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SUSTAINABLE DIMENSION OF HUMAN RIGHTS

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BLOCK-I

SUSTAINABLE DIMENSION OF HUMAN RIGHTS

Unit 1: Human Rights: Meaning and Evolution

Unit 2: Sources of Rights

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UNIT-1

HUMAN RIGHTS: MEANING AND EVOLUTION

Unit Structure:

1.1 Introduction
1.2 Objectives
1.3 Meaning of Human Rights
1.4 Evolution of the concept of Human Rights
1.5 International Human Rights instruments
1.6 Human Rights as International Concern
1.7 Human Rights Issues in India
1.8 Summing Up
1.9 References and Suggested Readings

1.1 Introduction:

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

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

1.2 Objectives:

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

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

1.3 Meaning of Human Rights:

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

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

dignity. Chief Justice of India J.S. Verma has rightly stated that 'human dignity is the quintessence of human rights'.

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

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

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

• D.D. Basu defines human rights as those minimum rights which every individual must have enjoy against the state or other public authority by virtue of his being a member of human family, irrespective of any other consideration. (Human Rights in Constitutional Law, 1994).

• The United Nations Centre for Human Rights defines Human Rights "as those rights which are inherent in our nature and without which we cannot live as human beings".

• For Kim, human rights represent 'claims and demands essential to the protection of human life and the enhancement of human dignity, and should therefore enjoy full social and political sanctions'.

• Nickel characterizes human rights as 'norms which are definite, high priority, universal and existing and valid independently of recognition or implementation in the customs or legal systems of particular countries'.

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

• It is a right of an individual or a group of individuals.

• These rights are inalienable and human beings are entitled to them by birth.

• It is a universal and legal concept.

• These rights are meant to uphold human dignity and equality and to set forth liberty and fraternity to all without any kind of discrimination.

• These rights are the basic minimum requirement for survival of human beings in society.

• These rights can be executed only within the society and are protected and enforced by the authority of the state at all levels.

1.4 Evolution of the Concept of Human Rights:

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

(1) The roots for the protection of the Rights of Men may be traced back to the Babylonian laws, Assyrian laws etc. Writings of Plato and other Greek and Roman philosophers also clamoured for the protection of human rights.

(2) The concept of human rights can also be traced to the period of the Renaissance and afterwards to the period of The Enlightenment.

(3) The Magna Carta (1215) is considered as the foundation of liberties of Englishmen. It guaranteed the citizens the freedom from arbitrary imprisonment or from dispossession of property.

(4) The Bill of Rights (1689) in England conferred some important rights on the British Parliament and also declared many actions of King James II illegal.

(5) The American Declaration of Independence (July 4, 1776) declared the enjoyment of rights of life, liberty and the pursuit of happiness by the individuals.

(6) The French Revolution (1789) proclaimed the slogans of liberty, equality and fraternity.

(7) The League of Nations, set up in 1920, was entrusted with the duty of protection of rights, but it failed in its mission. World War II (1939-1945) was the most destructive war in human history. UNO was established in 1945 after the Second World War. Its Charter contains a number of articles related to human rights protection. Articles 1(3), 13(16), 55C, 62(2), 68 of UNO Charter contains provisions relating to the protection and promotion of human rights. The Charter of the United Nations Organisation (UNO) in its preamble declared 'We the peoples of the United Nations determine to reaffirm faith in the fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of the Nations large and small.....'. The Charter also declared that the purpose of the United Nations is 'to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for Human Rights and for Fundamental Freedoms for all without distinction as to race, sex, language or religion.'

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

Stop to Consider

Economic Foundations of Human Rights

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

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

1.5 International Human Rights Instruments:

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

(1) The Universal Declaration of Human Rights, Dec. 10, 1948. This Declaration contained various civil, political, economic, social rights. But, it was not legally binding. So, ultimately two other covenants were adopted which were legally binding on signatory states. These are:

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

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

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

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

(1) The General Assembly on December 1948 adopted the Convention on the Prevention and Punishment of Genocide, which came into force on January 1951. [The term 'Genocide' has been derived from the Greek term 'genos' (race) and the Latin word 'cide' (killing).]

(2) International Convention on the Suppression and Punishment of Crime of Apartheid on November 1973, which came into force on July, 1976.

(3) The Convention against Torture and other Cruel, Inhuman or Degrading Treatment, adopted by the General Assembly on December 10, 1984. (Regional Conventions have also been concluded for the prevention of torture.)

(4) International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly on December 1965.

(5) The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on 18 December 1979, and entered into force on Sept. 1981. The Declaration on the Elimination of Violence Against Women, adopted by the United Nations General Assembly in 1993, calls on all states to take measures to prevent and punish violence against women.

(6) The Convention on the Rights of the Child, adopted by the UN General Assembly on 20 Nov. 1989, came into force in September 1990.

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

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

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

Stop to Consider

Basic Parameters of Human Rights

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

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

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

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

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

1.6 Human Rights as International Concern:

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

But, since 1940s, the concept of human rights protection underwent tremendous change due to crimes committed during the Second World War against the humanity and defence of unrestricted state sovereignty was challenged and questioned. It was argued by many thinkers that restoration of human rights was essential for the preservation and promotion of international peace and security. Thereby, it was felt that protection of human rights was not only intra-national, but inter-national concern also. If it is not well protected within the domestic level, it is well and good, otherwise comes the role of international human rights law. Thus, today,

protection of human rights has become a global concern, thereby becoming both intra-national and inter-national in its scope. Human rights as inter-national concern focus on the fact that it checks arbitrariness on the part of state and government.

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

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

national societies in fact respect the human rights of their inhabitants.

Self-Asking Question

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

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1.7 Human Rights Issues in India:

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

Part III is justiciable in nature, whereas, Part IV is non-justiciable. For example, Article 14, 15, 16, 19, 21, 23, 24 etc. of Part III and Article 39, 45 etc. of Part IV deal with the various provisions for the protection and promotion of human rights of Indians.

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

Thus, in India, the constitutional provisions, different pieces of legislation as well as the efforts of the court are the important safeguards to protect the human rights of Indians. The above discussion makes it clear that there is no dearth of provisions for the protection of human rights both under the domestic and international laws, but, whenever we scan through the newspapers, T.V. Channels, magazines, we come across the news of large scale violation of these rights. It is strange that despite the presence of so

many laws in the domestic and international level these rights are constantly violated. Instances of child trafficking, violation of women rights, custodial death under police custody etc. are increasing day by day. The more the world is showing concern about human rights protection, its violation are also becoming more rampant.

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

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

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

As we know, the problem of child labour is rampant in India. Child rape and child prostitution also lead to the violation of child rights and dignity. In India, it is estimated that about a million babies, out of 21 million born every year, are abandoned after birth due to the various socio-economic pressures. (UNICEF, New Delhi, International Year of the Child, 1979.)

The White Collar Crimes, like the Satyam case also prevails in India. Moreover, there are communal violence also aggravate the problem. From the above discussion, it is clear that despite the printed Constitutional Ciphers, the social homicide, bride burning, communal riots, insurgencies, violence, ongoing violation of women and child rights have characterized Indian life. Amnesty International (a leading NGO in the field of Human Rights protection), 1992 Report on India entitled, - 'INDIA TORTURE, RAPE AND DEATH IN CUSTODY' – has published records of exclusively the custodial crimes. The Amnesty Report, 1990, entitled 'INDIA OPERATION BLUEBIRD' has also cited many other cases of human rights violation.

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

Thus, a cursory look at the whole situation will certainly lead to disappointment and everything will appear to be a mirage. It is to be

understood here that the socio-economic environment is intrinsically related to the question of human rights protection. Respect and observance of human rights are always conditional upon economic condition of respective states. The NGOs are now playing a vital role in human rights protection. It must be admitted here that the case of human rights violation are so massive that no single group can tackle the problem. There is a need for a global forum.

Self-Asking Question

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

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Stop to Consider

Judicial Response to Violation of Human Rights:

Writings of John Locke, Hugo Grotius and Rousseau depicts the fact that men were living in the state of nature in ancient time, governed by laws of nature to protect them. These natural rights given to men by natural laws are now-a-days known as human rights. Slowly, people started depending on government for the protection of their rights. It must be noted that the proper enjoyment of human rights depends on the quality of laws of State. But, in the name of protection of human rights, the state should not cross its limits. in such a complex situation, it is the judiciary which protects human rights. For example, in Maneka Gandhi case, the Supreme Court held that an unreasonable, unfair and arbitrary procedure is no

procedure at all. Moreover, judicial laws has civilized our prisons. In Sunil Batra v/s. Delhi Administration case, prison reform was emphasized by V.R. Krishna Iyer.

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

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

Challenges to the protection of human rights – some global reports:

We can refer here to some of the global reports in a nutshell, which have projected the various challenges to the protection of the human rights throughout the length and breadth of the world –

The Human Rights Watch – World Report, 2024, has highlighted on the renewed hostilities between Israel and Hamas, in Sudan, ongoing conflicts in Ukraine, Myanmar, Ethiopia etc. It also projected on the growing economic inequality and on the violation of rights in many places. The report stressed on the fact that the drivers of these human rights crises and their consequences often transcend borders and thus cannot be solved by governments acting alone. Rather these problems and threats need to be tackled through the universal principles of international human rights and the rule of law. However, the report projected the fact that the governments that could play a vital role in improving the human rights protection adopt double standards in applying the human rights framework. For

example, governments are vocal in condemning crimes against civilians in some places, whereas, it is silent about the similar types of happenings elsewhere. This weakens the belief in the universality of human rights and the legitimacy of the laws designed to protect them. It has become easier for the governments to disregard human rights issues in the international arena in part because the international community is not challenging their violations of human rights at home. The autocrats have worked to erode the independence of the key institutions which are vital for protecting the human rights so as to exercise power without any constraint. The human rights and humanitarian crises have caused some to question the effectiveness of the human rights framework as a model for protection and for positive change. The selective government outrage, transactional diplomacy seeking short term gain, growing transnational repression and the willingness of the autocratic leaders to sacrifice rights to consolidate their power – all these outrage undermines the human rights. The report highlighted on the fact that all governments can demonstrate human rights leadership to protect the civilians. However, the challenge lies in doing it consistently in a principled manner. The report after projecting the various issues concerning human rights violations also highlighted on the need of the hour. It stated that independent, rights-respecting institutions, including the judiciary, Ombudspersons and the Human Rights Commissions can effectively guard against capricious decision making and can upheld the rule of law. An active and independent civil society can also ensure the governmental decisions serve the public interest. These human rights crises focus on the urgency of all governments to apply longstanding and mutually agreed principles of international human rights law everywhere. The governments need to uphold human rights consistently, no matter who the victims are or where the rights violations are being

committed. Thus, the report projected the fact that the leaders should stand up for everyone's human rights, not just the rights of some people. (https://www.hrw.org/world-report/2024)

The Human Rights Watch 2025 World Report reflected on the events of 2024 and highlighted that governments should respect and defend universal human rights with more rigor and urgency than ever. The people and the civil society also need to remain steadfast in holding them accountable. The report stated that elections are never an end in themselves and so, the elections need to abide by the human rights standards. Racism, hate and discrimination drove many elections in the past year. The report also projected the fact that the governments of some countries helped some other countries to commit atrocities by providing weapons and the warring parties have committed mass killings, sexual violence and forced displacement. Thus the governments supplying arms to the warring parties have shown utter disregard for the civilian lives thereby exposing the need for a global response to uphold the humanitarian principles and human rights norms. The report very rightly highlighted on the fact that human rights are not abstract ideals but they are the foundation of human dignity and survival and it is our shared interest to protect them. The report asked to stop all human rights problems and for that the leaders of the world should do more to stand up for everyone's human rights. There have been many big issues of human rights problems in the world but many leaders have not done enough to stop those violations. Also, the report highlighted that many leaders in the world want more power and control over others and try to stop people from saying things that the leaders do not agree with. The report also said that wars are causing big human rights problems. Though some leaders have spoken about these human rights abuses in the world, yet they are silent about some happenings elsewhere. The report agreed to the fact that the

International Criminal Court must be supported. (https://www.hrw.org/world-report/2025)

The UNHCR (The UN High Commissioner for Refugees) reports highlighted on the significant challenges to the protection of the rights which primarily arises from rising forced displacement, conflicts and inadequate humanitarian responses. The Global Appeal 2025 highlighted UNHCR's plans for 2025 and also on the funding it needs to protect, assist and empower a large number of forcibly displaced and stateless people and to help them find solutions to their situations.

Moreover, The United Nations Human Rights Council is the main intergovernmental body within the UN System which is dedicated to promoting and protecting the human rights worldwide. Also, in 'Resolve', which is the report of the Secretary-General on the work of the organization, 2024, in his introductory speech said that the past year has tested humanity in every way. Various crisis and challenges like that of conflicts, deepening poverty and inequality, hunger and poor economic prospects for the developing countries, were faced by the people. The human rights abuses, discrimination against minorities, women and girls, rising extremism etc are sowing discord and mistrust across the communities, countries and the entire regions. (Introductory speech of the UNO Secretary General).

Check Your Progress

Q.1. Discuss the meaning and evolution of the concept of Human Rights.

Q.2. Discuss the different human rights instruments at the international level.

Q.3. Discuss the protection of human rights as an international concern.

1.8 Summing Up:

After reading this unit now you are in a position to discuss the different parameters of the concept of human rights. It is evident from the above discussion that human rights protection today is both intra-national as well as inter-national concern. Although globalization can bring prosperity to the nations, but it does not always ensure the protection of human rights. So, people must become conscious about their rights and duties to make realize the goal of complete protection of human rights. In this unit we have also discussed the constitutional provisions for the protection of human rights. Although enshrined in the constitution these rights have remain mere paper aspirations and reality there is a wide gap between the theory and practice. Only theoretical provisions are not enough to protect human rights, the urgent need of the hour is to make the public conscious about the fact. Human rights can be protected in real sense of the term only when the public at large will become conscious about their human rights protection. Otherwise, the gap between the theory and practice will keep on widening leading to serious consequences.

1.9 References and Suggested Readings:

- Basu. L.N. (2007) Human Rights in a Global Perspective. Aavishkar Publishers Distributors, Jaipur (Rajasthan).
- Natarajan. A. (2006) Human Rights in International Perspective, Aavishkar Publishers, Jaipur.
- Joshi, S. C. (2006). Human Rights – concepts, issues and laws. Akansha Publishing House, New Delhi.
- Geetanjali. (2011). Human Rights – theory and practice. Centrum Press, New Delhi.
- Uvin, P. (2005). Human Rights and Development.

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UNIT-2

SOURCES OF RIGHTS

Unit Structure:

2.1 Introduction
2.2 Objectives
2.3 Various Sources of Rights
2.4 Sources of International Law
2.5 NGOs and Human Rights
2.6 Summing Up
2.7 References and Suggested Readings

2.1: Introduction:

We have already discussed in the last unit about the meaning and evolution of human rights. We know that human rights are the very basic rights which belong to every individual regardless of nationality, gender, ethnicity or any other status. These rights are fundamental for the development of personality of the human beings. These rights are upheld and protected through various sources. In this unit, we will try to study about the various important sources of rights. It is very significant as well as very important to know wherefrom our rights originate, how they are justified and how they are enforced and protected.

2.2: Objectives:

After reading this particular unit, the learners will be able to –

- understand the various different sources of rights.
- analyse the role of NGOs in promoting rights.
- discuss the different Sources of International Law.

2.3: Various Sources of Rights:

1. Philosophical and Natural law theory - This is one of the oldest source of rights. It is based on the belief that certain rights are inherent in human nature and that individuals possesses natural rights like that of right to life, liberty and property, simply by virtue of being human. Enlightenment thinkers, classical liberals sought to ground rights in nature. Rights, they posited, are born not out of man-made laws but out of natural law. Thus, they are universal and inalienable, existing independent of state recognition. The leading exponents are: John Locke, Jean Jacques Rousseau, Jefferson, A Hamilton, Immanuel Kant, George Mason etc. However, this theory has been criticized on the ground that rights cannot exist prior to State. It is pertinent to note that though not legally enforceable, these natural rights often provide an ethical foundation for the legal recognition of other rights.

2. God-given rights – The idea that rights come from God is particularly popular among the conservatives and republicans. According to this theory, rights exist prior to and apart from any man-made law and thus cannot be granted or repealed by the government. Our rights came from God, and they are inalienable. The Constitution created a national government to protect our God-given, inalienable rights. But the theory has been subject to criticisms on the ground that there is no evidence in support of this theory.

3. International Treaties and Conventions – This is another very significant source of rights. Different International laws like that of Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) deals with wide spectrum of rights. Some other examples are: CEDAW, Convention on the rights of the Child (CRC), Convention against

Torture (CAT) etc. Moreover UN Charter deals with various human rights. We will discuss all these in detail in the next units.

4. Government granted rights – Leftists and modern liberals support this source of rights. According to them, rights do not precede political laws but follow from there. Governments creates laws and the laws in turn dictate the rights and non-rights of the people who live under those governments. “Absent a government”, writes E. J. Dionne, “there are no rights”. Other exponents are Stephen Holmes, Sunstein etc. Thus, according to this theory, sources of rights are governmental decrees. This is also subject to various limitations and criticisms because it contradicts the very purpose of the concept of rights.

5. Historical source of rights – According to this theory, rights are the product of history. These are found in ancient customs and traditions. However, it has been criticized on the ground that rights do not always exist in customs and traditions but rights changes from age to age.

6. National Constitutions and legislations – Rights are often embedded in the Constitutional and legal frameworks of the countries. In addition to the Constitutional arrangements, there are also legislations passed from time to time dealing with protection of rights of the people. For example, in our country, Constitution provides for rights under Part III dealing with fundamental rights, Part IV dealing with directive principles of state policy, the Bill of Rights in the United States Constitution, Charter of rights and freedoms in Canada etc. These Constitutional rights are enforceable by the courts and can be limited only under specific conditions. Rights can also originate from various statutes which are known as the statutory rights. For example: right to education, consumer protection rights etc.

7. Judicial decisions and precedents – The judiciary plays a very crucial role in interpreting and enforcing human rights. For example, in India, we have so many environmental rights as a result of judicial intervention. Various Public Interest Litigations were filed from time to time and the judiciary has played a very active role in protecting rights of various sections of population. Be it environmental right, or prisoners rights, or child and women rights, the Indian Judiciary has tried its best to deliver justice through various landmark judgements and decisions. Thus we see that courts also play a crucial role in the development of rights through the judicial interpretations and precedents. In our country, the scope of right to life has been expanded through various judicial pronouncements. Through the various decisions of the courts, our laws gets amplified and multiplied. It is true that effective protection of human rights is exercised truly by the means of justice.

8. Regional Human Rights instruments – Different regions have developed their own human rights systems which is another important source of rights. For example, European Convention on Human Rights, American Convention on Human Rights, African Charter on Human and Peoples' rights, Asian Human rights Charter are some of the regional arrangements dealing with human rights protection within that region.

9. Customary and Cultural sources – It is seen in some societies that customary practices or their cultural traditions serves as sources of rights, especially in family matters, property and inheritance matters. For example, traditional practices related to community governance etc.

10. Historical and Political Documents – Various such documents are sources of rights. We can understand from the following discussion –

(a) Magna Carta (1215) – This is considered as a foundational document in the development of constitutional law and the protection of the individual rights.

(b) English Bill of Rights (1689) – This document set limitations on the powers of the monarchy and affirmed certain rights of the Parliament and of the individuals.

(c) American Declaration of Independence (1776) – This asserted the fact that all men are created equal and endowed with unalienable rights.

(d) French Declaration of the Rights of Man and of the Citizens (1789).

Thus, we see from the above discussion that there are various sources of rights. The United Nations Charter contains provisions for the protection of rights. Various efforts have been taken under the auspices of UNO for the protection of rights, which we will discuss in the next block dealing with UN Human Rights Systems. The UNO Charter recognized the urgent need for a robust mechanism to combat oppression and discrimination and thereafter. UDHR was adopted on Dec 10, 1948, which is a comprehensive document covering variety of rights. The UDHR is a monumental achievement in the annals of human history dealing with rights. It marked the first international acknowledgement of the fact that human rights and fundamental freedoms are inherent to every person, irrespective of their location or circumstances. It is pertinent to mention here that the UDHR along with International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, social and cultural Rights (ICESCR) and their two Optional Protocols collectively form the International Bill of Human Rights.

The Universal Declaration of Human Rights recognizes the universality of the human rights and it has become a source of customary international law, meaning that states have a sense of legal obligation to observe norms and these norms are reflected in the general practice of states. The UDHR has gained widespread acceptance amongst the states.

Thereafter, there is the Vienna Declaration on Human Rights, 1993. In 1993, the World Conference on Human Rights was convened in Vienna to re-assess the progress of the United Nations' Human Rights work. The Vienna Declaration and programme of Action were the pivotal outcomes of this conference. It unanimously recognized the right to development as an inalienable human right and an integral part of the international human rights law.

It is pertinent to mention here that there are no single sources of human rights law nor there are single set of participants. No single arenas or institutional arrangements are there for the creation, invocation, application, change or termination of such laws. The question of the sources of rights has assumed greater significance with the expand in the scope and the reach of international human rights. As the potential ramifications becomes greater, there arises the need to ensure that the relevant rights or norms are solidly gounded in the international law which assumes increasing importance.

Self-Asking Question

Q. There are no single sources of human rights law nor are there single set of participants – Discuss the relevance of the statement.

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Stop to Consider

Domestic bills of rights versus the International ones:

Whatever be the degree of analogy or disanalogy between the international and Constitutional law, the domestic bill of rights and the international human rights law performs the same basic functions of stating the limits on what the government may do within their jurisdictions. Also, another important similarity between the two is regarding their general content and structure. For example, many domestic bills of rights also included some or most of the core social and economic rights as contained in ICESCR.

Self-Asking Question

Q. The NGOs have collected the important information which are necessary to reveal the true status of human rights conditions in most of the remote or politically oppressed corners of the world. Do you think so? Discuss with examples.

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2.4: Sources of International Law:

The sources of International Law can be discussed under the following heads –

1. **International Conventions –** The term convention applies to any treaty, protocol or agreement and according to Article

38 of the Statute of International Court of Justice, it is the first source of international law. International treaties are very important sources of international law and these international treaties may be of the following types: law-making treaties and treaty contracts. The Law-making treaties are those treaties which are entered into by a large number of states and such treaties may be divided into the following types: treaties enunciating the rules of Universal International Law and those enunciating general principles. Treaty Contracts are those which are entered into by two or more states and are binding on the parties to the treaty.

2. **International Customs -** International Customs is another very important source of international law. Custom is a habit which has been repeated for a long period of time and has ultimately assumed the force of law. The essential ingredients or elements of customs are:

   (a) Evidence of a general practice accepted as law – In the fields of international law, customs have emerged and have been accepted over the time as laws.

   (b) Uniformity and consistency – The custom need to be uniform and consistent. Complete uniformity may not be possible but there must be substantial uniformity.

   (c) Generality of practice.

3. **General principles of law as recognized by the civilized states –** According to Article 38 of the Statute of International Court of Justice, the General principles of law as recognized by the civilized nations constitute another important source of international law. This is an important source of law through which the international law adapts

itself in accordance with the changing times and circumstances. These general principles are recognized by most of the civilized states and as a result the court may apply it as a principle of international law.

As pointed out by B. Cheng, International Courts have recognized the following general principles: (i) good faith; (ii) responsibility; (iii) prescription; (iv) a party to a dispute cannot himself be an arbitrator or judge; (v) res judicata; (vi) in any judicial proceedings, the court need to give proper and equal opportunity of hearing to both the parties etc.

4. **Decisions of judicial and Arbitral Tribunals –** The Decisions of judicial and Arbitral Tribunals are also another important source of international law. This source includes international as well as state decisions. Regarding the decisions of the International Court of Justice, Article 59 of the Statute of International Court of Justice provides that they will not have any binding force except between the parties and in respect to that particular case. They are regarded as subsidiary means for the determination of the rules of international law.

5. **Juristic Works –** The opinions of the jurists are regarded as another important sources of the international law. While deciding a particular case, if the court finds that there are no relevant treaty or judicial decision or any legitimate act or any established custom, then the court may take the help of the opinions of the experienced jurists for the determination of the rules of international law.

6. **Decisions or determinations of the organs of international institutions –** In the modern age, the Decisions or determinations of the organs of international

institutions are treated as very important source of international law. After the establishment of U.N., most of the developments in the field of international law and its codification have taken place through the instrumentality of international organizations.

Some other subsidiary sources of International Laws are – international comity, state papers, state guidance for their officers, reason and equity and justice. We all know the fact that we enjoy our rights from various laws existing in the field. Thus, the above discussion makes us clear about the sources of international law from which stems various international rights.

2.5 NGOs and Human Rights

Globalization has made the world a global village and it increases the sources of injustice that are beyond the scope of any national systems of justice. Today, we see that the multinational corporations and institutions like the World Bank, the International Monetary Fund etc. have a major impact on the lives of the people. As a result, even the political spaces for the governments has equally been affected by these international forces which has its profound impact on how governments behave domestically.

We see that during the last couple of years, the NGOs (Non-governmental Organizations) have contributed tremendously towards enrichment of the international and national discourse on various issues of global importance like that of the eradication of poverty and the promotion of gender equality, peace, sustainable development and other areas of human rights. NGOs are seen as a nascent organizational articulation of a global human rights enforcement mechanisms. Thus, we see that NGOs have played an important role always in establishing and expanding the UN Human

Rights System. Often it has been seen that the NGOs have proposed new institutional arrangements in order to embody UN responses to various human rights abuses. In the development of UN Human Rights system, the NGOs supporting role can be summarized by three functions: standard-setting, monitoring and implementation. The various NGOs have collected the important information which are necessary to reveal the true status of human rights conditions in most of the remote or politically oppressed corners of the world. The primary role of the NGOs in human rights protection can be summarized thus: monitoring and reporting of governmental behavior on human rights, particularly violations, building pressures and creating international machinery to end the violations and hold the governments accountable (Peter Van Tuijl).

We can specify here the role played by some NGOs in furthering the protection of human rights. For example, Amnesty International has conducted various investigations into human rights violations and has published credible reports on various issues like that of torture, unlawful detentions, executions etc. Through its Urgent Action Network, the Amnesty International mobilizes activists to take up the issues of human rights abuses. It monitors the human rights situations in various countries and holds governments accountable through annual reports and alerts about various crises and conflicts. Similarly, Human Rights Watch (HRW), another international NGO, has responded to various emergency situations and has reported about abuses in conflict zones. HRW also works on specific issues like that of rights of women, children, refugees, and takes up issues like child labour, war crimes, human trafficking etc. Moreover, ICRC (International Committee of the Red Cross) also upholds the rights of the people affected by conflict and other situations of violence. It protects and assists the victims of armed conflict and other situation of violence.

In India, the positive role played by the non-governmental organizations (NGOs) in furthering the cause of human rights has been recognized both by the Protection of Human Rights Act, 1993 and by the National Commission on Human Rights (NHRC).

Check Your Progress:

Q.1. Discuss the different important sources of human rights. How the customs and conventions be regarded as a source of human rights?

Q.2. How do the Constitutional rights differ from other rights? Explain.

Q.3. Discuss the significance of UDHR as a source of right.

Q.4. What role does judicial precedent play in the development of rights? Substantiate your answer with examples.

Q.5. Highlight the differences between Natural Rights and the Legal Rights.

2.6 Summing Up

From the above discussion, it is seen that rights emerges from a variety of sources. There are constitutional provisions, legislative enactments, judicial decisions, international law, cultural traditions and each of these help in giving shape to rights. It is very important to understand the sources of different rights in order to appreciate its legitimacy and also needed for the protection of rights in any society.

2.7 References and Suggested Readings

- Simma, B., & Alston, P. (1988). The sources of human rights law: custom, jus cogens, and general principles. *Aust. Ybil*, *12*, 82.

- Paust, J. J. (1995). The complex nature, sources and evidences of customary human rights. *Ga. J. Int'l & Comp. L.*, *25*, 147.
- Van Tuijl, P. (1999). NGOs and human rights: Sources of justice and democracy. *Journal of International Affairs*, 493-512.
- Shestack, J. J. (2017). The philosophic foundations of human rights. In *Human Rights* (pp. 3-36). Routledge.
- Donnelly, J. (1982). Human rights as natural rights. *Hum. Rts. Q.*, *4*, 391.
- O'Boyle, M., & Lafferty, M. (2013). General principles and constitutions as sources of human rights law.
- Kapoor, S. K., International Law – a nutshell. 7th ed. Central Law Agency.

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UNIT-3

TYPES, GENERATIONS AND HIERARCHIES OF RIGHTS

Unit structure:

3.1 Introduction
3.2 Objectives
3.3: Types of Rights
3.4 Three Generations of Human Rights
3.5 Approaches to the Study of Human Rights
3.6 Hierarchy of Human Rights
3.7 Summing Up
3.8 References and Suggested Readings

3.1 Introduction

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

3.2 Objectives

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

- *understand* different types and approaches to the study of Human Rights,
- *evaluate* the concept of three generations of Human Rights,
- *understand* different perspectives of the concept of Human Rights,
- *discuss* the hierarchy of rights.

3.3 Types of Rights:

Rights are the essential conditions of social life which is very essential for an individual to lead a dignified life in the society. Let us now concentrate on the different types of rights, which are like:-

1. Natural Rights:- These rights exists independently of society or government i.e., these were enjoyed by the people even before the origin of the state. These rights were enjoyed by the people in the state of nature and are regarded as inherent fundamental rights. For example, right to life, liberty and property. Thus, natural rights are inherent to all human beings, regardless of nationality, ethnicity or any other consideration. These rights are inalienable in the sense that they cannot be taken away or denied.

2. Moral Rights:- These rights are not granted by any statutes or law but these are very much dependent on the ethical feelings and principles of man. For example, seniors have the moral right to be obeyed by the juniors, teachers have the moral right to be obeyed by the students.

3. Legal Rights:- These rights are given to man by law and are protected by law. They are enforceable by law and vary from one country to another, depending on its Constitution, laws and judicial pronouncements. For example, women rights, child rights which are granted by statutes. Legal rights can be civil rights, economic rights, political rights. Civil rights protect the citizens from unfair treatment. These rights are essential in preventing discrimination and promoting justice. Economic rights relate to the economic well-being like that of right to work, right to fair wages etc. Political rights helps people participate in the governing process and thus are crucial for the functioning of a democratic society. For example, right to vote etc.

4. Social Rights:- These rights gives opportunity for equal participation in the society and ensures that every individual has access to certain basic needs like that of education, healthcare, social security etc.

5. Cultural Rights:- These rights ensures that individuals and communities can freely participate in their cultural life, thereby preserving their heritage and traditions. For example, right to language, right to preserve cultural identity.

3.4 Three Generations of Human Rights:

The division of human rights into three generations was initially proposed in 1979 by the Czech jurist Karel Vasak at the International Institute of Human Rights in Strasbourg. He used the term as early as November 1977. Karel Vasak is of the opinion that there are three generations of Human Rights: - first generation – civil and political rights (right to life and political participation), second generation – economic, social and cultural rights (right to subsistence) and third generation – solidarity rights (right to peace,

right to clean environment). Out of these generations, the third generation is the most debated and lacks both legal and political recognition. His divisions follow the three watchwords of the French Revolution:- liberty, equality, fraternity. These three generations rights are reflected in the various international documents containing human rights. The UDHR, for example, includes rights that are thought of as second as well as first generation ones, but it does not make the distinction in itself. Now, let us discuss these three generations of Human Rights in detail:

First-Generation Human Rights:

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

Second-Generation Human Rights:

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

Third-Generation Human Rights:

The third generation of 'solidarity rights' emerged in the 20th century. These rights are a response to the phenomenon of global interdependence and these rights are of relatively recent origin. These rights go beyond the mere civil, and social, as expressed in

many progressive documents of international law, including the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, the 1992 Rio Declaration on Environment and Development. These rights include environmental, cultural and developmental rights. These rights are concerned with the rights of groups and peoples rather than of individuals and include such rights as the right of self-determination and the right to development. The third generation rights covers a broad spectrum of rights like, group and collective rights, right to self-determination, right to economic and social development, right to a healthy environment, right to natural resources, right to communicate and communication rights, right to participation in cultural heritage, right to intergene rational equity and sustainability. Some countries have constitutional mechanisms for safeguarding these rights. These rights are sometimes referred as 'green' rights. The Declaration on the Right to Development adopted by the UN General Assembly in 1986 is the most important example of these rights.

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

The first generation of human rights was largely of negative character, as it had deterred the State or the government from denying the political rights and freedoms to the individuals, but the second generation of human rights is essentially of positive character, as the State has been placed under one form of obligation or another including the international obligation to provide for economic, social and cultural rights to the individuals. In the UNESCO vocabulary, the 3rd generation of rights or the Solidarity rights constitute the collective or, group rights like the right to environment, right to development, right of nations to self-

determination, and right to common heritage of mankind, among others. The contemporary human rights concern has been sufficiently enlarged considering the intensity, expanse and expediency of the third generation of human rights, some of which rights are yet to be fully conceptualized. The 3rd World is apparently much more concerned with the 3rd generation of human rights.

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

In the 19th century, there was a shift in the notion of rights – from natural rights to civil liberties, from personal rights to the rights of participation. It was realized that a better and fuller enjoyment of rights was possible by more effective participation in the civil and political life. The nineteenth century saw a number of "humanitarian interventions" by the big powers, through diplomacy and sometimes through force, to protest, end or prevent massacres, and other atrocities. They were sharp deviations from the international political system's assumption that in principle how a State treated its own citizens was its own business.

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

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

Self-Asking Question

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

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Stop to Consider

Contributions of Hobbeas, Locke and Rousseau :

Thomas Hobbeas (1588-1679), in his masterpiece the Leviathan in 1651, wrote about the state of nature and why men ultimately choose to enter into a human agreement. For Hobbeas, Natural Laws are "counsels of prudence". Man, who is born free, solitary and in intellectual and moral isolation, voluntarily accepts limitation of

sovereignty to achieve something else. He composes a society by human agreement.

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

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

3.5 Approaches to the Study of Human Rights:

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

1. Universalistic Approach:

This approach believes in the universality of human rights. According to this approach, the human rights are universal and accepted by all states, regardless of their historical, economic, social and cultural differences or ideological persuasions. Earlier, the concept of human rights were narrow in their scope and application. On account of the convergence of several historical factors, by the middle of the 20th century, a concept of human rights universal in its approach and comprehensive in its content emerged. For the first time, the international concern for human rights found expression in the Charter of the United Nations. It proclaimed universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion. The UN Charter thus ushered in a new international law of human rights. Until then, the question of human rights was considered to be a matter between state and individuals within its territory. As such it was beyond the reach of international community. In December 1948, the UN General Assembly proclaimed the Universal Declaration of Human Rights, which defines specific rights – civil and political as well as economic, social and cultural – all in a common framework. The Universal Declaration was not conceived as law but as a "common standard of achievement" for all peoples of all nations. It stirred the moral consciousness as well as the political assertiveness of people in various countries. Though the Declaration has a worldwide significance, the Declaration carries no legal sanction to compel states to meet the obligation of ensuring observance and implementation of human rights enshrined in the Declaration. So, the General Assembly promulgated in December 1966, two Covenants i.e., International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights. Humanitarian intervention at the international level

may be considered as an indication of international concern for human rights. Thus, from the time of the establishment of the United Nations, there has been a tremendous surge in the development of international concern for human rights. This approach believes the fact that it is the obligation of the states to respect, protect and implement human rights as internationally agreed upon. The fact that human rights require a set of corresponding duties to the community is also given due acknowledgement. It is believed that rights without emphasis on the duties could prove to be counterproductive. Thus, the UDHR states that everyone has duties to the community in which alone the free and full development of his personality is possible. Thus, a global human rights regime has started with this approach.

