats for SCs/STs in the State Vidhan Sabhas (Legislative Assemblies).

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Article 334: This Article originally laid down that the provisions relating to the reservation of seats for SCs/STs in the Lok Sabha and State Vidhan Sabhas (and the representation of the Anglo-Indian community in the Lok Sabha and the State Vidhan Sabhas by nomination) would cease to have effect on the expiration of a period of ten years from the commencement of the Constitution. This Article has been amended five times, extending the said period by ten years on each occasion. This provision will now expire in January, 2010.

Article 371A: This Article contains special provisions with respect to Nagaland.

Article 371B: Article 371B contains special provisions with respect to Assam.

Article 371C: Article 371C contains special provisions with respect to Manipur.

Article 371F: Article 371F contains special provisions with respect to Sikkim.

(5) Service Safeguards

Article 16(4): Article 16(4) empowers the State to make ‘any provision for the reservation in appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State’.

Article 16(4A): Article 16(4A) specific that nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion, ‘with consequent seniority’ to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

Article 16(4B)—‘Specific that nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year’.

Article 320 (4) this Article provides that nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision under Article 16(4A) may be made or the manner in which effect may be given to the provisions of Article 335.

Article 335 mentions that ‘the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making to appointments to services and posts in connection with the affairs of the Union or of a State’

‘Provided that nothing in this Article shall prevent in making of any provision in favour of Member of SCs & STs for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with affairs of Union or of a State’ (Constitutional 82nd Amendment, Act, 2000).

Check Your Progress

3. Which Act was passed to give effect to Article 17 of the SC/ST Act?
4. What does Article 16(4) of the Constitution empower the State to do?

10.4 SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

Dalits have faced various atrocities in India from ancient times. After getting independence, the government of India has taken various steps time and again to protect the rights and safeguard the interest of Dalits. In 1989 the government of India passed the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Act was enacted to prevent the commission of offences of atrocities against the members of the scheduled Castes and the Scheduled Tribes, to provide for special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

10.4.1 Offences of Atrocities Punishable under the Act

The Act specifies certain offences and provides punishments for the same. According to the Act any person who is not a member of a Scheduled Caste or a Scheduled Tribe shall be punished with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine if that person commits any of the following offences:

- (i) Forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substances;
- (ii) Acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste, or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighborhood;

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- (iii) Forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;
- (iv) Wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;
- (v) Wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;
- (vi) Compels or entices a member of a Scheduled Caste or a Scheduled Tribes to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;
- (vii) Forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;
- (viii) Institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;
- (ix) Gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;
- (x) Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;
- (xi) Assaults or uses force on any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;
- (xii) Being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;
- (xiii) Corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;
- (xiv) Denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;
- (xv) Forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house village or other place of residence. Along with these offences the Act also provides for the following offences and the punishment for the

same to any person not being a member of a Scheduled Caste or a Scheduled Tribe:

- (i) If any person not being a member of schedule caste or schedule tribe gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such evidence, shall be punished with death;
- (ii) If any person gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, or knowing it to be likely that he will thereby cause, any member of a scheduled Caste or a scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six, months but which may extend to seven years or upwards and with fine;
- (iii) If any person commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a scheduled Tribe, Shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (iv) If any person commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;
- (v) If any person commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;
- (vi) If anyone knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any

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information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

- (vii) If anyone being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

10.4.2 Features of the Act

The features of the Act may be discussed as follows:

- (1) The Act provides for the offences and punishments committed by the members not belonging to Scheduled Caste or a Scheduled Tribe against the members of Scheduled Caste or a Scheduled Tribe in detail.
- (2) The Act provides for punishment for willful neglect of duties by a public servant not being a member of a Scheduled Caste or a Scheduled Tribe for imprisonment for a period if not less than six months which may extend to one year.
- (3) The Act provides for the enhanced punishment for the subsequent offence by the same person.
- (4) The Act provides for the application of the certain provisions of Indian Penal Code.
- (5) The Act provides that where a person has been convicted of any offence punishable under this Act, the Special Court may, in addition to awarding any punishment, declare that any property, movable or immovable or both, belonging to the person which has been used for the commission of that offence, shall stand forfeited to Government.
- (6) The Act also provides that for the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a special Court to try the offences under this Act.
- (7) For every Special court, the State Government shall specify a special Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.
- (8) The Act imposes a duty on Government to ensure effective implementation of the Act.

10.4.3 Implementation of the Act: A Critical Analysis

In 1989, the Government of India enacted Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 but despite this legislation, atrocities and discrimination against Dalits continued. Human Rights Watch in 2001 reported

that, 'The state's failure to prosecute atrocities against Dalits is well illustrated by its manipulation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Enacted in 1989, the act provides for certain stiffer punishments for abuses against members of scheduled castes and scheduled tribes when committed by nonscheduled caste or tribe members. Its enactment represented an acknowledgment on the part of the government that abuses, in their most degrading and violent forms, were still perpetrated against Dalits despite the constitutional abolition of 'untouchability' four decades earlier. The potential of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to bring about social change, however, has been hampered by police corruption and caste bias, with the result that many allegations of caste crimes are not entered in police records. Ignorance of procedures and a lack of knowledge of the act have also affected its implementation. Even when cases are registered, the absence of special courts to try them can delay prosecutions for up to three to four years. Some state governments dominated by higher castes have attempted to repeal the legislation altogether'

Amnesty International in 2006 reported that 'data suggested that few cases under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 had resulted in convictions.' The Human Rights Watch report of 2007 supports the findings of Amnesty International and adds that 'local authorities regularly fail to implement laws set up to end discrimination against and protect Dalits and members of the tribal groups'.

Though the Act has been enacted for the protection of the people belonging to schedule caste and schedule tribe but the implementation is not being done properly. It is as important to implement the Act as to enact one. The government should focus not only on enacting the laws but also on the proper mechanism to implement the laws.

10.4.4 National Commission for Schedule Castes and Scheduled Tribes

Earlier there was one Commission for looking after both Schedule Castes and Scheduled Tribes but later on an amendment was made in Article 338 and a new Article 338A was inserted in the Constitution through the Constitution (89th Amendment) Act, 2003. By this amendment, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes was replaced by two separate Commissions namely- (i) the National Commission for Scheduled Castes (NCSC), and (ii) the National Commission for Scheduled Tribes (NCST)

10.4.5 National Commission for Schedule Castes

A national commission has been established for SCs with a view to provide safeguards against the exploitation of SCs and to promote and protect their social, educational, economic and cultural interests. Due to their social disability and economic backwardness, they were grossly handicapped in getting reasonable share in elected offices, Government jobs and educational institutions and, therefore,

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it was considered necessary to follow a policy of reservations in their favour to ensure their equitable participation in governance. For effective implementation of various safeguards provided in the Constitution for the SCs and STs and various other protective legislations, the Constitution provided for appointment of a Special Officer under

Article 338 of the Constitution.

Under the amended Article 338 (9), it has been provided that the Union and State Governments shall consult the Commission on all major policy matters affecting the Scheduled Castes. The Commission has impressed upon all concerned that this provision should be strictly enforced, as a result of which many Bills and other Policy matters affecting Scheduled Castes is now being received in the Commission for its views. The Commission would like to reiterate the obligatory nature of this provision and solicit the support of all concerned to bring to its notice new policies and change in existing policies, which have a bearing on the interests of SCs.

Duties of the Commission

According to Article 338(5) the Commission has the following duties to perform:

- (a) To investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;
- (c) To participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the functions Union and any State;
- (d) To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) To make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and
- (f) To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify

Powers of the Commission

The Commission has all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:

- (a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;

- (b) Requiring the discovery and production of any documents;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or office;
- (e) Issuing commissions for the examination of witnesses and documents;
- (f) Any other matter which the President may by rule, determine;

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10.4.6 National Commission for Scheduled Tribes (NCST)

The National Commission for Scheduled Tribes (NCST) was established by amending Article 338 and inserting a new Article 338A in the Constitution through the Constitution (89th Amendment) Act, 2003.

Functions of the Commission: Under Clause (5) of Art. 338A the Commission has the following functions:

1. To investigate and Monitor matters relating to Safeguards provided for STs under the Constitution or under other laws or under Govt. Order, to evaluate the working of such Safeguards.
2. To inquire into specific complaints relating to Rights & Safeguards of STs;
3. To participate and Advise in the Planning Process relating to Socioeconomic development of STs, and to Evaluate the progress of their development under the Union and any State;
4. To submit report to the President annually and at such other times as the Commission may deem fit, upon/ working of Safeguards, Measures required for effective implementation of Programmes/ Schemes relating to Welfare and Socio-economic development of STs;
5. To discharge such other functions in relation to STs as the President may, subject to the provisions of any law made by Parliament, by rule specify;
6. The Commission would also discharge the following other functions in relation to the protection, welfare and development & advancement of the Scheduled Tribes, namely:
 - (i) Measures that need to be taken over conferring ownership rights in respect of minor forest produce to the Scheduled Tribes living in forest areas.
 - (ii) Measures to be taken to safeguard rights to the Tribal Communities over mineral resources, water resources etc. as per law.
 - (iii) Measures to be taken for the development of tribals and to work for move viable livelihood strategies.
 - (iv) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects.
 - (v) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place.

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- (vi) Measures to be taken to elicit maximum cooperation and involvement of Tribal Communities for protecting forests and undertaking social afforestation.
- (vii) Measures to be taken to ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996).
- (viii) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by Tribals that lead to their continuous disempowerment and degradation of land and the environment.

Powers of the Commission: Under Clause (8) of Art. 338A the Commission vested with powers of a civil court for Investigation and Inquiry, the Commission is having authority to:

- (a) Summon and enforce attendance of any person and examine on oath;
- (b) Discovery & production of any documents;
- (c) Receive evidence on affidavits;
- (d) Requisition any public record or copy thereof from any court or office;
- (e) Issue Commissions for examination of witnesses and documents; and
- (f) Any matter which President, by rule, may determine.

10.4.7 Committee on the Welfare of Scheduled Castes and Scheduled Tribes

The Committee on the Welfare of Scheduled Castes and Scheduled Tribes consists of 30 Members. 20 members are elected by Lok Sabha from amongst its Members in accordance with the System of proportional representation by means of single transferable vote and 10 members are nominated by Rajya Sabha from amongst its Members. The Chairman of the Committee is appointed by the Speaker from amongst the Members of the Committee. A Minister is not eligible for election to the Committee. If a Member after his election to the Committee is appointed a Minister he ceases to be a Member of the Committee from the date of such appointment. The Committee is formed for one year.

Functions of the Committee on the Welfare of Scheduled Castes and

Scheduled Tribes: The functions of the Committee are as follows:

- (a) To consider the reports submitted by the National Commission for Scheduled Castes and Scheduled Tribes under Article 338(5) of the Constitution and to report as to the measures that should be taken by the Union Government in respect of matters within the purview of the Union Government including the Administration of the Union Territories;
- (b) To report on the action taken by the Union Government and the Administration of the Union Territories on the measures proposed by the Committee;

- (c) To examine the measures taken by the Union Government to secure due representation of the Scheduled Castes and Scheduled Tribes in services and posts under its control (including appointments in the Public Sector Undertakings, Nationalized Banks, Statutory and Semi-Government Bodies and in the Union Territories) having regard to the provisions of Article 335;
- (d) To report on the working of the welfare programmes for the Scheduled Castes and Scheduled Tribes in the Union Territories; and
- (e) To examine such other matters as may deem fit to the Committee or are specifically referred to it by the House or the Speaker.

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Procedure of the Work of the Committee

The Committee selects such subjects pertaining to the welfare of Scheduled Castes and Scheduled Tribes from time to time as may deem fit to the Committee. The Committee may also examine matters of special interest relating to the welfare of Scheduled Castes and Scheduled Tribes which may arise, or come to light in the course of its working or which may be specifically referred to it by the House or by the Speaker. The Committee may ask for preliminary material from the Ministry/ Department/Public Undertaking/ Nationalized Bank or other Statutory or Government Body connected with the subject matter under examination for use of the Members of the Committee.

The Committee may, appoint one or more Sub-Committees/Study Groups for carrying out detailed examination of various subjects. If it appears to the Committee that it is necessary for the purpose of its examination that an on-the-spot, study should be made, the Committee divides itself into Study Groups consisting of a few members to undertake tours to make a study of the problems of the Scheduled Castes and Scheduled Tribes and the measures taken or being taken for the welfare of Scheduled Castes and Scheduled Tribes, and prepare Study Reports.