From the above discussion, it is clear that the internationalization and universalization of human rights has its significance in the fact that for the first time in the history of mankind, every individual can enjoy certain rights, irrespective of his origin, religion, race, colour and nationality. These rights are universal and accepted by all the states, regardless of their historical, economic, social and cultural differences or ideological persuasions. These rights are civil, political, economic, social and cultural, thereby covering every facets of human life.

2. Relativist Approach:

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

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

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

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

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

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

3. Feminist Approach on Human Rights:

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

focuses its attention on a vast array of rights, which are essential to protect women's dignity and status.

4. Marxist Approach on Human Rights:

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

5. Third World Approach on Human Rights:

The third world or the developing countries face a host of problems, which are peculiar to these countries, because these countries were under colonial exploitation for a long span of time. So, these countries face problems like malnutrition, poverty, illiteracy, unemployment etc. and due to this reason, Human Rights appears to be illusory to large sections of population of these countries. Human

rights violation is a common feature in most of the developing world where criminalization of politics and lack of accountability has become the order of the day. We all know that there are lot many international declarations for protection and promotion of human rights, but, still it is very difficult to arrive at a common concept of human rights in these developing countries. Nor is there a common framework of action.

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

• First, the incorporation of western theories of human rights would amount to the continuation of the colonial heritage.

• Secondly, any kind of incorporation of the human rights regime determined by the west would be either inappropriate or too rigid for these countries.

• Thirdly, the politicization of human rights has made the ruling elite's of the third world highly suspicious of the western notion of human rights.

The wave of liberalizations and democratizations throughout the Third World countries have further changed the concept of human rights in these countries. All these countries, soon after their independence, have embarked upon the path of development and economic reconstruction. So, these countries at times feel being in dilemma as to how to protect human rights. Even within the Third World, there remains a sharp disagreement on the exact scope and

nature of basic human rights, on the treatment of substantive human rights, economic issues and the methodology of protection of these human rights. However, for a balanced approach, it is imperative that the issues of human rights in these countries are viewed in the broader context.

6. Gandhian Approach to Human Rights:

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

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

Classical Liberal Theory of Human Rights: the genesis of the concept of human rights can be traced to the emergence of classical liberalism. Classical Liberalism stands for principles like,

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

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

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

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

- Theories based on Equality.

The main contentions of these theories are like:

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

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

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

The first principle implies that everybody should have an equal share of liberty in the society, along with other individuals. The basic liberties of citizens are political liberty together with freedom

of speech and assembly, liberty of conscience and freedom of thought, right to hold property and freedom from arbitrary arrest. Under the second principle, inequalities in wealth and income cannot be justified. Income and wealth would have to be equally distributed among the citizens. Rawls believes that basic liberties are essential for the individuals if a society has to move towards perfection.

3.6 Hierarchy of Human Rights:

The UDHR proclaimed rights to which 'everyone' is entitled and which no one should be deprived of. Thus, the Declaration does not suggest any priorities amongst these rights. However, throughout the development of international human rights and humanitarian laws, there was a debate of whether or not certain rights can be considered to be superior to or more fundamental than that of other rights. Certain rights like right to life, physical security, non-discrimination etc are regarded as at the peak of the hierarchy, because these basic rights makes possible redressal for violation of the rest. Thus, hierarchy of rights suggest that not all the rights are always treated equally. Some rights are given priority over the others. Thus, we see that though theoretically, all the rights stand on the same footing, but the legal systems and international courts sometimes apply the principle of practical hierarchy based on necessity, urgency and enforceability. It is pertinent to note here that certain rights are regarded as non-derogable i.e., they cannot be suspended even during a state of emergency. For example, right to life etc. These rights are considered to be at the top of the hierarchy.

Check Your Progress:

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

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

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

Q.4 What are the different types of rights? Explain in detail the hierarchy of rights.

3.7 Summing Up:

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

3.8 References and Suggested Readings:

- Thakur, L.K. (2000). Comparative and International Human Rights. Authors press, Delhi.
- Uvin, Peter (2005). Human Rights and Development.
- Upadhyay, A. & Adil-ul-Yasin. (2004) Human Rights. Aakansha Publishing House, New Delhi.
- Joshi, S.C. (2006) Human Rights - Concepts, Issues and Laws. Aakansha Publishing House, New Delhi,

- Bhargava, G (2001). Human Rights Concern of the Future. Kalpaz Publications, Delhi.
- Agarwal, H.O. (2007). Human Rights. Central Law Publications, Allahabad. 10th edition.
- Sanajaoba, N (Ed.) (1994). Human Rights (Principles, Practices and Abuses). Omsons Publications, New Delhi.
- Krishna Iyer, V.R. (1999). The Dialectics and dynamics of Human Rights in India. (Tagore Law Lectures), Eastern Law House, New Delhi.
- Goodhart, M. E. (Ed.). (2016). *Human rights: politics and practice*. Oxford university press.
- Montgomery, J. D. (2002). Is there a hierarchy of human rights?. *Journal of Human Rights*, *1*(3), 373-385.
- Shelton, D. (2002). Hierarchy of norms and human rights: Of trumps and winners. *Sask. L. Rev.*, *65*, 301.
- Farer, T. (1992). The hierarchy of human rights. *Am. UJ Int'l L. & Pol'y*, *8*, 115.

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UNIT-4

HUMAN RIGHTS: BETWEEN UNIVERSALISM AND RELATIVISM

Unit Structure:

4.1 Introduction

4.2 Objectives

4.3 Universalism Versus Cultural Relativism

4.4 Key Principles of Both the Universalism and Relativism

4.5 Alison Renteln on Cultural Relativism

4.6 Universalism Versus Relativism – The Legal Challenges

4.7 Summing Up

4.8 References and Suggested Readings

4.1: Introduction:

Universalism and Relativism are two different, opposite and irreconcilable views or opinions in the field of human rights. At the same time, these two positions cannot be considered independently of each other and each is untenable by itself. Both the views need to be accommodative to the other in order to be sustainable. These two opposing philosophical perspectives are fundamental to the understanding of the global application, acceptance and enforcement of human rights. While universalism asserts that human rights are inherent in all individuals irrespective of culture or context, the relativism challenges this by saying that different factors shape what is considered as rights. This unit deals with these two concepts in detail.

4.2: Objectives:

After reading this particular unit, the learners will be able to:-

- *understand* the difference between universalism and relativism in the field of human rights,
- *discuss* about views of Alison Renteln on Cultural Relativism,
- *analyse* the key principles of both the Universalism and Relativism.

4.3: Universalism Versus Cultural Relativism:

Universalism versus Cultural Relativism are presented as two positions which stand in sharp opposition to that of the other in the domain of human rights. The Universalistic view believes in the universality of human rights. This approach stands firm on the notion that human rights are universal and are accepted by all equally regardless of the differences in the historical, economic, social, ideological and cultural front. Earlier, human rights were considered as a matter between the state and individuals within its territorial limits. But the universal concept of human rights is a broader view which contends universal respect for and observance of the human rights and fundamental freedoms without any distinction on the basis of race, sex, language or religion. The UN Charter ushered in an international concern for the human rights.

Some thinkers view Universalism as arrogance because there has been emphasis on the natural law. Despite the significant variations, the natural law philosophy believes in the following core characteristics: they rely on an absolute source of rights, be it God, nature or the universe. They posit the immutable and eternally valid principles and assert that the content of natural law can be discovered through reason.

In Dec. 1948, the UN General Assembly proclaimed the Universal Declaration of Human Rights (UDHR) where there are different rights like that of civil, political, economic, cultural rights – all in a common framework. The UDHR was a common standard of achievement for all peoples of all nations. Since the declaration carries no legal sanction to compel the states to meet the obligations enshrined in the declaration, so, the General Assembly promulgated in December two other Covenants: International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Thus, we see that since the time of establishment of the United Nations, there has been an increasing surge in the development of international concern for human rights. Universalism is embedded in these key international instruments.

The most significant challenge to the Universalist conception of human rights has been given by the Cultural relativists, who have challenged the human rights related universalistic approach in a variety of ways. They contended the fact that the Universalists should resist the temptation to identify human rights as serving the interests of all the people in all the contexts. They criticized universalism on the ground that no transcendent or trans-cultural ideas of rights can be found. Those advancing this argument believes that no culture or state is justified in attempting to impose on other cultures or states what must be understood as ideas associated particularly with it. They say that natural law is a problematic idea because it assumes that everyone will arrive at the same conclusion as to what is natural law through an adequate exercise of reason. But, as anthropologists have made us aware about the fact that what appears as natural to one person may not appear to be so natural to another. They posit the fact that it is very important to realize that the human rights do not make any sense

outside the specific political and social history from which they actually evolved. Moreover, they said that by positing the existence of universal values for all, which can be discovered through reason, the universalists can too easily engender kind of arrogance. The relativists contend the fact that cultures and societies are never as homogenous as they appear.

The American Anthropologists Association (AAA) contended that the UDHR was likely to become an ethnocentric document. It again reiterated the fact that it was impossible to maintain that the declaration would apply to all human beings alike while incorporating the values which are prevalent in the west. The AAA further said that in order to be truly universal, the declaration should embrace and recognize the validity of many different ways of life. Otherwise, human rights might have the risk of becoming what Raimundo Panikkar described as 'Trojan horses' which indicates the vehicles for the promotion of the western values and modernity.

International law is clear in saying that all human rights – civil, political, economic, social and cultural – are indivisible and mutually reinforcing.

Let us now look into the matter as to why this debate of universalism versus cultural relativism is needed and how it impacts the development of discourses on human rights.

We have already understood from the above discussion that the universalist approach always searches for what is methodical and systematic and hence tries to enforce the uniform rules, laws and norms on all the members. It is true that the development of a state adequately depends on the preservation and implementation of the human rights in the civil society. The UDHR has acted as a pivotal guide to the mankind. However, the debate lies in the point that universalism of human rights merely referred to the western

imperialism. And the countries who reject the universal set of standards as a policy of the western countries, form some basic values and ethical values based on the cultural relativism. The debate lies in the fact that the universal set of values cannot be wholly implemented to all the countries nor the cultural relativism be accepted as universal moral values for all the countries. However, some contends the fact that universalism is a pivotal approach that has more opportunities than the cultural relativism. But, in the case of the universality of the human rights, there are certain challenges in implementation and perception of human rights. Since the publication of Pollis and Schwab's 'Human Rights: Cultural and Ideological Perspectives' in 1979, the human rights universalists and cultural relativists have collided regarding the legality and the applicability of human rights and in their confrontational lead essay, "Human Rights: as western construct with limited applicability", the authors argued that the western political philosophy upon which the United Nations Charter and the UDHR are based provides only one specific elucidation of human rights and that this western notion may not be successfully applied to non-western areas due to the ideological and cultural differences. The cultural relativism is based on the morals, ethics and customs of each human society and differs from one another. So, what is considered as bad practice somewhere may be a good practice somewhere else.

We can sum up the debate by saying that the perception of human rights in the modern world from the prism of both universalism and cultural relativism is entirely complicated and the assumptions and ideas have been taken with a radical approach. Thus, reconciling the two main approaches of human rights, our civil society can create relative universal sets of values and behaviours by taking into consideration both relativism and universalism. Then only, human

rights can be protected properly everywhere. (https://modernd iplomacy.eu/2019/04/11/the-clash-of-human-rights-ideas-between-universalism-and-relativism/)

4.4: Key Principles of Both the Universalism and Relativism:

The philosophical roots of universalism can be traced to the enlightenment thinkers such as John Locke, Immanuel Kant, Jean Jacques Rousseau etc. who emphasized on the natural rights, reason and individual dignity as the foundation of morality and law.

Let us discuss here the key principles of universalism which are as follows:-

1. Moral Universality and moral consistency – It means that human rights are equally applicable to all the people, regardless of the cultural differences. It says that human dignity is a universal concept and rights such as freedom from torture or other forms of discrimination are not culturally contingent.
2. Legal standardization – This view supports the establishment of a uniform legal framework across the nations for protecting the individual rights.
3. Equality and non-discrimination – Universalism stands for the principles of equality and non-discrimination.
4. Global Standards – Universalism provides a framework for evaluating and challenging various oppressive practices worldwide. Thus, it provides for international solidarity.
5. Inalienability of rights – This view holds that rights cannot be taken away even by one's own society.

The criticisms leveled against universalism have been discussed above. It has been seen that universalism often reflects western liberal values thereby ignoring the non-western traditions. It has also

been criticized by the critics as a form of cultural imperialism undermining local autonomy and diversity.

Cultural relativism, on the other hand, challenges the very notion of a universal standard and emphasizes on the fact that the values and practices are actually shaped by the cultural contexts. They argue that what is considered as a right in one context or culture, may not be recognized as right in another context.

The key principles of Relativism are as follows:-

1. Cultural specificity – This view of relativism contends that rights should be interpreted within the cultural and societal frameworks.
2. Respect for diversity – Relativism teaches respect for diversity and contends that imposing the universal rights without paying any attention to the differences of contexts, may perpetuate neocolonialism.
3. Local legitimacy – Rights holds more meaning when they emerge from within the society, rather than being imposed externally.

The clash between universalism and relativism often centres on contentious issues like that of women's rights, freedom of expression etc. In some places, these rights are enjoyed whereas in some other places, these rights may not be equally granted. Efforts have been taken to reconcile both universalism and relativism so as to reach a consensus of opinion.

Self-Asking Question

Q. Universal concept of human rights is a broader view which contends universal respect for and observance of the human rights. Discuss in the present context.

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4.5: Alison Renteln on Cultural Relativism:

In her book 'International Human Rights: Universalism versus Relativism', Alison Renteln redefined the concept of cultural relativism. She started with the basic question: whether or not there can be any such thing as that of universal human rights? She opined that the central question is that whether the cultures other than those in the west have any concept of human rights, and if they do, then the next question remains whether or not it resembles to that of UDHR or any other human rights instrument. Renteln makes clear the fact that there is no guarantee that the cross-cultural universals will be supporting the international human rights standards which are most important to either the westerners or the non-westerners. For example, if we look at the women's rights, then we find that there may be no worldwide support for women's rights. Similarly, we see that even if a cross-cultural universal seems to exist, that may not yield any reforms. For example, universal condemnation of Aparthied that did not in itself brought about reforms in South Africa. So saying, she challenged some of the very normativist assumptions which were prevalent in the field. She, thus, reiterated that we should look not simply for rights cast in the western world but should also look for the structural equivalents for human rights in other societies as well.

Over time, many other anthropologists also entered the field and they started to explore and develop new and more effective approaches in the field of human rights. We can mention here the names of anthropologists like Sally Engle Merry, Marie Dembour, Richard Wilson and Mark Goodale and other social scientists. Thus, we see from the above discussion that universalism is asserted by human rights advocates and denied by the cultural relativists. Universalists presume the validity of human rights whereas the

relativists reject the possibility that there can be universal moral standards.

4.6: Universalism Versus Relativism – The Legal Challenges:

We have already studied above that since its very inception, the human rights community has been under attack on one of its very basic premises namely that of the universality of the human rights. We have also noted above that many scholars and activists have argued that human rights emanate mainly from the western political, cultural or religious values and are therefore not universally valid. It is simply a political ploy, where there are the opposing camps in the international community and was particularly true during the cold war era, when the United States argued exclusively in favour of the civil and political rights, whereas the different communist countries argued equally exclusively and vehemently for the economic, social and cultural rights. It was regarded as western intellectual hegemony by some as explicitly positioning their own values as superior. There was the fear amongst some that the social change will not succeed or be durable unless it is carried and owned internally. Efforts have thus been taken that every developmental project, program or policy has a desire to build local ownership and has claimed to strengthen local capacities, so as to build on the expressed needs and internal dynamics of the community and to support national policies – all these ways to ensure that aid is not considered as external and 'western-centric'. Thereafter, a wide variety of practices has been developed to achieve various aims like that of techniques to promote community participation, participatory assessments and programming and the like. Thus the development practitioners, in order to ensure that their works truly reflects local needs and strengthens internal dynamics, have developed a multitude of different strategies. The answer to the charge of 'western-centrism'

is a bit legal: human rights are universal and binds all states because they have voluntarily ratified the relevant legal instruments (Feyter 2001). Human rights are clearly established as binding expressions of universal aims (Yasauki 1999). Most of the countries have ratified both the 1966 covenants and other human rights treaties have been ratified even more widely. For example, the 1993 Vienna Declaration and Program of Action was adopted by consensus by various states and this very declaration adopted an anti-relativist position as it said: "the universal nature of these rights and freedoms is beyond question….human rights and fundamental freedoms are the birthright of all people". Thus, they argue that human rights instruments have been negotiated, affirmed and ratified so often and by so many countries that they truly constitute the expression of a universal agreement. According to the international law scholars, human rights may well constitute customary law if not *juscogens* (mandatory international law) and in both the cases implying that they are applicable even to those states that have not ratified them (Schachter 1985; Meron 1998; Steiner and Alston 2000). Thus, from a positive legal perspective, it can be argued that human rights obligations constitute universal obligations. We can quote here Jerome Shestack, who clearly stated: even as theorists have continued to quarrel with each other, fundamental human rights principles have become universal by virtue of their entry into international law as *jus cogens*, customary law or by convention. In other words, the relativist argument has been overtaken by the fact that human rights have become hegemonic and therefore universal by fiat (Shestack 2000).

Another way out is called weak cultural relativism, which essentially argues that the human rights edifice allows space for culturally and socially sensitive variations in implementation. The approach posits the fact that the human rights edifice has been so

designed deliberately so as to allow for culturally adapted modalities of implementation. This position is known as weak relativism, for, while it does not doubt the universality of human rights, it does accept that the concrete implementation of the universal human rights will be culturally specific.

Thus, it is seen that the human rights instruments have been designed in this way, creating significant explicit allowances for local adaptation. For example, Article 29(2) of the UDHR allows for such limitations as 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. Similarly, various articles in the ICCPR makes allowances for the protection of national security or of public order or of public health or morals. Also, ICESCR exhorts states to take appropriate measures to realize progressively the rights described in the covenant. Thus, we see that the legal language of the major human rights instruments constitutes a nice instance of the weak culturally relativist position. There is significant room for countries to develop a differentiated practice based on context and local particularities (Perry 1998). Yet it needs mention that this approach poses many problems both as a matter of theory and practice. The weak cultural relativism solution collapses when we start debating the tough issues. For example: is the death penalty acceptable? Should certain civil and political rights be curtailed in order to achieve rapid economic growth? It needs mention here that all these debates are not culturally specific but whether these contested practices are to be allowed or not, whether they are just or not.

Another approach to rebut the relativist charge is to start from a theoretical position, grounded in ethics or philosophy, one affirms the existence of universally fixed and identical human nature from

which it follows that human rights practices are indeed universally desirable. If the existence of a fixed human nature can be posited, we can then confidently identify some things that are good or bad for every human being. For example, some acts are evil for all like that of murder, enslavement, rape etc. The most famous recent scholars to work along these lines are John Rawls, Martha Nussbaum and Amartya Sen. Rawls talks about 'primary goods' which all rational individuals, if they were free to choose, would desire as prerequisites for carrying out their lives (Rawls 1971).

Thus, we have discussed above different shades of opinions. We see that the western-centrism debate can never be resolved.

Stop to Consider

Areas of tension between Universalism and Relativism:-

- Difference in scope – Universalists wanted to promote global standards of human rights, whereas, relativists emphasized on the cultural sovereignty.
- Globalization v/s local traditions – Universalism wanted to uphold uniformity of rights whereas, the relativists contended that the universalist ideologies may clash with the indigenous or the traditional beliefs.

Check Your Progress

Q.1. Discuss the main features of universalism and relativism in the field of human rights. Can human rights truly be universal in a culturally diverse world?

Q.2 How does Universal Declaration of Human Rights (UDHR) reflect a universalist approach? Discuss.

Q.3. Is it ethically justifiable to impose the universal human rights standards on the societies with different moral traditions? Discuss the criticisms leveled against universalism.

Q.4. Can the enforcement of universal human rights be seen as a form of cultural imperialism? Discuss.

Q.5. Discuss the role played by the states in balancing universal principles with that of cultural sensitivity while making policies.

4.7: Summing Up:

From the above discussion, it is clear to all of us that the discourse on human rights has long been shaped by a fundamental tension between that of universalism and relativism. Universalism contends that human rights are universally applicable to all the individuals regardless of differences in culture, context and tradition. According to them, certain rights are inherent to all the human beings by virtue of their humanity. Whereas, relativism contends that rights must be interpreted within the cultural and societal frameworks in which they actually exist. But there is a need of more balanced, dialogical approach which respects the diversity while upholding the core principles and this is very essential for the continued relevance and effectiveness of human rights in a multicultural world.

4.8: References and Suggested Readings:

- Renteln, A. D. (2013). *International human rights: universalism versus relativism*. Quid Pro Books.
- Donnelly, J. (1984). Cultural relativism and universal human rights. *Hum. Rts. Q.*, *6*, 400.

- Eriksen, T. H. (2001). Between universalism and relativism: a critique of the UNESCO concept of culture. *Culture and rights: Anthropological perspectives*, 127-148.
- Dembour, M. B. (2001). *Following the movement of a pendulum: between universalism and relativism* (pp. 56-79). Culture and rights: anthropological perspectives. Cambridge, Cambridge University Press.
- Peerenboom, R. (2003). Beyond universalism and relativism: the evolving debates about values in Asia. *Ind. Int'l & Comp. L. Rev.*, *14*, 1.
- Mullender, R. (2003). Human rights: universalism and cultural relativism. *Critical Review of International Social and Political Philosophy*, *6*(3), 70-103.
- Ghai, Y. (1999). Universalism and relativism: human rights as a framework for negotiating interethnic claims. *Cardozo L. Rev.*, *21*, 1095.
- Uvin, P., (2005). Human Rights and Development. Kumarian Press.

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BLOCK-II

HUMAN RIGHTS: GLOBAL CHALLENGES

Unit 1: U.N. Human right system

Unit 2: UDHR and other declarations

Unit 3: International Refugee Regime

Unit 4: Gender and Human rights

Unit 5: Role of NGOs in Human right protection

UNIT-1

U.N. HUMAN RIGHTS SYSTEM

Unit structure:

1.1 Introduction
1.2 Objectives
1.3 Origin of UNO
1.4 The UN Charter and Human Rights
1.5 Purposes of the UN
1.6 Principles of the UNO
1.7 Key Institutions within the UN System
1.8 Specialised Agencies of the UN
1.9 The Contemporary Challenges
1.10 Summing Up
1.11 References and Suggested Readings

1.1: Introduction:

Human rights are those basic rights which are possessed by all the human beings irrespective of their race, caste, nationality, sex, language etc. Protection of these human rights is a global concern and also concern for each nation. Human rights protection occupy a significant place of importance in the UN Charter. The preamble of the Charter reaffirms faith in the fundamental human rights and the dignity and worth of human persons and in the equal rights of men and women. One of the purposes of UNO is to achieve international co-operation and solving international problems of economic, social, cultural or humanitarian character and also in promoting and encouraging the respect for human rights and the fundamental freedoms for all without any distinction as to race, sex, language or

religion. Thus, we see that the United Nations Organisation (UNO) has been endeavouring to relate the human rights protection to the global issues and strenuously working so as to find solutions for various human rights concerns affecting the millions of deprived, dispossessed, discriminated and marginalized people. The incessant efforts of UNO in the human rights protection can be understood from the fact that under its leadership different international covenants, declarations and other documents for protection of human rights have been passed. These international covenants and instruments are the beacon lights showing the path of justice and humanity to the entire nation in the world. India is a signatory of almost all the human rights instruments passed under the auspices of UNO. In this particular unit, we will make an effort to study the various arrangements made under the UNO system for human rights protection.

1.2: Objectives:

After reading this unit, the learners will be able to:-

- *discuss* the provisions of human rights protection under UN Charter,
- *describe* the various arrangements made under the auspices of UN for the protection of human rights,
- *trace* the role of the various specialized agencies under UN system.

1.3: Origin of UNO:

We all know that after the first World War, the League of Nations was established to promote international peace and security but it failed to prevent the occurrence of the second world war. The

second world war was more devastating in nature and it once again compelled the nations of the world to endeavour so as to establish an international organization which could prevent future war and which can maintain international peace and security. During the second world war itself, the great powers started making efforts in this direction. Their efforts led to the holding of the San Francisco Conference in which the United Nations Charter was adopted and signed by 51 nations of the world. After the Charter got ratified by the requisite number of states, it ultimately came into force on October 24, 1945. Thus, this was United Nations got finally established. Some of the important factors and efforts which led to the establishment of UNO are like: the declaration of St. James Palace (June 12, 1941), The Atlantic Charter (Aug. 14, 1941), The United Nations Declaration (Jan. 1, 1942), the Moscow Declaration (Oct. 30, 1943), the Tehran Conference (Dec. 1, 1943), Dumbarton Oaks Conference (1944), the Yalta Conference (Feb. 11, 1945), Sanfrancisco Conference (June 25, 1945).

1.4: The UN Charter and Human Rights:

The Preamble indicates that the Charter of the UNO is born as a result of the experiences of a devastating war and that it holds out hope for a lasting peace based on recognition of fundamental human rights. It is provided in the Charter that the General Assembly shall initiate studies and make recommendations for the purpose of promoting international co-operation in the economic, social, cultural, educational and health field and assist in the realization of the human rights and fundamental freedoms for all without distinction as to race, sex, language or religion [Art. 13(b)]. Articles 55, 62 and 68 also reaffirms the commitment of the UN to promote and encourage respect for human rights and fundamental freedoms for all. Article 55 charges the UN to promote universal respect for

and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. This provision has been further strengthened by Article 56 under which all members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55. Thus, both Articles 55 and 56 binds the member states to observe and respect human rights.

Let us discuss here some of the arrangements made under UN for the promotion and protection of the human rights –

Human Rights Commission – The Commission on Human Rights was established by the Economic and Social Council in Feb. 1946, for the supervision of the problem of protection of the human rights. The Commission was directed to prepare recommendations and reports on (i) an International Bill of Human Rights; (ii) International conventions or declarations on civil liberties; the status of women, freedom of information and similar other matters; (iii) the protection of minorities; (iv) the prevention of discrimination on the basis of race, sex, language or religion; (v) other matters concerning human rights.

The Universal Declaration of Human Rights – In 1948, the General Assembly passed the Universal Declaration of Human Rights and this has been hailed as a victory in respect of human rights protection. There are 30 articles in the declaration which describes in detail about the human rights and fundamental freedoms. Though not legally binding, the UDHR served as a universal standard for human rights and also inspired various treaties, constitutions and conventions. We will discuss in detail about UDHR in the next unit.

The International Bill of Human Rights - The International Bill of Human Rights comprises of the following:

1. The Universal Declaration of Human Rights, 1948.

2. The Covenant on Civil and Political Rights (ICCPR), 1966.
3. The Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, and,
4. The Optional Protocol to the Covenant on Civil and Political Rights, 1966.

The ICCPR and the ICESCR treaties are legally binding which means that by ratifying them, the states are bound to abide by their provisions. These two covenants included more detailed explanations of the rights and freedoms as enumerated in the UDHR. The ICCPR covers the civil and political rights referred to as the first generation rights. The ICESCR specifies social, economic and cultural rights also referred to as second generation rights. Implementation of each of these covenants is monitored by UN Committee – the ICCPR by the UN Human Rights Committee, and the ICESCR by the UN Committee on Economic, Social and Cultural Rights.

In the first Optional protocol to the ICCPR, only the members to the covenant can become the member to the protocol. The protocol consisted of 14 articles. The protocol recognized the rights of every individual being to life, liberty, privacy and security of a person. The second optional protocol to ICCPR mainly aimed at the abolition of the death penalty.

Apart from the above mentioned provisions, numerous other international documents like treaties, declarations, resolutions, recommendations, decisions and actions have been developed in the years since the International Bill of Human Rights. All these different efforts have addressed various human rights issues such as non-discrimination, self-determination, women's rights, children's rights, prohibitions against slavery and forced labour, humanitarian law and other rights and freedoms. In addition to the above discussed provisions, even the specialized international agencies of

the UN have contributed a lot towards the recognition and respect for the human rights. Even the Regional institutions have created their own instruments for human rights protection. They are like – The African Charter of Human and People's Rights, Asian Human Rights Charter, European Convention on Human Rights and the American Convention on Human Rights.

The approach of the UN was formalized in the Proclamation of Tehran (1968) having the following characteristic features –

(a) To identify root causes of human rights violations;
(b) To link human rights to major worldwide patterns and issues;
(c) To recognize the diversity of political and social systems, cultural and religious differences and varying levels of development; and,
(d) To assess human rights in the light of concrete contexts situations.

This approach recognizes the central importance of the human person in the development process and linked human rights with that of development. (S. C. Joshi).

Settlement of international disputes under the UN Charter:-

(i) It is one of the purposes of the United Nations that the member-states settle their disputes through peaceful means. Under Article 2 of the Charter, the member-states have undertaken to resolve their disputes through peaceful means and not to resort to force or threat of force to resolve international disputes.

(ii) the General Assembly of the UN may make recommendations for the peaceful settlement of international disputes (Article 14).

(iii) Articles 33 to 38 of chapter VI of the Charter make the provisions for the peaceful settlement of the international disputes.

In accordance with these provisions, if there is a danger to international peace and security, then the states should resolve their disputes through judicial settlement, negotiations, mediation, conciliation enquiry or any other peaceful means of their choice.

(iv) Chapter VII of the Charter deals with the provisions under which the security council can resort to compulsive means for the settlement of disputes regarding the maintenance or restoration of international peace and security.

1.5: Purposes of the UN:

The purposes of the UNO are mentioned in Article 1 of the Charter and they are –

(a) To maintain International Peace and Security – The most important purpose of the United Nations is to maintain international peace and security.

(b) To develop friendly relations among the nations – Another purpose of the UN is to develop friendly relations among the nations on respect for the principles of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace.

(c) International co-operation in solving international problems of social, cultural and humanitarian character – Another purpose of UN is to achieve international co-operation in solving the international problems of economic, social, cultural and humanitarian character and promoting and encouraging respect for the human rights and fundamental freedoms for all.

(d) To make the UN a centre for the attainment of the above common ends – This is yet another important purpose of UN.

1.6: Principles of the UNO:

Article 2 of the UN describes the principles of the United Nations and provides that the organization and its members shall act in accordance with the following principles:-

1. The Principle of Sovereign Equality of all members – The first principle of the UN is that the organization is based on the principle of sovereign equality of all the members. However, it is not an absolute principle and admits certain exceptions. For example, the permanent members of the Security Council possesses more powers than other members in regard to decision on all important matters.
2. Members to fulfill in good faith the obligations assumed by them – The second principle of the UN is that all the members shall fulfill in good faith the obligations assumed by them in accordance with the Charter.
3. Peaceful Settlement of international disputes – All members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.
4. Principle of non-intervention – All members shall refrain in their international relations from use of threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the purposes of the United Nations.

5. Members to assist the United Nations in common action – All members shall give the UNO every assistance in accordance with the Charter and shall refrain from giving assistance to any state against which the United Nations is taking any preventive or enforcement action.

6. Non-members also to act in accordance with the principles of the United Nations for the maintenance of international peace and security – The organization need to ensure the fact that states which are not members of the UNO, shall act in accordance with all the principles for the maintenance of international peace and security.

7. Non-intervention in domestic matters of member states – The UN need not intervene in the domestic affairs of a member state. It provides that nothing contained in the Charter shall authorize the UN to intervene in the matters which are essentially within the domestic jurisdiction of any state. This principle will not apply if the UN takes any enforcement measures under chapter VII of the Charter.

Thus, we see that UN Charter has provisions for collective security. In the preamble of the Charter, it has been resolved that to save the succeeding generations from the scourge of war, which in our lifetime has brought untold sorrow to mankind, and for this end, to unite our strength to maintain international peace and security. There is also provision for the pacific settlement of disputes. The Charter provides that the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice. It has further been provided that the Security Council, shall, when it deems necessary, call upon the parties to settle their

disputes by such means (Article 33). It is further provided that if the security council deems that the continuance of any dispute is likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Art. 36 or to recommend such terms of settlement as it may consider appropriate (Article 37). The Charter of the UN under Article 51, conferred inherent rights of individual or collective self defence upon the members of the UN.

Self-Asking Question

Q. The UN Charter has provisions for collective security – Discuss.

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1.7: Key Institutions within the UN System:-

1. UN Commission on Human Rights – This commission constituted by the UN Economic and Social Council. It conducts fact-finding studies and discussions about human rights issues. The Commission can consider the cases of massive violations of human rights that are brought to its attention by individuals or groups.

2. UN Human Rights Committee – This committee was established to monitor the implementation of the ICCPR. The Committee examines the various reports from the states and considers state complaints against other states and also addresses the individual complaints by the victims.

3. UN Committee on Economic, Social and Cultural Rights – This committee deals with human rights issues as embodied in the ICESCR. The committee does not accept individual complaints.

4. UN Commission on the Status of Women – This Commission works for the promotion and implementation of the principle of equal rights. The Commission prepares various recommendations and reports to the ECOSOC for promotion of women's rights in the political, economic, civil, social and educational fields.

5. UN Committee on the Elimination of all forms of Discrimination against Women – This UN Committee reports on and monitors the implementation of CEDAW (Convention on the elimination of all forms of discrimination against women).

6. UN Committee against Torture – This UN Committee accepts complaints on issues related to torture, cruel and inhuman and degrading treatment.

7. The UN Human Rights Council (UNHRC) established in 2006 is responsible for promoting and protecting human rights globally.

It needs mention here that the traditional right of self-defence and self-preservation stands modified by the UN Charter. The Charter recognizes use of force only when an armed attack occurs. Thus, we see that the United Nations Charter confers upon every state the right of individual or collective self-defence under Article 51. However, the right of self-defence under Article 51 is subject to the following conditions –

(a) There should be an armed attack;

(b) The right exists until the security council has taken any action;

(c) It should be reported to the security council;

(d) It is subject to the review by the security council;

(e) The right shall not affect the authority and responsibility of the security council for the maintenance or restoration of international peace and security;

(f) This right is limited to the members of the United Nations and is not available to the non-members.

The above discussion helps us understand the fact that United Nations has a formidable system of collective security. Various other conference, conventions and declaration were passed under the auspices of UN for the protection of human rights. These are discussed below:

UN Declaration on the establishment of a New International Economic Order – The UN Declaration on the establishment of a New International Economic Order was adopted by the General Assembly on May 1, 1974. Through this declaration, the members of the UN proclaimed their determination to work for the establishment of a new international economic order based on equity, sovereign equality, inter-dependence, common interest and co-operation among all the states, irrespective of their economic and social systems, which shall correct the inequalities and make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development in peace and justice for the present and future generations.

The United Nations Conference on Trade and Development (UNCTAD) – It was established as a permanent subsidiary organ of the General Assembly in 1964. The objective of UNCTAD is to encourage international trade for bringing about economic development.

The United Nations Development Programme (UNDP) – The UNDP provides assistance to the under developed and the developing countries regarding the investment of capital and also provides technological facilities.

The United Nations Industrial Development Organisation (UNIDO) – It was established by the General Assembly on January 1967 and its function is to establish co-ordination among the works of the industrial agencies.

The United Nations Children Emergency Fund (UNCEF) – It was established by the General Assembly on December 1966 and its chief objective is to improve the condition of children all over the world.

United Nations High Commission for Refugees (UNHCR) – It was established by the General Assembly on January 1961 and its main function is to give legal protection to the refugees and also to provide them with material assistance.

The UN Conference on the Human Environment was held at Stockholm from June 5 to June 16, 1972, and it was a major attempt to solve the global problems concerning the conservation and regulation of the human environment.

In June 1993, a United Nations World Conference was held in Vienna to address the differences in the national perceptions regarding human rights. The goal of the conference was to reach a mutual understanding and universal approach to the human rights norms, fundamental freedoms and the enforcement mechanisms.

The Convention on the Prevention and Punishment of the crime of Genocide is a key international treaty which was adopted by the UN General Assembly on December 1948 in the wake of the holocaust and other atrocities which were committed during the world war. It came into force on January 1951.

The International Convention on the Suppression and Punishment of the Crime of Apartheid was adopted by the UN General Assembly on 30 November, 1973 and it entered into force on July 1976.

Some other international human rights treaties under UN are –

1. Convention on the elimination of all forms of Racial discrimination (CERD)
2. Convention on the elimination of all forms of discrimination against women (CEDAW)
3. Convention against Torture (CAT)
4. Convention on the rights of the child (CRC)
5. Convention on the rights of persons with disabilities (CRPD)
6. International convention on the protection of the rights of all migrant workers and members of their families (ICMW)

Stop to Consider

List of Human Rights Covenants, Conventions and Treaties to which India is a party:-

Here are some of the international human rights documents to which our country is a party –

1. Convention on the prevention and punishment of the crime of Genocide.
2. International Convention on the Elimination of all forms of racial discrimination.
3. International Covenant on Economic, Social and Cultural Rights.
4. International Covenant on Civil and Political Rights.
5. Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity.
6. International Convention on the suppression and punishment of the crime of Aparthied.
7. Slavery Convention and Supplementary Convention on the abolition of slavery, the slave trade and institutions and practices similar to slavery.

8. Final protocol to the convention for the suppression of the traffic in person and of the exploitation of the prostitution of others.
9. Convention on the political rights of women.
10. Convention on the rights of the child.
11. Convention on the political rights of women etc.

1.8: Specialised Agencies of the UN:-

The following are the main specialised agencies under the UNO –

1. International Labour Organisation (ILO) – ILO functions in close collaboration with the UN and it has done a commendable work to achieve social justice for the workers.
2. World Health Organisation (W.H.O) – The main function of the W.H.O is to raise the standard of health of the people. W.H.O defines health as a state of complete physical, mental and social being and not merely the absence of diseases or infirmity. The organisation has done commendable works through its endeavour to eradicate diseases and to raise the standards of health of the people of the world.
3. United Nations Educational, Scientific and Cultural Organisation (UNESCO) – The UNESCO emphasizes on the development of basic education and also encourages research work in the field of science. It has also rendered valuable services for the development of knowledge and its dessimination.

Some other specialised agencies under UN system are – Food and Agricultural Organisation (F.A.O), International Civil Aviation Organisation (ICAO), International Monetary Fund (IMF), International Maritime Organisation (IMO), The International Finance Corporation (IFC), the International Fund

for Agriculture Development (IFAD), World Intellectual Property Organisation (WIPO), the United Nations Industrial Development Organisation (UNIDO) etc. These specialised agencies of the UN have done commendable work in the various fields.

Stop to Consider:

Principal Organs of the UN:-

There are the 6 principal organs of the United Nations – General Assembly, Security Council, The Economic and Social Council, The Trusteeship Council, The International Court of Justice and The Secretariat. All these organs have performed important functions in the social, economic, cultural fields and also in the field of promotion of human rights.

1.9: The Contemporary Challenges:

We can discuss here about the various challenges of protection of human rights in the contemporary times. The UNO works to deal with these challenges. The UNO through the Office of the High Commissioner for Human Rights (OHCHR) and the Human Rights Council helps establishing international human rights standards. Moreover, the UN bodies also monitors the human rights situations in different countries through special rapporteurs, commissions of inquiry and periodic reviews such as the Universal Periodic Review (UPR) and accordingly provides support to the countries to help them strengthen their legal and institutional frameworks for human rights protection. Whenever there are situations of conflict or crisis, the UN investigates the abuses, documents violations and pressurizes the

governments and the international actors to take the appropriate actions. Also, we have seen UNO collaborating with the local and international NGOs to amplify the grassroots efforts and raise the awareness about human rights violations. The OHCHR plays a key role in coordinating with other UN agencies and civil society organizations. Also, it needs mention here that the UNHRC (Human Rights Council) established in 2006, plays a vital role in promoting and protecting human rights through conducting debates, adopting resolutions and by addressing the urgent human rights crises. The UN Peacekeeping missions are tasked with protecting and promoting human rights in various conflict zones. The UN also shows humanitarian response and human rights protection through agencies like the UNHCR and UNICEF which plays crucial roles in protecting vulnerable populations. In the recent years, there has been conflict in various places and UN has acted as investigative mechanisms and also supported the displaced populations through various humanitarian efforts. The UN has also taken steps to combat the racial and ethnic discrimination. However, despite its achievements, UN system faces severe challenges and the effective protection of human rights remains a complex and evolving challenge. It is pertinent to note here that in the contemporary times, various political, social, technological and environmental factors have complicated the issues further. The various political challenges are like: the rise of authoritarian regimes and political repression leads to violation of rights. Even in the democratic system, there is a gap between what has been committed and what is actually done. Due to lack of political will, sometimes, even after signing a treaty the leaders fail to implement domestic reforms. Moreover, civil wars and internal conflicts, unprecedented levels of forced migration,

poverty and deprivation, economic inequalities, discrimination in economic systems etc poses serious challenges to the UN System. Now-a-days, there is also growth of technological threats. Also, environmental degradation and climate disasters adversely affect leading to displacement and loss of livelihoods. The UN system tries to address all these problems but there are certain institutional limitations which pose as obstacles and these are like weak enforcement mechanisms, resource constraints etc.

Thus, from the above discussion, we see that limited enforcement power, geopolitical rivalries, resource constraints, the rise of transnational threats like terrorism and cyber crimes etc has posed as serious challenge in the process of protection of human rights. On some of the major human rights issues, the geo-political tensions between major powers significantly hinder UN's ability to act effectively on the issue. Thus, we can understand that the UN faces a vast array of complex global issues and these issues often intersect with human rights concerns and it becomes difficult for the UN to address these issues effectively within its limitations. Due to financial constraint, sometimes it becomes difficult to provide assistance to the victims of human rights violations. Recently, the rise of new technologies, such as AI also presented new challenges for human rights protection as it requires ongoing adaptations and reforms. It needs mention here that terrorism, organized crimes, cyber threats and other transnational challenges can be tackled through international co-operation and co-ordination. Some major challenges can be discussed here in details –

Climate change – This is a crucial problem and its effects are unparallel in magnitude. It ranges from changing the weather patterns to that of increasing sea level which increases the risks

of major flooding. The challenge lies in the fact that the UN need to convince all the nations to take appropriate measures so as to reduce the greenhouse gas emissions and to meet the sustainability goals.

Conflict Resolution and Peacekeeping – We see various ongoing crises which pose as challenges in the negotiation of peace agreements, ensuring humanitarian access and maintaining stability in the post-conflict regions.

Pandemic and global health – The COVID-19 pandemic threw a serious challenge in addressing global health crisis but the UN through the WHO has played a commendable role in tackling the problem.

Thus, we can sum up our discussion here by saying that various issues like that of migration and refugees, different humanitarian crises, terrorism and transnational threats, nuclear proliferation and Arms control etc. poses as serious challenges before UN. (https://www.drishtiias.com/blog/the-un%27s-challenges-in-the-21st-century)

Check Your Progress:

Q.1. Discuss the main UN bodies which are responsible for promoting and protecting human rights.

Q.2. Discuss in detail about the purposes and principles of UNO.

Q.3. How does UN enforce human rights? Highlight on the limitations or criticisms of the UN human rights system.

Q.4. What are the core international human rights treaties for protecting human rights? Discuss with special reference to CEDAW.

1.10: Summing Up:

From the above discussion, it is clear to us that human rights are the ideals without which no man can develop his personality. The enjoyment of these rights leads to the enhancement of the quality of life in the society. UN since its very inception has always played a very positive role towards protection and preservation of international peace and also showed its concern for the protection of the human rights. After the establishment of the United Nations, the development of international law has been effected mainly through various multi-lateral law-making treaties.

1.11: References and Suggested Readings:

- Kapoor, S. K., International Law – a nutshell. 7th ed. Central Law Agency.
- Joshi, S. C. (2006). Human Rights – concepts, issues and laws. Akansha Publishing House.
- Uvin, P., (2005). Human Rights and Development. Kumarian press.
- Geetanjali. (2011). Human Rights – theory and practice. Centrum Press.
- Natarajan, A., Human Rights in International Perspectives. Aavishkar Publishers and distributors.

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UNIT-2

UDHR AND OTHER DECLARATIONS

Unit structure:

2.1 Introduction

2.2 Objectives

2.3 Universal Declaration of Human Rights

- 2.3.1 Salient Features of the Declaration
- 2.3.2 Provisions of the Declaration
- 2.3.3 Significance of the Declaration
- 2.3.4 India and the Declaration

2.4 Other Declarations and Covenants on Human Rights

2.5 Amnesty International

2.6 International Court of Justice

2.7 Summing Up

2.8 References and Suggested Readings

2.1 Introduction:

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

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

2.2 Objectives:

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

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

2.3 Universal Declaration of Human Rights:

The task of drawing up an International Bill of Human Rights, defining the human rights and freedoms referred to in the Charter of UN was entrusted to the Commission on Human Rights, established

in 1945, a subsidiary body of the Economic and Social Council (ECOSOC), one of the principal organs of the United Nations. After two and a half years of efforts, the Commission drafted a Universal Declaration of Human Rights. The Declaration was approved by the General Assembly of the United Nations on December 10, 1948 'as a common standard of achievement for all peoples and nations'. The Declaration is comprehensive, covering variety of rights. The basic aim of the Declaration is to ameliorate and develop the lives of all human beings and it truly desires to free mankind from fear, poverty, unemployment, wants, ignorance, superstitions etc.

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

2.3.1 Salient Features of the Declaration

The Declaration is a remarkable juncture of political-civil and economic-social rights, with equality and freedom from discrimination as the principal and recurrent theme. The UDHR contains 30 articles. Articles 1 and 2 of the Declaration state that all human beings are born equal in dignity and rights and are entitled to

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

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

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

2.3.2 Provisions of the Declaration

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

• the right to life, liberty and security of person;
• freedom from slavery and servitude;
• freedom from torture or cruel, inhuman or degrading treatment or punishment;

• the right to recognition everywhere as a person before the law; the right to an effective judicial remedy; freedom from arbitrary arrest, detention or exile; the right to a fair trial and public hearing by an independent and impartial tribunal; the right to be presumed innocent until proved guilty;

• freedom from arbitrary interference with privacy, family, home or correspondence; freedom from attacks upon honour and reputation; the right to protection of the law against such attacks;

• freedom of movement, the right to seek and to enjoy in other countries asylum, the right to a nationality;

• the right to marry and to have a family, the right to own property;

• right to freedom of thought, conscience and religion, right to freedom of opinion and expression;

• the right to peaceful assembly and association;

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

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

• the right to social security;

• the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment;

• the right to equal pay for equal work, the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity;

• the right to form and join trade unions; the right to rest and leisure;

• the right to a standard of living adequate for health and well-being;

• the right to education, which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, and shall further the activities of the United Nations for the maintenance of peace;

• the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

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

right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Self-Asking Question

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

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2.3.3: Significance of the Declaration:

Although the UDHR is not legally binding, it must be admitted that it has great significance and importance all over the world. A number of legally binding international covenants and congresses on human rights have incorporated direct reference to the Declaration. Many new African states as well as a number of states in other parts of the world include references to the Declaration and its provisions in their Constitutions. European Convention on Human Rights, 1950, closely resembles the Declaration. To make this Declaration as the basis the Latin American countries adopted the American Convention on Human Rights, 1969. Similarly its influence is visible in the constitutions of the various countries framed immediately after the Second World War. The Declaration has clearly inspired human rights provisions in the constitutions of a number of African states and new non-African states like Cyprus, Jamaica and Trinidad and Tobago. Even the national courts have frequently made reference to the Declaration. Mr. Roosevelt opined, while commending the Universal Declaration of Human Rights to

the General Assembly of the United Nations in 1948, that it might well become the international Magna Carta of all mankind. Today, the saying has become a truth because most of the countries all over the world have adhered to the provisions of the Declaration. Moreover, the UDHR is explicit and covers a wide range of rights and value affirmations. Particularly important is its affirmation of "human dignity, equality and the right to freedom from discrimination and exploitation", "the right to social security, to an adequate standard of life and to the opportunity for the free and full development of the individual's personality". It also refers to the duties of the individual to his community, in which alone the free and full development of his personality can take place. Thus, from the above discussion, it is clear to us that the Declaration has a vital place of importance. The Declaration has become a common reference in human rights for all nations.

The significance of the Declaration may be discussed under the following points:

• The Declaration was not legally binding on the member states, but it provided a yardstick of measurement to all the nations by which the progress of the states and people in the field of human rights could be assessed.

• The Declaration of Human Rights was the first of its kind in the history of international organization. The Declaration was a sort of statement of rights considered essential for human development all over the world.

• The Declaration became one of the most remarkable developments in the law of the nations. Although it is not binding on the nations, still it has developed itself as a source of law.

• The Declaration has acquired a political and moral authority. No other international instrument has ever received the same acceptance from all nations.

• Even at the level of international relations, the Declaration has served a very useful purpose. It has often been cited in support of human rights. Whenever a particular country has violated human rights, it has been criticized on the ground that the country has blatantly violated the letter and spirit of the Declaration.

• The Declaration has exercised profound influence on the constitutions of several new nations and regional agreements. The Constitutions of countries like India, Nigeria, Indonesia, Syria, Haiti, Libya, Jordan etc. have borrowed from the Declaration. Even in various treaties and regional agreements the influence of the Declaration is quite visible.

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

2.3.4 India and the Declaration:

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

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

• Article 1 of UDHR that all men are born free and are equal in dignity and in rights, finds expression in Indian constitution under Article 14.

• Article 2 of the Declaration states that no discrimination on the ground of race, colour, sex, language, religion and birth, finds expression in Indian constitution under Article 15.

• Article 3 of the Declaration dealing with right to life finds expression under Indian constitution under Article 21.

• Article 4 of the declaration on no slavery is found under Article 23 of Indian Constitution.

• Article 5 of the Declaration dealing with no torture, cruelty, inhuman degrading treatment finds expression under Indian constitution in Article 21, as elaborated by different court judgments.

• Article 7 of the Declaration dealing with equality before law finds expression in Article 14 of Indian constitution.

• Article 8 of the Declaration on right to effective remedy finds itself under Indian constitution in Article 32 and 226.

• Article 9 of the Declaration finds itself under Article 22 of the constitution.

• Article 13 of the Declaration finds itself under Article 19 of the constitution.

• Article 17 of the Declaration on right to property is covered under Article 300A of Indian constitution.

• Article 19 and 20 of the Declaration finds expression under Article 19 of Indian constitution.

• Article 22 of the Declaration finds itself under Article 38 of Indian constitution.

• Article 23 of the Declaration dealing with right to work, right to equal pay etc. finds expression under Articles 41, 39(a), 43 of Indian constitution.

• Article 25 of the Declaration finds itself under Article 47 of the constitution.

• Article 26 of the Declaration on right to education also finds itself under Indian constitution.

• Also, Article 27 and 28 of the Declaration finds itself under Article 51, 38 of Indian constitution.

• Article 29 of the Declaration on duties found expression under Article 51A of Indian constitution, dealing with duties of Indian citizens.

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

Challenges and limitations of UDHR:

The various Challenges and limitations of UDHR can be discussed under the following heads –

- The UDHR is a declaration, not a treaty and so it is not legally binding. States are not legally obligated to enforce the rights mentioned in the declaration. Also, there are limited enforcement mechanisms to ensure compliance.
- Some critics argue that the UDHR reflects mainly the western values.
- Critics also contend that the UDHR has not addressed many modern issues of rights.
- The implementation of the economic and the social rights are difficult in the poorer countries with limited resources.

Stop to Consider

Some Facts about the Protection of Human Rights at the International Forum:

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

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

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

• The European Convention, 1950.

• The American Convention, 1969.

• The African Charter of Human Rights, 1987

2.4 Other Declarations and Covenants on Human Rights:

As stated earlier, following the adoption of UDHR, two international Covenants on Human Rights – one on economic, social and cultural rights and the other on civil and political rights – were adopted to legalise the rights proclaimed in the Declaration. The International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocols to the latter Covenant were adopted unanimously by the General Assembly on 16 Dec. 1966. These instruments, along with the Declaration itself and a Second Optional Protocol adopted in 1989, make up what is widely known

as the International Bill of Human Rights. Besides these, there are also a large number of conventions, declarations and recommendations adopted by the General Assembly and other legislative bodies of the United Nations, which tried to protect the human rights. Some of the important conventions, declarations are:

• The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly in December 1948. Genocide is defined as a crime against humanity.

• The International Convention on the Elimination of all forms of Racial Discrimination came into force in 1969.

• The Convention on the Elimination of all forms of Discrimination against Women was adopted by the United Nations General Assembly on Dec. 1979, and entered into force on September 1981. The Declaration on the Elimination of Violence against Women, adopted by the UN General Assembly in 1993 suggests all states to take measures to prevent and punish violence against women.

• The Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly of the UN on 10 Dec. 1984 and came in force on June 1987.

• The Convention on the Rights of the Child came into force in September 1990, after it had been adopted by the UN General Assembly on November 1989.

• The Declaration on the Rights of Person Belonging to National or Ethnic, Religious and Linguistic Minorities is the most comprehensive UN human rights instrument devoted solely to minority rights.

• The human rights of the refugees are protected by the Convention relating to the Status of Refugees (1951) and its Protocol (1966).

• The Vienna Declaration and Programme of Action (1993) recognized the need for adopting the United Nations machinery for the promotion and protection of human rights to current and future needs and recommended considering the establishment of a High Commissioner for Human Rights.

• The Declaration on the Right to Development was adopted by the General Assembly of the UN on December 1986, which is particularly significant for its importance to the developing countries.

• International Convention on the Suppression and Punishment of Crime of Apartheid was established on November 1973, and it came into force on July 1976.

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

2.5: Amnesty International:

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

The Amnesty International devotes itself to very specific objectives – reminding the world of what most governments do to those of their citizens who step out of line on matters of conscience, finding out who are being held as prisoners of conscience, and trying to do something to improve their lot. Its task is, in other words, to tell us that there are certain rights basic to all human beings, and work towards the restoration of those rights to citizens who have been deprived of them. Amnesty International has published its Report for 1982 on abuses and violations of human rights. The 367 page Report covers 121 countries and is based on the information collected for the year 1981 by the Amnesty. Amnesty's founder Peter Beneson was a Londoner, interested in defending the victims of oppression. Launched in May 1961, Amnesty proved the effectiveness of moral indignation linked with mass publicity. The organization has campaigned for the release of some 1360 political prisoners and some 330 were freed.

In general terms the findings of Amnesty International are:

• The political killings by governments in many countries continued unabated till 1981.

• The techniques of repression and human rights violation varied from country to country.

• Thousands of men and women were in prison because of their beliefs, many were still held after years without charge or trial.

• Prisoners were subject to torture, and people had been executed or were under sentence of death in various countries, often for politically-related offences.

• In many countries men, women and children remained unaccounted for after being taken into custody, often violently by security forces or abducted by agents acting with the complicity of

governments. They had “disappeared” and their families and friends could get no information about their fate or whereabouts.

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

Challenges and limitations:

We have discussed above how the Amnesty International has played a vital role in protecting human rights. However, it also faces several challenges and limitations. It has been criticized on several grounds like that of reporting inaccuracy, potential biases and internal workplace issues. Some criticisms leveled against it are: financial mismanagement, flaws in the reporting of human rights abuses, an inadequate understanding of armed conflict leading to erroneous claims and incorrect analysis etc.

2.6: International Court of Justice:

The International Court of Justice is the principal judicial organ of the United Nations. It works according to a statute which forms an integral part of the UN Charter. The Court consists of 15 judges elected by the General Assembly and Security Council, voting independently. The judges are elected for a term of nine years. However, they are eligible for re-election. The Court has its permanent seat at Hague. The Court enjoys powers like, settlement of disputes and rendering of advisory opinion. It also hears all the cases involving sovereign States which have accepted the Statute of the Court. The other states can also take their disputes to the Court on fulfillment of conditions laid down by the Security Council. The Court decides the cases referred to it in accordance with

international law, international covenants, and the general principles of law recognized by civilized nations. The International Court of Justice also enjoys the power to give advisory opinion to the General Assembly, the Security Council and other specialized agencies of the United Nations, on legal questions. The Court does not render advisory opinion on its own. Further, the advice of the Court is not binding on the organ seeking it. In fact, the opinion given by the court is more like an advice rather than a decision.

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

Challenges and limitations:

We have studied above that since its inception, many cases have been handled and solved by the Court. However, the effectiveness and the efficiency of this esteemed institution have often been called into question. Some of the challenges and limitations within which the institution is working, have been discussed below –

1. Lack of proper enforcement mechanism – The UN Charter has authorized the UN Security Council to enforce the court's decisions. As a result, the compliance and enforcement of the decisions of the court are often left at the mercy of the power politics or veto powers of the permanent members of the Security Council.

2. Non-participation of the powerful member states in the ICJ proceedings – When the powerful member states do not participate in the court proceedings, then that becomes a big challenge. For example, Russia's refusal to participate in the ICJ proceedings in the Ukraine v/s Russia case (2022).

3.Political bias of the member judges – If the impartiality of the ICJ judges are compromised by political considerations and the member judges align their decisions with the interests of their home countries, then that becomes an obstacle or hindrance in the path of smooth functioning. For example, judges from Russia and China voting against the ICJ decision ordering Russia to halt military operations in Ukraine in 2022.

4. Lengthy and bureaucratic procedures – Another challenge of ICJ is that it is marred by lengthy and bureaucratic procedures, resulting in delay in the delivery of justice.

5. Limited jurisdiction – ICJ can settle those cases where states voluntarily submit to its authority. But some states may not accept the jurisdiction of the court, thereby reducing its scope.

6. Lack of coercive power – The ICJ has no means to enforce compliance if a state refuses to follow its rulings.

7. Problem of fragmentation of international law – The parallel existence of various international courts and tribunals has also posed as a challenge. For example, the co-existence of the ICJ with that of the other judicial bodies such as the International Criminal Court (ICC) and Permanent Court of Arbitration (PCA) has resulted in different interpretations of various legal principles.

We have discussed above the various challenges and limitations of the International Court of Justice and it is pertinent to mention here that certain steps can be taken to strengthen the institution. The steps are like – strengthening the court's judgement enforcement

mechanisms, exploring alternative dispute resolution methods, promoting the impartiality and independence of the members etc. Also, efforts need to be taken to co-ordinate and harmonize the decisions of the various international courts and tribunals, so as to avoid the contradictions and inconsistencies in the international law. Some more steps can be taken like enhancement of procedural efficiency, improving the accessibility of the developing countries in ICJ etc.

Self-Asking Question

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

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Check Your Progress

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

2.7 Summing Up:

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

2.8 References and Suggested Readings:

- Chander, P. & Arora, P. International Relations, (20th edition), cosmos Bookhive pvt. Ltd., New Delhi.
- Joshi, S.C. (2006). Human Rights - Concepts, Issues and Laws, Akansha Publishing House, New Delhi.
- Upadhyay, A & Adil-ul-Yasin. (2006). Human Rights. Akansha Publishing House, New Delhi
- Geetanjali. (2011). Human Rights – theory and practice. Centrum Press
- Natarajan, A. Human Rights in International Perspectives. Aavishkar Publishers, Jaipur.

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UNIT-3

INTERNATIONAL REFUGEE REGIME

Unit Structure:

3.1 Introduction
3.2 Objectives
3.3 The History of International Refugee Regime
3.4 Refugee Protection Regime
3.5 Revitalizing refugee protection
3.6 Contemporary Challenges in the Refugee Regime
3.7 Durable Solutions
3.8 Summing Up
3.9 References and Suggested Readings

3.1 Introduction

In 1921, the High Commissioner of the League of Nations introduced the term "refugee," marking the beginning of what would later be recognized as the international refugee regime. Today, this regime constitutes the legal framework governing international migration driven by safety concerns and persecution. It establishes the rights, duties, and obligations of both sending and receiving states regarding asylum-seekers, refugees, and other nations. Originally, the regime was developed in response to the aftermath of the Balkan Wars, World War I, and subsequent conflicts. Its most significant legal instrument is the 1951 Convention Relating to the Status of Refugees, which defines a refugee as an individual who flees their home country due to a well-founded fear of persecution based on race, religion, nationality, membership in a particular

social group, or political opinion. Given their vulnerability, refugees are recognized as a distinct category in need of protection.

Despite its intended purpose, the international refugee regime—particularly the 1951 Refugee Convention—has struggled to adequately safeguard and support refugees. This concern has grown increasingly relevant as modern warfare tactics blur the distinction between soldiers and civilians, with attacks on non-combatants becoming a deliberate strategy. As a result, violent conflicts have produced disproportionately high numbers of refugees, as seen in the Syrian crisis, which has displaced over nine million people ("Syrian Refugees," 2014).

Since its inception, the international refugee regime has evolved in a fragmented manner, addressing emerging challenges that were not initially considered when its foundational conventions and declarations were established. Consequently, significant gaps remain in the system. This unit will focus on two key shortcomings: the exclusion of sexual orientation as a recognized category under the 1951 Convention and the issue of burden-sharing within the European Union's asylum system, particularly under the Dublin Regulation. The omission of sexual orientation stems from the Convention's vague wording and the excessive discretion exercised in the asylum application process. Meanwhile, burden-sharing pertains to the disproportionate influx of asylum-seekers in certain EU Member States, notably Greece.

To examine these issues, the paper will incorporate personal narratives to provide insight into the real-world impact of these gaps in the refugee regime. It will also explore relevant laws and policies to trace the roots of these challenges. Additionally, an analysis of two landmark legal cases will highlight the perspectives of the legal community on these shortcomings. Through a combination of firsthand accounts, legislative review, and court rulings, this unit

will offer a comprehensive understanding of how the failure to include sexual orientation in the 1951 Convention and the lack of equitable burden-sharing contribute to severe human rights violations affecting refugees worldwide.

3.2 Objectives

This unit aims to provide a comprehensive understanding of the international refugee regime, tracing its evolution and examining the legal frameworks that govern refugee protection. After reading this unit, you will be able to—

- *analyze* the roles and responsibilities of key institutions and stakeholders in managing refugees while exploring contemporary challenges and emerging trends in refugee protection and assistance,
- *assess* the impact of global refugee movements on international security, humanitarian policies, and national interests,
- *discuss* potential reforms and future directions for improving the international refugee protection system.

3.3 The History of the International Refugee Regime

The current international refugee system faces numerous challenges and deficiencies that hinder its ability to protect those it was designed to assist. To fully grasp the complexities within this system, it is essential to examine its historical development. The refugee regime emerged through a series of reactive measures taken in response to crises, gradually shaping what is now recognized as the international refugee framework. The pattern has been consistent: a conflict arises, prompting the creation of an institution

to manage its consequences. However, none of these institutions were originally intended to sustain a comprehensive international system.

Throughout history, conflicts between states and territorial entities have often led to conditions that force people to flee their homes. Those affected are now classified as refugees. Although displacement has long been a reality, a collective international responsibility to protect and support refugees did not always exist. It was only in the twentieth century that the refugee issue gained serious global attention. The League of Nations became the first international organization to formally define refugees and lay the groundwork for what would become the international refugee system in 1921. Following the Russian Revolution and World War I, more than a million people fled Russian territories seeking safety. At the time, assistance came primarily through charitable donations from public and private organizations. However, the absence of a centralized body to coordinate aid and raise funds effectively limited the impact of these efforts. To address this, the Joint Committee of the International Committee of the Red Cross and the League of Red Cross Societies convened a conference on February 16, 1921. This meeting led to the appointment of a High Commissioner tasked with defining refugee status, facilitating repatriation or employment outside Russia, and coordinating relief measures. Dr. Fridtjof Nansen, the first High Commissioner, categorized refugees based on their country of origin and introduced identity certificates to aid in their recognition and protection.

Under Nansen's leadership, several institutions were established to manage refugee-related issues, including the Intergovernmental Committee on Refugees, the Office of the High Commissioner of the League of Nations for Refugees, and the Nansen International Office for Refugees (Jaeger, 2001, p. 729). These organizations

incorporated input from multiple European nations, culminating in the drafting of the 1933 Convention Relating to the International Status of Refugees. This convention addressed various aspects of refugee welfare, including legal protections, labor conditions, education, and relief efforts. It also introduced measures against refoulement and called for the creation of refugee committees (Jaeger, 2001, p. 730). This was the first collective international initiative aimed at providing structured assistance to those displaced by war and conflict.

A significant milestone in the evolution of the refugee regime was the establishment of the International Refugee Organization (IRO) by the United Nations General Assembly on December 15, 1946 (Jaeger, 2001, p. 732). The devastation following World War II made refugee resettlement a primary concern, with the IRO focusing on relocation rather than rehabilitation or reparations (Gallagher, 1989, p. 579). However, as the refugee crisis persisted, it became evident that the organization would not achieve full resettlement by its intended dissolution in 1950. Between 1947 and 1951, the IRO, in collaboration with other institutions, successfully resettled over a million refugees (Jaeger, 2001, p. 732). Recognizing the ongoing need for refugee assistance, the Commission on Human Rights and the Economic and Social Council requested the UN Secretary-General to conduct a study on the refugee situation and propose recommendations for future actions (Jaeger, 2001, p. 733).

3.4 Refugee Protection Regime

The framework for refugee protection, overseen by the United Nations High Commissioner for Refugees (UNHCR), is rooted in fundamental human rights principles. At the same time, it is firmly based on treaty and customary law, particularly obligations arising

from the 1951 Refugee Convention and its 1967 Protocol. It also incorporates principles from other international agreements and judicial decisions across various jurisdictions. Additionally, the regime is influenced by "soft law" guidelines and directives issued by authoritative global and regional bodies, such as the conclusions of UNHCR's Executive Committee.

The 1951 Convention holds legal, political, and ethical significance that extends beyond its explicit provisions. Legally, it establishes fundamental standards for refugee protection; politically, it provides a universal framework for states to collaborate and share responsibility for displaced persons; and ethically, it represents the commitment of 141 state parties to uphold and protect the rights of some of the world's most vulnerable populations.

As a milestone in setting refugee protection standards, the Convention incorporates essential principles that remain relevant today. These include:

- The principle of non-refoulement, ensuring that refugees are not returned to persecution or threats to their safety.
- The requirement that protection be granted without discrimination.
- Recognition of the refugee issue as a social and humanitarian concern rather than a political dispute between states.
- The necessity of international cooperation to alleviate the burden of hosting refugees.
- The understanding that refugees fleeing persecution may not always enter another country through legal channels and should not be penalized for irregular entry.
- The principle that expelling refugees should only occur in exceptional cases related to national security or public order.

- The importance of state cooperation with the UNHCR to ensure effective refugee protection.

Beyond these principles, refugee protection also encompasses safeguarding fundamental human rights that are particularly at risk in refugee situations, including the rights to life, liberty, security, freedom from torture, non-discrimination, and access to basic needs such as food, shelter, medical care, and, eventually, opportunities for self-sufficiency through education and employment. Even fifty years after its adoption on July 28, 1951, the Convention remains a crucial framework for refugee protection. However, evolving global realities necessitate certain adjustments to address gaps in protection through complementary mechanisms and refinements in principles. The extent to which innovation is required in this regard continues to be a subject of debate.

The 1950s: Establishing the International Refugee Protection Regime

At the time of UNHCR's creation, the primary concern was assisting the remaining one million individuals who had fled Nazism and later Communism in Europe. UNHCR's role was largely legal, focused on facilitating refugee entry and integration in line with the 1951 Refugee Convention. This Convention was the first—and remains the only—universally binding legal instrument for refugee protection. However, its scope was initially limited, primarily addressing refugee status rather than broader solutions or the root causes of displacement.

Although grounded in human rights principles, the Convention emphasized state responsibilities over individual rights. One of its key contributions was establishing a globally recognized definition of a refugee. However, its universal applicability was initially restricted by geographical and temporal limitations. These

constraints were removed in 1967 with the adoption of a protocol—the only amendment to the Convention—extending its scope beyond its original parameters.

The 1960s and 1970s: Expansion of the International Refugee Protection Regime

While the 1951 Convention provided a foundational framework for refugee protection, it soon became evident that its scope was limited. As UNHCR extended its activities beyond Europe, particularly into African nations undergoing decolonization, the persecution-based criteria outlined in the Convention were seen as restrictive. The large-scale refugee movements and widespread conflicts leading to displacement created a growing disconnect between the Convention's provisions and emerging realities.

From the late 1950s, the UN General Assembly occasionally expanded UNHCR's mandate to assist refugees who fell outside the 1951 Convention's definition and geographic scope. This evolving approach eventually led to the adoption of the 1967 Protocol, which removed previous temporal and geographical restrictions. Meanwhile, African nations took a regional initiative to address refugee protection more comprehensively. This resulted in the 1969 Organization of African Unity (OAU) Convention on the Specific Aspects of Refugee Problems in Africa. The OAU Convention built upon the 1951 Convention but broadened the definition of a refugee to include individuals forced to flee due to external aggression, occupation, foreign domination, or events seriously disrupting public order. This marked a shift from the earlier focus on individual persecution to recognizing victims of widespread violence and conflict. Additionally, the OAU Convention emphasized the security implications of refugee movements, voluntary repatriation as a solution, and the importance of burden-sharing among states.

The 1970s further reinforced the principles of international solidarity and responsibility-sharing. A key milestone was the 1979 International Conference on Refugees and Displaced Persons in South-East Asia, convened in Geneva amid global concern over the plight of Vietnamese refugees. Many were fleeing in fragile boats, facing dangers at sea, including piracy, only to be turned away by neighbouring countries. The conference resulted in a three-way agreement: Southeast Asian countries committed to granting temporary asylum, Vietnam pledged to facilitate legal departures, and third countries outside the region accelerated resettlement efforts. This led to burden-sharing mechanisms designed to ensure continued rescue operations for Vietnamese "boat people." The Comprehensive Plan of Action (CPA) for Indo-Chinese refugees, emerging from this initiative, became the first coordinated international effort involving asylum countries, countries of origin, resettlement nations, and donors in a structured approach to refugee protection and solutions.