Procedure for Dealing with Complaints

The following procedure has been laid down for dealing with representations/complaints:

- (i) Representations from Government employees in regard to their service matters are not entertained by the Committee as per direction from the Speaker.
Government servants have a prescribed hierarchy of Appellate and Reviewing Authorities with the President at the top. Such representations, when received are forwarded to the Ministry/Department/ Organization concerned for appropriate action.
- (ii) Memoranda/representations on matters which are within the purview of the State Governments are forwarded of the Chief Secretaries of the State Governments concerned for disposal and the petitioner is informed of the action taken.

- (iii) Memoranda/representations which make general suggestions for the welfare and improvement of the conditions of Scheduled Castes and Scheduled Tribes are considered by the Committee on merit while dealing with the subjects referred to in those suggestions.

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10.4.8 Minorities

In India, the safeguards for minorities under the Constitution of India are in the form of fundamental rights. Firstly the Constitution nowhere discriminates among the citizens of India on the grounds of religion, race, caste, etc and secondly, the rights conferred under Articles 25 to 30 are fundamental rights. The State is duty bound to protect the fundamental rights. If fundamental rights are infringed the remedy lies under Articles 32 and 226. A person can directly approach the Supreme Court or the High Court in case of violation of fundamental rights. So the true spirit and intention of the Constitution is to provide a very formal and water tight arrangement for safeguarding the interest of minorities.

There are some Articles in the Constitution of India that exclusively safeguards minority's rights. We will discuss them in detail later on. There are also certain Articles though not specifically meant for minorities but they strengthen minorities' rights. These include Article 14, Article 15, Article 16, Article 21, 25 and 26.

Exclusive Rights of Minorities

India's founding fathers, in order to give a sense of security and confidence to the minorities, have conferred certain rights to minorities. Minorities in India do not stand on equal footing with others, which made the framers of the Constitution, through Article 29 and Article 30, accord special rights to the people who form religious or linguistic minority in India. Let us discuss these two articles in detail.

Article 29: Protection of interests of minorities.

- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30: Right of minorities to establish and administer educational institutions.

- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
[(1A) In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a

minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

- (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Check Your Progress

5. How has the potential of SC/ST Act, 1989 been hampered?
6. How was the National Commission for Scheduled Tribes (NCST) established?

10.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. Dalit movement indicates some trends of protest ideologies which entail— withdrawal and self-organization, high varna status and extolling of non-Aryan culture's virtues, abandoning of Hinduism and embracing other religions like Buddhism and Islam.
2. Ambedkar's Dalit movement essentially embodied dejection with the Brahminism, which was perceived to be the root cause for their sufferings.
3. To give effect to Article 17, Parliament made an enactment viz., Untouchability (Offences) Act, 1955. To make the provisions of this Act more stringent, the Act was amended in 1976 and was also renamed as the Protection of Civil Rights Act, 1955.
4. Article 16(4) empowers the State to make 'any provision for the reservation in appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State'.
5. The potential of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to bring about social change has been hampered by police corruption and caste bias, with the result that many allegations of caste crimes are not entered in police records.
6. The National Commission for Scheduled Tribes (NCST) was established by amending Article 338 and inserting a new Article 338A in the Constitution through the Constitution (89th Amendment) Act, 2003.

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10.6 SUMMARY

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- ‘Dalit’ literally means oppressed or ‘broken people’. The centuries old caste system in India is a complex social hierarchy that assigns people a place. Dalits are at the very bottom of this discriminatory social order.
- The organizational efforts made by Dalit leadership for uplifting their status are known as Dalit movement. It is a protest against untouchability, casteism and discrimination faced by the Dalits.
- The Dalits, mostly landless agricultural laborers or menial laborers, need greater political voice and participation in political processes to break free from the age old socio-culturally imposed bondage, segregation, and discrimination.
- All anti-caste movements thus, from the beginning to the present, invariably appear engaged in religious or metaphysical confrontation with Brahminism, either in terms of its denouncement or of adoption of some other religion.
- Article 17 of the Constitution provides that untouchability is abolished and its practice in any form is forbidden.
- Article 25(2) (b) provides that Hindu religious institutions of a public character shall be thrown open to all classes and sections of Hindus.
- Article 320 (4) provides that nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision under Article 16(4A) may be made or the manner in which effect may be given to the provisions of Article 335.
- In 1989 the government of India passed the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 to prevent the commission of offences of atrocities against the members of the scheduled Castes and the Scheduled Tribes, to provide for special Courts for the trial of such offences and for the relief and rehabilitation.
- If any person commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.
- Amnesty International in 2006 reported that ‘data suggested that few cases under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 had resulted in convictions.
- By the Constitution (89th Amendment) Act, 2003, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes was replaced by two separate Commissions namely- (i) the National Commission for Scheduled Castes (NCSC), and (ii) the National Commission for Scheduled Tribes (NCST)

- The National Commission for Scheduled Tribes (NCST) was established by amending
- Article 338 and inserting a new Article 338A in the Constitution through the Constitution (89th Amendment) Act, 2003.
- The Committee on the Welfare of Scheduled Castes and Scheduled Tribes consists of 30 Members. 20 members are elected by Lok Sabha from amongst its Members in accordance with the System of proportional representation by means of single transferable vote and 10 members are nominated by Rajya Sabha from amongst its Members.

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10.7 KEY WORDS

- **Mahad Satyagraha:** It was a satyagraha led by B. R. Ambedkar on 20 March 1927 to allow untouchables to use water in a public tank in Mahad, Maharashtra, India.
- **Bhakti movement:** It refers to the theistic devotional trend that emerged in medieval Hinduism and later acted as the de facto catalyst to the formation of Sikhism. It originated in eighth-century south India, and spread northwards.
- **Xenophobia:** It is the fear or hatred of that which is perceived to be foreign or strange. It is an expression of perceived conflict between an ingroup and an outgroup and may manifest in suspicion by the one of the other's activities, a desire to eliminate their presence, and fear of losing national, ethnic or racial identity.
- **Denotified Tribes:** These are the tribes that were listed originally under the Criminal Tribes Act of 1871, as Criminal Tribes and "addicted to the systematic commission of non-bailable offences.

10.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Why have Dalits chosen the 'Dalit' label for themselves?
2. List some important anti-caste movements.
3. Write a short note on Article 24 of the Constitution.
4. List some offences punishable under the SC/ST Act, 1989.
5. What are some of the duties of the National Commission for Scheduled Castes as per Article 338(5)?
6. Under what circumstances can the Committee on the Welfare of Scheduled Castes and Scheduled Tribes divide itself into study groups?

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Long-Answer Questions

1. Discuss social and economic Constitutional Safeguards for Scheduled Castes and Tribes.
2. Explain the political safeguards provided in the Constitution.
3. Elaborate upon the features of the SC/ST Act, 1989.
4. Analyze the functions of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes.

10.9 FURTHER READINGS

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UNIT 11 ISSUES AND RIGHTS

Structure

- 11.0 Introduction
- 11.1 Objectives
- 11.2 Child Labourers
 - 11.2.1 Protection of Children from Exploitation and Abuse
 - 11.2.2 Child Labour as Exploitation of Children
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11.0 INTRODUCTION

The problem of child exploitation, dismal condition of domestic workers and the practice of bonded labour have plagued Indian society for a long time. Not only does child labour deprive the children of their rights, but it also forces them into hard labour. Several laws have been put in place to tackle these issues. Despite the legislations, these practices are rampant even today. There is a need to ensure that the laws are effectuated properly. This unit will discuss in detail the issues and problems of child labourers, bonded labourers and domestic workers.

1.1 OBJECTIVES

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

- Understand the issue of child exploitation
- Discuss the laws put in place to protect the rights of children
- Explain the concept of bonded labour
- Examine the condition of domestic workers

11.2 CHILD LABOURERS

The menace of child exploitation exists at the global level. The term 'child exploitation' refers to the misuse of children for advantage of someone else, thereby resulting in undeserved, cruel and detrimental treatment of the child. It includes

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circumstances of manipulation, misappropriation, mistreatment, victimization, oppression or ill-treatment. This has a hazardous impact on the child's physical or mental health, education, moral or social-emotional development.

There are many forms of child exploitation. They are child domestic work, recruitment of children as soldiers, involvement of children in armed conflict, sexual exploitation and pornography, use of children for criminal activities including the sale and distribution of narcotics and the involvement of children in harmful or hazardous work.

Mainly, there are two types of child exploitation which are as follows:

- 1. Sexual exploitation:** It is defined as the abuse of a position of vulnerability, differential power, or trust for sexual purposes; this includes profiting monetarily, socially or politically from the exploitation of another as well as personal sexual gratification. For example, child prostitution, trafficking of children for sexual abuse and exploitation, child pornography, sexual slavery.
- 2. Economic exploitation of a child:** The economic exploitation of a child can be done in work or other activities for the benefit of others. This includes, but is not limited to, child labour. Economic exploitation implies the idea of a certain gain or profit through the production, distribution and consumption of goods and services. This material interest has an impact on the economy of a certain unit, be it the State, the community or the family. Examples are recruitment of children as soldiers, involvement of children in armed conflict, child bondage, and use of children for criminal activities including the sale and distribution of narcotics and the involvement of children in any harmful or hazardous work.

11.2.1 Protection of Children from Exploitation and Abuse

There are many forms of exploitation and abuse of children. Due to violence, discrimination and extreme climate change, millions of children are being forced to leave their home.

Measures that can be taken to prevent and protect children from abuse are as follows:

- Prevent trafficking at the community level by creating awareness of the risks of migration.
- Provide support to children who have been trafficked and help them return home and reintegrate into their communities.
- Improve law enforcement and bring about legal reform to protect survivors of trafficking.
- One cannot reduce the number of children living on the streets without also engaging with the problems at home or in school that could explain their situation. A child who faces the risk of being trafficked, may also

be disabled, in conflict with the law or experience violence in home. Understanding the underlying causes and addressing this interconnectedness is key. Child protection systems seek to address the full spectrum of risk factors in the lives of all children and their families. Effective partnering between government, non-governmental organizations, civil society actors and the private sector should be promoted. Furthermore, the child protection systems should be strengthened. This means that there should be an increased focus on human resources, finances, laws, standards, governance, monitoring and services. Depending upon the country, child protection system can also cut across part of social welfare, education, health and security sectors.

- Initiatives should be taken for the mapping and assessment of child protection systems. This work build consensus among government and civil society on the goals and components of such systems, their strengths, weaknesses and priorities upon which action should be taken. This then translates into better laws, policies, regulations, standards and services, thereby protecting all children. It also leads to the strengthening of these systems with the financial and human resources necessary to deliver results for children.
- Steps should be taken to understand the social norms that result in violence, exploitation and abuse. To promote positive norms to bring about an end to harmful practices, discussions, education programmes and communication for development strategies at community and national levels, within villages, across professional and religious groups and within diaspora communities should be conducted. Changing social norms related to forms of violence, exploitation and abuse that are socially condoned is time and resource intensive. Yet, this work that focuses on community values and human rights is crucial for sustained improvements in children's lives.
- This focus on the prevention and response to violence, exploitation and abuse cuts across the life cycle of the child. It is a critical part of realizing the Millennium Development Goals to ensure that children grow up in a safe and supportive environment. This work not only applies in development contexts but also in humanitarian settings and is in line with the recommendations of the United Nations Secretary-General's Study on Violence against Children (2006), the United Nations Report on the Impact of Armed Conflict on Children (1996) and the Machel Study 10-year Strategic Review: Children and Conflict in a Changing World (2006).

11.2.2 Child Labour as Exploitation of Children

India has the largest number of child labourers under the age of 14 in the world. According to the legal system of India, the minimum age for employment is 14

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years. However, many children in India start working at the age of five years either in the glass, pottery or clothing industry. Child labour is an important topic due to the fact that it has such a huge impact on everyone's life.

According to the National Commission for Protection of Child Rights (NCPCR), the term child labour is used for 'those children who are doing paid or unpaid work in factories, workshops, establishments, mines and in the service sector such as domestic labour'. The Ministry of Women and Child Development (WCD) in India devises policies, plans and programs and also enacts and amends legislation for the development of women and children. The WCD defines a child as a 'human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.' Child labourers tend to start working from a very young age, when they are still not mentally and physically ready for hard labour. The Indian laws states that girls and boys may end their compulsory education and start working at the age of fourteen. There are a few exceptions where the child must be eighteen to work. This age limit is for jobs which are typically more hazardous and unhealthy such as mining.

The Caste System is very much prevalent in India. UNICEF states that 'in India, the view has been that some people are born to rule and to work with their minds while others, the vast majority, are born to work with their bodies. Many traditionalists had been unperturbed about lower-caste children failing to enroll in or dropping out of school, and if these children end up doing hazardous labour, it is likely to be seen as their lot in life.' Because of this, children are not able to get education of good quality. The reasons for this can be insufficient number of schools, lack of teachers, obsolete curriculums and syllabus, wrong methods of teaching and dearth of skilled teachers. The mentality of the parents is also one of the reasons why children fail to get access to education. Some believe that 'children should work in order to develop skills useful in the job market, instead of taking advantage of a formal education'. These rituals and traditions have been passed on for many generations.

Rural Poverty is the poverty found in rural areas which affect the rural economy, rural society and the rural political system. Rural poverty is a clear cause of child labour and child exploitation. Overall, poverty forces parents and guardians of the child to push them into hard labour. Whether it is the glass industry, lock industry, the traditional crafts, pottery or the clothing industry, they all have one thing in common, which is that these are hazardous, extremely unhealthy and life threatening occupations.

Working children are sources of income for the families in India. A recent study revealed that between thirty-four and thirty-seven percent of the total household incomes come from children. Parents push their children towards hard labour as employers are likely to hire them over adults. This is because adult demand a higher income than children. Another reason is that the hands of children are smaller, and therefore they can work quickly and get easily in between the machines in factories.

In 2000, more than 170 Head of States and Governments came together to create a plan to reduce poverty, decrease the spread of HIV/AIDS and provide universal primary education by 2015. The United Nations Development Programme quotes that these eight goals are the 'most broadly supported, comprehensive and specific development goals the world has ever agreed upon'. The eight goals are as follows:

- Goal Number 1: Eradicate extreme poverty and hunger
- Goal Number 2: Achieve universal primary education
- Goal Number 3: Promote gender equality and empower women
- Goal Number 4: Reduce child mortality
- Goal Number 5: Improve maternal health
- Goal Number 6: Combat HIV/AIDS, malaria and other diseases
- Goal Number 7: Ensure environmental sustainability
- Goal Number 8: Develop a global partnership for development

11.2.3 Prostitution

Prostitution is another form of child labour; there are different forms of prostitution seen in India. The most prevalent among them are traditional and religious prostitution. Thousands of girls are forced in the name of tradition and religious practices into sexual exploitation in rural India. Child prostitution is socially acceptable in certain parts of Indian society. It is said that they are 'given' to the Gods as a religious prostitute. A serious concern is the spread of HIV/ AIDS. Committees have been set up to help exterminate child prostitution, and to help decrease the spread of HIV.

11.2.4 Legal Provisions of Child Labour

According to the International Labour Organization, The Constitution of India (26 January 1950), through various articles enshrined in the Fundamental Rights and the Directive Principles of State Policy, lays down that:

- No child shall be employed in any type of hazardous employment.
- The state shall provide free and compulsory education for all children aged between six and fourteen.
- All men and women including children are protected by the state and they will not have to work in vocations not suited for their gender, strength or age.
- All children shall be given the opportunity to grow up and develop in healthy manner and they will all be protected against moral and material abandonment.

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Other than the Constitution, six other main legislative initiatives have been passed on a national level (and many more on local level) in order to at least control child labour. These six legislative initiatives are:

- 1. The Factories Act, 1948:** The Factories Act is the same as the Child Labour Act in the fact that it bans children under the age of 14 to work in factories. For children aged between 16 and 18, the Act states that they can only work when found fit by a doctor and for no more than 4.5 hours a day.
- 2. The Minimum Wages Act, 1948:** This Act is concerned with the minimum wage of all workers in industries. This includes children who are at the legal age of working. This means that children are to receive as much money for their labour as adults, which is considered a strong device in combating child labour.
- 3. The Mines Act, 1952:** This Act states that children under the age of 18 are not allowed to work in Indian mines. Apprentices (who have to be 16 or older) are only allowed to participate in the mining operations when appropriately supervised.
- 4. The Child Labour (Prohibition and Regulation) Act, 1986:** This act prohibits the employment of children under the age of 14 in 16 different occupations and 65 different processes that are considered dangerous and harmful to a child's life. These 14 occupations and 65 processes are listed in the schedule to the act; in 2006, multiple occupations and processes were added to the list.
- 5. The Juvenile Justice (Care and Protection) of Children Act, 2000:** This Act was amended in 2002 in order to conform to the UN Convention of the Rights of the Child. It is in place to make sure that children who are indeed working are able to work for decent wages that they can spend on themselves. It was aimed at ensuring that the employees are not held to work against their will in any shape or form. It furthermore states that the people and employers who do not conform to these laws and regulations are punishable with up to three years in prison and a fine.
- 6. The Right of Children to Free and Compulsory Education Act, 2009:** This act provides free education to all children aged six to fourteen. It also states that 25 per cent of all seats in private schools are to be given to less advantaged children.

As stated above, India has many laws concerning child labour and child exploitation. But the Child Labour (Prohibition and Regulation) Act, 1986 has several loopholes which makes it ineffective. The law states that 'children working as part of family labour are exempt from the purview of the Act'. Due to this, work is now being given at home. To eliminate this problem, 'The Child Labour Act must be non-negotiable and the word "Regulation" should be removed from its title so that child labour abolition becomes non-negotiable.'

The United Nations has also put in place certain laws on child labour. The law against child labour is an international agreement where it is stated that all children should be treated fairly, and with dignity. The laws are grouped into four different categories. The first one is the 'Right to Survival'. It ensures that all children have a right to food, clean water, shelter, and healthcare so that they can survive. The next right is the 'Right to Protection'. This suggests that all children have a right to feel safe and secure, especially in times when they feel extremely vulnerable which is often seen in the child labour industry. 'Right to Development' states that all children have a right to education and play so that they can develop in all aspects. 'The Right to Participation' ensures that all children have a right to be involved in the life of their communities, so that they are able to express themselves and participate in decisions that will affect them.

Three main reasons responsible for child labour in India are extreme poverty, the social system and the rising population. However, to accept these reasons as the only causes for child labour is not only unreasonable but unacceptable as well. In order to truly eradicate child labour, one needs to take radical measures. Even though education for all children is compulsory, many children do not attend schools in India. The loopholes in the education system make it difficult for lower caste children to attend schools; 'people from the lower castes are often deprived of the most basic facilities and opportunities.'

Although child labour provides money to the family that they need to survive, it is cruel and inhumane for children to work at such a young age. In order to tackle child labour, everyone should take responsibility. Social responsibility ensures that companies promote the rights mentioned in the Universal Declaration of Human Rights of the United Nations. In the western world, measures have been taken to deal with human rights abuses, forced labour and exploitation. Companies that support social responsibility support programs to abolish child labour are in line with the best interests of the child.

It is also important for consumers to be aware about child labour. In some cases, companies relying on child labour for profits were identified. Consumers who are aware of the detrimental impact of child labour are willing to spend a little more on ethical brands. Child Rights Activist Kailash Satyarthi rightly noted, 'Child labour is the denial of childhood.' We can get rid of child labour by increasing the wages for the adults so they can earn enough to sustain the family. Also, developing the communities and improving their living standards should be encouraged.

11.3 MEASURES TO PROMOTE CHILDREN'S RIGHTS

The Government's commitment and priority towards child protection is critical to the creation of a protective environment for children. The Government needs to demonstrate this commitment through the acceptance and recognition of problems, formulation of appropriate policy, strong legal frameworks and programming, and

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allocation of adequate resources to programs. It needs to ensure that mechanisms for child protection are child friendly, functional and in a position to reach children in needs of protection. Some such initiatives taken by the Indian Government towards creating a protective environment for children as per the law are the:

1. Juvenile Justice (Care and Protection) Act, 2000.
2. The CHILDLINE 1098 service in partnership with Integrated Program for street children,
3. Signing and ratification of the United Nations Convention on the rights of the child (UNCRC), and
4. Ratification of the Optional Protocols
5. The National Plan of Action, 2005
6. The National Policy for Children, 1974
7. Study on Child Abuse 2007.

Recommendations for Prevention of Child Rights violation

a) In Society

1. Sexual education for children
2. Punish those who commit acts against child
3. Create support centres for victims
4. Set up free phone lines to break the silence
5. Ensure children's safety
6. Educate children about sexual violence
7. Ratify and conform to laws protecting children
8. Create preventative laws and disseminate information about them
9. Create committees for eliminating violence against children
10. Find healthy ways for children to spend their free time
11. Limit TV Channels
12. Forbid harmful traditional practices by law
13. Launch awareness campaigns for the community
14. Create local committees for child protection.

b) At work place, in the streets and in institutions

1. Sensitise employers about child rights and consequences of corporal punishment to children
2. Respect children
3. Educate employers to listen to children
4. Ensure employers listen to children
5. Ensure children's safety at work

6. Value alternative education methods
7. Encourage and support the development of child led organizations.

Issues and Rights

c) At School

1. Increase the number of education advisers and sensitize teachers about corporal punishment
2. Create councils for discipline in schools that can work in partnership with children's organizations establish and disseminate internal rules of conduct
3. Sensitize education inspectors about corporal punishment
4. Ensure children's security in schools
5. Parents have to accompany younger children to school
6. Offer alternative punitive measures.

d) At Home

1. Sensitize parents about the consequences of violence against children
2. Teach parents how to communicate with their children (parents' school)
3. Priorities dialogue with children
4. Train them on education without violence
5. Offer alternative disciplining methods
6. Inform parents about child rights and laws that ban corporal punishment
7. Alleviate poverty and increase family benefits for children
8. Parents must let go to know their children better and reasons for them misbehaving
9. Adopt and implement laws on violence against children.

e) Other Recommendations to Government of India to Prevent Child Rights Violation

It is just not possible for the government to fight the battle alone. Every individual in the society should contribute to this effort.

For a participative action, government should be encouraging the following projects:

1. Start a scheme 'Sponsor a child' and get sponsorship from individuals, business man, politician, cinema field etc. Give the sponsors some tax benefit to encourage sponsorship.
2. More child helpline telephone numbers should be in place. It should be popularized by means of advertisements campaigns.
3. Minimum Rs.1/- Project: Collect a minimum of Rs.1/- from every Indian (Close to 100 crores can be collected) and use it for poor child development - (Keep Hundi in Government Banks to collect this)

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4. Strict Law to be amended on TV Channels which telecast and encourages violence, sex and vulgar programs.
5. Celebrate Pandit Jawaharlal Nehru's birthday as 'Children's Rights Day' rather than children's day alone.
6. Release a postal cover / post card with campaigning information on Child Rights.
7. Special police stations for protecting children (Like Women police stations).
8. Form local communities with volunteers for campaigning and creating awareness on child rights.
9. Schools to have awareness classes for 'Child Rights'.

Check Your Progress

1. What are the different forms of child exploitation?
2. What is the minimum age for employment in India?
3. What does The Mines Act, 1952 state?
4. What are the loopholes in the Child Labour (Prohibition and Regulation) Act, 1986?
5. What are the three main reasons responsible for child labour in India?

11.4 BONDED LABOURERS

Bonded labour or debt bondage is probably the least known form of slavery today, and yet it is the most widely used method of enslaving people. A person becomes a bonded labourer when their labour is demanded as a means of repayment for a loan. The person is then tricked or trapped into working for very little or no pay.

Bonded labour is prohibited in India by Articles 21 and 23 of the Constitution. A specific law to prohibit the practice was legislated only in 1976 known as the Bonded Labour System (Abolition) Act. With the commencement of the Act, the following consequences followed: bonded labourers stand freed and discharged from any obligation to render to bonded labour. All customs, traditions, contracts, agreements or instruments by virtue of which a person or any member of family dependent on such person is required to render bonded labour shall be void. Every obligation of bonded labourer to repay any bonded debt shall be deemed to have been extinguished. No suit or any other proceeding shall lie in any Civil Court or any other authority for recovery of any bonded debt. Every decree or order for recovery of bonded debt not fully satisfied before commencement of the Act shall be deemed to have been fully satisfied. Every attachment for the recovery of bonded debt shall stand vacated. Any moveable property of bonded labourer,

if seized and removed from his custody shall be restored to him. Any property possession of which was forcibly taken over by the creditor shall be restored to the possession of the person from whom seized. Any suit or proceedings of the enforcement of any obligation under the bonded labour system shall stand dismissed. Every bonded labourer who has been detained in Civil Prisons shall be released from detention forthwith. Any property of a bonded labourer under mortgage, charge, lien or any other encumbrance, if related to public debt shall stand freed and discharged from such mortgage. Freed bonded labourer shall not be evicted from the homestead land.

Despite the statutory prohibition, bonded labour is widely practiced. The worst affected are the children and women particularly those from the Dalit community. The legal framework against bonded labour provided in the Bonded Labour System (Abolition) Act, 1976 is supported by other legislations like the Contract Labour (Regulation and Abolition) Act, 1970; the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; and the Minimum Wages Act, 1948.