The 1980s, 1990s and the 21st century: restrictions on the international refugee protection regime

During the 1980s and 1990s, significant shifts occurred in the environment surrounding international refugee protection. These changes not only called fundamental concepts into question but also affected the political will and willingness of local communities to continue offering asylum on the generous terms previously extended. The number of refugees increased dramatically, not as a result of independence struggles but due to escalating internal ethnic conflicts in newly independent states. These conflicts, often fueled by superpower rivalries and exacerbated by socioeconomic challenges in developing nations, made finding solutions to refugee crises more difficult. In places like Afghanistan, the Horn of Africa, and southern Africa, human rights violations and breaches of

humanitarian law were increasingly deliberate acts of military strategy, intensifying the suffering of civilians and leading to massive displacement. For example, 2.5 million people fled northern Iraq in 1991, over four million were displaced in the former Yugoslavia, and more than three million fled the Great Lakes region of Africa in 1994.

As the chances of lasting political solutions became more remote, the UNHCR had little choice but to implement prolonged aid programs for millions of refugees living in overcrowded camps. The global refugee population surged from a few million in the mid-1970s to approximately 10 million by the late 1980s, and by 1995, the number requiring assistance had reached around 25 million. Asylum countries became increasingly concerned about hosting large numbers of refugees with no prospects of early repatriation. Large refugee movements were seen as a threat to national stability, and even traditionally welcoming countries began to see rising hostility, violence, and attacks against refugees. In situations where conflicts remained unresolved, where warring parties lacked authority, and where there was no accountability for human rights violations, providing protection became exceedingly difficult. For instance, in some cases, governments resorted to closing borders or forcibly returning refugees to dangerous situations, as seen in Guinea's closure of its borders in 1998-1999, which left Sierra Leonean refugees, including women and children, in peril.

The question of "voluntary" returns became crucial as refugees returned to countries emerging from prolonged conflicts where peace was fragile, infrastructure was weak, and human rights conditions were unstable. In some instances, returns were not motivated by improvements at home but by increasingly hostile conditions in the host country. In the developed world, significant changes also occurred, with many industrialized nations rethinking

their asylum policies. Rising concerns about overwhelmed asylum systems, growing costs, and challenges in applying refugee concepts to mixed groups of arrivals led to more restrictive measures. Trafficking and human smuggling further complicated matters, as asylum-seekers resorted to illegal routes to reach safety, which often led to their claims being viewed with suspicion.

Many states increasingly restricted access to asylum, imposing obstacles like interdiction and interception, while using terms like "safe country" and "internal flight alternative" to limit protection. Some countries moved away from objective, law-based systems and adopted more discretionary procedures, providing less protection for those seeking asylum. As a result, asylum-seekers have turned to human rights instruments like the 1984 Convention Against Torture and the European Human Rights Convention as alternative sources of protection. However, these instruments typically offer fewer rights than those granted to recognized refugees. Overall, the climate surrounding asylum and refugee protection today is less welcoming. Refugee issues are often politicized and sensationalized for various domestic and political reasons, with media inflaming public attitudes. Unfortunately, refugees are frequently scapegoated for societal problems, and racist and xenophobic attacks against them are being exploited for political gain. To address these challenges, there is an urgent need to reaffirm the legal and ethical principles that underlie asylum and refugee protection.

1951 Convention outdated?

Some have argued that the complexities of modern migration have rendered the 1951 Convention obsolete, impractical, or even a hindrance in today's migration landscape. The Convention, in particular, has been criticized for its rigid stance in the face of pressing migration issues. However, many voices, including that of the UNHCR, oppose this view. The 1951 Convention should not be

held accountable for issues it was never intended to address. Although the Convention affects immigration-related matters, such as the sovereign right of states to regulate border entry, its primary purpose is to provide protection for a specific group of individuals in need. It was never designed to handle permanent migration or control migration flows. The UNHCR argues that it is unacceptable to diminish the priority of refugee protection in favor of migration challenges unrelated to the Convention's original objectives.

The 1951 Convention is facing significant challenges that are testing its relevance and scope of application. These challenges include:

- The changing displacement context, which requires more flexibility in the application of the Convention. Issues such as whether victims of violence by non-state actors (e.g., police, militia, separatists) should be recognized as refugees, whether "persecution" should include gender-based violence in conflict, and the protection of individuals affected by conflict in only part of their country, are pressing. Also, how the Convention interacts with other human rights frameworks, such as the Convention on the Rights of the Child, complicates refugee status determination for children.
- The rise of irregular migration and human smuggling, which has crowded the space in which the Convention operates.
- The growing discrepancy between Convention refugees, people in need of international protection, and those for whom states have assumed explicit responsibilities. This has created confusion and requires a more rational allocation of responsibilities to ensure clear protection outcomes.
- The proliferation of alternative protection forms at national and international levels, such as subsidiary protection or

complementary protection, which often bypass or limit the scope of the 1951 Convention.

- The development of region-specific legal frameworks for handling asylum claims, which, though practical, could lead to redundancy for the Convention and challenge its global applicability.
- The use of concepts like "internal flight alternative" or "safe third country," which can be misused and applied without sufficient attention to protection-sensitive procedures.
- The political nature of ensuring safe and dignified returns of refugees, which often requires more than the UNHCR's capacity to manage. A global commitment to supporting local efforts is necessary for sustainable solutions.
- The need for better integration of refugees into host communities without destabilizing the local economy, and the challenge of preparing host countries for local integration.
- The potential of resettlement as a durable solution and its role in burden-sharing, as well as how to implement responsibility-sharing mechanisms to ease the asylum burden on overburdened states.
- The Convention's "integrationist" approach, which is not well-suited to handling mass arrivals or large numbers of individual asylum-seekers. This creates challenges in finding lasting, protection-based solutions for both individuals and groups.

In conclusion, while the 1951 Convention remains the cornerstone of refugee protection, it faces significant erosion from multiple directions. The challenge lies in reinforcing and revitalizing it to

ensure its continued relevance and full application in the coming decades. The Convention is the only truly universal instrument setting out the baseline principles for the international protection of refugees, and without it, finding a replacement with similar value is unlikely.

Self-Asking Question

Q. Analyze the evolution of refugee protection regime.

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3.5 Revitalizing Refugee Protection

In response to these challenges, the UNHCR has recently made significant efforts to enhance the implementation of the 1951 Refugee Convention through targeted strategies aimed at:

- Addressing the declining quality of asylum,
- Bridging existing gaps in the protection framework, and
- Resolving inconsistencies between regional approaches and international standards.

These strategies align with a dynamic interpretation of the 1951 Convention. The principles of treaty interpretation are well-established in international law and have been comprehensively codified in the 1969 Vienna Convention on the Law of Treaties. This Convention emphasizes the principle of effectiveness, requiring that treaties be interpreted "in good faith, in accordance with the ordinary meaning of their terms, considering their context, and in light of their object and purpose." One key source for understanding

a treaty's purpose is its preamble. The preamble of the 1951 Convention underscores its goal of ensuring that all individuals enjoy fundamental rights and freedoms without discrimination and that refugees have the broadest possible access to these rights.

As a result, the 1951 Convention functions as a dedicated instrument for protecting rights. To uphold its safeguards effectively, its provisions must be interpreted in a manner that ensures their practical application. This aligns with the 1995 European Court of Human Rights ruling in Loizidou v. Turkey, which emphasized that legal instruments should be treated as "living documents" and understood in the context of present-day realities rather than being confined to the original intent of their drafters. Therefore, the 1951 Convention should not be viewed as a static document but rather as one that evolves with changing global circumstances. This evolutionary approach was affirmed by the UK House of Lords in the Aden case (December 2000), where it recognized that the signatory states intended the Convention to provide ongoing protection to refugees in the face of contemporary and future challenges.

3.6 Contemporary Challenges in the Refugee Regime

The international refugee regime faces numerous challenges that complicate the effective protection and assistance of displaced individuals worldwide. These challenges are rooted in geopolitical, economic, legal, and environmental issues, all of which significantly impact the ability of states and institutions to address the needs of refugees.

Mass Displacement and Protracted Refugee Situations

One of the most pressing challenges is the unprecedented scale of displacement. According to UNHCR, over 100 million people are

forcibly displaced worldwide due to conflicts, persecution, and human rights violations. Countries like Syria, Afghanistan, and Myanmar have produced millions of refugees, with many living in protracted situations for decades without durable solutions. The lack of resettlement opportunities, limited integration policies, and insufficient voluntary repatriation options exacerbate this crisis.

Host Country Burden and Rising Xenophobia

Developing nations host the majority of the world's refugees, often without adequate resources to support them. Countries such as Turkey, Pakistan, Uganda, and Bangladesh bear disproportionate burdens, leading to economic strain, social tensions, and pressure on infrastructure. Meanwhile, xenophobia and anti-refugee sentiments are increasing globally, with political leaders in various nations leveraging nationalist rhetoric to justify restrictive asylum policies. This has resulted in pushbacks at borders, reduced refugee quotas, and discriminatory treatment of asylum seekers.

Climate-Induced Displacement and Legal Gaps

Climate change is emerging as a significant driver of forced displacement, yet existing legal frameworks do not formally recognize climate refugees. Rising sea levels, extreme weather events, and desertification have forced millions to flee their homes. Island nations such as Tuvalu and the Maldives face existential threats, yet individuals displaced by climate-related disasters lack formal refugee status under the 1951 Convention. The absence of legal recognition leaves them without access to international protection mechanisms.

Politicization of Refugee Protection and Policy Fragmentation

The protection of refugees has increasingly become a political issue, with governments prioritizing national security concerns over humanitarian commitments. In Europe, policies such as the EU-

Turkey deal and externalization of asylum processing have led to accusations of rights violations. Similarly, in the United States, shifting asylum policies have created uncertainty for those seeking refuge. The lack of a unified global approach has resulted in inconsistent refugee policies and protection gaps across different regions.

Challenges in Refugee Integration and Social Inclusion

Integrating refugees into host communities remains a complex issue, with challenges ranging from language barriers to employment discrimination. In some countries, restrictive labor laws prevent refugees from accessing job markets, leaving them dependent on humanitarian aid. Education for refugee children is another concern, as many lack access to quality schooling, limiting their long-term prospects for self-sufficiency and contributing to cycles of poverty and marginalization.

Insufficient Funding and Humanitarian Gaps

The international humanitarian system struggles with chronic underfunding, affecting the ability to provide adequate assistance to refugees. UNHCR and other aid agencies frequently face budget shortfalls, leading to reductions in food rations, healthcare services, and shelter provisions in refugee camps. Donor fatigue and shifting global priorities have further strained resources, particularly in protracted crises where long-term funding commitments are necessary.

Security Concerns and Refugee Radicalization Risks

Security concerns related to refugee movements have been increasingly cited by governments to justify restrictive policies. While the majority of refugees are peaceful individuals fleeing persecution, the association of refugee flows with terrorism has fueled public fears and policy crackdowns. The risk of radicalization

in poorly managed refugee camps, where frustration, lack of opportunities, and extremist recruitment efforts can thrive, has also been a point of concern for policymakers.

Stop to Consider

The International Committee of the Red Cross

The International Committee of the Red Cross (ICRC) established in 1863, is a humanitarian institution based in Geneva, Switzerland. The mission of ICRC is to alleviate human suffering, uphold human dignity, protect life and health, especially during armed conflicts and other emergencies. ICRC is a part of the International Red Cross and Red Cresent Movement along with the International Federation of Red Cross and Red Cresent Society and 192 National Societies. It is present in every country and is supported by millions of volunteers and acts to help all victims of war and internal violence, attempting to ensure implementation of humanitarian rules restricting armed violence**.**

3.7 Durable Solutions

- There is no **fixed hierarchy** among durable solutions, which include voluntary repatriation, local integration, and resettlement. The most appropriate solution depends on the specific needs of refugee populations.
- ***Voluntary Repatriation***: Returns must be voluntary, safe, and conducted with dignity, ensuring legal, physical, and material security in the country of origin.
- ***Local Integration***: Refugees can contribute significantly to host societies and should be able to integrate fully, including

having access to naturalization opportunities. Public and private sectors should support integration efforts.

- ***Resettlement***: This serves as a tool for protection, responsibility-sharing, and durable solutions, requiring transparent and consistent policies worldwide.
- ***Responsibility-Sharing****:* UNHCR relies on States to uphold asylum commitments through responsibility-sharing rather than burden-shifting. Refugees should be seen not only as a challenge but as contributors to society. Many host countries, often lacking sufficient resources, require international cooperation to manage mass influxes and protracted refugee situations effectively.

Building a common understanding of these principles is essential for strengthening international refugee protection. As one leading refugee law expert observed, misrepresenting legal standards or relying on rhetoric over substantive legal principles undermines refugee protection efforts. The ongoing Global Consultations on International Protection seek to enhance these shared understandings.

Check Your Progress

1. Analyse the concept of International Refugee Regime.
2. Discuss the history of International Refugee Regime.
3. What are the contemporary challenges of International Refugee Regime?
4. What are the solutions to the existing challenges related to refugee regime?

3.8 Summing Up

The international refugee regime, built on the foundations of the 1951 Refugee Convention and its 1967 Protocol, has played a critical role in addressing forced displacement worldwide. Over the decades, it has evolved in response to changing global dynamics, from conflicts and environmental crises to political persecution and economic instability. However, the challenges facing the regime today are more complex than ever, requiring innovative solutions and stronger international cooperation.

One of the key challenges is the widening gap between the legal framework and the political will of states to implement their obligations. While the principles of non-refoulement and asylum remain central to the regime, many countries have adopted restrictive policies that undermine refugee protection. The rise of nationalism, populism, and xenophobia in many parts of the world has further eroded commitments to refugee rights. Deterrence measures, such as border externalization, detention centers, and pushback operations, have significantly limited refugees' access to asylum, raising ethical and legal concerns. Another pressing issue is the inadequacy of burden-sharing mechanisms. The vast majority of refugees are hosted by developing countries, often with limited resources and fragile infrastructures. The international community has failed to equitably distribute responsibilities, leaving host countries overburdened. While initiatives like the Global Compact on Refugees (GCR) seek to promote responsibility-sharing, their implementation has been inconsistent. A more robust and enforceable system of global solidarity is essential to ensure a fair distribution of responsibilities and resources.

The changing nature of forced displacement also necessitates a broader approach to refugee protection. Climate change-induced displacement, for instance, is not adequately covered under the 1951

Convention. Millions of people are being forced to leave their homes due to rising sea levels, extreme weather events, and environmental degradation. Yet, they do not qualify as refugees under international law, leaving them in a legal limbo. Expanding the definition of refugees or creating a complementary framework for climate-induced displacement is crucial for ensuring their protection. Furthermore, the protracted nature of many refugee situations highlights the need for durable solutions beyond temporary asylum. The three traditional solutions—voluntary repatriation, local integration, and resettlement—have become increasingly difficult to implement. Political instability and insecurity in home countries often make repatriation unfeasible, while restrictive policies in host countries hinder integration. Resettlement, although an important solution, remains limited, benefiting only a fraction of refugees. Greater emphasis must be placed on long-term strategies, including economic empowerment, education, and community-based approaches to integration. Despite these challenges, there are also opportunities for strengthening the refugee regime. The use of technology in refugee assistance, partnerships between governments, international organizations, and private actors, and the inclusion of refugees in decision-making processes are promising developments. Countries and institutions must move beyond rhetoric and take concrete actions to uphold refugee rights.

In conclusion, the international refugee regime stands at a crossroads. While it has made significant contributions to refugee protection, it must adapt to contemporary challenges to remain relevant and effective. Strengthening international cooperation, expanding legal protections, and ensuring equitable burden-sharing are crucial steps toward a more just and humane system. The future of refugee protection depends not only on legal frameworks but also

on the collective moral responsibility of the international community.

3.9 References and Suggested Readings

- Office of the High Commissioner for Human Rights (OHCHR). (2018). *The principle of non-refoulement under international human rights law*. www.ohchr.org.
- UNHCR. (2007). *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol.*
- UNHCR. (2021). *UNHCR Note on the "Externalization" of International Protection.* https://www.refworld.org/policy/legalguidance/unhcr/2021/en/121534
- UNHCR. (2023). *UK asylum and policy and the Illegal Migration Bill*. https://www.unhcr.org/uk/what-we-do/uk-asylum-and-policy/uk-asylum-and-policy-and-illegal-migration-bill
- Walzer, M. (1983). *Spheres of Justice: A Defense of Pluralism and Equality*. Oxford University Press.
- Wendt, A. (1999). *Social Theory of International Politics*. Cambridge University Press.

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UNIT-4

GENDER AND HUMAN RIGHTS

Unit Structure:

4.1 Introduction
4.2 Objectives
4.3 Understanding Gender in Human Rights
4.4 Historical Development of Gender Rights
4.5 Gender-Based Violence as a Human Rights Issue
4.6 Intersectionality and Inclusive Rights
4.7 Gender Equality in Practice
4.8 The Role of States and Institutions
4.9 Summing Up
4.10 References and Suggested Readings

4.1. Introduction:

Gender and human rights are deeply interconnected. Human rights, as enshrined in international law, proclaim the dignity, equality, and freedom of all individuals. However, these rights have not always been applied equally across genders. Gender-based discrimination and violence continue to affect millions worldwide, limiting access to education, healthcare, political participation, and economic resources. This unit will help you understand the relationship between gender and human rights, the evolution of international norms, and the ongoing struggles and achievements in realizing gender equality.

4.2. Objectives:

After reading this unit you will be able to-

- *understand* the concept of gender in relation to human rights,
- *trace* the history of gender rights,

- *analyse* gender based violence as a human rights issue,
- *examine* the concept of intersectionality and inclusive rights,
- *discuss* gender equality in practice,
- *assess* the role of states and institutions.

4.3. Understanding Gender in Human Rights:

Gender refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for individuals based on their sex. Unlike biological sex, which is assigned at birth, gender is fluid and can change over time and across cultures. Human rights, on the other hand, are universal legal guarantees that protect individuals and groups from actions that interfere with fundamental freedoms and human dignity.

Gender plays a crucial role in how individuals experience human rights. Social norms, stereotypes, and power structures often create and sustain inequalities that marginalize women, girls, LGBTQ+ individuals, and gender non-conforming people. A gender-sensitive human rights approach recognizes these disparities and works to dismantle them.

Understanding gender in human rights involves recognizing how gender shapes people's experiences of rights, freedoms, and justice. Although human rights are founded on the principle of universality—that all individuals are entitled to the same fundamental rights and freedoms—people's lived realities reveal that these rights are not always equally accessible. Gender plays a significant role in determining how individuals experience and enjoy their rights, with cultural, legal, and institutional factors often leading to the marginalization or exclusion of certain groups, especially women, girls, and gender-diverse individuals.

Gender is not just about biological differences between men and women; it encompasses the social roles, responsibilities, behaviours, and expectations that societies assign to people based on their perceived sex. These gender norms can lead to unequal power relations, which in turn contribute to discrimination, violence, and exclusion. For instance, in many societies, women may have less access to education, healthcare, political representation, and economic opportunities compared to men. Similarly, people who do not conform to traditional gender norms—such as LGBTQ+ individuals—may face legal and social discrimination, violence, and denial of basic rights.

From a human rights perspective, gender inequality is not simply a social issue but a violation of fundamental rights. Discrimination based on gender undermines the right to equality and non-discrimination as enshrined in international human rights instruments such as the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the International Covenant on Civil and Political Rights (ICCPR). These documents affirm that every person, regardless of gender, has the right to life, liberty, security, education, work, and participation in public life. The Yogyakarta Principles further extend this framework to include the rights of individuals of diverse sexual orientations and gender identities.

Incorporating gender into human rights also requires an intersectional approach. This means understanding how gender intersects with other aspects of identity—such as race, ethnicity, class, disability, age, and nationality—to produce unique experiences of discrimination or privilege. For example, an Indigenous woman may face multiple layers of discrimination due to her gender, ethnicity, and socio-economic status, which cannot be

fully understood or addressed by looking at gender alone. An intersectional lens helps human rights advocates to develop more inclusive policies and interventions that address the needs of all individuals, particularly those who are most marginalized.

Ultimately, understanding gender in human rights is about striving for equity and justice. It involves challenging unequal power structures, transforming harmful gender norms, and ensuring that everyone—regardless of gender identity or expression—can fully enjoy their human rights. It also calls for active efforts to protect individuals from gender-based violence, ensure equal participation in decision-making, and promote inclusive legal and social systems. Without integrating gender considerations into human rights work, the promise of universal rights remains incomplete.

Stop to Consider

The Global Gender Gap Report 2024

The Global Gender Gap Report 2024**,** published by the World Economic Forum, assesses gender parity across 146 countries in four key areas: Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment. As of 2024, the global gender gap has closed by 68.5%, marking a slight 0.1 percentage point improvement from the previous year. At the current rate of progress, it is projected to take 134 years to achieve full gender parity worldwide. Among the subindexes, the Health and Survival gap is the most closed at 96%, followed by Educational Attainment at 94.9%. Economic Participation and Opportunity stands at 60.5%, while Political Empowerment remains the most significant gap, with only 22.5% closed. Iceland leads the global rankings for the 15th consecutive year, having closed 93.5% of its gender gap, followed by Finland, Norway, New Zealand, and Sweden. India ranks 129th, with 64.1%

of its gender gap closed, and faces notable challenges in Economic Participation and Opportunity and Health and Survival. The report underscores the need for accelerated efforts to address persistent disparities and promote gender equality globally.

4.4. Historical Development of Gender Rights:

The historical development of gender rights is a long and complex journey that reflects broader struggles for justice, equality, and social transformation. It has evolved over centuries, influenced by political movements, cultural shifts, and legal reforms. While the idea of human rights dates back to ancient civilizations, gender-specific rights only began to gain prominence in more recent history, particularly through the rise of feminist movements and the increasing recognition of women's and gender-diverse people's struggles.

In the 19th and early 20th centuries, the first wave of feminism emerged in Europe and North America, focusing primarily on legal inequalities, particularly women's suffrage (the right to vote). Activists such as Mary Wollstonecraft, Elizabeth Cady Stanton, and Emmeline Pankhurst played pivotal roles in advocating for women's civil and political rights. This era marked the beginning of formal campaigns to recognize women as full citizens with equal rights under the law. However, this movement largely centered on white, middle-class women, often excluding the voices and experiences of women of color, working-class women, and those from colonized regions.

The second wave of feminism, which gained momentum in the 1960s and 1970s, broadened the scope of gender rights. It emphasized not only legal equality but also issues such as reproductive rights, workplace discrimination, domestic violence,

and the social construction of gender roles. This period saw landmark achievements such as the legalization of abortion in many countries, the criminalization of marital rape, and greater participation of women in public and professional life. It also led to the development of important international instruments like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, often considered the international bill of rights for women. CEDAW established a legal framework for addressing gender-based discrimination and holding governments accountable for promoting gender equality.

During the 1980s and 1990s, the conversation around gender rights continued to evolve with the emergence of the Gender and Development (GAD) approach, which emphasized the role of both men and women in addressing gender inequalities. The United Nations' Fourth World Conference on Women in Beijing in 1995 was a critical milestone, producing the Beijing Platform for Action, a comprehensive agenda for advancing women's rights globally. Around this time, the concept of gender-based violence gained more attention, and there was increasing recognition that women's rights are human rights—a principle now widely accepted in international law and policy.

In the 21st century, gender rights have expanded to include a broader understanding of gender identity and sexual orientation. The rise of LGBTQ+ activism has played a vital role in pushing for the recognition and protection of rights for people whose gender identity and sexual orientation do not conform to traditional norms. The Yogyakarta Principles (2006) were developed as a set of international principles relating to sexual orientation and gender identity, helping to shape human rights discourse in this area. Legal reforms in many countries have since decriminalized same-sex relationships, legalized same-sex marriage, and introduced gender

recognition laws for transgender people—though such progress remains uneven globally.

Despite these advances, the struggle for gender rights is far from over. Deep-rooted patriarchal norms, cultural practices, and discriminatory laws continue to limit the full realization of gender equality. Moreover, intersecting inequalities based on race, class, religion, disability, and nationality mean that not all individuals benefit equally from legal and social progress. As the movement for gender rights continues to grow, it increasingly adopts an intersectional and inclusive approach, aiming to ensure that the rights of all individuals—regardless of gender identity or background—are fully respected and protected. This historical trajectory reflects an ongoing process of challenging injustice, expanding rights, and striving for a more equal and inclusive world.

4.5. Gender-Based Violence as a Human Rights Issue:

Gender-Based Violence (GBV) is one of the most pervasive and persistent human rights violations in the world. It refers to harmful acts directed at individuals based on their gender and is rooted in structural inequalities, power imbalances, and discriminatory norms that legitimize violence against women, girls, and gender-diverse people. Gender-Based Violence includes a range of physical, sexual, psychological, and economic abuse, such as domestic violence, sexual assault, female genital mutilation, trafficking, forced marriage, and online harassment. Recognizing Gender-Based Violence as a human rights issue means acknowledging that these acts are not merely personal or cultural matters but serious violations of fundamental rights, including the right to life, dignity, freedom, and security.

Historically, Gender-Based Violence was often overlooked by legal and political systems, treated as a private matter rather than a public concern. For many years, issues like domestic violence or marital rape were not seen as crimes in many parts of the world, and survivors often had little legal recourse or support. The turning point came with the global feminist movements of the 20th century, particularly during the second wave of feminism, which brought widespread attention to violence against women. Activists and scholars emphasized that personal experiences of violence were deeply political, connected to larger systems of gendered oppression. This laid the groundwork for understanding Gender-Based Violence as a violation of human rights that states have a responsibility to address.

International human rights instruments have played a crucial role in framing Gender-Based Violence as a human rights issue. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) obliges states to take all appropriate measures to eliminate discrimination against women, including gender-based violence. In 1992, the CEDAW Committee issued General Recommendation No. 19, which explicitly recognized GBV as a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on an equal basis with men. Similarly, the 1993 UN Declaration on the Elimination of Violence Against Women clearly defined violence against women as a violation of human rights and called on states to take active measures to prevent and respond to it.

The framing of Gender-Based Violence as a human rights issue means that states are no longer seen as neutral or passive actors. Instead, they have a legal and moral obligation to protect individuals from gender-based violence, prosecute perpetrators, and provide adequate support and remedies for survivors. This includes ensuring

access to justice, safe shelters, health services, and psychosocial support. It also requires addressing the root causes of violence—such as harmful gender norms, unequal power relations, and discriminatory laws and practices—through education, advocacy, and structural reform.

Furthermore, the understanding of Gender-Based Violence has expanded to include the experiences of LGBTQ+ individuals, who often face targeted violence due to their gender identity or sexual orientation. In many contexts, transgender and non-binary people experience extremely high levels of violence, discrimination, and even murder, often with little to no legal protection. Recognizing the human rights of LGBTQ+ individuals and addressing the specific forms of Gender-Based Violence they face is essential to building inclusive and equitable societies.

Therefore, it is now clear that gender-based violence is not just a consequence of individual behavior or cultural tradition; it is a systemic human rights issue that demands a coordinated and comprehensive response. Addressing Gender-Based Violence requires governments, institutions, and societies to take action in preventing violence, protecting survivors, prosecuting offenders, and promoting gender equality. Only by treating Gender-Based Violence as a serious violation of human rights can we move toward a world where all individuals, regardless of gender, can live free from fear, violence, and discrimination.

International bodies have increasingly recognized Gender-Based Violence as not just a social or cultural problem, but a violation of human rights:

- **UN Declaration on the Elimination of Violence Against Women (1993)** explicitly framed violence against women as a barrier to equality (UNGA, 1993).

- **Istanbul Convention (2011)** by the Council of Europe legally binds state parties to prevent violence, protect victims, and prosecute perpetrators (Council of Europe, 2011).

4.6. Intersectionality and Inclusive Rights:

Intersectionality is a powerful framework for understanding how different aspects of a person's identity—such as gender, race, class, ethnicity, age, disability, and sexual orientation—intersect to shape their experiences of privilege or oppression. Coined by legal scholar Kimberlé Crenshaw in 1989, the term originally described how Black women in the United States faced overlapping forms of discrimination that were not fully addressed by either anti-racist or feminist movements. Since then, intersectionality has become a crucial concept in human rights and gender justice, helping activists, policymakers, and scholars to analyze the complex and interconnected nature of social inequalities.

In the context of human rights, intersectionality reveals the limitations of one-size-fits-all approaches to equality and justice. Traditional human rights frameworks often assumed that all women or all marginalized groups experience discrimination in the same way. However, this ignores the fact that a poor, rural, Indigenous woman, for example, may face vastly different challenges from an urban, middle-class white woman. Her gender, ethnicity, socioeconomic status, and geographic location all interact to create unique barriers to accessing her rights. Without an intersectional lens, human rights policies risk being blind to the experiences of those who are most disadvantaged and excluded.

Inclusive rights build on this intersectional understanding by emphasizing the need to ensure that *all people*—regardless of their

identity or background—can fully enjoy their rights and freedoms. This means moving beyond merely formal equality (treating everyone the same) toward substantive equality, which takes into account people's different needs, circumstances, and historical disadvantages. For instance, promoting inclusive rights in education might require targeted interventions for girls with disabilities, refugee children, or transgender youth, who may face specific barriers to staying in school. Inclusion means making sure that laws, policies, and services are designed not just to be "gender-sensitive," but truly responsive to the diverse realities of people's lives.

Moreover, intersectionality is essential in addressing the root causes of systemic inequality and oppression. It helps to expose how institutions—like the legal system, healthcare, education, and labor markets—often reflect and reinforce existing hierarchies. For example, in many societies, domestic workers—many of whom are women from marginalized ethnic or migrant communities—face labor exploitation and abuse but are often excluded from legal protections. An intersectional analysis would consider how gender, race, class, and immigration status work together to make this group particularly vulnerable, and advocate for laws and protections that address these intersecting injustices.

Inclusion also requires amplifying the voices of those most affected by discrimination, rather than speaking on their behalf. This involves centering the leadership and experiences of Indigenous women, LGBTQ+ activists, people with disabilities, and other marginalized groups in the design and implementation of policies and programs. Intersectionality challenges the idea that rights advocacy should be led only by dominant voices, instead insisting on a more democratic and participatory model of change.

Therefore, it can be summarised that intersectionality and inclusive rights are essential to achieving true equality and social justice.

They remind us that human rights cannot be meaningful unless they take into account the full complexity of people's lives and identities. An inclusive, intersectional approach helps ensure that no one is left behind, and that human rights protections are not only universally declared but *equitably realized*. By acknowledging and addressing the multiple and overlapping forms of discrimination that people face, societies can work toward more just, equitable, and inclusive futures for all.

4.7. Gender Equality in Practice:

Gender equality in practice refers to the concrete efforts and policies that translate the principle of gender equality into real-world change. While gender equality is recognized as a fundamental human right in numerous international treaties and national laws, achieving it requires more than legal recognition—it demands active implementation, systemic change, and cultural transformation. "Rights in action" means putting laws, commitments, and policies into practice to ensure that people of all genders can enjoy equal opportunities, protections, and freedoms in every aspect of life.

In the area of education, for instance, gender equality in practice involves ensuring that girls and boys have equal access to quality education at all levels. While many countries have closed the gender gap in school enrolment, barriers still persist, especially for girls in rural areas, girls with disabilities, and those from minority communities. Practical steps to address these inequalities may include providing scholarships, building safe and accessible schools, training teachers on gender sensitivity, and tackling gender-based violence in schools. Rights in action means not only enrolling girls in schools but also creating an environment where they can thrive and complete their education.

In employment and economic empowerment, gender equality in practice involves laws and policies that promote equal pay for equal work, eliminate workplace discrimination, and support women's access to decent jobs. For example, implementing parental leave policies that benefit both mothers and fathers helps to challenge the stereotype that caregiving is a woman's responsibility. Rights in action also means ensuring women have access to credit, land ownership, and business opportunities, especially in regions where traditional customs or legal restrictions have historically excluded them from economic participation. It requires enforcing labor rights for women in the informal economy and supporting women's cooperatives and entrepreneurship.

Stop to Consider

Gender Equality in India:

Gender equality in India remains a complex and evolving issue, marked by both significant progress and persistent challenges. According to the Global Gender Gap Report 2024, India has closed 64.1% of its overall gender gap, ranking 129th out of 146 countries, with particularly low scores in economic participation and health outcomes. Women continue to be underrepresented in leadership roles, holding only 17% of C-suite positions and 20% of board seats in the corporate sector. Nevertheless, initiatives like the Azim Premji Foundation's scholarship program, which supports 2.5 lakh girls across 18 states in pursuing higher education, aim to bridge educational disparities. Efforts to improve women's sanitation facilities, such as the inauguration of 'pink toilets' in Bihar, further demonstrate a commitment to enhancing women's safety and hygiene. At the grassroots level, programs like the Bibipur Model in Haryana focus on women's empowerment and village development.

Despite these advancements, challenges like child marriage, with 23.3% of women aged 20–24 married before age 18, and low female labor force participation persist. Achieving true gender equality in India necessitates sustained efforts across education, employment, health, and legal reforms to ensure equitable opportunities for all genders.

When it comes to political participation and leadership, gender equality in practice includes measures to ensure that women and gender-diverse individuals have a meaningful voice in decision-making processes. Quotas and affirmative action policies in political institutions have helped increase women's representation in many countries. However, true rights in action also require dismantling the cultural and institutional barriers that prevent women from fully participating in politics—such as gender-based harassment, lack of campaign financing, and discriminatory party structures. It also means supporting leadership by women from diverse backgrounds, including those from Indigenous, disabled, or LGBTQ+ communities.

In the area of health and bodily autonomy, gender equality in practice involves ensuring equal access to healthcare services and information, especially in the areas of sexual and reproductive health. This includes access to contraception, maternal care, abortion services (where legal), and protection from forced sterilization or child marriage. Rights in action in this context also involves challenging societal norms that stigmatize women’s health or restrict their choices. It requires healthcare systems to be inclusive and respectful of the needs of transgender and non-binary individuals, who often face discrimination and barriers to care.

Another critical area is the prevention of gender-based violence (GBV). Putting gender equality into practice means not only passing laws that criminalize violence but also ensuring survivors have access to justice, protection, and support services. This involves training police, judges, and healthcare providers; establishing safe shelters; and conducting public awareness campaigns to change harmful gender norms. Rights in action is about creating systems that not only respond to violence but also work proactively to prevent it by promoting respectful, non-violent relationships and gender-equitable attitudes.

Finally, achieving gender equality in practice requires strong political will, adequate funding, and active participation from civil society, especially women's rights organizations and grassroots movements. These actors play a vital role in holding governments accountable, raising awareness, and pushing for inclusive policies. International cooperation, including development aid and multilateral commitments like the Sustainable Development Goals (SDG 5), also plays an important role in supporting national efforts to realize gender equality.