Bonded labour is characterized by a relationship between employer and employee, through a loan, and is embedded intricately in India's socio-economic culture—a culture that is a product of class relations, a colonial history, and persistent poverty. Also known as debt bondage, bonded labour is a specific form of forced labour in which compulsion into servitude is derived from debt. Categorized and examined in the scholarly literature as a type of forced labor, bonded labour entails constraints on the conditions and duration of work by an individual. Not all bonded labour is forced, but most forced labour practices, whether they involve children or adults, are of a bonded nature. Bonded labour is most prevalent in rural areas where the agricultural industry relies on contracted, often migrant labourers. However, urban areas also provide fertile ground for bondage. Characterized by a creditor-debtor relationship that a labourer often passes on to his family members, bonded labour is typically of an indefinite duration and involves illegal contractual stipulations. These contracts deny an individual the basic right to choose his or her employer, or to negotiate the terms of his or her contract. Bonded labour contracts in India are not only economic, as they are reinforced by custom or coercion in many sectors such as the agricultural, silk, mining, match production, and brick kiln industries, among others.

Bonded labourers are forced to work to repay debts their employer says they owe, and they are not allowed to work for anyone else. Various forms of force are used to make sure that they stay. In many cases they are kept under surveillance, sometimes under lock and key. Bonded labour in the farming sector is mostly due to caste-based prejudices against the Dalit communities and due to the absence of a proper land reform policy.

Owing to lack of livelihood options, large number of rural population are forced to work for landlords and eventually end up in perpetual debt traps resulting in entire families and villages ending up as bonded to the landlord for generations.

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The absence of public health facilities and education opportunities literally push the rural population to work either as bonded labourers or to migrate into urban areas seeking odd jobs. A large number of children employed as bonded labourers by the non-farming sectors like small-scale textile, firecracker, leather goods manufacturing, brick kilns and granite extraction units are from the families who are subjected to distress migration from the rural villages. In the cities, children from these families are employed as bonded labourers in restaurants and eateries or end up being employed as bonded beggars or fall prey to sex trade.

The need of the hour is to focus on safeguards for release of bonded labourers and prevention from their lapsing into bondage again. For instance, identification, release and rehabilitation should be simultaneous. There should not be any gap between identification and release and in the same way between release and start of rehabilitation process. It is important to ensure that release certificates in respect of individual bonded labourers identified as such are issued promptly in the language which is intelligible to the bonded labourers. Prosecution of employers must go simultaneously but separately with identification and release of bonded labourers. Delay in conviction of the bonded labour keeper or even his eventual acquittal should not inhibit or stall the rehabilitation process.

The Ministry of Labour, Government of India has initiated a Centrally Sponsored Scheme under which Rs. 20,000 is provided for the rehabilitation of each bonded labourer, to be equally contributed by the Centre and the State Governments. In the case of North Eastern States, 100% central assistance is to be provided if they express their inability to provide their share. But, by and large, the process of rehabilitation is poor and is frequently delayed, particularly in the case of inter-state bonded migrant labourers, and the degree of concerted convergent action required on the part of the administration is rarely forthcoming.

Prosecution of employers is also weak. Since the bonded labourers are very poor and assetless, most of them relapse into bondage, while others experience only a very marginal increase in income. The financial assistance from the Government, even if realized, in the absence of any additional support mechanism for a released and assetless labourer is not sufficient support to start a new life. However, increasing the quantum of the support amount is not a viable solution. Instead to end the practice, what is required is strict implementation of labour laws in India. Other than this, the State Government should dovetail the Centrally Sponsored Scheme for rehabilitation of bonded labourers with other ongoing poverty alleviation schemes such as Swarna Jyanti Gram Swaraj Rozgar Yojana (SJGSRY), Special Component Plan for Scheduled Castes, Tribal Sub Plans, etc.

Preventive efforts must recognize the social dimensions of bondage, and thereby address it through public sensitization and rights awareness, adult literacy, organizing workers, income generation and vocational skills development. The strategies to eliminate bonded labour need to go beyond the symptoms to address the root causes. The multifaceted and deeply rooted nature of those causes requires an integrated and long term strategy.

The role of District Magistrates in elimination of bonded labour is significant. The law provides for the duties and responsibilities of the District Magistrate and every officer specified by him. They have to ensure that the provisions of the Act are properly carried out. The law also provides for the constitution of Vigilance Committees at the district and sub-divisional level, duties and responsibilities of such Committees in the area of identification and rehabilitation of freed bonded labourers. The District Magistrates have to ensure the release of identified bonded labourers on the basis of reports submitted by the Vigilance Committees after conducting the survey at the district and sub-divisional level. They would also formulate suitable schemes for the rehabilitation of freed bonded labourers-land based, non-land based and skill/craft based occupations, keeping in view the preferences, felt needs and interest of the beneficiaries.

Initiatives of the National Human Rights Commission

The Supreme Court in the Writ Petition (No. 3922/1985) - Public Union for Civil Liberties Vs State of Tamil Nadu & Others - requested the NHRC in 1997 to get involved in the monitoring of the implementation of the Bonded Labour System (Abolition) Act, 1976. Since then, the NHRC has been focusing on States where bonded labour is prevalent. During 2011, it took stock of the situation and the following charter of activities have been taken up by the Commission on the issue of Bonded Labour:

- 1. Constitution of Core Group on Bonded Labour:** A Core Group on Bonded Labour has been constituted by the Commission who will advise in chalking out and suggesting strategies to the State/Central Government for elimination of bonded labour in the country. The last meeting of the Core Group took place on 10 January 2012.
- 2. Organized a National Level Seminar:** The Commission organized a National level Seminar on elimination of bonded labour system on 30 September 2011 at IIC, New Delhi. The Officers from State Government/UTs participated in the seminar.
- 3. Workshops conducted in Bonded Labour prone States:** The Commission altogether has organized five Workshops on Elimination of Bonded and Child Labour system. These have been organized in collaboration with the State Governments to sensitize District Magistrates, Sub Divisional Magistrates, SSPs and officers from the Labour Department. These Workshops were held at Gujarat, Karnataka, Maharashtra, Haryana and Uttar Pradesh.
- 4. NHRC team to carry out surprise visits to bonded labour prone areas:** Teams have been constituted in NHRC to carry out surprise visits to bonded labour prone areas. The team consists of officers from the Investigation and Law Divisions of the Commission.

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- 5. Development of an instructional manual on Bonded Labour:** The Commission brought out a booklet under the Know Your Rights series on Bonded Labour which was disseminated to all concerned.
- 6. Revised format for Monitoring of Bonded Labour in States:** A new format has been devised for compiling bi-annually status from States/UTs regarding identification, release and rehabilitation of bonded labourers. However, almost all the States/UTs are sending the information in old format only. This issue is being taken up with the Chief Secretaries of the State Governments to send the information as per the revised format. A copy of the revised format is at Annexure-III.
- 7. Review existing schemes of the Central and State Governments on Bonded Labour:** The Commission has taken up the issue with the Ministry of Labour and Employment. It has conveyed that they have adopted an integrated convergence based approach to prevent bonded labour with the help of ILO.
- 8. Recommendation to State Government for organizing orientation training programme in each bonded labour prone district:** The Commission has written to all the Chief Secretaries of the State Government /UTs for organizing orientation training programmes for DMs/DSMs/SSPs and also for the field functionaries of labour law enforcement.
- 9. Recommending States to constitute a State Level Monitoring and Coordination Committees under the chairmanship of Chief Secretary with Secretaries to Government of various departments as Members.** The committee will also convene meetings to take stock of bonded labour situation in their States and will apprise the Commission every six months.

11.5 DOMESTIC WORKERS

Domestic workers comprise a significant part of the global workforce in informal employment and are among the most vulnerable groups of workers. They work for private households, often without clear terms of employment, unregistered in any book, and excluded from the scope of labour legislation. Currently there are at least 67 million domestic workers worldwide, not including child domestic workers and this number is increasing steadily in developed and developing countries. Even though a substantial number of men work in the sector – often as gardeners, drivers or butlers – it remains a highly feminized sector: 80 per cent of all domestic workers are women.

Their work may include tasks such as cleaning the house, cooking, washing and ironing clothes, taking care of children, or elderly or sick members of a family, gardening, guarding the house, driving for the family, and even taking care of household pets.

A domestic worker may work on full-time or part-time basis; may be employed by a single household or by multiple employers; may be residing in the household of the employer (live-in worker) or may be living in his or her own residence (live-out). A domestic worker may be working in a country of which she/he is not a national, thus referred to as a migrant domestic worker.

At present, domestic workers often face very low wages, excessively long hours, have no guaranteed weekly day of rest and at times are vulnerable to physical, mental and sexual abuse or restrictions on freedom of movement. Exploitation of domestic workers can partly be attributed to gaps in national labour and employment legislation, and often reflects discrimination along the lines of sex, race and caste.

Check Your Progress

6. Who is worst affected by the practice of bonded labour?
7. Define bonded labour.

11.6 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. There are many forms of child exploitation. They are child domestic work, recruitment of children as soldiers, involvement of children in armed conflict, sexual exploitation and pornography, use of children for criminal activities including the sale and distribution of narcotics and the involvement of children in harmful or hazardous work.
2. According to the legal system of India, the minimum age for employment is 14 years.
3. The Mines Act, 1952 states that children under the age of 18 are not allowed to work in Indian mines. Apprentices (who have to be 16 or older) are only allowed to participate in the mining operations when appropriately supervised.
4. The Child Labour (Prohibition and Regulation) Act, 1986 has several loopholes which makes it ineffective. The law states that 'children working as part of family labour are exempt from the purview of the Act'. Due to this, work is now been given at home.
5. Three main reasons responsible for child labour in India are extreme poverty, the social system and the rising population.
6. The worst affected are the children and women particularly those from the Dalit community.

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7. Bonded labour is a specific form of forced labour in which compulsion into servitude is derived from debt.

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11.7 SUMMARY

- The term ‘child exploitation’ refers to the misuse of children for advantage of someone else, thereby resulting in undeserved, cruel and detrimental treatment of the child. It includes circumstances of manipulation, misappropriation, mistreatment, victimization, oppression or ill-treatment. This has a hazardous impact on the child’s physical or mental health, education, moral or social-emotional development.
- There are many forms of child exploitation. They are child domestic work, recruitment of children as soldiers, involvement of children in armed conflict, sexual exploitation and pornography, use of children for criminal activities including the sale and distribution of narcotics and the involvement of children in harmful or hazardous work.
- India has the largest number of child labourers under the age of 14 in the world. According to the legal system of India, the minimum age for employment is 14 years. However, many children in India start working at the age of five years either in the glass, pottery or clothing industry.
- Prostitution is another form of child labour; there are different forms of prostitution seen in India. The most prevalent among them are traditional and religious prostitution.
- The Constitution of India (26 January 1950), through various articles enshrined in the Fundamental Rights and the Directive Principles of State Policy, sets down legal provisions to tackle child labour.
- Six other main legislative initiatives have been passed on a national level (and many more on local level) in order to at least control child labour. These six legislative initiatives are The Factories Act, 1948, The Minimum Wages Act, 1948, The Mines Act, 1952, The Child Labour (Prohibition and Regulation) Act, 1986, The Juvenile Justice (Care and Protection) of Children Act, 2000, and The Right of Children to Free and Compulsory Education Act, 2009.
- Some initiatives taken by the Indian Government towards creating a protective environment for children as per the law are the:
 1. Juvenile Justice (Care and Protection) Act, 2000.
 2. The CHILDLINE 1098 service in partnership with Integrated Program for street children,
 3. Signing and ratification of the United Nations Convention on the rights of the child (UNCRC), and
 4. Ratification of the Optional Protocols



5. The National Plan of Action, 2005
6. The National Policy for Children, 1974
7. Study on Child Abuse 2007.

- Bonded labour or debt bondage is probably the least known form of slavery today, and yet it is the most widely used method of enslaving people. A person becomes a bonded labourer when their labour is demanded as a means of repayment for a loan. The person is then tricked or trapped into working for very little or no pay.
- Bonded labour is prohibited in India by Articles 21 and 23 of the Constitution. A specific law to prohibit the practice was legislated only in 1976 known as the Bonded Labour System (Abolition) Act.
- Bonded labour is characterized by a relationship between employer and employee, through a loan, and is embedded intricately in India's socio-economic culture—a culture that is a product of class relations, a colonial history, and persistent poverty. Also known as debt bondage, bonded labour is a specific form of forced labour in which compulsion into servitude is derived from debt.
- The role of District Magistrates in elimination of bonded labour is significant. The law provides for the duties and responsibilities of the District Magistrate and every officer specified by him. They have to ensure that the provisions of the Act are properly carried out.
- Domestic workers comprise a significant part of the global workforce in informal employment and are among the most vulnerable groups of workers. They work for private households, often without clear terms of employment, unregistered in any book, and excluded from the scope of labour legislation. Currently there are at least 67 million domestic workers worldwide, not including child domestic workers and this number is increasing steadily in developed and developing countries.
- At present, domestic workers often face very low wages, excessively long hours, have no guaranteed weekly day of rest and at times are vulnerable to physical, mental and sexual abuse or restrictions on freedom of movement. Exploitation of domestic workers can partly be attributed to gaps in national labour and employment legislation, and often reflects discrimination along the lines of sex, race and caste.

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11.8 KEY WORDS

- **Child exploitation:** It refers to the misuse of children for advantage of someone else, thereby resulting in undeserved, cruel and detrimental treatment of the child. It includes circumstances of manipulation, misappropriation, mistreatment, victimization, oppression or ill-treatment.



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- **Juvenile:** A juvenile is a child or young person who is not yet old enough to be regarded as an adult.
- **Bonded labour:** It is a specific form of forced labour in which compulsion into servitude is derived from debt.

11.9 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Define child exploitation.
2. How does the rigid caste system enforce child labour?
3. Write a short note on prostitution as a form of child labour.
4. What are the laws put in place by the United Nations to tackle child labour?
5. Write a short note on the role of District Magistrates in the elimination of bonded labour.

Long-Answer Questions

1. Discuss the measures that can be taken to protect children from abuse.
2. Analyze the importance of social responsibility to stop child exploitation.
3. Explain the measures taken by the Indian government towards child protection.
4. Discuss in detail the condition of bonded labourers and domestic workers.

11.10 FURTHER READINGS

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BLOCK - V
HUMAN RIGHTS LAW AND ITS PROTECTION

*Laws for Protection
of Human Rights*

**UNIT 12 LAWS FOR PROTECTION
OF HUMAN RIGHTS**

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Structure

- 12.0 Introduction
- 12.1 Objectives
- 12.2 Children and Human Rights in India
 - 12.2.1 Child Labour (Prohibition and Regulation) Act, 1986
- 12.3 Protection of Civil Liberties Act
- 12.4 Right to Education Act, 2009
- 12.5 Answers to Check Your Progress Questions
- 12.6 Summary
- 12.7 Key Words
- 12.8 Self Assessment Questions and Exercises
- 12.9 Further Readings

12.0 INTRODUCTION

A majority of children in India live in rural areas that makes access to fundamental rights difficult. They are deprived of basic health and education facilities that act as impediments in their overall growth and development. For the purpose of safeguarding children's rights and offering them the means to create better lives and future for themselves, governments and local authorities work in tandem. The most notable and significant enactments passed for child rights are Child Labour (Prohibition and Regulation) Act, 1986 and Right to Education Act, 2009. They aim to prevent the exploitation of children and provide them ample opportunities for progress. The National Commission for Protection of Child Rights (NCPCR) works to ensure that all the legislations, laws, programmes and policies are in agreement with the child rights perspective. Along with these, the unit will also discuss the Protection of Civil Liberties Act.

12.1 OBJECTIVES

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

- Discuss the objectives and functioning of the Child Labour (Prohibition and Regulation) Act, 1986 and the National Commission for Protection of Child Rights (NCPCR)

- Analyze the features and provisions of Protection of Civil Liberties Act
- Describe the characteristics of Right to Education Act, 2009

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12.2 CHILDREN AND HUMAN RIGHTS IN INDIA

In India we can study the human rights related to children in the following enactments and initiatives:

12.2.1 Child Labour (Prohibition and Regulation) Act, 1986

From a rights based perspective, the National Commission for Protection of Child Rights (NCPCR) considers that there can be no excuse for existence of child labour and violation of children's rights. There can be no distinction between child labour and child work, or hazardous labour and non-hazardous labour. The definition of 'child labour' must encompass children working for the families in their own homes, children in agriculture work, work rendered by girl children and all other forms of work that deprives them of their right to education in a full time formal school. It recommended that the definition of 'child labour' be inclusive and recognize all forms of child labour as prohibitive and to include children up to 18 years of age. The NCPCR calls for a consonance of the child labour law with the Act on 'Right of Children for Free and Compulsory Education-2009' that guarantees education as a fundamental right to all children in the 6-14 years age group. The NCPCR has reflected its stand in a policy document and suggested reform in this area as well.

The Child Labour (Prohibition and Regulation) Act, 1986 was passed to ban the employment of children, i.e., those who have not completed their fourteenth year, in specified occupations and processes. The act lays down a procedure to decide modifications to the Schedule of banned occupations or processes. It also regulates the conditions of work of children in employments where they are not, prohibited from working. Finally, the act lays down enhanced penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children. The act also provides uniformity in the definition of "child" in the related laws.

According to the Act, a "child" is defined as any person below the age of 14 and the Act prohibits employment of a child in any employment including as a domestic help (except helping own family in non-hazardous occupations). It is a cognizable criminal offence to employ a child for any work. Children between age of 14 and 18 are defined as "Adolescent" and the law allows Adolescent to be employed except in the listed hazardous occupation and processes which include mining, inflammable substance and explosives related work and any other hazardous process as per the Factories Act, 1948.

Reforms in Juvenile Justice System

It was found that the failures in the Juvenile Justice system predominantly related to criminalization and institutionalization of children were in conflict with the law and children in need of care and protection. This is reflected in the pervasive violation of children's fundamental rights in every step of a child's contact with the juvenile justice system. Importantly, there was a fundamental lack of recognition within the juvenile justice system that:

- Children in conflict with law are also children in need of care and protection;
- Children in need of care and protection are also at risk of becoming children in conflict with law; all 'at risk' children are also potential entitlement holders of the juvenile justice system NCPCR has identified the following six (overlapping and inter-related) areas for priority reform under existing the Juvenile Justice policy and legislation.
- An inclusive in coverage and reach of categories of children who are currently unaddressed or excluded due to procedural or operational barriers.
- Institutionalize processes and ensure professionalization of actors in the Juvenile Justice system.
- Reforms in procedural implementation (intake, adjudication and disposition) of the Juvenile Justice Boards to ensure fairness in line with child jurisprudential principles.
- Operationalize non-institutional, alternate care provision to ensure durable placement outcomes for children without access to parental care; and appropriate re-unification processes for children returning to parental care.
- Transform quality of care in existing Homes to eliminate child rights violations and ensure consistent standards of care through reform of governance, schooling reintegration and education provision within and outside the home premises, mental health provision and rehabilitation programming.
- Establish strategies for prevention of children falling into 'at risk' category through early intervention by community based child protective services mobilized at district and block levels.

Child Rights in Areas of Civil Unrest

Children are the worst affected in times of civil unrest and such displacement. Having no access to food, water, health care and basic amenities, they have suffered the most. Hunger and starvation leading to malnutrition is not uncommon. Children's education has been compromised resulting in school drop outs and a large number of children not attending schools. This is especially true of children of families in relief camps or of migrant labour. Having no documentation regarding age proof, address and school progress reports, children are unable to join schools in the new areas. Older children have been left to fend for themselves and some of them have been caught in the web of illegal activities and even in armed conflict, having

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none of the options that come through literacy and education. Several of them have joined networks of trafficking as child labour and also for sex work. Hundreds and thousands of children are thus affected. Even in habitations where families have stayed back, access to education, health, nutrition and so on is non-existent as public servants have stopped visiting the habitations out of fear.

In all these areas, the NCPCR has also come across children who have lost link with their families and are even orphaned. Young girls have been victims of physical and sexual abuse. The Commission has enquired into the plight of children in such camps in Dantewada in the State of Chhattisgarh, NC Hills District, Chirang District and New Bongaigaon District in the State of Assam, in Ashapara and Naisingpur camps at Kanchanpur in North Tripura District in the State of Tripura and Kandahmal in State of Orissa. It has taken up the issue of entitlements of children of migrant households who are struggling to be integrated into the local community but remain outsiders, and seen as competing with local poor as in Khammam district in Andhra Pradesh. It has intervened in situations where the community has remained in the villages where there has been a total disruption of services as in the case of Sukma block in Dantewada district of Chattisgarh.

The experience of NCPCR in Chattisgarh and other areas has shown that the local youth are capable of taking charge of children and their lives if given the necessary support and skills for a program of community mobilization. This has enabled, in a small way, stability in the lives of children in the process of ensuring that all their entitlements to protection, health, nutrition, sanitation, education and safety, are fulfilled through government action. Indeed it has also enhanced democracy through community participation and action and renewed hope in harmonizing the society and stabilizing their lives while a child's well-being became the focus of all action in the area.

The Commission also submitted a policy document for protection of children's rights in areas of civil unrest.

Right to Education Act, 2009

NCPCR has been mandated to monitor the implementation of the right to education Act that has been enacted in 2009. The RTE Act is historic as it makes it a State obligation to provide for free and compulsory education to every child of the age of 6-14 years in a neighbourhood a welcome step. This would enable millions of out of school children who have been drawn into harmful and illegal nexuses of labour, trafficking and work in domestic as well as informal sector join schools.

The Commission is in the process of creating requisite accountability mechanisms at the local level for the upholding of the right to all children and for ensuring speedy resolution of grievances and disputes. Also to introduce a system of social audit of children's access and retention in schools as well as the school infrastructure, teacher attendance and support systems to schools at the block and district level. And how the quasi-judicial powers vested in the NCPCR and its State level organs can be effectively put to work for the welfare of all children

of India. NCPCR is in the process of creating RTE Advisers at the States who will in turn network with hundreds and thousands of child defenders at the grass root level. The relationship the child defenders have with the rescued child labourer, children who are physically and mentally challenged, whose thirst for knowing is boundless, is one of aesthetics and beauty. They bring to the fore issues of social justice and equity, access to services and State obligation, citizenship and participation, democracy. We have seen poetry, literature; music and songs emerge in abundance when every child is welcomed to the portals of schools. A non-violent, silent social transformation for citizenship and rights is launched in this process. We will discuss the RTE in detail later on in the unit.

Corporal Punishment

The Commission has heard innumerable cases of corporal punishment, and violence and suicide of children for being subject to insinuating and often unreasonable remarks by school teachers. In that year, 2008 it was reported that there were 98 suicides of children in Tamil Nadu alone as a consequence of corporal punishment. These gross acts have come to light through newspapers and electronic media and specific complaints made to the Commission. NCPCR held public hearings and heard children's testimonies on the issue.

The Right of Children to Free and Compulsory Education Act, 2009 provides that no child shall be subject to "physical punishment or mental harassment" in schools. Those officials that contravene this provision shall be liable for disciplinary action under service rules applicable to them. However, the provision does not criminalise corporal punishment; it does not resolve contradictory provisions in criminal law in favour of an absolute ban. Nor does it lay down a standardised penalty for corporal punishment that should be incorporated in service rules to punish corporal punishment. In practice, this could mean corporal punishment is penalised very lightly, which would have little deterrent effect given how widely it is accepted as a method of discipline.

Child Abuse

The Commission has also received several complaints on child sexual abuse. It is found that child sexual abuse and violence occurs in the family by members, relatives and other people they trust or known to them, in institutions such as schools, homes, hostels, orphanages, by persons in position of trust causing aggravated sexual assault. Sexual violence is also rampant through pornography, internet or via commercial sex exploitation and sex tourism. Both boys and girls are victimized. The offenders, too are not necessarily only males. Considering the social pressure and prevalent taboos most often sexual offence goes unreported and is under wraps. The victim is silenced because of the power imbalance between the perpetrator of crime and the child. Children who are very young are not in a position to tell and those who know something very wrong has happened often do not have spaces to be heard. It is only when an adult notices the change in behaviour of the child and takes courage to question that the first step of registration of

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complaint occurs. It is found that there are gaps in procedures for registration of complaints, collection of evidence, police involvement in investigation, court procedures and rehabilitation mechanisms resulting in revictimization of the child. At every step there is a challenge, making it impossible to take the case to a logical conclusion.

Seeking Judicial Intervention & Orders (i.e. Supreme Court and High Court) Towards Child Protection and Child Rights

The commission has successfully interfaced with higher Judiciary to ensure that child rights issues are addressed, children are protected and assured of all their entitlements, and the laws and systems are effectively implemented. In several matters, the Supreme Court and High Court(s) have asked the Commission to provide inputs and guidance from a child rights angle and/ or to provide workable action plans towards effective implementation of laws and child protection. One such example is the Child Labour Action plan, prepared by the Commission, on the request of the Delhi High Court, on which effective orders were eventually passed. As a result, the Delhi Government was directed to adopt the said Action plan and provide periodic reports to the High Court on its implementation. Likewise, on issues relating to reforms in the Juvenile Justice System and status of homes for children; child trafficking; children of prisoners and so on.

The commission has endeavoured to hold discussions with the Judiciary around the country to obtain their views on issues pertaining to child jurisprudence, sensitization of the judiciary towards child rights, and the urgent need to develop a system and a bench book which addresses children and their issues quickly without compromising them in any manner—the focus being to assure all children, protection and all their rights and entitlements. The interaction and dialogue has been meaningful, to say the least.