In summary, gender equality in practice is about moving from words to deeds. It is about dismantling the structural barriers that perpetuate gender inequality and building systems and societies where all individuals, regardless of gender, can live with dignity, freedom, and equal opportunity. True gender equality is not just a vision—it's a process of continuous effort, rooted in justice, inclusivity, and the full realization of human rights for all. In this context we can cite an elaborate explanation of gender equality in practice through real-life examples:

- One of the most powerful examples of gender equality in practice is ensuring equal access to education for both girls and boys. In countries like Rwanda and Bangladesh,

governments have made significant efforts to close the gender gap in education. For instance, Rwanda has implemented gender-sensitive education policies and provided scholarships for girls, resulting in nearly equal enrollment rates in primary and secondary schools. By removing financial and cultural barriers, girls are now able to attend school alongside boys, learn in safe environments, and aspire to careers previously dominated by men, such as engineering and medicine. These changes reflect a practical commitment to gender equality and show how education can empower young women to contribute fully to society.

- Another example is the increased participation of women in political leadership roles. Countries such as Finland, New Zealand, and Ethiopia have made strides in promoting women's representation in government. In Ethiopia, for example, women make up 50% of the cabinet, and the country has its first female president, Sahle-Work Zewde. Similarly, New Zealand's former Prime Minister Jacinda Ardern has been internationally recognized for her leadership style, which integrates compassion and strength—challenging traditional, male-dominated models of governance. These examples show that gender equality is being put into practice when political systems are restructured to give women a voice in decision-making processes.
- Workplace gender equality is another important area where practical measures are making a difference. In Iceland, the government requires companies to prove they offer equal pay for equal work, regardless of gender. This legislation, known as the Equal Pay Certification, ensures that employers audit their salary structures and eliminate

unjustified pay gaps. In addition to fair wages, many companies around the world are also adopting family-friendly policies such as paid parental leave for both mothers and fathers, flexible working hours, and anti-harassment training. These initiatives create a more inclusive work environment, encouraging both women and men to participate equally in the workforce and in caregiving responsibilities.

- Efforts to combat gender-based violence also demonstrate gender equality in practice. In countries like South Africa and India, grassroots organizations and governments are working together to support survivors, promote awareness, and change harmful norms. For example, India's "One Stop Centre" scheme offers integrated support—medical care, legal aid, and counselling—for women who experience violence. Similarly, in South Africa, community-based campaigns like "Brothers for Life" engage men and boys to speak out against violence and rethink traditional notions of masculinity. These efforts not only protect women's rights but also promote healthier, more equitable relationships between genders.

- Lastly, legal reforms that promote gender equality are key indicators of progress. Tunisia and Nepal, for instance, have passed laws that enhance women's rights to inheritance, property ownership, and protection from discrimination. In Tunisia, the government reformed inheritance laws to allow women equal rights to family property, challenging long-standing patriarchal practices. In Nepal, citizenship laws were amended to allow both mothers and fathers to pass nationality to their children—an important step toward recognizing women as equal citizens under the law. These

legal changes help shift social attitudes and institutional practices toward greater gender equality.

Together, these examples show that gender equality in practice is not a single action but a combination of policies, laws, cultural shifts, and collective efforts across all sectors of society. When governments, organizations, and individuals work together to challenge inequality, the benefits extend far beyond women—they contribute to more just, balanced, and prosperous communities for everyone.

4.8. The Role of States and Institutions:

The role of states and institutions in promoting gender and human rights is crucial, as they are the primary agents responsible for creating, implementing, and enforcing laws, policies, and frameworks that uphold equality and justice. States have a legal and moral obligation to protect the rights of all citizens, regardless of gender, as outlined in international human rights agreements such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). By ratifying such treaties, states commit to eliminating gender-based discrimination and ensuring equal access to opportunities, resources, and protection under the law. National governments play a key role in designing gender-sensitive policies in areas such as education, health, employment, and political participation. For example, through legislation, they can mandate equal pay, criminalize gender-based violence, guarantee maternity and paternity leave, and ensure equal access to public services. The judiciary and law enforcement institutions also play an important role by interpreting and applying the law fairly, protecting victims of discrimination, and holding perpetrators accountable.

Institutions—such as schools, healthcare systems, courts, police forces, and even the media—act as channels through which human rights and gender equality can be realized or denied. When institutions adopt inclusive and rights-based approaches, they become powerful tools for transformation. Educational institutions, for example, can promote gender equality by revising curricula to challenge stereotypes and encouraging girls and boys to pursue any career regardless of gender norms. Health institutions contribute by ensuring access to reproductive health services and addressing gender-specific health issues. Legal institutions can promote justice by making court systems more accessible to women and marginalized groups, especially in cases of gender-based violence or discrimination. Even civil service systems have a role to play by promoting gender parity in recruitment, leadership, and decision-making positions. Furthermore, state institutions often collaborate with civil society organizations and international bodies to implement gender-focused programs, conduct public awareness campaigns, and provide training to officials on gender sensitivity and human rights.

In short it can be said that the state and its institutions are both the protectors and enablers of gender and human rights. When they function effectively and inclusively, they can help dismantle systemic inequalities and create a society where every individual—regardless of gender identity or background—can live with dignity, freedom, and equal opportunity. However, when these structures fail or remain biased, they can reinforce discrimination and injustice. Therefore, accountability, transparency, and a commitment to gender-sensitive governance are essential for states and institutions to fulfill their roles in advancing gender and human rights.

Stop to Consider

"One Stop Centre" Scheme:

The **One Stop Centre (OSC) Scheme**, also known as **Sakhi,** was launched by the Government of India in 2015 to support women affected by violence, both in private and public spaces. It provides integrated services such as police assistance, legal aid, medical care, and psychological counselling under one roof, available 24/7. These centres aim to offer a safe and supportive environment for women facing physical, sexual, emotional, psychological, or economic abuse. Located typically within hospitals or close to district headquarters, OSCs play a crucial role in empowering women by ensuring quick and coordinated response mechanisms to gender-based violence.

Self-Asking Question

Do you think Gender plays a significant role in determining how individuals experience and enjoy their rights? Examine.

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Check Your Progress

1. What is the Yogyakarta Principles?
2. Explain the historical development of gender rights.
3. Define Gender-Based Violence.
4. Who coined the term intersectionality?

5. What do you mean by inclusive rights?
6. Write a brief note on intersectionality and inclusive rights.
7. Discuss gender equality in practice with the help of few examples.
8. What is Equal Pay Certification in Iceland?
9. Define the Brothers For Life campaign in South Africa.
10. Analyse the role of states and institutions in promoting gender and human rights.

4.9. Summing Up:

After reading the unit, now you have understood that the struggle for gender equality is fundamentally a human rights issue. Achieving full gender rights requires not only strong legal frameworks but also cultural transformation, intersectional analysis, and inclusive participation. As global awareness grows, so does the opportunity to create more just and equitable societies where all people, regardless of gender, can live with dignity, freedom, and equality.

4.10. References and Suggested Readings:

- Crenshaw, K. (1989). Demarginalizing the Intersection of Race and Sex. *University of Chicago Legal Forum*.
- Council of Europe. (2011). *Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence*.
- International Commission of Jurists. (2007). *Yogyakarta Principles: Principles on the Application of International*

Human Rights Law in Relation to Sexual Orientation and Gender Identity.

- United Nations. (1995). *Beijing Declaration and Platform for Action*.
- UN General Assembly. (1993). *Declaration on the Elimination of Violence against Women*.
- UN Women. (1979). *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*.

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UNIT-5
ROLE OF NGOS IN HUMAN RIGHTS PROTECTION

Unit Structure:

5.1. Introduction
5.2. Objectives
5.3. Historical Context and Evolution
5.4. Functions of NGOs in Human Rights Protection
5.5. NGOs as Bridges Between State and Society
5.6. NGOs and International Human Rights Mechanisms
5.7. Case Studies
5.8. Challenges Faced by NGOs
5.9. Summing Up
5.10. References and Suggested Readings

5.1. Introduction:

Non-Governmental Organizations (NGOs) have emerged as vital actors in the global human rights landscape. While nation-states remain the primary duty bearers under international human rights law, NGOs function as critical watchdogs, advocates, and service providers, often bridging the gap between communities and the state. This unit explores the multifaceted role that NGOs play in the protection and promotion of human rights, examining their historical development, operational strategies, areas of impact, and the challenges they face in their mission.

5.2. Objectives:

After reading this unit you will be able to-

- *understand* the historical context of NGOs in human rights,
- *examine* the functions of NGOs in Human Rights Protection,

- *discuss* NGOs as Bridges Between State and Society,
- *know* NGOs and International Human Rights Mechanisms,
- *examine* various case studies,
- *analyse* the challenges faced by NGOs.

5.3. Historical Context and Evolution:

The role of Non-Governmental Organizations (NGOs) in human rights protection has evolved significantly over the past century, shaped by global political developments, humanitarian crises, and the increasing recognition of civil society as a key actor in governance and accountability. The roots of modern human rights NGOs can be traced back to the early 20th century, when groups such as the International Committee of the Red Cross (ICRC) began advocating for the humane treatment of individuals during armed conflict. However, it was in the aftermath of World War II—particularly following the atrocities of the Holocaust—that the international community acknowledged the urgent need for mechanisms to protect individual rights globally. This culminated in the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, which laid the normative foundation for human rights advocacy. During the Cold War era, NGOs began to flourish as independent voices monitoring state abuses, especially in authoritarian regimes where government transparency was minimal. Organizations like Amnesty International and Human Rights Watch emerged during this period, using documentation, international pressure, and grassroots mobilization to expose violations. With the end of the Cold War and the wave of democratization that swept across the Global South, NGOs expanded their scope beyond civil and political rights to include economic, social, and cultural rights, gender equality, and environmental justice. They also began

engaging with newly established international and regional human rights mechanisms, such as the United Nations treaty bodies and the African and Inter-American human rights systems. Today, NGOs operate on a spectrum from local grassroots movements to large international institutions, playing an essential role not only in protecting human rights but also in shaping the global human rights agenda through advocacy, legal reform, education, and direct service delivery. Their evolution reflects a growing global consensus that civil society participation is fundamental to the realization of human rights for all.

5.4. Functions of NGOs in Human Rights Protection:

One of the primary functions of NGOs in human rights protection is monitoring and reporting. NGOs serve as independent observers that document human rights conditions and expose violations committed by state and non-state actors. They collect data through field investigations, interviews with victims and witnesses, and collaboration with local communities. These findings are then published in detailed reports that inform the public, media, international bodies, and governments about ongoing abuses. Such documentation is crucial for accountability, as it provides evidence that can be used in legal processes or advocacy campaigns. International NGOs like Amnesty International and Human Rights Watch have become renowned for their rigorous reporting, which has drawn global attention to abuses in conflict zones, repressive regimes, and neglected humanitarian crises. At the local level, community-based NGOs also play a vital role by providing real-time, grassroots perspectives that may not be captured by larger organizations.

Another key function of NGOs is advocacy and lobbying for legal and policy reform. NGOs often act as the voice of marginalized groups by engaging in dialogue with lawmakers, policymakers, and international institutions. Through petitions, public campaigns, and expert testimonies, they influence legislation and push for the implementation of human rights treaties and standards. At the international level, NGOs advocate within forums such as the United Nations Human Rights Council, presenting alternative reports and participating in special sessions. Domestically, they work to reform unjust laws, promote transparency, and hold governments accountable. For example, NGOs have played a critical role in advocating for laws against gender-based violence, the abolition of the death penalty, and protections for refugees and asylum seekers. Their persistent lobbying efforts can lead to institutional change that ensures better protection of fundamental rights.

NGOs also provide legal assistance and engage in strategic litigation to uphold human rights. Many organizations offer free or subsidized legal aid to individuals who cannot afford legal representation, particularly victims of discrimination, violence, or abuse. In addition to direct legal support, NGOs engage in strategic litigation—carefully chosen legal cases intended to set significant precedents or challenge the constitutionality of laws and policies. These cases can have a broad impact on legal and institutional frameworks, driving systemic change. For instance, organizations like the Legal Resources Centre in South Africa and the European Center for Constitutional and Human Rights (ECCHR) have used strategic litigation to defend the rights of marginalized communities and to bring perpetrators of gross human rights violations to justice.

Capacity building and human rights education are also central to the work of many NGOs. They organize training programs, workshops,

and seminars to educate citizens, community leaders, law enforcement officials, and government representatives on human rights principles and practices. The goal is to foster a culture of rights and responsibilities, where individuals are empowered to claim their rights and hold duty bearers accountable. NGOs often develop and distribute educational materials in local languages to ensure accessibility. In post-conflict or transitional societies, human rights education is especially important in promoting reconciliation, preventing future abuses, and building democratic institutions. Through these efforts, NGOs contribute to long-term social transformation by cultivating a well-informed and rights-conscious public.

Furthermore, NGOs often act as humanitarian service providers, particularly in conflict zones, disaster-stricken areas, or regions experiencing widespread human rights violations. In such contexts, they deliver essential services like food, healthcare, psychosocial support, and shelter to vulnerable populations. They also assist in the rehabilitation and reintegration of victims of torture, sexual violence, trafficking, and displacement. Organizations like Médecins Sans Frontières (Doctors Without Borders) and the International Rescue Committee are prominent examples of NGOs that blend humanitarian relief with human rights advocacy. By addressing both immediate needs and systemic issues, NGOs offer holistic support that enhances the dignity and well-being of affected populations.

It must be noted here that the functions of NGOs in human rights protection are vast and interconnected. From documenting abuses and advocating for justice, to providing legal aid and humanitarian assistance, NGOs operate on multiple fronts to defend the dignity and rights of individuals and communities. Their presence strengthens democratic processes, enhances accountability, and

ensures that the voices of the most vulnerable are heard in local, national, and international arenas. Their work not only complements state efforts but also serves as a critical counterbalance when those in power fail to uphold human rights obligations.

5.5. NGOs as Bridges Between State and Society:

Non-Governmental Organizations (NGOs) play a vital role as intermediaries between the state and society, particularly in the context of human rights protection. In many societies, especially those with fragile democratic institutions, marginalized populations often lack direct access to decision-makers, legal resources, or platforms to voice their concerns. NGOs help fill this gap by acting as channels through which citizens, particularly vulnerable and excluded groups, can communicate their needs and grievances to the government. By translating grassroots concerns into policy language and engaging with institutional processes, NGOs help ensure that governance becomes more participatory, inclusive, and responsive. They essentially serve as the "ears and eyes" of the state, especially in areas where the state's presence is weak or where citizens have historically been ignored or oppressed.

One of the key ways NGOs act as bridges is through facilitating dialogue and negotiation between civil society and state actors. For instance, in contexts where there is distrust or conflict between the government and communities—such as with indigenous peoples, ethnic minorities, or displaced populations—NGOs can serve as neutral facilitators that bring both parties to the table. They create safe spaces for consultation and advocacy, helping to mediate tensions and build mutual understanding. By organizing community forums, roundtables, or policy dialogues, NGOs enable citizens to express their views while also informing government actors about

the social realities on the ground. This function is particularly important in post-conflict or transitional societies, where rebuilding trust in state institutions is a critical component of long-term peace and development.

Moreover, NGOs play an essential role in policy translation and capacity building. Often, there is a disconnect between the legal or policy frameworks adopted by governments and the everyday realities experienced by people. NGOs help interpret and communicate laws and rights to communities in accessible ways, using local languages and culturally relevant materials. At the same time, they also provide feedback to the government about how policies are being implemented—or failing to be implemented—at the grassroots level. This two-way flow of information is crucial for closing the gap between law and practice. Additionally, NGOs build the capacity of both citizens and state actors through training, workshops, and awareness programs. They help citizens understand their rights and how to claim them, while also educating public officials about their obligations and the importance of respecting human rights standards.

In fragile democracies or authoritarian regimes, NGOs often become the primary vehicles for civic participation. Where formal democratic institutions are weak or inaccessible, NGOs offer alternative channels for people to organize, express dissent, and participate in shaping public policy. Through mobilizing social movements, organizing protests, or leading public interest campaigns, NGOs empower people to demand accountability and justice. Simultaneously, they also work behind the scenes with policymakers and legislators to reform discriminatory laws or introduce progressive frameworks aligned with international human rights norms. This dual approach—grassroots mobilization

combined with institutional engagement—enables NGOs to amplify public voices while also achieving tangible policy outcomes.

Furthermore, NGOs contribute to building trust and legitimacy in public institutions, especially in societies recovering from conflict, dictatorship, or systemic corruption. When state institutions are perceived as abusive, indifferent, or inaccessible, NGOs often become more trusted by the public. By delivering services, advocating for justice, and promoting transparency, they help restore a sense of social contract between citizens and the state. Over time, as governments become more responsive and inclusive—often under pressure or guidance from civil society—trust can be rebuilt, and state legitimacy can be restored. In this way, NGOs not only challenge state power when necessary but also support its evolution into a more rights-based and democratic form of governance.

In conclusion, NGOs serve as indispensable bridges between state and society by facilitating communication, enabling participation, and promoting accountability. Their ability to operate at both grassroots and institutional levels allows them to link individual rights with systemic change. Through advocacy, education, mediation, and service delivery, NGOs help create a more equitable relationship between citizens and the state, one grounded in mutual respect, inclusivity, and shared responsibility for upholding human rights.

5.6. NGOs and International Human Rights Mechanisms:

Non-Governmental Organizations (NGOs) are deeply embedded within the international human rights system, playing a vital role in both shaping and enforcing global human rights standards. While states remain the primary actors in international law, NGOs have

carved out a significant space for themselves by participating in various international mechanisms and institutions. Their involvement enhances the legitimacy, transparency, and effectiveness of these systems by providing alternative sources of information, highlighting violations, and advocating for victims. In many cases, NGOs act as the crucial link between global institutions and local realities, ensuring that the human rights discourse remains grounded in lived experiences. Their contributions help fill gaps left by states, particularly when governments are unwilling or unable to uphold their human rights obligations.

One of the most important platforms for NGO engagement is the United Nations (UN), particularly through mechanisms like the Human Rights Council (HRC), treaty bodies, and special procedures. NGOs that have been granted consultative status with the UN Economic and Social Council (ECOSOC)can participate in meetings, submit written statements, and make oral interventions at various sessions. This allows them to bring attention to pressing human rights issues that may not be adequately addressed by governments. Moreover, NGOs contribute shadow reports—alternative accounts of a country's human rights performance—which are submitted to treaty-monitoring bodies during periodic reviews of state compliance. These reports often provide critical information that challenges the official narratives presented by governments, allowing international bodies to make more accurate assessments and recommendations.

NGOs also play a key role in the Universal Periodic Review (UPR) process, which is a peer review mechanism under the UN Human Rights Council that assesses the human rights records of all member states. Although only states can participate in the actual review, NGOs significantly influence the process by submitting stakeholder reports and organizing advocacy campaigns to ensure that key

human rights concerns are addressed during the review. They also follow up after the review, monitoring how effectively states implement the recommendations they have accepted. In this way, NGOs enhance accountability and ensure that the UPR does not remain a purely diplomatic exercise, but becomes a tool for real human rights progress on the ground.

In addition to the UN, NGOs are active in regional human rights systems, such as the Inter-American Commission on Human Rights (IACHR), the African Commission on Human and Peoples' Rights (ACHPR), and the European Court of Human Rights (ECHR). At these forums, NGOs act as petitioners, legal representatives, or amici curiae (friends of the court) in cases involving violations of human rights. Their legal expertise and documentation often prove instrumental in securing favorable judgments and policy changes. For example, African NGOs have played a critical role in bringing attention to violations related to freedom of expression, police brutality, and indigenous land rights at the ACHPR. In Europe, NGOs frequently support individuals and groups in navigating complex legal procedures at the ECHR, ensuring access to justice beyond national borders.

Furthermore, NGOs work with UN Special Rapporteurs and Independent Experts, who are appointed to investigate specific human rights issues or country situations. NGOs provide them with firsthand information, facilitate access to affected communities, and support their fact-finding missions. By building coalitions and networks, NGOs also amplify their voices through global advocacy campaigns that mobilize public opinion and influence international agendas. High-profile campaigns such as those against child soldiers, torture, or arbitrary detention have successfully pushed governments to sign treaties, reform laws, or halt abusive practices.

These global efforts show how NGOs are not just observers, but active participants in the international human rights ecosystem.

In principle, NGOs and international human rights mechanisms function in a mutually reinforcing relationship. NGOs enrich the international system by ensuring that human rights debates are informed by ground-level realities, while the system offers NGOs a formal platform to advocate for change. This dynamic enhances the legitimacy and reach of human rights norms, particularly in holding states accountable for their actions. By combining local knowledge with international advocacy, NGOs ensure that human rights mechanisms do not remain abstract legal instruments but serve as practical tools for justice, equality, and dignity across the world.

5.7. Case Studies:

NGOs play a vital role in protecting human rights in India, as seen in several impactful case studies. These NGOs not only provide direct support but also influence policy, raise awareness, and hold authorities accountable for human rights violations. Now let us discuss this in brief -

1. Amnesty International and the Anti-Torture Campaign

Amnesty International, one of the most prominent international human rights NGOs, launched a ground breaking global campaign against torture in the 1970s. At a time when torture was often considered an internal matter of the state, Amnesty's work helped redefine it as a serious violation of international human rights law. The organization meticulously documented cases of torture across the globe, including in Latin America, the Middle East, and parts of Asia. Through its "Write for Rights" campaign, Amnesty mobilized millions of people to send letters to governments demanding the release of prisoners of conscience and an end to abusive practices.

This not only raised global awareness but also led to the adoption of the United Nations Convention Against Torture (UNCAT) in 1984. Amnesty's sustained pressure contributed to the creation of legal frameworks and monitoring bodies that have since been used to hold states accountable. This case illustrates how NGOs can shift global norms and pressure states to commit to international human rights standards.

2. Human Rights Watch and the Documentation of War Crimes in Syria

Since the outbreak of the Syrian civil war in 2011, Human Rights Watch (HRW) has played a critical role in documenting war crimes and crimes against humanity committed by both government and non-state forces. HRW researchers used satellite imagery, witness interviews, and video evidence to expose the use of chemical weapons, indiscriminate bombings, and the targeting of civilian infrastructure such as hospitals and schools. These reports were used not only to inform the international community and the media but also to assist in legal proceedings at the International Criminal Court (ICC) and other forums seeking justice for victims. Despite the political complexities surrounding international intervention in Syria, HRW's work ensured that reliable records of atrocities were preserved, creating a foundation for future accountability. This case study highlights how NGOs contribute to justice by meticulously documenting abuses in conflict zones where international access is limited.

3. The Kenyan Human Rights Commission (KHRC) and Electoral Justice

The Kenyan Human Rights Commission, a national NGO, has been instrumental in promoting human rights and democracy in Kenya, especially in the context of electoral violence. Following the

disputed 2007 presidential elections, Kenya experienced widespread ethnic violence that resulted in the deaths of over 1,000 people and the displacement of hundreds of thousands. KHRC played a crucial role in documenting these human rights violations and providing legal and psychosocial support to victims. Moreover, the organization lobbied for the establishment of the Truth, Justice and Reconciliation Commission (TJRC) and supported constitutional reforms aimed at strengthening democracy and the rule of law. KHRC also partnered with international NGOs to keep global attention on the situation in Kenya and to push for accountability through the International Criminal Court (ICC). This case shows how local NGOs can lead in transitional justice processes and legal reform while effectively engaging with international mechanisms.

4. The Bangladesh Legal Aid and Services Trust (BLAST) and Women's Rights

The Bangladesh Legal Aid and Services Trust (BLAST) is a leading example of a national NGO working on legal empowerment and gender justice. One of its landmark achievements was its involvement in a case that led the Supreme Court of Bangladesh to declare the practice of extra-judicial punishments by village shalish (informal courts) illegal. These courts had often subjected women to public beatings, humiliation, and punishment for so-called “moral” offenses, violating their basic rights and dignity. BLAST filed public interest litigation challenging this practice and provided legal aid to numerous affected women. The court ruling was a major victory for human rights and women's protection in rural areas. In addition to litigation, BLAST engages in awareness-raising, legal literacy programs, and capacity-building initiatives across the country. This case illustrates how NGOs can use strategic litigation and grassroots engagement to dismantle harmful practices and promote gender equality.

5. Global Witness and Environmental Human Rights Defenders

Global Witness is an NGO that has been at the forefront of protecting environmental defenders—activists who face threats for opposing destructive mining, logging, or land-grabbing projects. In countries like the Philippines, Honduras, and Brazil, where environmental defenders are often targeted for standing up against powerful corporate and political interests, Global Witness documents cases of violence and murder, often in collaboration with local NGOs. The organization publishes annual reports exposing the links between natural resource exploitation, corruption, and human rights abuses. Their work has brought international attention to the plight of environmental activists and pressured governments to enact stronger protections. One notable outcome was the European Union's adoption of regulations on conflict minerals, influenced by sustained NGO advocacy. This case study reflects how NGOs can address the intersection of environmental justice and human rights on a global scale.

6. The International Federation for Human Rights (FIDH)

The **International Federation for Human Rights (FIDH)**is one of the oldest and most prominent international human rights NGOs, founded in 1922 and based in Paris, France. It operates as a federation of over 180 human rights organizations from more than 100 countries, working collectively to promote and defend civil, political, economic, social, and cultural rights as outlined in the Universal Declaration of Human Rights. FIDH plays a crucial role in documenting human rights violations, supporting victims, and advocating for accountability at both national and international levels. It engages actively with international institutions such as the United Nations, the International Criminal Court (ICC), and regional human rights bodies to influence policy, push for justice, and uphold the rule of law. By empowering local member

organizations and amplifying their voices on the global stage, FIDH helps bridge grassroots activism with international human rights mechanisms, making it a vital player in the global human rights movement.

7. The People's Union for Civil Liberties (PUCL)

The **People's Union for Civil Liberties (PUCL)** is one of India's leading human rights organizations, founded in 1976 by Jayaprakash Narayan during the Emergency to defend and promote civil liberties and democratic rights. It operates independently of political affiliations and focuses on issues such as freedom of speech, police reforms, custodial violence, and the rights of marginalized communities. PUCL plays a crucial role in documenting human rights violations, raising public awareness, and filing Public Interest Litigations (PILs) to seek legal remedies. Through its grassroots networks and legal activism, PUCL continues to be a strong voice for justice, accountability, and the protection of constitutional rights in India.

8. The Human Rights Law Network (HRLN)

The **Human Rights Law Network (HRLN)** is a prominent non-profit organization in India that provides legal support and advocates for the protection of marginalized and vulnerable groups. Founded in 1989 by senior advocate Colin Gonsalves, HRLN works through a nationwide network of lawyers, activists, and researchers to promote justice on issues such as gender equality, labor rights, disability rights, environmental justice, and the rights of minorities and indigenous communities. The organization is known for filing significant Public Interest Litigations (PILs) in the Supreme Court and High Courts, challenging systemic injustices and pushing for policy reforms. HRLN's efforts have led to landmark judgments and

strengthened access to justice for those often excluded from the legal system.

9. Child Rights and You (CRY)

Child Rights and You (CRY) is a leading Indian non-governmental organization established in 1979 by Rippan Kapur, dedicated to restoring the rights of underprivileged children. CRY works to ensure that every child has access to education, healthcare, nutrition, and protection from exploitation and abuse. Collaborating with grassroots partners and communities across India, CRY focuses on sustainable change by addressing root causes like poverty, lack of awareness, and social exclusion. The organization also engages in policy advocacy and campaigns to influence government action on child rights. Through its efforts, CRY has improved the lives of millions of children, empowering them to live with dignity and opportunity.

So you have understood that these case studies demonstrate the multifaceted roles NGOs play in human rights protection—from campaigning and documentation to litigation, education, and grassroots mobilization. Whether operating locally or globally, NGOs bring visibility to abuses, empower victims, and influence both national and international responses. Their ability to act independently of government control and to bridge the gap between affected populations and global institutions makes them indispensable actors in the fight for human dignity and justice.

5.8. Challenges Faced by NGOs:

One of the most pressing challenges faced by NGOs working in the field of human rights is **political repression and restrictions on civic space.** In many countries, especially those governed by authoritarian or illiberal regimes, NGOs are increasingly viewed as

threats to state authority rather than as partners in development and governance. Governments may impose restrictive laws that limit NGO registration, funding, and operations—such as demanding excessive bureaucratic procedures, controlling foreign donations, or labeling organizations as "foreign agents" or "anti-national." These measures not only limit their ability to function freely but also delegitimize their work in the eyes of the public. In extreme cases, human rights defenders associated with NGOs face harassment, arbitrary arrest, surveillance, travel bans, or even physical violence. This shrinking civic space undermines the vital watchdog role that NGOs play and can isolate vulnerable communities from the protection and support they urgently need.

Another significant challenge is **financial sustainability**. Many NGOs depend heavily on grants and donations from international donors, governments, and philanthropic organizations. This dependence creates uncertainty, as funding cycles are often short-term and subject to changing political priorities or donor fatigue. Additionally, some funders may impose strict conditions or expect NGOs to align with their agendas, potentially compromising organizational independence and priorities. Smaller or grassroots NGOs, especially those based in the Global South, may struggle more to access consistent funding, leaving them at a disadvantage compared to larger, well-established international organizations. This financial insecurity can lead to staff burnout, scaling down of operations, and inability to respond effectively to emergencies or long-term crises.

NGOs also face **operational challenges related to security, access, and infrastructure**, particularly in conflict zones or politically volatile areas. When operating in environments plagued by war, civil unrest, or natural disasters, NGOs may have limited access to affected populations due to ongoing violence, poor infrastructure, or

government-imposed travel restrictions. In such conditions, it becomes extremely difficult to gather accurate data, monitor human rights violations, or provide services safely. Moreover, staff and volunteers often risk their lives to carry out their work. The need to ensure security while maintaining a presence on the ground presents a constant dilemma. At the same time, logistical barriers like lack of transportation, internet connectivity, or language challenges further impede the effectiveness of operations.

A more nuanced challenge lies in the issues of legitimacy, representation, and accountability. NGOs are not elected bodies, yet they often speak on behalf of communities and advocate for large-scale policy changes. This raises questions about whom they truly represent and how accountable they are to the communities they serve. If not carefully managed, there is a risk of NGOs imposing external agendas or acting paternalistically, especially when international organizations intervene in local contexts without meaningful consultation. Furthermore, some NGOs may lack internal transparency, have weak governance structures, or fail to include diverse voices in their leadership, which can undermine their credibility and effectiveness.

Additionally, NGOs increasingly face the challenge of navigating complex geopolitical landscapes and competing global priorities. With the rise of nationalism, populism, and geopolitical rivalries, international solidarity on human rights issues has weakened. Governments may use economic or strategic alliances to shield themselves from criticism and scrutiny, making it harder for NGOs to hold powerful actors accountable. For instance, human rights violations in countries with strong economic or political ties to influential nations may receive less international condemnation or action. In such cases, NGOs find themselves isolated or unable to generate sufficient global pressure to compel change.

Lastly, technological challenges and digital threats are becoming a growing concern for NGOs. While technology has enabled greater outreach and information sharing, it has also introduced new risks such as cyberattacks, online harassment, and surveillance. Authoritarian regimes often use digital tools to track, intimidate, or discredit human rights defenders. NGOs must invest in digital security measures to protect their data and communications, which requires both financial resources and technical expertise that many organizations may lack. At the same time, misinformation and disinformation campaigns—often spread through social media—can undermine the credibility of NGOs and their advocacy work.

Therefore, it can be said that NGOs committed to human rights face a wide range of interrelated challenges that hinder their ability to operate freely, securely, and effectively. From political repression and financial instability to legitimacy concerns and digital threats, these obstacles require adaptive strategies, solidarity among civil society actors, and greater support from international partners. Despite these challenges, NGOs continue to play an indispensable role in defending the rights and dignity of individuals and communities around the world.

Stop to Consider

Steps to strengthen the role of NGOs

To strengthen the role of NGOs in human rights protection, several steps can be taken:

- **Strengthening legal frameworks** that protect civil society actors.
- **Diversifying funding sources** to reduce dependency and enhance sustainability.

- **Enhancing collaboration** between international and local NGOs to ensure context-sensitive interventions.
- **Promoting transparency and accountability** through internal governance reforms.
- **Integrating technology** to enhance documentation, reporting, and outreach.

Self-Asking Question

Do you think in fragile democracies or authoritarian regimes, NGOs often become the primary vehicles for civic participation? Examine.

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Check Your Progress

1. Discuss how the role of Non-Governmental Organizations (NGOs) in human rights protection has evolved.
2. In which year the Universal Declaration of Human Rights (UDHR) was adopted?
3. Describe the functions of NGOs in human rights protection.
4. What is Médecins Sans Frontières?
5. Assess the role of NGOs as bridges between state and society.
6. Write a note on NGOs and international human rights mechanisms.
7. Define Universal Periodic Review (UPR) process.
8. Discuss the role of Amnesty International and the Anti-Torture Campaign.

9. Discuss the role of Human Rights Watch (HRW) in Syrian civil war.
10. Discuss the functions of Global Witness.
11. What are the challenges faced by NGOs?

5.9. Summing Up:

NGOs are indispensable in the global quest for human dignity, freedom, and justice. As advocates, educators, litigators, and protectors, they amplify the voices of the marginalized and challenge oppressive systems. However, their continued relevance depends on their ability to remain responsive, resilient, and rooted in the communities they serve. A thriving civil society, backed by an enabling environment, is essential for the realization of universal human rights.

5.10. References and Suggested Readings:

Goel, V., & Tripathi, M. K. (2010). The role of NGOs in the enforcement of human rights: An overview. *The Indian Journal of Political Science*, 769-793.

Wiseberg, L. S. (2017). The role of non-governmental organizations (NGOs) in the protection and enforcement of human Rights 1. In *Human rights: International protection, monitoring, enforcement* (pp. 347-372). Routledge.

Dias, C. J. (1993). The role of NGOs in the protection and promotion of human rights in Asia. *Asian and Pacific Migration Journal*, *2*(2), 199-222.

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BLOCK-III

HUMAN RIGHTS IN INDIA

Unit 1: Constitutional Framework of Human Rights in India

Unit 2: National Security and Protection of Human Rights in India

Unit 3: Civil Liberty Movements

Unit 4: Development, Displacement and Human Rights

Unit 5: Role of Media in Human Right Protection

UNIT-1

CONSTITUTIONAL FRAMEWORK OF HUMAN RIGHTS IN INDIA

Unit structure:

1.1 Introduction

1.2 Objectives

1.3 Constitutional Provisions of Human Rights in India

- 1.3.1 Preamble of Indian Constitution
- 1.3.2 Part III of the Indian Constitution
- 1.3.3 Part IV of the Indian Constitution
- 1.3.4 Some Other Provisions

1.4 Statutory Provisions of Human Rights in India

1.5 Enforcement of Fundamental Rights under Indian Constitution

1.6: Role of Human Rights NGOs

1.7: Challenges to the protection of Human Rights and Civil Liberties in India

1.8 Summing Up

1.9 References and Suggested Readings

1.1 Introduction

In a developing country like India, there is an air of unreality about the protection of human rights. Our country was under colonial regimes for a long span of time and faced tremendous exploitation. When the developing countries attained independence, they faced various problems like, poverty, malnutrition, illiteracy, unemployment etc. The benefits of development were not available to the poor mass and the grand plans and projects made practically no dent in the volume of poverty in these countries. In a world of rapid change, poverty remained basic problem in the developing

nations. In this critical juncture, how can the people assert their human rights? Thus, it was increasingly felt all over the world that the basic human rights in these developing countries need to be well protected by the Constitution itself. The Constitution being the basic or fundamental law of the land protects against the violation of human rights through the Constitutional provisions. This view has received considerable popularity and support.