Check Your Progress

1. What should the definition of 'child labour' encompass?
2. Name the areas where the NCPCR has inquired into the plight of children.

12.3 PROTECTION OF CIVIL LIBERTIES ACT

The Civil Rights in India include rights regarding equality before the law, freedom of speech, freedom of expression regarding religious and cultural freedom, freedom of assembly, and freedom of religion. Section 2 of the Protection of the Civil Rights Act, 1955 (also known as Civil Liberties Act) lays down the definition of civil rights. This act prescribes punishments for the practice of untouchability for the enforcement of any disability arising from and for matters connected therewith and vice-versa. After the suffering of many years, the introduction of civil rights

took place in India which in the beginning did not change anything but with the passage of time changes took place.

What is the Indian Civil Rights Act (ICRA)?

It is a federal law. Indian tribal governments cannot pass such laws that violate certain individual rights. It is similar to that of the US Constitution that guarantees personal freedom against federal government actions.

What rights does ICRA provide to individuals?

The rights provided by ICRA are:

- Freedom of speech and free exercise of religion.
- Freedom from unreasonable search and seizures.
- Freedom from prosecution more than once for the same offense.
- Equal protection of law and freedom of liberty or property without due process of law.
- Freedom from excessive bail, excessive fine, and cruel or unusual punishments.

How is ICRA different from the Constitution Bill of Rights?

- ICRA's guarantee of free exercise of religion which does not stop a tribe from establishing a religion.
- ICRA guarantees a criminal defendant the right to a lawyer at the defendant's own expense

Salient features of the protection of the Civil Rights Act

- The Amendment Act has tightened the provisions to remove untouchability. All untouchability offenses which were considered within the jurisdiction of the court will now be treated as non-compoundable offences and if the punishment does not exceed three months imprisonment can be tried instantly.
- The punishment for the untouchability offenses has been enhanced to a fine as well as imprisonment and for further default, the punishment will be extended. For the third and subsequent offenses, the punishment may increase from one-year imprisonment with a fine of ₹ 500 to two years of imprisonment with the fine of ₹ 1000.
- To any form of punishment, courts have the power to cancel or suspend the licenses of any profession, trade, employment, in terms of which the offense has been committed for as much as the time they seem fit.
- One of the important characteristics of this Act is that public servants who willfully show negligence in the investigation of any offense will be punishable under this Act. The Act shows surveys and studies for determining the areas

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where untouchability is practiced, setting up committees for implementing the Act.

- The places of worship along with the lands and apartments which are privately owned are allowed by the owners to be used as places of public worship.
- The direct and indirect preaching of untouchability and its justification has been made a ground to commit an offense.
- Forcing any person to do sweeping has also been made punishable.
- The State Governments have been given the power to impose fines locally of any area who are worried and help the commission to commit untouchability offences.
- One of the features is also that the Central Government will coordinate with the State Government for the implementation of the provisions of the Act.
- The Government of India has also asked the State Governments to provide statistical and other information about the number of cases dealt by them under this Act along with the detailed information regarding the steps taken by them for the proper implementation of the provision of the Act.

Provision of Protection of Civil Rights

Due to the practice of untouchability, many untouchables started feeling deprived, isolated due to which the concept of equality in terms of untouchability under the Protection of Civil Rights was introduced. This act only deals with the provisions of punishment which protect untouchables from any kind of discrimination.

There are certain provisions for the protection of civil rights. The sections which provides punishment are:

- **Section 3:** It says that whosoever will prevent any person from entering the public worshipping place or performing any religious services then the punishment for the term not less than one month and not more than six months and also a fine of not less than one hundred rupees and not more than five hundred rupees will be given.
- **Section 4:** It says that whosoever on the basis of untouchability force any person with any condition with regard to enter in any shop, public restaurant, hotel or place of entertainment any also restrain with the use of utensils, and other things kept in Dharamshala, public restaurant, or to use of any stream, river, tanks, etc then the punishment will be given of imprisonment for a term not less than one month and not more than six months and a fine of not less than one and rupees and not more than five hundred rupees.
- **Section 5:** It says that whosoever will refuse to enter in the hospital, dispensary, educational institution or any hostel which is for public use will be punished with the imprisonment of not less than one month and

not more than six months and with a fine of not less than one hundred rupees and not more than five hundred rupees.

- **Section 6:** It says that whosoever will refuse to sell goods and to render services to any person on the ground of untouchability will be punished with imprisonment for not less than one month and not more than six months and will also pay fine.
- **Section 7:** It says that whosoever will prevent any person from exercising the rights of Article 17 or molest, cause injury, annoy, insult, or attempt to insult any person by the reason of exercising the rights related to the abolition of untouchability will be punishable with imprisonment and fine. It was also said that if any person refused any person to use or occupy any house or land and for work or business, or abstain from social, professional, or business relationship then he would be punished with imprisonment and fine.
- **Section 7A:** It says that if any person forces other on the ground of untouchability to be subject to slavery, practice sweeping or to force any person to remove the skin of animals or other jobs similar to that will be punished with the imprisonment of not less than three months and not more than six months and with the fine of not less than one hundred rupees and not more than five hundred rupees.

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Check Your Progress

3. What does the Protection of the Civil Rights Act, 1955 prescribe for the practice of untouchability?
4. What does Section 6 of the Protection of Civil Rights Act state?

12.4 RIGHT TO EDUCATION ACT, 2009

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

Article 21-A and the RTE Act came into effect on 1 April, 2010. The title of the RTE Act incorporates the words 'free and compulsory'. 'Free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from

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pursuing and completing elementary education. 'Compulsory education' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group. With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.

The RTE Act provides for the:

- Right of children to free and compulsory education till completion of elementary education in a neighbourhood school.
- It clarifies that 'compulsory education' means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. 'Free' means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.
- It makes provisions for a non-admitted child to be admitted to an age appropriate class.
- It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.
- It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
- It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
- It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications.
- It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition,

It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child's knowledge, potentiality

and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centred learning.

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Check Your Progress

5. Why was Article 21-A inserted in the Constitution of India?
6. What obligation does 'compulsory education' cast on the government and local authorities?

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12.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The definition of 'child labour' must encompass children working for the families in their own homes, children in agriculture work, work rendered by girl children and all other forms of work that deprives them of their right to education in a full time formal school.
2. The NCPCR has enquired into the plight of children in such camps in Dantewada in the State of Chhattisgarh, NC Hills District, Chirang District and New Bongaigaon District in the State of Assam, in Ashapara and Naisingpur camps at Kanchanpur in North Tripura District in the State of Tripura and Kandahmal in State of Orissa.
3. The Protection of the Civil Rights Act, 1955 prescribes punishments for the practice of untouchability for the enforcement of any disability arising from and for matters connected therewith and vice-versa.
4. Section 6 of the Protection of Civil Rights Act states that whosoever will refuse to sell goods and to render services to any person on the ground of untouchability will be punished with imprisonment for not less than one month and not more than six months and will also pay fine.
5. The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine.
6. Compulsory education casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group.

12.6 SUMMARY

- From a rights based perspective, the National Commission for Protection of Child Rights (NCPCR) considers that there can be no excuse for existence of child labour and violation of children's rights. There can be no distinction

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between child labour and child work, or hazardous labour and non-hazardous labour.

- The NCPCR calls for a consonance of the child labour law with the Act on 'Right of Children for Free and Compulsory Education-2009' that guarantees education as a fundamental right to all children in the 6-14 years age group.
- Children in need of care and protection are also at risk of becoming children in conflict with law; all 'at risk' children are also potential entitlement holders of the juvenile justice system NCPCR has identified the following six (overlapping and inter-related) areas for priority reform under existing the Juvenile Justice policy and legislation.
- Children are the worst affected in times of civil unrest and such displacement. Having no access to food, water, health care and basic amenities, they have suffered the most. Hunger and starvation leading to malnutrition is not uncommon.
- NCPCR has taken up the issue of entitlements of children of migrant households who are struggling to be integrated into the local community but remain outsiders, and seen as competing with local poor as in Khammam district in Andhra Pradesh.
- NCPCR is in the process of creating RTE Advisers at the States who will in turn network with hundreds and thousands of child defenders at the grass root level.
- The Right of Children to Free and Compulsory Education Act, 2009 provides that no child shall be subject to "physical punishment or mental harassment" in schools. Those officials that contravene this provision shall be liable for disciplinary action under service rules applicable to them.
- In several matters, the Supreme Court and High Court(s) have asked the Commission to provide inputs and guidance from a child rights angle and/or to provide workable action plans towards effective implementation of laws and child protection.
- The Civil Rights in India include rights regarding equality before the law, freedom of speech, freedom of expression regarding religious and cultural freedom, freedom of assembly, and freedom of religion. Section 2 of the Protection of the Civil Rights Act, 1955 (also known as Civil Liberties Act) lays down the definition of civil rights.
- One of the important characteristics of the ICRA is that public servants who willfully show negligence in the investigation of any offense will be punishable under this Act.
- Section 7A of the ICRA says that if any person forces other on the ground of untouchability to be subject to slavery, practice sweeping or to force any person to remove the skin of animals or other jobs similar to that will be punished with the imprisonment of not less than three months and not more

than six months and with the fine of not less than one hundred rupees and not more than five hundred rupees.

- The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.
- RTE Act lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
- RTE Act prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition,

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12.7 KEY WORDS

- **National Commission for Protection of Child Rights (NCPCR):** It is a statutory body established by an Act of Parliament, the Commission for Protection of Child Rights (CPCR) Act, 2005. The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child.
- **Juvenile Justice:** It is a legal framework which defines justice for juvenile under the Indian Legal System. The system is giving a special treatment and protection to juvenile delinquency. Juvenile Delinquency means a crime committed by youth who is under the age of 18 years.
- **Right to Education Act, 2009:** It was enacted by the Parliament of India on 4 August 2009. It describes modalities of the importance of free and compulsory education for children aged between 6-14 years in India under Article 21 (A) of the Constitution of India.

12.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the failures in the Juvenile Justice system predominantly related to?
2. Why is the RTE Act historic?
3. List any three rights provided by the IRCA to individuals.

4. State the provisions under Section 7 of the Protection of Civil Rights Act.
5. What does 'free education' mean as per the RTE Act, 2009?

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Long-Answer Questions

1. Discuss the points regarding which there is a fundamental lack of recognition within the juvenile justice system.
2. Elaborate upon the salient features of the Protection of Civil Rights Act.
3. Examine the provisions that the RTE Act provides for.

12.9 FURTHER READINGS

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UNIT 13 NATIONAL COMMISSION FOR WOMEN

*National Commission
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Structure

- 13.0 Introduction
- 13.1 Objectives
- 13.2 National Commission for Women: Composition, Powers and Functions
- 13.3 Role of National Commission of Women
- 13.4 Answers to Check Your Progress Questions
- 13.5 Summary
- 13.6 Key Words
- 13.7 Self Assessment Questions and Exercises
- 13.8 Further Readings

13.0 INTRODUCTION

The National Commission for Women (NCW) was established in January 1992 on the recommendation of the Committee on the Status of Women in India (CSWI). The NCW aimed at creating an egalitarian environment by ensuring the equal participation of women in all spheres of life. This unit will discuss the functions and composition of the NCW. The appointment and removal of the members will be discussed in detail. The role of the NCW in the present scenario will also be highlighted.

13.1 OBJECTIVES

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

- Understand the vision and mission of the National Commission for Women
- Discuss the functions and composition of NCW
- Explain the role of NCW

13.2 NATIONAL COMMISSION FOR WOMEN: COMPOSITION, POWERS AND FUNCTIONS

The mission of the National Commission for Women has been mentioned below:

- To strive towards enabling women to achieve equality and equal participation in all spheres of life by securing her due rights and entitlements through suitable policy formulation, legislative measures, effective enforcement of laws, implementation of schemes/policies and devising strategies for solution

of specific problems/situations arising out of discrimination and atrocities against women.

Vision

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- The Indian Woman, secure in her home and outside, fully empowered to access all her rights and entitlements, with opportunity to contribute equally in all walks of life.

Functions of the Commission:

As per Section 10 of NCW Act, the Commission has the following functions:

- (i) Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.
- (ii) Present to the Central Government annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.
- (iii) Make in such reports recommendations for the effective implementation of those safeguards aimed at improving the conditions of women.
- (iv) Review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislation.
- (v) Take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities.
- (vi) Look into complaints and take suo-moto notice of matters relating to:
 - o Deprivation of women's rights
 - o Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development
 - o Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities.
- (vii) Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal.
- (viii) Undertake 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.

- (ix) Participate and advise on the planning process of socio-economic development of women.
- (x) Evaluate the progress of the development of women under the Union and any State.
- (xi) Inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action, if found necessary.
- (xii) Fund litigation involving issues affecting a large body of women.
- (xiii) Make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil.
- (xiv) Address any other matter that may be referred to it by the Government.

Services provided by the National Commission for Women:

- (i) To provide a legal framework which adequately addresses the problems of women by studying and monitoring all matters relating to the constitutional and legal safeguards provided for women.
- (ii) To address the problem of unequal status of women in every sphere of life and make policy recommendations for the same.
- (iii) To fulfil the surveillance functions as well as facilitate redressal of grievances of women and to look into complaints and take suo-moto notice of the cases relating to:
 - o Deprivation of the rights of women in order to provide support, legal or otherwise.
 - o Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women.
- (iv) To enable women to equally benefit from the process of development by participating and advising on the planning process of socio- economic development of women and evaluating the progress of the same.

Laws to address the problems of women

The following laws have been put in place to safeguard the interests of women:

- The Immoral Traffic (Prevention) Act, 1956
- The Dowry Prohibition Act, 1961 (Amended in 1986)
- The Indecent Representation of Women (Prohibition) Act, 1986
- The Commission of Sati (Prevention) Act, 1987
- Protection of Women from Domestic Violence Act, 2005

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- The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013
- The Criminal Law (Amendment) Act, 2013

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Women-related Legislation

- The Indian Penal Code, 1860
- The Indian Evidence Act, 1872

Composition of NCW in India

The constitution of the National Commission for Women has been discussed below:

- (i) The Central Government shall constitute a body to be known as the National Commission for Women to exercise the powers conferred on, and to perform the functions assigned to it under this Act.
- (ii) The Commission shall consist of the following members:
 - a) A Chairperson, committed to the cause of women, to be nominated by the Central Government;
 - b) Five Members to be nominated by the Central Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organisation committed to increasing the employment potential of women, women's voluntary organisations (including women activists), administration, economic development, health, education or social welfare: Provided that at least one Member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes respectively;
 - c) A Member-Secretary to be nominated by the Central Government, who shall be—
 - An expert in the field of management, organisational structure or sociological movement, or
 - An officer who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union with appropriate experience.

Term of the members of the Commission

Every Member shall hold office for such period, not exceeding three years, as may be specified by the Central Government in this behalf.

- (i) The Chairperson or a Member (other than the Member-Secretary who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union) may, by writing, resign from the office of Chairperson or, as the case may be, of the Member at any time.

- (ii) The Central Government shall remove a person from the office of Chairperson or a Member referred to in sub-section (2) if that person—
- Becomes an undischarged insolvent;
 - Gets convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude;
 - Becomes of unsound mind and stands so declared by a competent court;
 - Refuses to act or becomes incapable of acting;
 - Is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or
 - In the opinion of the Central Government has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest: Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.
- (iii) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination.
- (iv) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

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13.3 ROLE OF NATIONAL COMMISSION OF WOMEN

The status and prestige of women in society is the mark of civilized society; the better the women's position is, the more advanced the society is. In the Indian scenario, from ancient times to modern time, women played an empowered role in society, from being women sages and scholars in the Vedic period to being employed in the armed forces, IT sector, politics, industry and other significant areas while balancing their role as a daughter, wife and mother. This journey towards modern status of women has not been a bed of roses. Women fought against the orthodox male-dominated society. While there have been positive developments, cases of rape, harassment at workplace and dowry deaths are rampant. A majority of women are still ignorant about their rights. Keeping this fact in mind, the Committee on the Status of Women in India (CSWI) recommended nearly two decades ago, the setting up of a National Commission for Women to fulfil the supervision functions in order to facilitate rectification of injustices and to promote the socio-economic development of women.

In January 1992, the National Commission for Women (NCW), was established as a statutory body under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Government of India) to review the constitutional

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and legal safeguards for women, recommend remedial legislative measures, facilitate rectification of grievances and advise the Government on all policy matters affecting women.

As the problem of violence against women is multi-layered, the NCW has adopted a multi-pronged strategy to tackle the problem. The Commission has initiated class of legal awareness among women, thus preparing them with the knowledge of their legal rights and with a capacity to use these rights. To facilitate speedy delivery of justice to women Parivarik Mahila Lok Adalats are organized in different parts of the country to review the existing provisions of the Constitution and other laws affecting women and recommending amendments thereto, any lacunae, inadequacies or shortcomings in such legislations. It organizes promotional activities to mobilize women and get information about their status and recommend paradigm shift in the empowerment of women. The Complaints and Counselling Cell of the commission processes the oral and written complaints under Section 20 of the NCW Act. The complaints received relate to domestic violence, harassment, dowry, torture, desertion, bigamy, rape and refusal to register FIR, cruelty by husband, deprivation, gender discrimination and sexual harassment at work place.

NCW tackles the problems by ensuring that investigations by the police are advanced and monitored. Family disputes are resolved or compromised through counselling. As per the 1997 Supreme Court Judgement on sexual harassment at workplace, every employer is required to provide for effective complaints procedures and remedies including awarding of compensation to women victims. In sexual harassment and provocation complaints, the concerned organizations are urged to rush cases. For serious crimes, the Commission constitutes an Inquiry Committee which makes spot enquiries, examines various witnesses, collects evidence and submits the report with recommendations. The execution of the report is supervised by the NCW.

The complaints received by the NCW show the trend of crimes against women and suggests systemic changes needed for reducing them. The complaints are analyzed to understand the slits in the mundane performance of government in confronting crimes against women and to propose amendment measures. The complaints are also used as case studies for sensitization programmes for the police, judiciary, prosecutors, forensic scientists, defence lawyers and other administrative functionaries.

The Commission also conducts seminars, workshops and conferences and sponsors such events by providing financial assistance to research organizations and NGOs. The important areas so far covered include women in detention, violence against women, sexual harassment at work place, educational, health and employment aspects, women in agriculture and Panchayati raj sector, custodial justice and mental health institutions.

The NCW holds public hearings on issues affecting large sections of women such as crime against women, women in unorganized labour sector, women in agriculture and women of minority groups. The deposition at these enquiries helps in appreciating the problems and initiating remedial action. As a measure of arousing public awareness and breaking bureaucratic apathy, public hearings under vigilant activists like Justice V.R. Krishna Iyer and Swami Agnivesh were held to understand problems and expedite solutions in the case of Kol women of Bundelkhand, deserted women of hill districts in U.P., rape case of girl children of Tamil Nadu, unorganized women labour and minority communities of Tamil Nadu, creche workers' enquiry and tribal women of Dindigul, Tamil Nadu.

Special studies on social mobilization, Panchayat raj in action, women labour under contract, gender bias in judicial decisions, family courts, gender-component in various Commissions' reports on women, violence against women, women's access to health and education in slums to help in formulation of NCW's policies for recommendations. These special studies emphasizes on development of health facilities, socio-economic development among women belonging to weaker strata of society, addressing the special needs of mentally disabled women and financial needs of women via the Gramin Banks and the widows of Vrindavan.

The NCW also comprises teams of professionals to deal with special issues which are taken up by them from time to time. Some important issues taken up by the NCW include sexual harassment at workplace, women in confinement, anti-arrack movement, issues concerning prostitution and political and technological empowerment of women in agriculture.

In order to educate itself, to enhance its own knowledge and awareness about worldwide movements, laws and research, the NCW established its own library in 1994. It has now grown into a resource centre for research scholars/activists with a collection of nearly 2300 books covering different issues relating to women's advancement. Besides, the library collection includes important reference books, like encyclopaedias, directories of NGO's as well as the complete set of Halsbury's Laws of England.

The NCW have its own publications and also sponsor research studies on various facets regarding women issues and publish them in research journals and other print media. The Commission commences evaluation of the progress of development of women in various states. Tamil Nadu, Andhra Pradesh, Rajasthan, Uttar Pradesh, Orissa, Sikkim, Madhya Pradesh, Assam, Tripura and Manipur have been covered so far. The Commission intermingles and networks with different NGOs and the State Commissions for safeguarding gender equality and empowerment of women. The Commission also interacts with the media, social activists and academics to spread awareness and consciousness among masses.

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Check Your Progress

1. What are some of the laws put in place by the Indian government to safeguard the interests of women?
2. What are the qualifications of the Member-Secretary of the NCW?
3. When was the National Commission for Women established?
4. What is the purpose of Parivarik Mahila Lok Adalats?
5. In which year did the NCW establish its own library?

**13.4 ANSWERS TO CHECK YOUR PROGRESS
QUESTIONS**

1. Several laws have been effectuated to protect the interest of women. Some of them are The Immoral Traffic (Prevention) Act, 1956, The Dowry Prohibition Act, 1961 (Amended in 1986), The Indecent Representation of Women (Prohibition) Act, 1986, The Commission of Sati (Prevention) Act, 1987, Protection of Women from Domestic Violence Act, 2005, The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013, and The Criminal Law (Amendment) Act, 2013.
2. A Member-Secretary is nominated by the Central Government, who shall be:
 - An expert in the field of management, organisational structure or sociological movement, or
 - An officer who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union with appropriate experience.
3. In January 1992, the National Commission for Women (NCW), was established as a statutory body under the National Commission for Women Act, 1990.
4. To facilitate speedy delivery of justice to women, Parivarik Mahila Lok Adalats are organized in different parts of the country. It reviews the existing provisions of the Constitution and other laws affecting women and recommending amendments thereto, any lacunae, inadequacies or shortcomings in such legislations.
5. The NCW established its own library in 1994.

13.5 SUMMARY

- The National Commission for Women aims at enabling women to achieve equality and equal participation in all spheres of life by securing her due rights and entitlements through suitable policy formulation, legislative measures, effective enforcement of laws, implementation of schemes/policies and devising strategies for solution of specific problems/situations arising out of discrimination and atrocities against women.
- Several laws have been effectuated to protect the interest of women. Some of them are The Immoral Traffic (Prevention) Act, 1956, The Dowry Prohibition Act, 1961 (Amended in 1986), The Indecent Representation of Women (Prohibition) Act, 1986, The Commission of Sati (Prevention) Act, 1987, Protection of Women from Domestic Violence Act, 2005, The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013, and The Criminal Law (Amendment) Act, 2013
- A majority of women are still ignorant about their rights. Keeping this fact in mind, the Committee on the Status of Women in India (CSWI) recommended nearly two decades ago, the setting up of a National Commission for Women to fulfil the supervision functions in order to facilitate rectification of injustices and to promote the socio-economic development of women.
- In January 1992, the National Commission for Women (NCW), was established as a statutory body under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Government of India) to review the constitutional and legal safeguards for women, recommend remedial legislative measures, facilitate rectification of grievances and advise the Government on all policy matters affecting women.
- The complaints received by the NCW show the trend of crimes against women and suggests systemic changes needed for reducing them. The complaints are analysed to understand the slits in the mundane performance of government in confronting crimes against women and to propose amendment measures.
- The NCW also conducts seminars, workshops and conferences and sponsors such events by providing financial assistance to research organisations and NGOs.
- The NCW holds public hearings on issues affecting large sections of women such as crime against women, women in unorganised labour sector, women in agriculture and women of minority groups.

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13.6 KEY WORDS

- **Dowry:** It is the transfer of parental property, gifts, or money at the marriage of a daughter.
- **Sati:** It is a Hindu practice in which a widow sacrifices herself by sitting atop her deceased husband's funeral pyre.
- **Bigamy:** It is the offence of marrying someone while already married to another person.

13.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What is the mission of the National Commission for Women?
2. Under what conditions can the chairman of NCW be removed from the post?
3. How does the NCW tackle the problem of sexual harassment?
4. What are some of the areas in which the NCW has conducted research on?

Long-Answer Questions

1. Discuss the functions of the National Commission for Women.
2. Examine the composition of the National Commission for Women.
3. Explain the role of the National Commission for Women.

13.8 FURTHER READINGS

Tripathi, T.P. 2012. *An introduction To the Study of Human Rights*. Allahabad: Allahabad Law Agency Publications.

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UNIT 14 NGOs AND PROTECTION OF HUMAN RIGHTS IN INDIA

*NGOs and Protection of
Human Rights in India*

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Structure

- 14.0 Introduction
- 14.1 Objectives
- 14.2 Role of Voluntary and Non-Governmental Organizations in Protection of Human Rights in India
- 14.3 Human Rights Organizations in India
- 14.4 Answers to Check Your Progress Questions
- 14.5 Summary
- 14.6 Key Words
- 14.7 Self Assessment Questions and Exercises
- 14.8 Further Readings

14.0 INTRODUCTION

Non-Governmental Organizations (NGOs) have, over the years, emerged as key players in the field of human rights. They act as whistle blowers where human rights are violated. Moreover, they provide direct assistance to people whose rights have been violated, push for changes in national and international laws, identify the violation of rights, create awareness among people regarding their rights and so on. Various organizations have been formed for the aforementioned purposes. Some of the most notable of these organizations are Child Rights and You (CRY), Bachpan Bachao Andolan, Human Rights Law Network (HRLN), Indian People's Tribunal (IPT) among many others. This unit offers an analysis of the contribution of NGOs in the field of human rights in addition to that of significant human rights organizations in India.