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

1.2 Objectives

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

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

1.3 Constitutional Provisions of Human Rights in India

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

In ancient India, Vedas and other sacred scriptures provided the basis of human rights. The ancient law of Dharma used to govern the social order in ancient times. The basis of ancient human rights was Dharma which aimed at the establishment of a socio-legal order free from traces of conflicts, exploitation and miseries. The prime importance of human rights was also contained in the rich Indian legacy of "Vashudhaiva-Kutumbakam". There were references in the Rigveda of three civil rights, that of Tana (body), Skridhi (dwelling place) and Jibhasi (life). The ancient lawgiver Manu laid down elaborate rules for the guidance of the king. Also, Kautilya, in his Arthasastra elaborated different rights of citizens. Thus, the Vedas, Puranas, and the epics like Ramayana and Mahabharata provided the basis of human rights. But, the philosophy of human rights in the modern sense took shape during British rule. It was during the nationalist movement or struggle, there was continuous demand for fundamental freedoms and civil and political rights for the people of India. Thereafter, when India attained independence, the Constitution incorporated different provisions for the protection of human rights.

1.3.1 Preamble of Indian Constitution

In the Constitution of India, there are certain important provisions for the protection and promotion of human rights. These provisions are contained in: The Preamble, Part III dealing with Fundamental Rights, Part IV dealing with the Directive Principles of State Policy, Part IVA dealing with the Fundamental Duties and various other articles like, Articles 226, 300A, 325, 326 etc. These provisions reflect the basic principles of the Universal Declaration of Human Rights, and the Covenants on Civil and Political Rights, and Economic, Social and Cultural rights. The Constitutional protection of rights in India have overriding authority because the judiciary has

the power to declare unconstitutional the legislations or other actions of the state which conflict with the terms of the Constitution. Now, let us discuss in detail the constitutional framework of human rights in India:

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

1.3.2 Part III of Indian Constitution

Next, Part III of the Indian Constitution dealing with the Fundamental Rights also protects various human rights. Throughout Indian nationalist movement, opinion was definitely in favour of a bill of rights for the Indians. Therefore, when India attained independence, the framers of the Constitution adopted Fundamental Rights to safeguard individual liberty and also for ensuring (together with the Directive Principles) social, economic and political justice for every member of the community. So, the Constitution of India has embodied a number of Fundamental Rights in Part III of the Constitution, which are (subject to exceptions) to act as limitations not only upon the powers of the executive but also upon the powers of the legislature. Human Rights as enumerated in the Constitution as Fundamental Rights are:

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

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

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

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

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

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

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

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

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

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

(6) Right to Constitutional Remedies (Article 32)

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

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

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

Article 15 of the Constitution provides –

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

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

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

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

The significance of the word 'only' is that if there is any other ground or consideration for the differential treatment besides those prohibited by this Article, then the discrimination will not be unconstitutional.

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

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

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

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

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

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

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

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

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

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

1.3.2.2 Article 19

Article 19, provides six Fundamental Rights in the nature of 'freedom'. In the original Constitution, there were 7 freedoms in Article 19(1), but 'the right to acquire, hold and dispose of property' has been omitted by the constitutional 44thAmendment Act, 1978, leaving only 6 freedoms in that article, like: freedom of speech and expression, freedom of assembly, freedom of association, freedom of movement, freedom of residence and settlement and freedom of profession, occupation, trade or business. But, it is to be noted here that India is a welfare State, and in a welfare state, absolute individual rights cannot be guaranteed. Therefore, the framer of our constitution specified the permissible limitations in clauses (2) to (6) of Article 19 itself, in order to protect the larger interests of the community.

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

(a)Retrospective criminal legislation, commonly known as ex post facto legislation.

(b)Punishment for the same offence more than once.

(c)Compulsion to give self-incriminating evidence.

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

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

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

Article 21 of our Constitution provides that – No person shall be deprived of his life or personal liberty except according to the procedure established by law. The scope of this article has been extended by various judicial interpretations of the Supreme Court from time to time. For example, the scope of this article has now been extended and right to life covers within its ambit right to live in pollution free environment. Various cases came before the judiciary through PIL and judiciary has given landmark judgements in accordance with the principle of sustainable development.

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

1.3.2.3 Article 23

Article 23 says: (1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention

of this provision shall be an offence punishable in accordance with law.

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

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

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

1.3.2.4 Articles 25-32

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

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

that full compensation has to be paid if the State seeks to acquire the property of a minority educational institution.

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

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

(1)The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

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

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

Fundamental Rights, but also for the redress of any other injury or illegality, owing to contravention of the ordinary law.

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

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

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

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

Stop to Consider

Indian Laws Relating to Human Rights

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

1. Protection of Human Rights Act, 1993.
2. National Commission for Minorities Act, 1992.
3. National Commission for Women Act, 1990.
4. Protection of Civil Rights Act, 1955.

5. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. Immoral Traffic (Prevention) Act, 1956.

7. Indecent Representation of Women (Prohibition) Act, 1986.

8. Dowry Prohibition Act, 1961.

9. Maternity Benefit Act, 1961.

10. Child Marriage Restraint Act, 1929.

11. Children Act, 1960.

12. Child Labour (Prohibition and Regulation) Act, 1986.

13. Juvenile Justice Act, 1986.

14. Bonded Labour (System) Abolition Act, 1976.

15. Medical Termination of Pregnancy Act, 1971.

16. Environmental Protection Act, 1986.

17. Industrial Disputes Act, 1947.

18. Workmen's Compensation Act, 1923.

19. Factories Act, 1948.

20. Employees State Insurance Act, 1948.

21. Minimum Wages Act, 1948.

22. Apprentices Act, 1961.

23. Equal Remuneration Act, 1976.

24. Payment of Wages Act, 1936.

25. Weekly Holidays Act, 1942.

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

1.3.3 Part IV of Indian Constitution

The Directive Principles of State Policy are included in Part IV of the Indian Constitution (Articles 36-51). Article 37 of the Constitution of India says that the Directive Principles are

fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

The Directive Principles are nothing but the restatement of the ideals as laid down in the Preamble to the Constitution of India. These principles are like instructions issued to the State. Part IV of the Constitution of India is regarded as the sister part of Part III, dealing with the fundamental rights. The objectives of the Directive Principles of State Policy have come out very clearly in the statement of M.C. Setalvad. Setalvad says : "Although the Directive Principles of State Policy confer no legal rights and create no legal remedies, they appear to be like an instrument of instructions, or general recommendations addressed to all authorities in the union reminding them of the basic principles of the new social and economic order which the Constitution aims at building. These fundamental axioms of State Policy, though of no legal effect, have served as useful beacon-lights to courts."

The Directive Principles may be classified into four categories on the basis of their objectives. These are: Economic principles, Social principles, Gandhian principles and principles for international peace and security. Now, let us discuss these principles in detail.

(1) Economic Principles: adequate means of livelihood for the citizens; equitable distribution of the ownership and control of the material resources of the community keeping in view the common good; equal pay for equal work to both men and women; protection of children and youth against exploitation and against moral and material abandonment; provision of public assistance in cases of unemployment, old age, sickness and disablement; that living wages, just and human conditions of work, and a decent standard of life are given; that inequalities of income is minimized etc.

(2) The Social principles are like: promoting educational and economic interests of the weaker sections of the society; providing a uniform civil code; separating judiciary from the executive etc.

(3) Gandhian principles are like : establishment of village panchayats as units of self-government (Article 40); promotion of cottage industries on an individual and co-operative basis in rural areas (Article 43); raising the level of nutrition, the standard of living of its people and the improvement of public health (Article 47); prohibiting consumption of intoxicating drinks and drugs except for medicinal purposes; organizing agriculture and animal husbandry on modern and scientific lines; prohibiting slaughter of cows, calves and other milch and draught cattle (Article 48); the State shall protect, preserve and maintain places of national and historical importance; etc.

(4) In the international field, India shall strive: to promote international peace and security; to maintain just and honourable relations between nations; to foster respect for international law and treaty obligations; to encourage settlement of international disputes by arbitration.

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

(i) Article 39A has been inserted to enjoin the State to provide free legal aid to the poor and to take other suitable steps to ensure equal justice to all, which is offered by the Preamble.

(ii) Article 43A has been inserted in order to direct the State to ensure the participation of workers in the management of industry and other undertakings.

The 44thAmendment Act, 1978, inserted Clause (2) in Article 38 : (2) the State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities

and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

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

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

(i) to abide by the Constitution and respect the National Flag and the National Anthem;

(ii) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(iii) to protect the sovereignty, unity and integrity of India;

(iv) to defend the country;

(v) to promote the spirit of common brotherhood amongst all the people of India;

(vi) to preserve the rich heritage of our composite culture;

(vii) to protect and improve the natural environment;

(viii)to develop the scientific temper and spirit of inquiry;

(ix) to safeguard public property;

(x) to strive towards excellence in all spheres of individual and collective activity.

1.3.4 Some Other Provisions

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

• Article 300A which states that no person shall be deprived of his property save by authority of law.

• Article 325 which states that no person shall be ineligible for inclusion in, or claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.

• Article 326 which states that elections to the House of People and to the Legislative Assemblies of States will be on the basis of adult suffrage.

• Article 335 enjoins that the claims of the members of the scheduled castes and the scheduled tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

• Article 311 provides protection to civil servants.

Self-Asking Question

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

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1.4 Statutory provisions of Human Rights in India

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

• Protection of Human Rights Act, 1993.

• National Commission for Scheduled Castes and Scheduled Tribes.

• National Commission for Minorities Act, 1992.

• National Commission for Women Act, 1990.

• Protection of Civil Rights Act, 1955.

• Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

• Immoral Traffic (Prevention) Act, 1956.

• Indecent Representation of Women (Prohibition) Act, 1986.

• Dowry Prohibition Act, 1961.

• Commission of Sati (Prevention) Act, 1987.

• Maternity Benefit Act, 1961.

• Child Marriage Restraint Act, 1929.

• Children Act, 1960.

• Child Labour (Prohibition and Regulation) Act, 1986.

• Caste Disabilities Removal Act, 1950.

• Mental Health Act, 1987.

• Bonded Labour (System) Abolition Act, 1976.

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

Self-Asking Question

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

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1.5 Enforcement of Fundamental Rights under Indian Constitution

Thus, from the above discussion, it is clear to that the enumerated and guaranteed Fundamental Rights would be no more than paper tigers, if the right to enforce Fundamental Rights is not made a fundamental right itself. Thus, it is the remedial Fundamental Right which gives teeth to all the Fundamental Rights. Article 32, which enshrines the remedial fundamental right, has been described as the cornerstone of the democratic edifice, as the protector and guarantor of Fundamental Rights. Article 32 guarantees the right to moving to the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights guaranteed by Part III of the Constitution. Article 32(4) lays down that this fundamental right cannot be suspended except as otherwise provided by the Constitution. Articles 358 and 359 provide for the suspension of certain fundamental rights during the period of promulgation of emergency. Under Article 226 also, the fundamental rights can be enforced by moving the High Courts. Under Article 32, the Supreme Court has very wide jurisdiction. Any order, direction or writ issued by the Supreme Court under Article 32 can be issued not merely anywhere

in India, but also beyond the territorial limits of India to all those authorities which are functioning inside or outside India under the control of the Union Government. Article 32(2) specifically mentions five types of directions, orders, writs like, Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. The Supreme Court has the power to issue any one of these writs, which it may consider appropriate in a particular case. The existence of the concurrent jurisdiction of the High Court under Art. 226 does not bar a person who alleges violation of a fundamental right to approach the Supreme Court directly. The Supreme Court has repeatedly held that the existence of an alternative remedy did not bar the jurisdiction of the court to grant relief under Article 32.

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

(1) Habeas Corpus: It is a remedy against wrongful detention of a person. By using this writ, illegal detention of a person can be prevented by the court.

(2) Mandamus: It is an order given by the court to some subordinate authority to perform an act which falls within its jurisdiction. By issuing this writ, the court commands a public body or an official to perform a public duty.

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

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

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

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

1.6: Role of Human Rights NGOs:

If we look back at the history, we find that the Human Rights NGOs have always played a very active role in various fields like that of cultural promotion, education, health and humanitarian relief in times of natural disasters etc. During the British period, some NGOs came into existence and the numbers kept on increasing with a focus on providing literacy, education and various aspects of social welfare. Some examples are Arya Samaj (1875), The National Council of Women in India etc. However, the present trend of human rights NGOs can be contextualized in the post-emergency period. During the emergency period of 1975 to 1977, there were gross violation of human rights and even the fundamental rights guaranteed by the Constitution were curtailed. Under the plea of preventive detention, thousands of people were illegally detained, arrested and jailed and also tortured and press was severely censored. As a result of such severe repression of civil liberties, many individuals and organizations took up the cause of human rights preservation and these groups got transformed into human rights NGOs once emergency was lifted. The Human Rights NGOs in our country can be classified based on various factors, like, based on the size of the organization, based on scope of work etc. Based on the geographic scope of work, NGOs can be local, state, national, international etc. For example, Human Rights Organization of Manipur, Andhra Pradesh Civil Liberties Committee (APCLC). Based on thematic scope of work, human rights NGOs works on

developmental issues such as health, education, sanitation etc. Some other work on civil liberties issue and other NGOs work on democratic rights issues such as right to health services, consumer protection, right to education, livelihood rights, abolition of corruption, encouraging women's political participation, environmental protection etc. Gandhi Peace Foundation is an example of such an NGO. Some NGOs are again humanitarian in nature as they deals with providing relief and rehabilitation. Examples are Care India, Plan India, Sristi, Human Welfare Foundation etc. Based on structure of NGOs, there can be different pressure groups, trade unions advocating labour rights, agrarian groups advocating for farmer's rights, environmental protection groups etc. There can also be community-based organizations. For example, Apnalaya works on integrated community development in Mumbai slums. There are various other NGOs working on child rights. For example, Butterflies and TULIR are the NGOs working on child rights. National Campaign on Dalit Human Rights (NCDHR) and Navsarjan work on dalit rights issues.

Thus we have discussed above various types of NGOs which works for promotion of human rights. The various functions performed by them are like awareness raising; research, documentation and publication of various issues of rights violations, mobilizing public opinion, providing legal aid and counseling to individual victims, providing humanitarian aid and relief etc. Also, it needs mention here that National Human Rights Commission (NHRC) as set up in 1993 under the protection of human rights Act, also promotes and supports the NGOs and institutions working in the field of human rights. Many human rights NGOs have initiated Public Interest Litigations (PILs) effectively and thereby sought recourse to judicial remedies to protect and promote the rights of the people, particularly the poor and the needy.

1.7: Challenges to the protection of Human Rights and Civil Liberties in India:

We have discussed above the various Constitutional provisions and legal provisions for protection of human rights in our country. But despite these provisions, we face numerous challenges to the protection of Human Rights and Civil Liberties in India. The various issues and challenges are like – caste, gender and religious discrimination, civil liberties violations, exploitation of the vulnerable groups, environmental degradation, gender inequality, extrajudicial killings and custodial deaths, violation of prisoner's rights, terrorism, increasing pollution, corruption in governance etc. The above cited are some of the challenges which stand as an obstacle in the path of protection of Human Rights and Civil Liberties in India. The NGOs working on the civil liberties issues addresses gross violations of human rights such as custodial torture, custodial killings and rapes, extra judicial killings, illegal arrest and detention, condition of under-trial prisoners, abolition of death penalty etc. People's Union for Civil Liberties (PUCL), Andhra Pradesh Civil Liberties Committee (APCLC) and Human Rights Alert are some examples of human rights NGOs in our country which have a clear focus on the civil liberties issues.

Check Your Progress

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

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

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

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

1.8 Summing Up

We have discussed above the various Constitutional framework as well as statutory measures to protect the human rights in India. It is clear from the above discussions that the founding fathers of Indian Constitution have taken various to promote and protect the fundamental human rights of Indians. The Fundamental Rights guaranteed by the Constitution of India have been lauded as the bed-rock of Indian democracy. Without these rights democracy in India would have been meaningless. These rights have the foundation of secularism in India. Adequate steps have been taken to safeguard the interest of the minorities and improve the condition of the socially deprived sections of the society. The Fundamental Duties are also importance because the courts are expected to be guided by the fundamental duties while interpreting the Constitution. The Directive Principles are also of great constitutional importance. Other provisions incorporated in the Constitution also help in protect and promoting the human rights of Indians.

1.9 References and Suggested Readings

1. Bhargava, G. (2001). Human Rights Concern of the future, Kalpaz Publications, Delhi.

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

3. Upadhyay, A. & Adil-ul-Yasin (2004). Human rights. Akansha Publishing House, New Delhi.

4. Basu, D.D. (1997). Introduction to the Constitution of India. (18th edition) Prentice Hall of India Pvt. Ltd., New Delhi.

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UNIT-2

NATIONAL SECURITY AND PROTECTION OF HUMAN RIGHTS IN INDIA

Unit structure:

2.1 Introduction
2.2 Objectives
2.3 Historical Background of National Security in India
2.4 National Security and Human Rights Protection in India
2.5 Conflicting Situations
2.6 National Security and Human Rights – Judicial Intervention
2.7 Protection of Human Rights in India
2.8 Summing Up
2.9 References and Suggested Readings

2.1: Introduction:

The National Security laws are very important for a country to preserve its sovereignty and also essential to safeguard the country from various external and internal threats to the lives and public order in that country. These threats may come in various forms like that of terrorism, separatism, public disorder, other organized crimes etc. These threats not only affect the rights and liberties of the citizens but also threatens the authority and sovereignty of the state. Thus, the national security laws aims at protecting the authority and sovereignty of the state and also provides for human rights protection within the territorial jurisdiction. The threat to the security of a nation may come from two sources – internal and external. When these threats come from the external factors, it becomes very essential to curb these and to protect the sovereignty of the state and also to protect the rights of the citizens. But, the

problem becomes more complicated if these threats are created by internal reasons. The state needs strong and effective national security laws so as to effectively deal with the problems and to provide a remedy when human rights are violated. The challenge lies in achieving a proper balance between ensuring security and protecting individual freedoms. In this unit, we will try to study about National Security and Human Rights protection in India in its entirety.

2.2: Objectives:

After reading this unit, the learners will be able to:-

- *understand* the meaning and need of national security,
- *explain* the historical background of the national security issue in our country,
- *describe* the National Security and Human Rights protection in India,
- *understand* the connection between the concepts of good governance, national security and human rights protection,
- *analyse* various conflicting situations.

2.3: Historical Background of National Security in India:

One of the major aims of these laws is to prevent and punish crimes. With the advancement in information technology and that of internet, the purview of these laws has become even broader. These advancements, no doubt, changed the nature of crimes being committed but at the same time, it has also increased the scope and ability of the state to scrutinize under these laws. It has resulted in increase of the surveillance and scrutiny ability of the state over the daily lives of the citizens.

If we look at the history, we find that the national security laws have been there in existence in our country since the colonial era. During the colonial time, preventive detention laws were enacted so as to preserve the public order, especially at times when the independence movement was at its peak. These laws were used to curb the resistance against the colonial government. When India attained independence, the impact of these laws and their application were discussed in the Constituent Assembly. The Assembly also debated on the various restrictions imposed on the fundamental rights and personal liberty which would be essential to maintain public order, peace and stability. Thereafter, the word 'reasonable' was added to the restrictions imposed. Also, to deal with emergency situation, the provisions regarding emergency were also incorporated in the Constitution. Thus, we see that the gravity of the issue of national security in our country has been recognized from time to time.

After independence, the significance of these legislations was embedded in the attempt to achieve stability in the newly formed state. In recent decades, various other problems erupted like that of issue of terrorism, internal insurgency, border conflicts, cyber threats, communal violence etc. which have intensified the security apparatus of the state. To address these issues, our country has established various security agencies like that of armed forces and paramilitary forces, National Investigation Agency (NIA), Intelligence Bureau (IB) and Research and Analysis Wing (RAW), the Ministry of Defence.

Self-Asking Question

Q. The gravity of the issue of national security in our country has been recognized from time to time. Discuss.

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2.4: National Security and Human Rights Protection in India:

After independence, it was considered important to ensure the fact that the State has enough power so as to protect itself against various secessionist movements and the communal disharmony that erupted as a consequence of partition. Since then, various laws have been enacted from time to time so as to protect the national security and also to maintain public order.

The Indian Penal Code, in its chapter VI defines the various offences against the State, which includes the offences of attempting or conspiring to wage war against the State, assaulting the President of India or Governor of any state and sedition. In addition to these, again the government has enacted some special laws for maintaining the national security. The main objective of these laws have always been to maintain public order and peace as an essential part of national security.

The Preventive Detention Act (PDA) was enacted in Feb 1950 and this law came as a response to the violence which outbroke as a result of partition after the independence. Thereafter, AFSPA (Armed Forces Special Power Act) was also passed in 1958 to regulate and cope with the various secessionist movements and also to deal with insurgency that was taking place in the different parts of the country. It needs mention here that unlike other national security laws, which are mostly used by the police and government officials, under AFSPA, the military and the armed forces have been given power over the civilians of the 'disturbed areas' where this law is in force. Also, the government enacted the Maintenance of Internal Security Act (MISA) in 1971 which had reinforced the preventive detention measures that lapsed with the expiration of the PDA. It is pertinent to mention here that during the period of emergency, the procedural protections provided in MISA were not applicable anymore and this law was used extensively.

It also needs mention here that even our Constitution has provided that the State can put reasonable restrictions under Article 19, if it is demanded for protecting the security of the state. We can cite here the example of Romesh Thappar v/s the state of Madras where the circulation of a weekly magazine was banned under the Maintenance of Public Order Act, 1949, applicable in the state of Madras.

We all know that for enhancing and protecting the fundamental rights as enshrined in the Constitution, restrictions are imposed on the authority of the police and also guidelines are issued which are necessary to discourage the abuse of power and limit the authority of the police. However, the court has refrained from giving such regulations or curbing the authority of the police or the armed forces in the cases pertaining to the national security.

State attempts to achieve set goals and objectives for the welfare of its citizens and these are accomplished through the instrument of government. The government through plans, policies and programmes attempts to deliver the essential services to the people. The United Nations Development Programme defines governance as "the exercise of political, economic and administrative authority in the management of a country's affairs at all levels. Governance comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their political rights, meet their obligations and mediate their differences."

In the recent years, the concept of 'good governance' has been widely regarded as one of the essential requirement for sustainable development. In 1998, World Bank's annual report 'Governance in Asia: From crisis to opportunity', presented a very cogent concept of good governance and elaborated four key components of good governance like, accountability, transparency, predictability and participation. Thus, good governance implies the process of

decision-making and its implementation free from abuse and corruption. According to U.N Economic and Social Commission for Asia and the Pacific (UNESPACP), good governance has eight characteristics, namely, participation, rule of law, transparency, responsiveness, consensus oriented, equity and inclusiveness, effectiveness and efficiency, accountability.

Here, one thing to be noted is that there is a crucial link between governance and internal security in the sense that, if internal security is not maintained, then, governance cannot be delivered well and similarly, internal security cannot be safeguarded if governance is inefficient and corrupt. We know that India has embarked upon the concept of welfare state and the principles of governance of our country are excellently enunciated in the chapter on Directive Principles of State Policy. But, numerous challenges have come to pose as an obstacle in the path of internal security in India and they threaten the body politic like a 'cancer'. The definition of 'internal security' in the Indian context has been given by the Centre-State Relations Committee, which defines 'internal security' as: "security against threats faced by a country within its national borders, either caused by inner political turmoil, or provoked, prompted or proxied by an enemy country, perpetrated even by such groups that use a failed, failing or weak state, causing insurgency, terrorism or any other subversive acts that target innocent citizens, cause animosity between and amongst groups of citizens and communities intended to cause or causing violence, destroy or attempt to destroy public and private establishment." Thus, the source of threats to internal security is not necessarily always internal but it can be external as well. But, the problem lies in the fact that every time, issues of security are discussed, profound ideas on strategy are examined, there is much talk of 'out of the box' solution, some of which are quite grand in their conception. But, strategy has no meaning unless

it incorporates a long-term perspective, a realistic and accurate assessment of the challenge, a clear definition of objectives, a quantified assessment and acquisition of resources required to secure such objectives and the planned deployment of these resources within timeframes.

National security is not just about the military, it also concerns governance and the issues of economy, society and technology are integral parts of the national security system. The modern day concept of security being much broader, it goes beyond the actions of the armed forces and involves all of the government and even the society.

(https://www.business-standard.com/article/news-ians/national-security-also-about-governance-don-t-politicise-actions-of-the-armed-forces-book-review-118082100282_1.html)

Our country gets confronted with so many threats, with so much of intensity at the same time. Many of the problems are affected by one or the other threats, which are not just 'law and order' problems, but they have increasing external dimensions as well. So, national security cannot be confined to the use of the state's coercive power to overcome domestic and external threats. For example, threats to domestic peace and stability may arise from the economic and social grievances. Also, it may be stimulated by external factors. For a modern state operating in an increasingly globalised world, the line between what is domestic and what is external is becoming increasingly blurred. For example, terrorism though a threat to domestic security, may have external links. Also, issues relating to water security may involve dealing with neighbouring countries with which India shares its major rivers. Thus, a combination of domestic and external interventions may be very essential. Moreover, due to technological advancements, cyber security has become a major concern and it is only through developing advanced

technological capabilities that a state has a chance of defending itself against cyberattacks. Also, in a democracy like India, the state's use of advanced digital technologies for surveillance and intelligence gathering must not violate the citizen's right to privacy and freedom of expression. Also, ecological degradation and climatic changes have significant impacts on national security. Moreover, national security may be adversely impacted by the spread of false news by the hostile elements within and outside the country using social media. (https://www.cprindia.org/policy-challenge/7851/foreign-policy-and-national-security)

India's internal security problems arises from a host of factors like, its past history, geography, colonial legacy, sharp social and economic disparities etc. Under our Constitution, public order and police are included in the state list (list II, 7th schedule). Thus, in the normal circumstances, the states are responsible for maintaining internal security within their jurisdictions. But, if we look back, we find that our country has faced various internal security problems since 1947, like, insurgencies, terrorist activities or political extremism. The illegal immigration from Bangladesh has led to a demographic upheaval and generated serious tensions and conflicts in several areas of the NE region. It is to be understood here that only deployment of central police forces, or the army, for carrying out anti-insurgency operations may not always yield the expected outcomes unless and until the entire state administration machinery devotes continuous organized attention to sensitively deal with the root causes which results in outbreak of tension. Another thing to be noted is that internal security cannot be safeguarded unless the governmental apparatus is rid of corruption. (https://idsa.in/jds/2_1_2008_NationalGovernanceandInternalSecurity_NNVohra)

Thus, the safeguarding of national security encompasses strict vigilance to meet every threat to the country from every possible source within the country and from anywhere across its land or sea borders or from across the air space. Our country is still now engulfed with various problems like, the persistence of large scale poverty, illiteracy, unemployment etc. which manifest the serious failures of governance. Various factors have posed as serious challenges in the path of good governance, like, women empowerment issue, growing incidence of violence, corruption, delay in justice, criminalization of politics etc. Today, due to the influence of media, awareness and expectations of the average citizens have been significantly enhanced. Unless urgent and ruthless steps are taken to check maladministration and corruption, the disgust of common people may lead to tension.

The international community has been, over the last two decades, developing a holistic approach to development that stresses the linkage between security, good governance and economic development. The idea that drives this triangular approach is that development can only be achieved in a secure and democratic environment.
(https://www.tandfonline.com/doi/full/10.1080/00220380802582312)

Thus, from the above discussion it is clear that though India has embarked on the path of good governance, still, many factors are posing as obstacles on its mission. Security is something which is intricately connected with governance and both are dependent on each other. Despite achieving success on several counts, there are still many challenges which the governance needs to address. The governance of India's security sector needs to be seen in the context of its external and internal vulnerability.

Stop to Consider

The Legal framework for National Security in India-

- The Unlawful Activities (prevention) Act, 1967 (UAPA):- Main objective is to combat terrorism and unlawful associations.
- The National Security Act (NSA), 1980.
- Armed Forces (Special Powers) Act, 1958.

Self-Asking Question

Q. Security is something which is intricately connected with governance and both are dependent on each other – Discuss.

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2.5: Conflicting Situations:

It has been seen that even after the repealing of the PDA and MISA and also after the emergency period, the legacy of these laws and provisions have been carried forward by the laws and the specific amendments to the laws that are applicable even today. It is true that the objectives of these national security laws are to protect the national security, to prevent threats and harm to the sovereignty of the state and also to maintain public order. However, such objectives become redundant if it is seen that these laws are leading to abuse of power and excessive exploitation. The issue of national

security versus the human liberty has been in debate and conflict because sometimes, it is seen that these laws lead to human rights violations. But these are always justified in the name of protecting the sovereignty of the state and maintaining law and order and preserving the national interest. For example, AFSPA allows military personnel to use force in the disturbed areas, UAPA allows prolonged detention without charges, Surveillance laws might infringe the right to privacy etc. Thus, it has become the need of the hour to streamline the national security jurisprudence with that of the human rights which have evolved over a period of time.

Another problem of these laws is that they seek to punish the people before the crime has been detected. But common law always demands that the guilt of the accused need to be proved beyond any shadow of doubt. But there has been a trend under these laws to punish people before the crime has been committed or their connection to any existing threat has been established. It needs mention here that the national security laws have been enacted always due to some political uprisings. For example: the PDA came as a result of violence in the aftermath of the partition of the country, MISA came in the wake of emergency, National Security Act was enacted and amended when Punjab was experiencing political and separatist uprisings. Similarly, AFSPA was enacted to deal with some other separatist movement and UAPA was amended so as to include the provisions repealed in TADA and POTA after the Mumbai terrorist attacks. Thus, above discussion makes it clear that the national security laws have always been enacted for some special reasons, to deal with threats or circumstances that have arisen. But the problem arises when they remain in existence in some form or the other even when such crisis is over or such threat or circumstance have been resolved.

Thus we can sum up the tension between national security issue and human rights protection under the following points:-

1. We have seen from the above discussion that laws like UAPA and NSA allows detention without trial for extended periods which leads to violation of human rights.

2. AFSPA allows sweeping powers in the disturbed areas. This has led to reports of torture, sexual violence, killings etc.

3. To prevent cybercrimes and terror threats, national security agencies often do surveillance which has raised concerns about the right to privacy.

2.6: National Security and Human Rights – Judicial Intervention:

In a constitutional democracy, the judiciary always plays a significant role in protecting the rights and interests of the people. Sometimes, the provision of the national security laws is unclear, leading to judicial intervention. For example, in A. K. Gopalan v/s State of Madras, the court analysed the difference between the 'due process' and 'procedure established by law'. The Constitutionality of PDA was upheld in the case. Similarly, in the case of A. K. Roy v/s UOI, the court determined the constitutionality of the National Security Act. In the case of Anuradha Bhasin v/s UOI, the court considered the conflict and balance between the security and liberty issues. The court upheld the fact that in case where one has to make a choice between the two, it should not choose either of the extremes but rather should try to balance the both. Thus, we see that courts have occasionally intervened to limit the state power and reinforcing civil liberties. Some more key judgements are ADM

Jabalpur v/s Shivkant Shukla, 1976, Maneka Gandhi v/s UOI, 1978, PUCL v/s UOI, 1997 etc.

2.7 Protection of Human Rights in India:

The State maintains the framework of social order by the implementation of various laws. We can quote here some of the sayings of leading thinkers which can help us understand the role of the state. As Aristotle opined, State came into existence out of the basic necessities of life and continues for the sake of good life. Similarly, Prof. Laski expressed that state is known by the right it maintains. Similarly, Locke opined that end of the state is to remove the obstacles that hinders the development of an individual. The above sayings proves the fact that the main objective of the state is the protection of the rights and liberties of the individuals. Thus, we see that the protection of individual dignity is very essential for social harmony and peace, and the violation of rights can have grave impact on the individual in particular and society in general. Thus, we see that the protection of human rights is a necessity for the development of individual personality and which ultimately contributes towards the national development. The ultimate purpose of the national as well as the international laws is to safeguard the human rights of the people under its jurisdiction. Government of India has always given due consideration to the recognition and protection of human rights. The Constitution of India recognizes these rights of the people. Our Constitution guarantees most of the human rights contained in UDHR. Part III of our Constitution mainly contains civil and political rights whereas, economic, social and cultural rights have been included in Part IV of the constitution. Article 32 guarantees right to constitutional remedies, i.e., right to move Supreme Court to enforce fundamental rights. Provision for redress is provided under Article 32 and 226 of the Constitution. An

aggrieved person can directly approach the Supreme Court or High Courts of the concerned state for the protection of his/her fundamental rights. In such cases, court is empowered to issue the appropriate order, directions and writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari. The rule of 'locus standi' i.e., right to move to the court for redressal of one's own grievances has been relaxed by the judiciary. Now through PIL, public spirited persons can file a writ petition for the enforcement of rights of any other person or other group of persons, if they are unable to invoke the jurisdiction of the court due to reasons of poverty, social and economic disability. Person can even write a letter to the court thereby drawing the attention of the court towards violation of rights. Thus, Public Interest Litigations has been considered as a vital tool of protecting the rights of people in our country. It is pertinent to mention here that The Protection of Human Rights Act, 1993, provides for the better protection of human rights. This Act provides for the composition of National Human Rights Commission. NHRC was thus established under the Protection of Human Rights Act of 1993. The Act of 1993 provides for the establishment of NHRC, State Human Rights Commission in the various states and also the Human Rights Courts at the district level. Even the NGOs are playing remarkable role in the society, regarding planning, monitoring and evaluation of the process of the protection of human rights. There are various instances of NGOs reporting the cases of violation of human rights to the concerned authorities.

All these above provisions help in the protection of human rights in our country. Thus, though national security is of paramount importance, but at the same time, steps are also taken for protection of human rights.

Check Your Progress

Q. What is National Security? To what extent insurgency threatens India's internal stability?

Q. Discuss the role of judiciary in balancing the national security concerns with the protection of the fundamental rights.

Q. Do you think that human rights can ever be compromised in the interest of national security? Substantiate your answer with examples.

2.8: Summing Up:

From the above discussion, it is seen that the basic purpose of the national security laws is to maintain peace and security of the country. Various such measures have been enacted from time to time which provided for national security. Even though there have been various national security laws that have been enacted, repealed and re-enacted from time to time, still in some cases we see the procedural and implementation gaps in such laws. The national security laws should take into consideration not just the preservation of the sovereignty but also the protection of the basic rights of the citizens. It is true that national security is of paramount importance for the survival of the state but it must not come at the cost of human rights. Human rights protection ensures the dignity, freedom and well-being of the people and thus very important component of a democratic society.

2.9: References and Suggested Readings:

Ambasta, B. M. K. (2020). *IMPLICATION OF NATIONAL SECURITY LAWS ON HUMAN RIGHTS* (Doctoral dissertation, NATIONAL LAW SCHOOL OF INDIA UNIVERSITY).

Kalhan, A., Conroy, G. P., Kaushal, M., & Miller, S. S. (2006). Colonial continuities: Human rights, terrorism, and security laws in India. *Colum. J. Asian L.*, *20*, 93.

Babu, B. R. (2016). FRoM NAtIoNAl SECURItY to HUMAN SECURItY. *World Affairs: The Journal of International Issues*, *20*(1), 30-41.