14.1 OBJECTIVES

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

- Understand the role of NGOs in protection of Human Rights in India
- Discuss the structure and objectives of several human rights organizations in India

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14.2 ROLE OF VOLUNTARY AND NON-GOVERNMENTAL ORGANIZATIONS IN PROTECTION OF HUMAN RIGHTS IN INDIA

In contemporary societies, it is common to distinguish between three main institutional spheres: the state, the civil society and the market. In all these spheres, organizations are formed and operate. Most organizations of the state and the civil society are, referred by a frequently used term, non-profit bodies, whereas organizations in the market sphere are business enterprises, aiming at generating profit for some individual person, group or institution (in some instances, the state).¹

Organizations with all these spheres contribute to development, in some sense, more or less directly. However, development focusing organizations within the spheres of the state and the civil society are organizations with a direct development mission, i.e., for which development constitutes the very purpose of existence are defined as any organized entity of society that contributes to development, without aiming at generating profit for owners of the organization from the work it does.²

The importance of development organizations/voluntary organizations/not-for-profit organizations or more recently termed non-governmental organizations (NGOs) has increased tremendously over the last decades. Voluntary organizations have been actors on the development stage longer than the World Bank, the United Nations or any other official aid agency. Though the voluntary organizations in different guises existed well before the twentieth century in both north and south, non-governmental organizations (NGOs) as they are recognized today have a more recent history.³

Voluntary organizations or NGOs play a significant role in protection of human rights. Across the world, many of these organizations are seen as whistle blowers and watch dogs of human rights and play a crucial role in:

- identifying and fighting violations of human rights,
- providing direct support to those whose rights have been violated,
- lobbying for changes to national, regional or international law,
- helping to develop new laws, and
- creating awareness of, and respect for, human rights among the communities.

Voluntary organizations or NGOs make sincere efforts to engage in the protection of human rights at various levels. The strategies and activities they adopt vary according to the nature of their vision, mission and objectives. Their involvement in human rights protection also depends on their focus on local, national, regional or international issues and coverage. A review of human rights protection

work being undertaken by several organizations in the world suggests following roles that many voluntary and non-governmental organizations are undertaking:

- Direct Assistance
- Collecting Information on Human Right Issues and Violations
- Campaigning and Lobbying
- Human Rights Education and Awareness

Many organizations working on economic, social and cultural human rights offer direct assistance to individuals whose human rights have been violated. Such organizations provide direct assistance in the form of humanitarian assistance, protection or training to develop new skills or providing legal aid.

Yet another role that many voluntary and non-governmental organizations play is that of collecting relevant information on human rights issues and their violations. Collection and dissemination of such information is helpful in promoting transparency and holding governments accountable towards protection of human rights.

One of the most influential roles that many voluntary and non-governmental organizations play in protection of human rights is through campaigning and lobbying. Several organizations exist that focus on rights based issues and resort to means of campaigning and lobbying for fulfilling their objectives. For instance, street actions and demonstrations, letter writing campaigns, shadow reports, social media campaigns etc. are all ways through which organizations engaged in human rights issues protect rights of the communities they serve.

Almost all the voluntary and non-governmental organizations irrespective of their strategies and activities are seen involved in some kind of awareness and educational work with the people. The rights based organizations understand completely that the essence of their support lies with the communities which are aware and educated about their rights. Informed and aware people will be easy to mobilize and shall provide support in particular instances of human rights violations.

14.3 HUMAN RIGHTS ORGANIZATIONS IN INDIA

The Constitution of India has given equal status to its all citizens. It also has accorded some fundamental rights that are to be claimed and enjoyed by all its citizens. Also the state guarantees protection of all these human rights against their violations. Several institutional set ups exist to protect the human rights constitutionally accorded to the people. The National Human Rights commission, The State Human Rights commission, The National commission for Scheduled castes as well as for scheduled Tribes and Commissions for women at National and State levels are the few names that assist governments in protecting the fundamental rights of people.

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Apart from several government set ups both at the central and state levels, many NGOs in India assist in protecting human rights of all. The prominent ones are listed below along with their brief description:

Childs Right and You: CRY - Child Rights and You is an Indian non-governmental organization that works towards ensuring happier childhoods for all children. Started in 1979, CRY works with 102 grassroots NGOs across 19 states in India and has impacted the lives of over 3 million children. CRY addresses children's critical needs by working with parents, teachers, Anganwadi workers, communities, district and state level governments as well as the children themselves. The organization focuses on changing behaviors and practices at the grassroots level and influencing public policy at a systemic level, thus creating an ecosystem where children are made the nation's priority.

Bachpan Bachao Andolan: Bachpan Bachao Andolan, also known as Save Childhood Movement, is an India-based movement campaigning for the rights of children. It was started in 1980 by Nobel Laureate Mr. Kailash Satyarthi and has focus pointed on ending bonded labour, child labour and human trafficking, as well as demanding the right to education for all children. It has so far freed more than 88,000 children from the servitude, including bonded labourers, and helped in their successful re-integration, rehabilitation and education.

Human Rights Law Network: The Human Rights Law Network (HRLN) is a collective of Indian lawyers and social activists who provide legal support to the vulnerable and disadvantaged sections of society. It works on child rights, disabilities rights, rights of people living with HIV/AIDS, prisoners' rights, refugee rights, rights of indigenous people, workers' rights, and rights of the minorities and people who have faced or are subject to sexual violence, among others.

HRLN is a project of the Socio-Legal Information Centre (SLIC). SLIC is a non-profit legal aid and education organization, which provides free legal assistance to people who lack the capacity to approach courts for redress. SLIC files more than 100 petitions each year to protect the health, dignity, and rights of India's citizens. SLIC is one of the country's largest, most active legal human rights programs and reproductive rights unit. SLIC is also an implementing partner of the United Nations High Commissioner for Refugees.

Indian People Tribunal: The Indian People's Tribunal (IPT), also called the Indian People's Tribunal on Environmental and Human Rights or Independent People's Tribunal, was a People's Tribunal set up by the Human Rights Law Network (HRLN) on 5 June, 1993. The IPT is an unofficial body led by retired judges who form a panel that conducts public enquiries into human rights and environmental abuses. It provides an alternative outlet for the victims faced with official obstruction and delays. Since being founded, the IPT has conducted numerous investigations into cases of relocation of rural people to make way for dams or parks, eviction of slum dwellers, industrial pollution and communal or state-sponsored violence.



Coordination of Democratic Rights Organization: Coordination of Democratic Rights Organizations (CDRO) is a union of twenty civil liberties and democratic rights associations in India. Its member organizations meet a minimum of three to four times annually, and all of them hold equal status within the CDRO, and work in a democratic manner. It was founded in August 2007 “in the context of the violent state repression of people’s movements in India as well as the arrest of democratic rights activists.

The Forum for Fact-Finding Documentation: The Forum for Fact-finding Documentation and Advocacy (FFDA) is an Indian human rights monitoring organization founded in 1995 that fights to promote and protect human rights in India by working with the victims of human rights violations and their organizations. It educates the victims and their communities, and facilitates and builds the capacity of organizations of victims to take collective action on their own. It addresses the issues of displacement and forced eviction, violence against women and children, exploitation, torture, abuse and discrimination against Dalits (untouchable and low caste poor), and attacks on minorities and indigenous communities.

Based on learning and work experiences, FFDA integrated democracy monitoring into its core activity as the basic path to rights for the above-mentioned target group; participating in decision making and asking for accountability and good governance of the state in particular. It focuses on having a right to:

- Social and political participation
- A sustainable livelihood
- Education, particularly access for girls and tribal children
- Life and security
- Identity

FFDA investigates, reports on, and campaigns against human rights abuses. Tribal and Dalit people, especially women and children, are its priority.

People’s Union for Democratic Rights: **People’s Union for Democratic Rights** is an organization based in Delhi which is committed to legally defend “civil liberties and democratic rights” of the people. The People’s Union for Democratic Rights (PUDR) is an independent entity and is not affiliated to any political party or organization.

Check Your Progress

1. What does the involvement of NGOs in human rights protection depend upon?
2. List some ways through which organizations engaged in human rights issues protect the rights of the communities they serve.
3. What does the Human Rights Law Network work on?

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14.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The involvement of NGOs in human rights protection also depends on their focus on local, national, regional or international issues and coverage. The strategies and activities they adopt vary according to the nature of their vision, mission and objectives.
2. Street actions and demonstrations, letter writing campaigns, shadow reports, social media campaigns etc. are all the ways through which organizations engaged in human rights issues protect rights of the communities they serve.
3. The HRLN works on child rights, disabilities rights, rights of people living with HIV/AIDS, prisoners' rights, refugee rights, rights of indigenous people, workers' rights, and rights of the minorities and people who have faced or are subject to sexual violence, among others.

14.5 SUMMARY

- Most organizations of the state and the civil society are, referred by a frequently used term, non-profit bodies, whereas organizations in the market sphere are business enterprises, aiming at generating profit for some individual person, group or institution (in some instances, the state).
- Voluntary organizations have been actors on the development stage longer than the World Bank, the United Nations or any other official aid agency.
- Across the world, NGOs are seen as whistleblowers and watch dogs of human rights and play a crucial role in:
 - o identifying and fighting violations of human rights,
 - o providing direct support to those whose rights have been violated,
 - o lobbying for changes to national, regional or international law,
 - o helping to develop new laws, and
 - o creating awareness of, and respect for, human rights among the communities.
- Such organizations provide direct assistance in the form of humanitarian assistance, protection or training to develop new skills or providing legal aid.
- Almost all the voluntary and non-governmental organizations irrespective of their strategies and activities are seen involved in some kind of awareness and educational work with the people. The rights based organizations understand completely that the essence of their support lies with the communities which are aware and educated about their rights.

- The Constitution of India has given equal status to its all citizens. It also has accorded some fundamental rights that are to be claimed and enjoyed by all its citizens.
- CRY addresses children's critical needs by working with parents, teachers, Anganwadi workers, communities, district and state level governments as well as the children themselves.
- Bachpan Bachao Andolan, was started in 1980 by Nobel Laureate Mr.Kailash Satyarthi and has focus pointed on ending bonded labour, child labour and human trafficking, as well as demanding the right to education for all children.
- HRLN is a project of the Socio-Legal Information Centre (SLIC). SLIC is a non-profit legal aid and education organization, which provides free legal assistance to people who lack the capacity to approach courts for redress.
- The IPT is an unofficial body led by retired judges who form a panel that conducts public enquiries into human rights and environmental abuses. It provides an alternative outlet for the victims faced with official obstruction and delays.
- Based on learning and work experiences, FFDA integrated democracy monitoring into its core activity as the basic path to rights for the above-mentioned target group; participating in decision making and asking for accountability and good governance of the state in particular.
- FFDA investigates, reports on, and campaigns against human rights abuses. Tribal and Dalit people, especially women and children, are its priority.

NOTES

14.6 KEY WORDS

- **Socio-Legal Information Centre (SLIC):** It is a non-profit legal aid and education organization, which provides free legal assistance to people who lack the capacity to approach courts for redress.
- **Coordination of Democratic Rights Organizations (CDRO):** It is a union of twenty civil liberties and democratic rights associations in India. . It was founded in August 2007 "in the context of the violent state repression of people's movements in India as well as the arrest of democratic rights activists.
- **Forum for Fact-finding Documentation and Advocacy (FFDA):** It is an Indian human rights monitoring organization founded in 1995 that fights to promote and protect human rights in India by working with the victims of human rights violations and their organizations.
- **People's Union for Democratic Rights:** It is an organization based in Delhi which is committed to legally defend "civil liberties and democratic rights" of the people.

14.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

NOTES

Short-Answer Questions

1. List some crucial roles played by NGOs across the world.
2. Name some institutions that assist governments in protecting the fundamental rights of people in India.
3. What does the CRY organization focus on?
4. Write a short note on the Bachpan Bachao Andolan.

Long-Answer Questions

1. Discuss the role of the Forum for Fact-Finding Documentation.
2. Elaborate upon the organization and work area of the Human Rights Law Network.
3. Evaluate the functioning of the Forum for Fact-finding Documentation and Advocacy (FFDA).

14.8 FURTHER READINGS

Tripathi, T.P. 2012. *An Introduction To the Study of Human Rights*. Allahabad: Allahabad Law Agency Publications.

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