Kaur, A. (2017). Protection of human rights in India: a review. *Jamia Law Journal*, *2*.

Links:-

https://www.tandfonline.com/doi/full/10.1080/00220380802582312

https://idsa.in/jds/2_1_2008_NationalGovernanceandInternalSecurity_NNVohra

https://gsdrc.org/document-library/leading-ahead-yet-far-behind-governance-of-the-security-sector-in-india/

https://shodhganga.inflibnet.ac.in/bitstream/10603/212780/13/publication%201_%20in%20journal_emerald_transforming%20information%20security%20governance%20in%20india.pdf

https://www.cprindia.org/policy-challenge/7851/foreign-policy-and-national-security

https://www.business-standard.com/article/news-ians/national-security-also-about-governance-don-t-politicise-actions-of-the-armed-forces-book-review-118082100282_1.html

https://www.satp.org/satporgtp/ajaisahni/10AS-usi.htm

https://www.jstor.org/stable/45072793?seq=1

http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2023%20Issue2/Version-2/I2302026064.pdf

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UNIT-3
CIVIL LIBERTY MOVEMENTS

Unit Structure:

3.1 Introduction
3.2 Objectives
3.3 History of Civil Liberty Movements in India
3.4 Struggle for civil liberties
3.5 Civil liberties provided by the Constitution of India
3.6 Contemporary Civil Liberty Movements in India
3.7 Summing Up
3.8 References and Suggested Readings

3.1 Introduction:

Rights which are considered necessary for civilized existence are called as civil rights e.g. Right to life, liberty, property, equality before law, right against arbitrary detention etc. are considered civil rights. Civil rights are based on philosophy of liberalism. The basic purpose of civil rights is to check the arbitrary exercise of power by the executive and to maintain the rule of law. Civil liberties encompass a broad range of freedoms essential for the civilized existence of human beings. Political thinkers generally agree on the following key liberties as vital for such an existence:

1. *Personal Liberty*: Protection against arbitrary arrest, detention, and punishment without a fair trial under the rule of law.
2. *Freedom of Movement*: The right to move freely within the territory of a state.
3. *Property Security*: Safeguarding private property.

4. *Freedom of Conscience*: The right to follow and practice one's religion, including atheism.
5. *Freedom of Expression*: The liberty to hold and express opinions, as well as the right to assemble and maintain a free press.

The realization of these liberties depends on the nature of the state. True liberty exists only in regimes that uphold and respect rights, while oppressive and undemocratic systems often disregard human rights. Consequently, civil liberties movements play a significant role in the broader human rights movement. These movements challenge authoritarian or totalitarian regimes, whether domestic or foreign. In doing so, they inherently become political, though their political nature may not always be explicitly stated.

Unlike freedom movements, which are overtly political and directed against foreign rule, civil liberties movements generally aim for transformation within the legal framework of existing regimes. They employ strategies such as petitions and persuasion to mobilize support. At times, rulers may concede to their demands if reason prevails. However, if rulers perceive these movements as a threat, they may respond with repression, thus intensifying the political nature of the movement. Civil liberties movements are broader in scope as they address issues arising from both native and foreign governance. These movements often precede political struggles but do not always evolve into them—especially if rulers wisely address the concerns raised by activists.

3.2 Objectives:

This unit aims to analyze the evolution, significance, and impact of civil liberty movements across different historical and geopolitical contexts. After reading this unit, the learners will be able to—

- *examine* how these movements have shaped democratic governance, human rights, and legal frameworks by challenging oppressive systems and advocating for individual freedoms,
- *explore* the key civil liberty movements, such as the Civil Rights Movement in the United States, anti-apartheid struggles in South Africa, and pro-democracy protests worldwide,
- *highlights* the role of activism, legal battles, and social reforms in advancing civil liberties,
- *delve* into the philosophical foundations of civil liberties, tracing their origins in Enlightenment thought and their codification in constitutional frameworks, international treaties, and human rights charters,
- *investigate* the strategies employed by activists, including nonviolent resistance, legal advocacy, and grassroots mobilization, while also addressing the challenges they face, such as government repression, ideological opposition, and societal inertia,
- *assess* the contemporary relevance of civil liberty movements in the digital age, exploring the impact of technology, social media, and surveillance on activism,
- *provide* a comprehensive understanding of how civil liberty movements continue to shape societies and influence global discussions on freedom, justice, and equality.

3.3. History of Civil Liberty Movements in India

Civil liberty movements in India have played a significant role in shaping the nation's socio-political fabric. These movements, rooted in resistance to oppression and the quest for justice, have evolved

over time, addressing issues ranging from colonial subjugation to socio-economic inequalities.

Colonial Era: Foundations of Liberty Movements

The struggle for civil liberties in India began during the colonial period when the British government imposed draconian laws that curtailed freedoms of expression, association, and assembly. Early movements, such as the Indian National Congress's formation in 1885, sought constitutional reforms and self-governance. The 1905 Swadeshi Movement, triggered by the partition of Bengal, was among the first large-scale civil resistance movements emphasizing economic self-reliance and freedom. Leaders like Bal Gangadhar Tilak, Annie Besant, and Mahatma Gandhi were instrumental in shaping civil liberty discourse. Gandhi's non-violent civil disobedience campaigns, including the Non-Cooperation Movement (1920), Salt March (1930), and Quit India Movement (1942), directly challenged British authoritarianism while mobilizing millions for the cause of personal and collective freedoms.

Post-Independence: Protecting Constitutional Liberties

After independence in 1947, India adopted a democratic constitution in 1950, guaranteeing fundamental rights such as freedom of speech, religion, and equality. However, civil liberty movements continued, as these rights were often challenged by socio-political realities.

The Emergency (1975-1977) declared by Prime Minister Indira Gandhi marked one of the darkest periods for civil liberties. During this time, constitutional rights were suspended, the press was censored, and dissent was stifled. The opposition, led by leaders like

Jayaprakash Narayan, launched a nationwide movement against authoritarianism, ultimately restoring democracy.

Socio-Economic and Minority Rights Movements

Post-independence India also witnessed movements advocating for marginalized communities' rights. The Dalit Rights Movement, led by figures like B.R. Ambedkar, sought to eradicate caste-based discrimination. Similarly, the women's movement gained momentum in the 1970s, focusing on issues like dowry, domestic violence, and workplace equality.

The tribal rights movement has also been pivotal, with Adivasis resisting displacement due to industrial projects and advocating for autonomy under the Fifth and Sixth Schedules of the Constitution. Movements like the Chipko Movement (1970s) combined ecological concerns with civil liberties, highlighting rural communities' right to livelihood and environmental justice.

Contemporary Civil Liberty Movements

In recent years, movements like the Right to Information (RTI) campaign, Anti-Corruption Movement (2011) led by Anna Hazare, and protests against controversial laws like the Citizenship Amendment Act (CAA) have spotlighted the enduring relevance of civil liberty struggles. Activists continue to use legal frameworks, peaceful protests, and digital platforms to demand accountability and transparency.

3.4. Struggle for Civil Liberties

Despite originating from Britain's liberal traditions, British colonial rule justified the exploitation of India by arguing that the principles of liberty were not applicable to what they considered backward societies. They endorsed a despotic style of governance, treating Indians as barbarians. As a result, Indians suffered not only economic exploitation but were also deprived of fundamental rights such as equality, justice, and dignity. Law enforcement agencies, particularly the police, were instrumental in suppressing individual rights. Early social reformers and nationalists, though not outrightly opposed to British rule, were deeply concerned about the denial of civil liberties. From Raja Ram Mohan Roy to Mahatma Gandhi, the struggle for civil rights was consistently raised through various forums, movements, and agitations.

Fight for Equal Justice- In 1861, the British Indian Government established an Executive Council for the Governor-General and provincial Governors, which initially included only a few nominated non-official Indian members. However, with the enactment of the Indian Councils Act of 1892, their role expanded slightly. Despite this, the Council largely remained submissive, approving repressive laws such as the Vernacular Press Act and the Indian Arms Act of 1878 during Lord Lytton’s administration.

An exception to this trend emerged with the Criminal Procedure Code (Amendment) Bill of 1873, commonly known as the Ilbert Bill. Introduced by the liberal Governor-General Lord Ripon, the bill sought to remove a major legal disparity: until then, European (British) subjects were tried exclusively by European judges. The Ilbert Bill aimed to end this privilege, allowing Indian judges to preside over cases involving British defendants.

However, the bill faced intense resistance from the European community in India, leading the government to amend it. The revised bill granted European defendants the right to demand a jury trial when appearing before a district magistrate or session court. Indian members of the Council, who had initially supported the bill, opposed the amendment. Syed Amir Ali reminded the Council of Queen Victoria's 1858 Proclamation, which had promised equal justice for all subjects. The Maharaja of Darbhanga argued that the right to a jury trial should be extended to Indians as well. Despite these objections, the amended bill was passed, revealing both the limitations of the empire's so-called liberal values and its susceptibility to organized pressure from the European community.

Fight against repression-The Indian Councils Act of 1892 introduced a system where some members were nominated after being elected by a highly restricted electorate. Despite these limitations, these members had enough influence to openly criticize government policies. One of the most vocal critics was Pherozeshah Mehta, who joined the Council in 1895 and strongly defended Indian civil liberties.

A major controversy arose when the government proposed an amendment to the Police Act of 1861. This amendment empowered authorities to selectively impose the costs of maintaining a punitive police force on specific individuals or groups in disturbed districts. It also allowed the government to levy fines on absentee property owners if their actions were deemed to contribute to local unrest. Additionally, magistrates were given arbitrary powers, such as regulating processions. Mehta condemned the bill, calling it "imperial, retrograde, open to abuse, and demoralizing." Despite fierce criticism from Mehta, G.R. Chitnavis, the Maharaja of Darbhanga, and others, their proposed amendments were defeated by the government's majority. Following the 1905 anti-partition

agitations in Bengal, the government introduced the Prevention of Seditious Meetings Bill in 1907 during its Simla session. Rash Behari Ghosh opposed the bill, criticizing the government's excessive tendency to perceive threats. When, in 1908-09, nine Bengali youth were deported for alleged involvement in revolutionary activities, Gopal Krishna Gokhale advocated for their cases to be reconsidered, arguing that their release would be both an act of justice and a positive step ahead of the upcoming Morley-Minto reforms. However, the Morley-Minto reforms failed to bring any significant improvements in civil liberties. In the very first session of the reformed Council, the government introduced a bill extending the Prevention of Seditious Meetings Act, 1907, by five months. Gokhale and other Indian representatives strongly opposed the bill, arguing that such harsh measures were unnecessary in a relatively calm political environment. They warned that the law granted excessive powers to the executive, which could be misused to stifle public activities. Sachchidananda Sinha also opposed the bill, pointing out that it would curtail freedom of discussion and allow unwarranted police interference, creating public frustration. Despite these objections, the bill was passed.

In 1913, Surendra Nath Banerjea, a member of the Imperial Legislative Council, proposed a resolution advocating for the separation of executive and judicial functions in the administration of criminal justice. He also pushed for amendments to the Press Act of 1910, which had granted sweeping powers to the police. Later, he opposed the Criminal Law (Amendment) Bill of 1915 on similar grounds, continuing the long struggle against laws that restricted civil liberties in British India.

The Rowlatt Bill Agitation- Despite their differences in political strategy, Moderates, Liberals, Extremists, and Gandhians were united in their fight for civil liberties. This was evident in their

collective opposition to the Criminal Law (Emergency Powers) Bill, commonly known as the Rowlatt Bill. Following the bill's passage, Mahatma Gandhi launched the first nationwide Satyagraha.

In September 1918, the Sedition Committee (Rowlatt Committee) submitted its report on revolutionary violence in India to the Imperial Legislative Council. Indian members strongly opposed the report's recommendations. Mohammad Ali Jinnah criticized the government for formulating policies without consulting Indian representatives. When the government introduced the Rowlatt Bill on 6 February 1919, the opposition leader from the Congress sought to delay its consideration by six months, effectively attempting to block it. Several prominent Indian leaders, including V.S. Srinivasa Sastri, Tej Bahadur Sapru, and Madan Mohan Malaviya, condemned the bill for its blatant disregard for civil liberties. Jinnah, Raja Rampal Singh, Sitanath Ray, and Surendra Nath Banerjee also opposed it, warning that it would stifle political activity and suppress public engagement. Despite unanimous opposition from non-official Indian members, the government passed the bill on 18 March 1919. In protest, Jinnah resigned from the Council on 28 March with a strongly worded letter to the Viceroy.

The passage of the Rowlatt Bill marked a turning point in Indian politics, bringing civil liberties to the forefront of political discourse. The Indian National Congress opposed the Montagu-Chelmsford Reforms and boycotted the 1920 elections, later returning in 1924 as the Swaraj Party. During periods of legislative boycott, Moderates and Independents dominated non-official membership but continued their fight for civil liberties. On 14 February 1921, Srinivasa Sastri moved a resolution in the Council of State calling for an early review of repressive laws, arguing that their existence fueled unrest. Some members sought an immediate repeal of these laws, but Sastri's resolution was passed without amendments. On 3 March

1921, Sastri proposed another resolution seeking strict conditions for the use of firearms by law enforcement, including mandatory public inquiries into incidents of police firing. Though this resolution was rejected, it prompted Sir Tej Bahadur Sapru, the government's Law Member, to repeal several oppressive laws, including the Newspaper (Incitement of Offences) Act, 1908, the Indian Criminal Law (Amendment) Act, 1908, and the Press Act, 1910.

Despite recommendations from the Repressive Laws Committee to repeal several laws, Congress and Independent members of the Central Legislative Assembly continued to resist their continuation. In October 1924, the government issued the Bengal Criminal Law Amendment Ordinance, leading to the arrest of political leaders such as Subhas Chandra Bose. Widespread public outrage followed. On 25 January 1925, Doraiswamy Iyengar moved a resolution seeking to replace the ordinance with a legislative act, receiving support from both Congress and Independents. The government was defeated in the Assembly. Shortly after, Vithalbhai Patel introduced a bill to repeal oppressive laws such as the Bengal State Prisoners Regulation, 1818, the State Prisoners Act, 1850, and the Prevention of Seditious Meetings Act, 1911. With support from Jinnah and other Independent leaders, the bill passed with a large majority. In January 1926, Maulvi Mohammad Shafee successfully moved a resolution calling for the release of political prisoners, backed by C.S. Ranga Iyer and Lala Lajpat Rai. The following month, Amarnath Dutt introduced a bill to repeal the Bengal Regulation of 1824, receiving strong emotional support from T.C. Goswami of Bengal. However, due to the abstention of some Swarajist (Congress) members, the bill was narrowly defeated.

These legislative battles highlighted the continued resistance against colonial repression and the persistent demand for civil liberties in British India.

Communists and the Revolutionary Activities- In 1928, the British government, concerned about the growing influence of communism in India, introduced the Public Safety Bill in the Central Legislative Assembly. This move created a sharp ideological divide among Indian legislators. The government secured backing from zamindars and several Muslim members, while M.R. Jayakar, a Liberal who did not support communism, opposed the bill on the grounds of individual liberty and concerns over executive overreach. Mohammad Ali Jinnah, who was residing in England at the time, was not present in the legislature. Despite opposition, the government narrowly won the vote, and the bill was sent to a select committee.

When the bill returned to the Assembly, debates became even more intense, with the House being evenly split. Ultimately, the bill was defeated by the casting vote of President Vithalbhai Patel. Determined to push it through, the government quickly introduced a new version of the bill, this time gathering more support. Even industrialist G.D. Birla opposed it, but despite resistance, the bill was once again sent to the select committee.

Before the committee could submit its report, the government arrested 31 communists and trade unionists, leading to the infamous Meerut Conspiracy Case. This sparked widespread unrest across the country. When the Public Safety Bill was reintroduced in the Assembly, M.R. Jayakar pointed out its direct connection to the Meerut case and argued that discussing the bill while the case was sub judice (under judicial consideration) would be improper. The government temporarily withdrew the bill but soon reintroduced it, claiming that there was no legal restriction against discussing it.

A legal battle followed. Jinnah, from England, sent a message asserting that the President could not lawfully block the bill's discussion. However, Vithalbhai Patel ruled that debating the bill while the related case was still in court would constitute misuse of legislative power, and he effectively blocked further discussion. In retaliation, the government bypassed the legislature and enforced the bill's provisions through an ordinance.

Shortly afterward, another major confrontation occurred when Bhagat Singh and his associates were arrested in the Lahore Conspiracy Case. The British authorities treated them as ordinary criminals, rejecting their demand to be recognized as political prisoners. In protest, they launched a hunger strike, which gained massive public support. Despite nationwide outcry, the government refused to concede. On 13 September 1929, Jatin Das succumbed to the hunger strike after 64 days, further fueling outrage. Motilal Nehru raised the issue in the Legislative Assembly and moved an adjournment motion, which was passed after a heated debate, leading to a formal censure of the government.

3.5. Civil Liberties Provided by The Constitution of India

The fundamental rights under part three of the Indian constitution guarantee liberties for the common people to lead their lives in peace. There are six fundamental rights in total which include:

Right to Equality - It is outlined in Articles 14-18 and guarantees that everyone is treated equally under the law. Discrimination on the basis of religion, ethnicity, caste, gender, or place of birth is forbidden by the right to equality.

Right to freedom - Every citizen of India has the freedom to live and work anywhere on its territory thanks to this privilege.

Individual rights are additionally safeguarded by the constitution from unreasonable state action.

Right against exploitation - Articles 23 and 24 of the Indian Constitution establish the right against exploitation. These crucial fundamental rights ensure that no individual is subjected to any form of forced labour.

Right to freedom of religion - Articles 25, 26, 27, and 28 of the Indian Constitution provide a clear description of the right to freedom of religion before the State, with no religion being granted priority over another. Any religion that a citizen chooses to preach, practise, and spread is free.

Cultural and education rights - Every member of society has the fundamental right to preserve their own languages and cultures, including the access to an education. Articles 29 and 30 of the Indian Constitution contain them.

Rights to constitutional remedies - Article 32 of the Indian Constitution guarantees citizens of India the fundamental right to Constitutional Remedies. It grants people the ability to petition a state's Supreme Court or High Court to have their fundamental rights upheld.

Stop to Consider

PUDR and PUCL

People's Union for Democratic Rights (PUDR) is a Delhi-based civil liberties and democratic rights organization founded in 1980. It came into existence in 1977 as the Delhi unit of a larger national forum, PUCLDR, and became PUDR on 1 February, 1981. PUDR aims to defend and promote the fundamental rights guaranteed by the Indian Constitution, especially for marginalized and oppressed groups. The organization conducts investigations into human rights

violations, including custodial deaths, police atrocities, communal violence, labor exploitation, and violations in conflict zones. It produces detailed fact-finding reports, legal interventions, and public campaigns to raise awareness and hold state institutions accountable. PUDR operates independently of political parties and functions through a collective and voluntary model, emphasizing democratic decision-making. Its work often challenges the misuse of state power, arbitrary arrests, sedition laws, and other repressive legal mechanisms. PUDR is also known for taking up causes that mainstream media or political entities may avoid, including the rights of political prisoners and the impact of counter-insurgency operations. Through its consistent advocacy, legal activism, and grassroots engagement, PUDR plays a vital role in India's civil society landscape, working to safeguard the democratic rights of all citizens, particularly those rendered voiceless by structural injustices.

People's Union for Civil Liberties (PUCL) is one of India's foremost human rights organizations, established in 1976 by veteran socialist leader Jayaprakash Narayan during the Emergency period. Originally known as the People's Union for Civil Liberties and Democratic Rights, it was later renamed PUCL to function as a non-partisan body committed to upholding civil liberties for all, regardless of political ideology. PUCL works to defend and promote the civil and constitutional rights guaranteed to Indian citizens, particularly the right to life, liberty, equality, and freedom of expression. It addresses a wide range of issues including police brutality, custodial deaths, communal violence, suppression of dissent, and state excesses. The organization is known for conducting independent fact-finding missions, publishing reports, filing public interest litigations, and creating public awareness around human rights issues. PUCL maintains branches in various

states and encourages voluntary participation by lawyers, journalists, academics, and activists. PUCL operates autonomously and distances itself from electoral politics, allowing it to maintain credibility as an independent watchdog. Over the decades, it has played a crucial role in resisting authoritarianism, advocating for prisoners' rights, and defending free speech, thereby strengthening India's democratic framework and commitment to justice and human dignity.

3.6. Contemporary Civil Liberty Movements in India

Digital Rights and Free Speech Movements

In recent years, India has witnessed growing activism around digital rights and free speech, driven by concerns over government surveillance, internet restrictions, and data privacy. With the rapid expansion of digital infrastructure, issues related to internet freedom and state control over digital spaces have become central to civil liberty movements.

One of the major areas of contention has been the increasing use of surveillance technologies and data collection mechanisms. The Aarogya Setu app, launched during the COVID-19 pandemic, was at the centre of controversy regarding data privacy. While the government promoted it as a necessary tool for contact tracing, critics pointed out that it lacked transparency regarding data collection, retention, and sharing. The absence of clear opt-out mechanisms and independent oversight raised concerns that the app could serve as a tool for mass surveillance. Digital rights groups such as the Internet Freedom Foundation (IFF) campaigned for stronger privacy safeguards and called for the government to ensure that citizens' data was protected. Another major surveillance-related controversy emerged with the Pegasus spyware revelations in 2021.

Investigative reports revealed that the Israeli spyware was allegedly used to target journalists, activists, and opposition leaders in India. Pegasus, known for its ability to infiltrate mobile phones through zero-click attacks, raised serious questions about state surveillance and the lack of legal accountability. The Supreme Court ordered an independent inquiry into the allegations, but activists remained concerned about the broader implications of government surveillance, particularly in the absence of a strong data protection framework.

India's biometric identification system, Aadhaar, has also been a focal point of digital rights activism. While initially introduced as a means to streamline welfare distribution, Aadhaar's mandatory linkage with essential services, including banking and telecommunications, led to fears of exclusion and data vulnerability. Reports of security breaches and personal data being leaked online further fueled concerns. The Supreme Court's 2017 judgment recognizing privacy as a fundamental right was seen as a victory, but critics argue that Aadhaar-related policies still undermine privacy protections. In addition to surveillance and data privacy, India has seen widespread campaigns against internet shutdowns. The country has recorded the highest number of internet shutdowns globally in recent years, with governments frequently cutting off access during protests, riots, or political unrest. The most notable example was the communication blackout imposed in Jammu and Kashmir after the revocation of Article 370 in August 2019. The region remained without internet access for 213 days, making it the longest internet shutdown in a democracy. Even after partial restoration, restrictions on high-speed mobile data continued, severely impacting journalism, education, and healthcare services. The Supreme Court later ruled that internet access is a fundamental

right and directed the government to review shutdown orders, but restrictions have continued in various forms.

Manipur also witnessed prolonged internet shutdowns in 2023 during ethnic violence, leaving citizens unable to communicate or access essential information. Similar blackouts have been imposed in Punjab, Rajasthan, and Uttar Pradesh, often justified as preventive measures to maintain law and order. However, civil liberties organizations argue that these shutdowns disproportionately affect marginalized communities and violate constitutional rights.

Legal challenges and advocacy efforts have sought to hold authorities accountable for arbitrary shutdowns. The case of Anuradha Bhasin v. Union of India in 2020 marked an important moment when the Supreme Court ruled that restrictions on internet access must be proportional and justified. Civil society groups such as SFLC.in have continued to track internet shutdowns and push for greater transparency in government decision-making. Despite these efforts, challenges remain. India still lacks a robust data protection law that adequately addresses concerns over surveillance and digital rights. The recently enacted Digital Personal Data Protection Act (2023) has been criticized for granting broad exemptions to government agencies, potentially enabling unchecked surveillance. Moreover, emerging technologies like artificial intelligence-based facial recognition systems are being deployed without clear legal safeguards, raising fears of an expanding surveillance state.

Activists and civil society groups continue to demand stronger legal protections for digital rights, greater oversight of government surveillance programs, and a more transparent approach to internet governance. As digital spaces become increasingly central to political and social life, the fight for internet freedom and privacy in India remains a crucial part of the broader struggle for civil liberties.

Protest Movements for Democratic Rights

In recent years, India has witnessed large-scale protest movements that have redefined democratic resistance in the country. Among them, the Anti-CAA-NRC-NPR protests and the Farmers' Protests emerged as two of the most significant expressions of dissent, challenging government policies that many believed threatened constitutional values and economic justice. Both movements mobilized vast sections of the population and were marked by prolonged sit-ins, mass gatherings, and demands for greater accountability from the state.

The protests against the Citizenship Amendment Act (CAA), National Register of Citizens (NRC), and National Population Register (NPR) began in late 2019, after the Indian Parliament passed the CAA in December of that year. This law aimed to provide fast-track citizenship to persecuted religious minorities from Pakistan, Bangladesh, and Afghanistan, but it explicitly excluded Muslims. Many saw this as a direct assault on India's secular framework and feared that, when combined with the NRC, it could lead to the disenfranchisement of Indian Muslims. The movement quickly gained momentum, with student groups, civil rights organizations, and ordinary citizens joining in. Universities like Jamia Millia Islamia, Aligarh Muslim University, and Jawaharlal Nehru University became epicentres of the protests, with students facing violent crackdowns from police. One of the most iconic symbols of the movement was the Shaheen Bagh protest in Delhi, where women, many of them Muslim, staged a continuous sit-in for over three months. Their peaceful resistance inspired similar protests across the country, as demonstrators called for the repeal of the CAA and opposed the discriminatory nature of the NRC and NPR. The government, however, responded with repression, deploying police forces, shutting down the internet in protest-hit

areas, and arresting activists under stringent laws such as the Unlawful Activities (Prevention) Act (UAPA). The protests eventually lost momentum due to the COVID-19 pandemic and the violent communal riots in Delhi in February 2020, which disproportionately affected Muslims. Despite this, the movement left a lasting impact on Indian political discourse, raising critical questions about citizenship, secularism, and the state's treatment of minorities.

Around the same time, another movement began to take shape, this time led by farmers. The Farmers' Protests erupted in response to three farm laws passed by the government in 2020, which aimed to deregulate agricultural markets and encourage private sector involvement. Farmers, particularly from Punjab, Haryana, and Uttar Pradesh, feared that these laws would dismantle the Minimum Support Price (MSP) system and leave them at the mercy of large corporations. In November 2020, thousands of farmers marched towards Delhi, setting up protest camps at its borders. Despite extreme weather conditions and repeated attempts by the government to discredit them, they remained steadfast in their demand for the repeal of the laws. The protest sites at Singhu, Tikri, and Ghazipur became centers of resistance, where farmers organized food distribution, educational programs, and cultural performances, transforming their movement into a broader assertion of democratic rights. Despite facing tear gas, water cannons, barricades, and defamation in the media, the farmers' resilience paid off. After a year of continuous protests, Prime Minister Narendra Modi announced in November 2021 that the government would repeal the laws. This marked a rare and significant victory for democratic protest in India, proving that sustained public pressure could lead to policy reversals. However, farmers continued to demand legal

guarantees for MSP and protections against corporate exploitation, ensuring that their struggle did not end with the repeal of the laws.

Both the Anti-CAA protests and the Farmers' Protests exemplified the power of collective resistance in India. While one movement fought for constitutional secularism and minority rights, the other defended economic justice and participatory democracy. In both cases, ordinary citizens took to the streets to challenge the government's policies and assert their rights. Despite state repression, these movements proved that dissent remains a fundamental part of Indian democracy, capable of shaping political discourse and compelling the government to respond.

Movements for Gender and LGBTQ+ Rights

In recent years, movements advocating for gender and LGBTQ+ rights in India have gained significant momentum, reshaping social discourse and challenging entrenched norms. These movements, rooted in demands for equality, dignity, and legal recognition, have sparked widespread conversations on issues ranging from workplace harassment to marriage equality and menstrual rights.

The #MeToo movement in India, which gained traction in 2018, became a defining moment in the fight against workplace harassment and gender-based violence. Inspired by the global wave of survivors sharing their experiences, Indian women from various fields, including journalism, entertainment, academia, and politics, came forward with allegations against powerful men. The movement exposed the deep-seated culture of misogyny and impunity that silenced survivors and protected perpetrators. It led to high-profile resignations and legal actions, forcing organizations to re-examine their internal policies on sexual harassment. Although the momentum has slowed over time, #MeToo fundamentally

altered the conversation around consent and accountability, making it harder for institutions to ignore the voices of survivors.

Parallel to the fight for gender justice, India's LGBTQ+ rights movement witnessed a landmark victory in 2018 when the Supreme Court decriminalized homosexuality by striking down Section 377 of the Indian Penal Code. The judgment was celebrated as a historic moment for the community, affirming the fundamental rights of LGBTQ+ individuals. However, the battle for full equality continues, with activists now demanding the legalization of same-sex marriage, inheritance rights, and protections against workplace discrimination. While corporate India has begun embracing inclusivity with policies that recognize LGBTQ+ employees, legal recognition remains a challenge. In 2023, the Supreme Court declined to legalize same-sex marriage, citing that the issue should be addressed by the legislature. This decision underscored the ongoing struggle for rights, as activists continue to push for policy changes that ensure equal treatment under the law.

Alongside gender and LGBTQ+ rights, menstrual health and period poverty have emerged as crucial areas of advocacy. For years, menstruation was shrouded in stigma, leading to a lack of access to sanitary products, especially in rural areas. Activists have worked to break taboos surrounding menstruation while also advocating for better menstrual hygiene policies. A major victory was achieved in 2018 when India scrapped the Goods and Services Tax (GST) on sanitary pads after prolonged protests and campaigns highlighting the economic burden on menstruators. Despite this progress, access to menstrual hygiene products remains a challenge, particularly for those in low-income communities. Organizations and grassroots activists continue to push for free distribution of sanitary products in schools and workplaces, as well as education programs to combat menstrual stigma.

These movements reflect a larger push toward a more inclusive and equitable society. While significant strides have been made in addressing workplace harassment, LGBTQ+ rights, and menstrual health, legal and social barriers remain. Activists and civil society groups continue to demand stronger policies, legal protections, and cultural shifts to ensure that all individuals, regardless of gender or sexual orientation, can live with dignity and equality. The growing visibility of these movements signals a transformation in India's socio-political landscape, where issues once considered taboo are now central to public discourse and policy debates.

Dalit and Adivasi Rights Movements

The Dalit and Adivasi rights movements in India have been shaped by long-standing struggles against caste and social oppression, as well as by the fight for land and resource rights. These movements reflect the ongoing resistance of marginalized communities against systemic discrimination and state repression. Among the most significant of these movements in recent years is the Bhima Koregaon movement, which has become a symbol of Dalit assertion and the state's increasing clampdown on dissent.

The Bhima Koregaon movement gained national attention in 2018, following violent clashes during the annual commemoration of the 1818 battle at Bhima Koregaon in Maharashtra. This battle, in which Dalit soldiers fighting for the British defeated the upper-caste Peshwa forces, has long been celebrated by Dalits as a moment of resistance against Brahminical oppression. However, during the 2018 gathering, the event was marred by violence when right-wing groups allegedly attacked Dalit participants, leading to widespread protests across Maharashtra. In the aftermath, several activists, including scholars, lawyers, and human rights defenders, were

arrested under the Unlawful Activities (Prevention) Act (UAPA) for allegedly inciting violence and having links to banned Maoist organizations. The arrests, which included figures such as Sudha Bharadwaj, Anand Teltumbde, and Gautam Navlakha, were widely criticized as politically motivated attempts to suppress Dalit activism and curb democratic dissent. Many of the accused have remained imprisoned for years without trial, raising concerns about state repression and the misuse of anti-terror laws against marginalized voices. The Bhima Koregaon movement has since evolved into a broader struggle for civil liberties, caste justice, and the right to dissent, drawing attention to the shrinking democratic space in India.

Parallel to the assertion of Dalit rights, Adivasi communities across India have been engaged in a persistent fight for land and forest rights. The Forest Rights Movement, which gained momentum after the passage of the Forest Rights Act (FRA) in 2006, remains a crucial battleground for indigenous rights. The FRA was intended to recognize the traditional land rights of Adivasi and forest-dwelling communities, granting them ownership over the land they have lived on for generations. However, implementation has been fraught with challenges, as corporate interests and state authorities have frequently undermined the law. In many cases, Adivasi communities have been forcibly evicted from their lands in the name of development projects, mining, and industrial expansion, often without due process or rehabilitation.

Resistance against corporate land acquisitions has been particularly intense in states like Chhattisgarh, Jharkhand, Odisha, and Madhya Pradesh, where large-scale mining and infrastructure projects threaten Adivasi livelihoods. Movements such as those in Niyamgiri, where the Dongria Kondh tribe successfully resisted bauxite mining by Vedanta, have set powerful precedents for

indigenous land struggles. However, despite legal protections, Adivasi communities continue to face displacement, police violence, and criminalization of their protests. The government's push for privatization and resource extraction has further aggravated conflicts over land, leading to clashes between security forces and Adivasi resistance groups. The branding of Adivasi activists as "Maoists" has become a common tactic to delegitimize their struggles and justify crackdowns on their movements.

Both the Bhima Koregaon movement and the Forest Rights Movement highlight the deep-rooted inequalities in Indian society and the state's growing intolerance toward grassroots resistance. While Dalits fight for social and political recognition against caste oppression, Adivasis continue to battle for their right to land and survival. These movements underscore the broader struggles for justice, dignity, and democratic rights in India, making them critical forces in the country's socio-political landscape.

Workers' and Gig Economy Rights Movements

Workers' rights movements in India have gained prominence in recent years, driven by growing concerns over labour exploitation, precarious employment conditions, and the impact of privatization. Traditional trade unions and emerging gig workers' collectives have played a central role in demanding better wages, job security, and social protections. The rise of digital platforms and the government's labour reforms have further intensified labour struggles, leading to widespread protests and strikes.

The gig economy, which includes food delivery workers, cab drivers, and other app-based service providers, has witnessed increasing mobilization since 2020. Gig workers, who are often classified as independent contractors rather than employees, face long working hours, fluctuating earnings, and the constant threat of

deactivation from platforms like Swiggy, Zomato, Ola, and Uber. Without formal employment status, they are denied basic labor rights such as health benefits, job security, and social security protections. The COVID-19 pandemic exposed the vulnerabilities of gig workers, as many were forced to continue working without adequate safety measures or financial support. This led to a series of protests across major cities, where workers demanded fair wages, better working conditions, and recognition as formal employees. Organizations such as the Indian Federation of App-Based Transport Workers (IFAT) and the United Food Delivery Partners' Union (UFDPU) have been at the forefront of these movements, advocating for legal recognition and inclusion in social security schemes. While some platforms have responded by introducing accident insurance and limited benefits, the broader fight for labour rights in the gig economy remains ongoing.

At the same time, traditional labour unions have been resisting changes in labour laws and the privatization of public sector units. The Indian government introduced major labour reforms in recent years, consolidating 44 labour laws into four new labour codes. While these changes were presented as an attempt to simplify labour regulations, trade unions argue that they dilute workers' rights by making it easier for companies to hire and fire employees, weakening collective bargaining, and reducing protections against exploitative contracts. The dilution of laws governing working hours, social security, and industrial disputes has sparked multiple nationwide strikes. Workers from various sectors, including banking, coal mining, railways, and manufacturing, have participated in these strikes, often shutting down economic activities in protest against policies perceived as favouring corporate interests over labour rights.

The privatization of public sector enterprises has been another major point of contention. The sale of state-owned companies, including banks, steel plants, and railways, has led to mass layoffs and uncertainty for workers. Trade unions have organized repeated strikes against these policies, arguing that privatization not only threatens job security but also undermines the role of public sector institutions in ensuring equitable economic growth. The resistance from workers has, in some cases, forced the government to delay privatization plans, but the larger trend of reducing state involvement in key industries continues.

Both the gig workers' protests and traditional labour strikes highlight the evolving nature of labour struggles in India. While gig economy workers are fighting for recognition and inclusion in labour laws, trade unions continue their battle against deregulation and privatization. These movements underscore the urgent need for stronger labour protections in an economy that is increasingly shifting toward informal and contract-based employment. Despite facing resistance from both corporations and the state, workers continue to organize and demand their rights, ensuring that labour issues remain a critical part of India's socio-political discourse.

Environmental and Climate Justice Movements

Environmental and climate justice movements in India have gained momentum in response to rapid urbanization, deforestation, and large-scale infrastructure projects that threaten ecosystems and local communities. These movements, often led by local activists, indigenous communities, and environmentalists, seek to protect forests, water bodies, and biodiversity from state-backed developmental projects and corporate exploitation. While some have succeeded in halting or reversing environmentally destructive policies, others continue to fight against powerful political and economic interests.

The Save Aarey movement in Mumbai became one of the most high-profile environmental protests in recent years. It emerged in 2019 when the Maharashtra government proposed clearing a portion of the Aarey forest to build a metro car shed. Aarey, often referred to as the green lungs of Mumbai, is home to diverse flora and fauna, as well as indigenous Adivasi communities. The movement saw massive participation from citizens, activists, and students, who staged peaceful demonstrations, tree-hugging protests, and legal battles against the deforestation plan. The government, however, proceeded with the cutting of trees, triggering widespread outrage. In 2022, after a change in government, the project was relocated, marking a victory for environmental activism in the city. However, concerns remain over continued encroachments and the need for stronger legal protections for urban forests. In Goa, the Save Mollem movement emerged in 2020 as a youth-led resistance against three infrastructure projects—a railway expansion, a highway expansion, and a power transmission project—that threatened the Mollem National Park and Bhagwan Mahavir Wildlife Sanctuary. The movement highlighted the ecological importance of these forests, which serve as a biodiversity hotspot within the Western Ghats, home to endangered species and critical water sources. Activists raised concerns over the environmental impact assessments, which they claimed were manipulated to justify deforestation. Social media played a crucial role in mobilizing public opinion, with Goan artists, musicians, and students joining the movement to amplify their voices. Despite continued opposition, the government has pushed forward with some aspects of the projects, while activists remain engaged in legal and advocacy efforts to protect the region.

Another key environmental movement in India has been the Jal Satyagraha protests, which have emerged in various parts of the

country against large-scale dams and water diversion projects. Inspired by Mahatma Gandhi's philosophy of nonviolent resistance, these movements often involve villagers standing in submerged waters for days as a form of protest. One of the most well-known instances occurred in Madhya Pradesh, where communities affected by the Sardar Sarovar Dam on the Narmada River staged Jal Satyagraha to demand proper rehabilitation and compensation for displaced families. Similar protests have taken place in Maharashtra, Chhattisgarh, and Odisha, where water-intensive projects have led to displacement, loss of livelihoods, and environmental degradation. These movements highlight the disproportionate impact of climate change and development projects on marginalized communities, particularly farmers, Adivasis, and fisherfolk, whose traditional ways of life are threatened.

Together, these environmental and climate justice movements reflect a growing consciousness about the need for sustainable development in India. While governments and corporations often frame infrastructure projects as necessary for economic growth, activists argue that environmental sustainability and social justice must be prioritized. Despite facing legal challenges, police crackdowns, and political resistance, these movements continue to inspire collective action, proving that grassroots activism remains a powerful force in shaping India's environmental policies.

Self- Asking Question

1. What are the civil liberties provided by the Constitution of India? Discuss.

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Check Your Progress

2. What do you understand by Civil Liberty Movements?
3. Discuss about the contemporary civil liberty movements in India.
4. Analyze the history of Civil Liberty Movements.

3.7. Summing Up

Civil liberty movements have played a transformative role in shaping societies, advocating for individual freedoms, and challenging systemic injustices. Throughout history, these movements have emerged in response to authoritarian rule, racial discrimination, gender inequality, and other forms of oppression, driving legal and social reforms that have strengthened democratic institutions and human rights frameworks. From the abolitionist movements of the 19th century to the civil rights struggles of the 20th century and the ongoing digital age activism, the fight for civil liberties remains a dynamic and evolving force.

One of the key takeaways from the study of civil liberty movements is their ability to bring about systemic change through persistent activism, legal challenges, and public awareness campaigns. Landmark victories such as the abolition of slavery, the recognition of universal suffrage, and the dismantling of apartheid were achieved through sustained efforts by activists, intellectuals, and ordinary citizens who refused to accept injustice. These movements have often been met with resistance from political establishments, but their resilience and adaptability have ensured progress in expanding rights and freedoms for marginalized communities. Another important aspect of civil liberty movements is their intersectionality. No single struggle for rights exists in isolation—racial justice movements intersect with gender rights, labour rights, and LGBTQ+ rights, demonstrating that the fight for freedom is

interconnected. This interconnectedness has allowed different movements to support one another, creating a broader coalition for human rights. For instance, the feminist movement and the civil rights movement in the United States had overlapping goals, with many activists participating in both to demand justice for all oppressed groups. Similarly, contemporary movements such as Black Lives Matter and climate justice advocacy reflect the need for a holistic approach to civil liberties that encompasses economic, social, and environmental rights.

In the digital age, civil liberty movements face both new opportunities and challenges. The rise of social media has amplified the voices of activists, allowing for real-time mobilization and global solidarity. Movements like the Arab Spring, #MeToo, and pro-democracy protests in Hong Kong have demonstrated the power of digital activism in raising awareness and pressuring governments. However, these advancements have also led to increased government surveillance, online censorship, and misinformation campaigns aimed at discrediting movements. The balance between freedom of expression and state control remains a contentious issue, highlighting the need for continued vigilance in protecting civil liberties in the digital realm. Despite significant progress, threats to civil liberties persist worldwide. Authoritarian regimes, restrictive laws, and rising nationalism continue to undermine hard-won freedoms. Even in democratic societies, issues such as police brutality, voter suppression, and restrictions on press freedom illustrate that the struggle for civil liberties is ongoing. Therefore, it is imperative for individuals, civil society organizations, and international bodies to remain committed to defending and expanding civil rights.

In conclusion, civil liberty movements have been instrumental in shaping the modern understanding of justice, equality, and human

dignity. Their legacy is a testament to the power of collective action in confronting oppression and advocating for a more just society. As new challenges arise, the lessons of past movements serve as a guide for future struggles, ensuring that the pursuit of civil liberties remains a central pillar of democratic progress.

3.8. References and Suggested Readings

Banerjee, A. C. (1978). *The Constitutional History of India*. The Macmillan Company of India Limited.

Chandra, B et al. (1989). *Indias Struggle for Independence*. Penguin Books.

Chaube, S. K. (1996). *Colonialism*, *Freedom Struggle and Nationalism in India*. Book Land.

Jha, M. (1972). *Role of Central Legislature in the Freedom Struggle*. National Book Trust.

Singh, U. K. (1998). *Political Prisoners in India*. Oxford University Press.

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UNIT-4
DEVELOPMENT, DISPLACEMENT AND HUMAN RIGHTS

Unit Structure:

4.1 Introduction
4.2 Objectives
4.3 Concept of Development
    4.3.1 The Concept of Development and The U. N
4.4 Displacement and Human Rights
4.5 Development Induced Displacement in India
4.6 Development, Displacement, and Human Rights in India
4.7 Summing Up
4.8 Reference and Suggested Readings

4.1 Introduction:

The human society from its inception to the present time has been continuously striving for achieving development. The concept of 'human development' has been discussed since the period of Aristotle when he emphasized arranging the society for promoting 'human good'. Studies have shown that connotations of the term 'development' are broader encompassing various aspects of life----- social, political and economical. Economic development focuses on improving wealth, infrastructure, and job opportunities. The concept of sustainable development focuses on meeting the needs of the present without compromising future generations' ability to meet their own needs, balancing economic growth with environment. The concept of human development is much broader and it focuses on improving people's capabilities, education, healthcare, and life expectancy. It is observed that in their craze for development after

long struggle against imperial power, the South-Asian nations have totally overlooked the social, environmental and human costs involved with them. The process of urbanisation has also contributed significantly towards the problem of internal displacement in South Asia. Like many other South Asian countries in India too, there is no reliable official statistics regarding the number of development-induced displaces. The concepts of development, displacement, and human rights are interconnected. In this block you have studied about the concept of human rights and various aspects of human rights. This unit will make an attempt to discuss the issue of human rights particularly of the development induced displaces of India.

4.2 Objectives:

Human beings are striving continuously towards progress or development. It is experienced that the model of development emphasizing solely on economic aspect has uprooted a huge number of population world over from their homes and hearths. After reading this unit you will be able to:

- *discuss* the concept of development,
- *examine* the human rights of the displaced persons,
- *analyse* the issue of human rights of the development induced displaced persons of India.

4.3 Concept of Development:

Development refers to the process of improving the economic, social, and political well-being of individuals, communities, and nations. The concept of development has been discussed and debated from the early period. There is absence of a universal

definition of this term and in different periods of history; development has been interpreted in different ways. The debate of development is also linked with the dual role human beings play as end and means of development. Sometimes, development has been considered as the end where human beings are the means to achieve that end, while sometimes human beings appear as the end of development.

In the common parlance, development is equated with economic development. Though one cannot deny the importance of economic development for the welfare of the society, restricting development only to economic development makes the whole concept narrow. To denote such changing situations various terms like change, growth, progress and development are used interchangeably. In the last fifty years, development is defined in many ways. There are multiplicity of approaches to development and it has been viewed in different ways like 'reconstruction and development', 'economic development', 'modernization', 'redistribution with growth', 'dependent development' 'interdependent development', meeting basic needs', 'top-down development', 'bottom-up development', 'Another Development', 'post-development', 'anti-development' and even 'post-modern development'. (Simon 1997:184). Mahbub ul Haq has rightly distinguished between economic growth and human development. According to him, economic growth is centered on income while human development embraces the enlargement of all human choices-- economic, social, cultural and political (Haq 2005:17**).** From this perspective, the basic purpose of development is to enlarge people's choices.

Again, many scholars are of the opinion that the term 'development' has been used as a policy to interfere in the affairs of the economically underdeveloped countries. According to Escober, capitalists take help of the term 'development' to intrude in other

non-western societies. (Escober 2005:141). Besides doing harm to communities, many development projects also adversely affect the environment and ecology.

The aim of development is to ensure the welfare of the society. According to Seers there should be a decrease in poverty and malnutrition, that income inequality should decline and that the employment situation should improve. Further, the purpose of development is to reduce poverty, inequality and unemployment. Thus, it can be said that developmental goals include reduction of poverty, increased economic welfare, improved health and education, and increased political and social freedom (Seers 1979).

In the contemporary period, the term 'development' is closely associated with 'human development' and both the terms are used interchangeably. Like the term 'development', 'human development' is also interpreted in different ways. Most people tend to mistake human development for social development and associate it solely with investments in health, education and nutrition, while some others equate it with human resource development (Fukuda-Parr and Shiva Kumar 2005). Poverty is one of the major issues addressed by human development. From human development perspective poverty implies 'the denial of choices and opportunities for a tolerable life' which manifests in different forms like ill health, ignorance, malnutrition, exclusion from decision-making processes, lack of freedom and loss of dignity, insecurity and unemployment (ibid).

T.K. Oommen (2004) has discussed three major perspectives of development. These are –-----Mainstream Perspective on Development (MPD), Alternative Perspective on Development (APD) and Post-Development Perspective (PDP). According to him, the Mainstream Perspective viewed development as exogenous, modeled after the values of the West. He also states that the

Mainstream Perspective on Development often conceptualizes development as a single homogenous process towards modernization understanding the potentials for diversity, complexity and adaptability. The newly independent countries of the post-World War II era, including India opted for this development model propagated by the West. However, adoption of such a model has failed to address the basic problems of these countries to a large extent. In fact, this model has generated inequalities in the society and the gap between the rich and the poor is widening. India's nation-building process that considered industrialization and economic growth as its goal failed to meet the demands of all sections. Discussing development in India, Amartya Sen says that poverty is still rampant in India, and so are widespread illiteracy, avoidable morbidity, premature mortality, and deep-seated inequality of opportunity. While some argues that poverty is diminishing, it is hard to deny that absolute level of deprivation in India is still extraordinarily high (Sen and Dreze 2002:2). This has brought the state policies under severe criticism in different parts of the country resulting in state-citizen conflict on the issue of development.

Thus, no matter how scholars have described the term 'development', the objective of development is to create an environment to ensure long, healthy and creative life with freedom and human dignity as well as guaranteeing the enjoyment of their rights for the people.

4.3.1 The Concept of Development and The U. N:

From the discussions above we have learnt that the concept of development has assumed a significant position in the modern states. However, most of the countries have adopted a model of

development shaped by the west, particularly the USA that viewed development largely from economic perspective. After sometime, the negative impacts of the economic-growth oriented development have come to the notice of different sections. The victims of this development model have started viewing development from a different perspective which incorporates socio-cultural and a political aspect of human lives besides economic. Considering the importance of this concept, the United Nations have systematically dealt with this issue of human development.

The First UN Development Decade has urged all the member states to intensify their efforts to mobilize support for measures required to accelerate progress towards self-sustaining economic growth and social advancement in the developing countries. Throughout the development decade of 1960s, growth rate in the economically advanced market economies accelerated, and the gap between the per-capita incomes of the developing countries and those of developed widened. The First UN Development Decade ended in December 1970 with one of its major goals unattained in the developing countries. Such discontentment has resulted in the creation of the United Nations Research Institute for Social development (UNRISD) in 1963. Another ECOSOC resolution in 1966 recognized the interdependence of economic and social factors and the need for harmonizing economic and social planning.

The Second Development Decade of the UN aimed at promotion of sustained economic growth, particularly in the developing countries, ensuring higher standard of living and facilitating the process of narrowing the gap between the developed and developing countries. It advocated for financial assistance of the developed countries for their development. It emphasizes on qualitative and structural changes in the society with rapid economic growth. Moreover, it emphasizes that existing social disparities on the grounds of

regional, social and sectoral should be reduced substantially. The Third Development Decade of the UN aims at establishing a new international economic order based on justice and equity. This decade also shows dismal performance. The Fourth UN Development Decade, therefore, has set new priorities and goals for the growth of the developing member nations. It also recommended that developing countries try to raise their rate of industrialization by 8-10% and increase their annual food production by 4%. Experts of UNESCO advocated the concept of endogenous development which rejected the necessity or possibility of mechanically imitating the industrial societies.

The 1990s have given birth to a new development discourse which emphasizes on redevelopment. Human development Report 1990 states: "human development and deprivation have many facets, so any index of human progress should incorporate a range of indicators to capture this complexity" (UNDP 1990). Scope of Human Development is certainly wider than education and health. Human Development Index reflects the average achievements of a country along three dimensions of human development---------- longevity, educational attainment and command over resources needed for a decent living.

Human Development Report 1992 considers political freedom as an essential element of human development (UNDP 1992). It goes on to construct a new political freedom index (PFI) which has five components-------personal security, rule of law, and freedom of expression, political participation and equality of opportunity. Again, Human Development Report 1994 urges policy makers and researchers to emphasize on human security not only on the security of the national borders.

Human Development Report 1995 argues that the connections between growth and human development are neither obvious neither

automatic. The following five types of policy failures occur when links are broken:

- *Jobless growth*: with economic growth opportunities of employment are not expanded
- *Ruthless growth*: economic growth benefits the rich only
- *Voiceless growth*: economic growth is not accompanied by democracy or empowerment.
- *Rootless growth*: causes people's cultural identity to wither
- *Futureless growth*: ignores sustainable development. Present generations consumes resources without thinking of the future generations.

This report further admits that the world needs growth but at the same time it believes that policy makers must pay attention to the structure and quality of growth so that it leads to human development, eliminating poverty, protecting the environment and ensuring sustainability (UNDP 1995).

Hence, it is evident from the above discussion that the Human Development Reports published by UNDP made an effort to redefine the concept of 'development'. It also considers promoting respect for human rights and guarantees of human rights as important development objectives. It can be said here that Human Development Reports emphasized on the non-income dimension of human development and emphasizes on human well-being.

Self-Asking Question

According to you what are the major challenges facing development in the 21st century? Discuss. (80 words).

4.4 Displacement and Human Rights:

Internal displacement of population refers to a situation in which people are uprooted from their homes and hearths but remain within the boundary of their countries. This type of displacement often caused by violence, conflicts, disasters or development projects.

Displacement from one's home and hearth often results in economic insecurity and alienation from the community. The displaced people lose their right to land and other forms of private and common property. Hence, it must be admitted that development aiming at ensuring happiness of the people often deprives a section of the society from their life and livelihood. The whole process of displacement is pathetic because possession of land and/or house in one's place of origin is seen not only as a wealth creating and livelihood sustaining resource, but also as the basis of status and identity (Kibreab 2003:57). Displacement has various social, psychological and environmental impacts too. Therefore, development-induced population displacement can be of two types---- direct and indirect. While direct displacement involves physical population displacement, indirect displacement emanates first of all from a process whereby installation and functioning of projects continuously push up the consumption of natural and environmental resources, thereby depriving the indigenous people of the surrounding regions of their traditional means of wherewithal and sustenance.

According to IDMC reports, the number of internally displaced persons reached to 83.4 millions at the end of 2024. Earlier, the total number of displaces were 75.9 million in 2023 71.1 million in 2022 respectively. The report of 2022 further states that the figure did not tell us about an even larger number of people who are displaced by development through projects, foreign investments etc. A conservative estimate of ESCR-Net a global advocacy group of

those who are displaced by development during last decade stands at 15 million per year. (IDMC, 2022, 23, 24)

Human rights are the fundamental rights and freedoms that every person is entitled to, simply by virtue of being human. These rights are enshrined in international frameworks, such as the Universal Declaration of Human Rights (UDHR), and include rights like --- The right to life, liberty, and personal security, the right to education, healthcare, and a decent standard of living. It also includes the right to work and participate in cultural, social, and political life, the right to not be subject to torture, discrimination, or arbitrary detention.

We have already learnt that forced displacement often leads to violations of human rights, such as the loss of property, lack of access to basic services, and discrimination. Displaced populations are often in precarious situations, vulnerable to exploitation, and have limited access to justice.

In India, displacement owing to development presents a grim scenario that includes landlessness, unemployment, homelessness, marginalisation, lack of food, loss of common resources and breakdown of social networks. As mentioned earlier, there is absence of proper resettlement policy and law on resettlement and compensation issues. Apart from lack of commitment of government towards the implementation of resettlement guidelines, there are other factors that harm the IDPs. These include the absence of community participation and inadequate funding for compensation. It also includes incompatibility of ethnic background, clash of interests between the host community and resettled families and lack of support services as well as social organisations processes to integrate the resettled population in the local communities. In some cases families were displaced twice as the design of the project was modified.

Here it needs mention that the problem of displacement is not temporary. Rather, it should be regarded as a crime against humanity. A separate legal regime is necessary to deal with the whole problem. However, the same set of laws cannot be applied to all types of displacement. There is an urgent need to protect people against such displacement and evolve an alternative method of development. When displacement becomes unavoidable, steps should be taken to protect the victims during displacement and proper resettlement and reintegration of the people should be arranged.

Some NGOs are championing the cause of the displaces of development projects. Their activities include: Policy advocacy, awareness raising, research and pressure group activities. It is often found that dams are built, people are uprooted and then the project is abandoned. Although resistance has come from the victims with the support of the civil society and NGOs, it has not achieved complete success.

Let us now examine how displacement violates the basic rights of the development induced internally displaced persons and the provisions for human rights for these displaces.

a) The Right to Adequate Housing: Displacement means that people lose their homes, which is a clear violation of their right to adequate housing. According to international human rights standards, everyone has the right to live in a safe, secure, and habitable environment. When people are displaced for development, they must be provided with alternative housing that meets these criteria. The International Covenant on Economic, Social and Cultural Rights (ICESCR)recognizes the right to housing under Article 11. The UN Habitat Agenda emphasizes the

importance of securing adequate housing and protection against forced evictions.

b) The Right to Property and Land**:** When people are displaced by development projects, they often lose their land, which can be a significant loss of livelihood and cultural identity. The Universal Declaration of Human Rights (UDHR)**,** in Article 17, recognizes the right to own property, and individuals cannot be arbitrarily deprived of it. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests**,** developed by the FAO**,** stress the importance of ensuring that individuals and communities are compensated fairly when displaced.

c) The Right to Free, Prior, and Informed Consent (FPIC): Itis a crucial human rights standard, especially when it comes to indigenous peoples and local communities facing displacement due to development projects. FPIC ensures that communities are fully informed about the potential risks of displacement and that they voluntarily agree to the project, giving them the power to negotiate conditions and seek alternatives. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**,** particularly Articles 10, 19, and 32, asserts the right of indigenous peoples to give or withhold their consent to projects that affect their land, territories, or resources. The International Labour Organization (ILO) Convention also provides important protections for indigenous peoples, including the right to consultation and participation in decisions that affect their lives.

d) The Right to Livelihood: People displaced by development projects often face the loss of their primary means of livelihood, whether through farming, fishing, or other forms

of subsistence. The International Covenant on Economic, Social, and Cultural Rights (ICESCR)includes the right to work and the right to earn a living. The World Bank's Operational Policies on Involuntary Resettlement call for providing displaced persons with resettlement options that ensure they can continue their livelihoods, including the restoration of income levels to pre-displacement standards.

e) The Right to Social and Cultural Identity: For many communities, especially indigenous peoples, displacement is not just a matter of losing land but also of losing cultural and social identity. The Universal Declaration of Human Rights (UDHR)and the International Covenant on Civil and Political Rights (ICCPR)both recognize the rights of individuals to freely practice their culture, religion, and language (Article 27, ICCPR). The UN Declaration on the Rights of Indigenous Peoples stresses the protection of indigenous peoples' cultural and spiritual connections to their land (Article 11 and 31).

f) The Right to Information, Participation, and Accountability: Affected communities should have access to clear and timely information about development projects, the potential impacts, and the alternatives available to them. Meaningful participation in decision-making processes is a critical human right, especially for those who are directly affected by displacement. Furthermore, there must be accountability mechanisms in place to address grievances and ensure that human rights violations are remedied. The United Nations Guiding Principles on Business and Human Rights urges the companies and governments to respect human rights by providing access to remedy for individuals whose rights have been violated by development projects. The World

Bank's Safeguard Policies also require consultation with affected communities and the establishment of grievance mechanisms for individuals who believe their rights have been infringed upon by development activities.

g) **The Right to Compensation and Resettlement:** A fundamental aspect of human rights protection in the context of development-induced displacement is the provision of just compensation and appropriate resettlement for displaced people. The World Bank's Operational Policy on Involuntary Resettlement (OP 4.12) outlines the importance of providing compensation for lost property and restoring livelihoods, as well as the requirement to offer resettlement options that are acceptable to the affected communities. The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons provide guidelines for restitution and compensation in situations of displacement, ensuring the right of return or fair compensation.

Stop to Consider

Internal Displacement and Women

Internal displacement is a very traumatic experience for different sections of people. However, the women and children are more vulnerable. Women as the marginalized entities within the marginalised group are often forced to shoulder the negative affects of displacement. The worst victims of such projects are those women participating in the economic activity of the family. The women heads are even denied the status of PAF. The cash compensation usually disempowers women who lack the experience of handling financial matter. The disintegration of social network of

the displaced community makes them more vulnerable. The women head of the families always find it difficult to pursue their cases with the department dealing with compensation or allotment of land. The National Commission of Women noticed that in the Tehri Dam project the displaced women lost their share of livelihood and the area where they are relocated did not provide them with the supplementary sources of income. Again, one method of eviction in the cities has been to enter an area and beat up women and children. They are not safe in the resettlement sites. Sometimes women are not recognized as the owners of land. So the development projects besides displacing thousands of families have also caused severe disempowerment of women in this region.

4.5 Development Induced Displacement in India:

Before discussing development induced displacement in India, we must know that internal displacement is of three types----conflict induced, development induced and displacement caused by natural disasters. However, the South Asian region has witnessed an enormous rise of internally displaced persons (IDPs) in recent times caused by various factors like conflicts, natural calamities and development projects. Displacement can have severe consequences on individuals and communities, as people lose their homes, livelihoods, and social networks. The situation of IDPs is often worse than the refugees because of the fact that they live within the boundaries of the state which has been responsible for their displacement. Moreover, they are not protected under refugee laws.

With the increase in the number of development projects, the magnitude of the problems associated with development also increased. It must be mentioned here that the population displacement associated with development is of two types – primary

and secondary displacement. The first type of displacement is the result of forced movement of the population while the second one suggests that without the physical displacement of the population there may be displacement of livelihood because of loss of land. Cernea has rightly argued that people's "place" is their land too, not only the roof above their heads. Land is livelihood and identity (Cernea 2006:14). Loss of land thus may tend to lead to loss of identity of the displaces. According to an estimate, every year about one million people are globally displaced by dams, highways, ports, urban improvements, mines, pipelines and petrochemical plants, industrial and other such development projects (Cernea 2000). Therefore, the major development challenge the governments face today is to resettle these affected populations in such a way that help them enjoying project benefits. Thus, displacement of population is not only physical but also economic displacement.

Displacement often involves a loss of land, culture, and identity. In the initial period of nation building, these countries including India often ignored the problem of internal displacement. Development policies of the newly independent countries are not concerned about the resettlement of the displaces of the development projects. The basic argument put forwarded here is that- someone has to suffer if the nation is to prosper. Moreover, governments do not keep the actual data relating to displacement. Besides, there is absence of clear-cut policy of resettlement and rehabilitation of the displaces, which makes the problem more complicated. These countries are not even following the UN Guiding Principles relating to internal displacement.

The First Prime Minister of India, Nehru who had a vision of taking the country in the path of modernization laid heavy emphasis on dam-building for the development of the nation. Therefore, he viewed the dams as the 'Temples of Modern India'. More than 3000

dams have been constructed in India in the period after independence. No doubt these projects have certain positive results, but its negative impacts perhaps outweigh the positive ones. According to an estimate, development projects have directly displaced about 21 million people during 1955-90. Besides, these projects have deprived a huge number of people of their means of livelihood causing indirect displacement

While discussing the problem of development-induced displacement in India, it must be mentioned that these people are never compensated for those losses by the concerned authority. When the displaces move from their original habitats, they are not only uprooted from their homes but also from their traditional sources of livelihood too. Moreover, there is community breakdown which was built after staying together for a long period of time. Again, they loss their access to common property resources. Because of such losses they face identity crisis in a new environment. Again, displacement of the tribal communities has often deteriorated the ethnic relations leading to conflict in this region. Dams and hydropower projects have been the major source of displacement in India. Displacement was regarded as an unavoidable corollary of development here. According to official estimate the number of such displaces is 15.5million in 1994. But depending on the calculations on the basis of the number of dams built in the country, that figure may go up to 21 to 33 million.

It is to be mentioned here that most of the development projects in have mainly displaced the poor indigenous people and they hardly enjoy the benefits of the projects. Most of such projects are located far away from the urban centers. Because of such reasons, the voices of the victims of these development projects remained unheard. However, now these sections of the people have learnt to raise their voice by breaking silence consequently leading to the emergence of

various oppositional movements against development projects at the grassroots level.

4.6 Development, Displacement, and Human Rights in India:

In India, development-induced displacement is a significant and ongoing issue, especially with large-scale infrastructure projects like dams, highways, urbanization, and industrialization. The displacement caused by such projects affects millions of people, particularly indigenous communities, farmers, and marginalized groups, often violating their fundamental human rights. This issue intersects with several legal frameworks and human rights standards, which aim to protect displaced populations, though implementation remains a challenge.

It is experienced that the model of development emphasizing solely on economic aspect has uprooted a huge number of population world over from their homes and hearths. It needs mention here that the people who are forced to leave their ancestral places for building such development projects mostly belong to the socially and economically backward and disadvantageous communities. Because of their marginalization, their voices against such displacement have been suppressed by the powerful authority for a long period of time.

It is worth mentioning here that a significant portion of the development-induced displaced populations of India belong to indigenous communities. These communities living far away from the cities and the so-called developed societies find it absolutely difficult to restart their lives with new livelihood opportunities in a location different from their original one. Such displacement is proved to be a major blow to the community life of the indigenous communities who draw their sustenance from the natural environment and leads to the violation of their human rights.

It is increasingly recognized that development must be human rights-based. This means that development policies and projects must actively promote human rights by ensuring participation, accountability, and non-discrimination. Approaches like participatory development and rights-based development emphasize the importance of engaging affected communities in decision-making and ensuring that development doesn't lead to exclusion or harm.

International organizations, such as the United Nations like UNHCR, work to ensure that displaced persons' rights are protected. For example, refugees have the right to seek asylum and the right to protection from forced return to dangerous condition. Similarly, displaced individuals must receive access to humanitarian assistance, legal protection, and adequate living conditions.

Hence, we can say that development, displacement, and human rights is a complex and often contentious issue. Development should enhance human well-being and rights, not undermine them. Displacement, whether caused by conflict, disaster, or development projects, raises significant human rights concerns that need to be addressed to ensure that all people, regardless of their circumstances, can enjoy their rights fully. Ensuring a human-rights-based approach to development can help mitigate the negative impacts of displacement and promote fair, inclusive, and sustainable growth.

Despite various human rights frameworks, the implementation of these rights in the context of development-induced displacement often falls short. Communities are often excluded from decision-making, and their consent is not genuinely sought or respected. It is also observed that, displaced people do not receive compensation that is sufficient to restore their previous living standards, and resettlement options may be inadequate or far from their original

communities. Many development projects proceed without adequate mechanisms for holding the developers or governments accountable for human rights violations, leaving affected communities with few options for redress.

As mentioned earlier, in the first few decades of independence, resettlement and rehabilitation was not a priority in India. Because of their craze for modernization and westernization, the nation-builders totally overlooked the sufferings of a tiny section of its population. As a result of it, the development projects aiming at improving the conditions of the people, further degrades the conditions of many people. Moreover, project authorities who are mostly concerned with engineering specifications, seldom undertake detailed and systematic surveys of the population to be displaced (Thukral, E.G 1992). The whole issue of resettlement mainly focuses on the process of physical resettlement of the population which ignores the issue of livelihood.

It needs mention here that there is absence of national law to systematically deal with the issue of displacement and rehabilitation. Neither international law nor national legal systems make adequate provision for 'development oustees (Chris de Wet 2002). The United Nations Guiding Principles on Internally Displaced Person has given a framework for rehabilitating and taking care of the displaced. These 30 principles cover all three phases of internal displacement – the pre-displacement, situation during displacement and the post-displacement i.e. the return and resettlement of the displaces. Though, these principles are not binding on the state authorities, they provide a guideline to the project authorities as well as to the IDPs to secure justice. Unfortunately, these principles are not properly followed in India.

Again, the Land Acquisition Act of India 1894 (as amended in 1984) is based on eminent domain that permits the state to take over

privately owned land for a public purpose by paying compensation. For a large number of people with no formal title to land but otherwise dependent on it, including landowners, subtenants, sharecroppers, landless labourers, encroachers and shifting cultivators, there is however no compensation whatever (Mathur 2006:42). Again the amount of compensation is never enough to buy an equivalent piece of land (ibid).

Among the various development projects dam building is the most significant one. In the years following the independence of India, rapid expansion of irrigation facilities was the prime objective. Thus, large dams became an important tool of India's development. However, the pace of completion of large dams had peaked in 1970s (1263 completed between 1971 and 1980), and dropped thereafter (1186 in 1980s and 347 in 1990s), but evidently, seems to have gone up in the new millennium considering that the 425 dams that were under construction in 1999 almost all have been completed (Thakkar 2007:7). Again, the estimates of the number of displaced vary in India. There exist huge differences between the government record and the actual number of displaces of every development project. Fernandes, Das and Rao (1989) are of the view that only dams have displaced more than 21 million people in India in the post-independence period. On the other hand, Arundhati Roy estimated the number of displaced to be 33 million (Roy 2002:61).

Table: Estimate of People Displaced by Development Projects in India during 1951-1990 (In Lakhs)

Type of Project	All Dps	%	Resettled	%
Dams	164.0	77	41.0	25.0
Mines	25.5	12	6.30	24.7

Industries	12.5	5.9	3.75	30.0
Wildlife	6.0	2.8	1.25	20.8
Others	5.6	2.3	1.50	30.0
Total	213.0	100.0	53.80	25.0

Fernandes, 1997

India has several laws and policies aimed at addressing the rights of displaced people, but these often have gaps in implementation. Let us examine the legal framework dealing with the human rights for development-induced displacement in India**:**

A. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 (LARR Act): The LARR Act is a key piece of legislation aimed at ensuring fair compensation, rehabilitation, and resettlement of individuals whose land is acquired for development projects. It mandates that compensation should be based on the market value of land, and those displaced should receive proper rehabilitation. The Act also mandates that "Free, Prior, and Informed Consent (FPIC)" of affected communities, especially in the case of land acquisition from tribal areas, should be obtained. While this law was a step forward, its effectiveness has been limited due to poor enforcement and issues with ensuring true participation and adequate compensation.

B).The Forest Rights Act, 2006 (FRA): The FRA recognizes the rights of forest-dwelling communities, particularly tribal people, to land and resources in forested areas. The Act ensures their rights to forest land, resources, and cultural practices. When development projects threaten these rights, the Act mandates that the consent of the local communities is necessary before any land acquisition takes place in forest areas. The FRA aims to prevent unjust displacement of indigenous populations, but its implementation has been

inconsistent, with many projects bypassing the need for consultation and consent.

C).The Environment Protection Act, 1986, and Environmental Impact Assessment (EIA): The Environment Protection Act requires that large-scale projects, particularly those that lead to displacement, undergo an Environmental Impact Assessment (EIA). This includes an evaluation of the social and environmental costs of such projects, and it should, in theory, take into account the rights and well-being of displaced communities. However, the EIA process has faced criticism for being weak and for often not involving affected communities sufficiently. Recently, changes to the EIA notification have raised concerns about further reducing the accountability of large projects.

D).The National Rehabilitation and Resettlement Policy (NRRP), 2006-07: After long waiting for a national law for the displaced the Government of India first came with a "National Policy on Resettlement and Rehabilitation for Project Affected Families" in February 2004. There were many loopholes in the policy which stands in the way of bettering the conditions of the victims. Later the government of India formulated a 'Draft National Rehabilitation Policy' (NRP) in 2006. This draft was again revised in 2007. By going through the preamble of NRP- 2006 one gets the idea that the provisions ensure all happiness and benefits of a displaced person. However, the provisions in the preamble are not reflected in the Draft Policy as a result of which NRP-2006 fails to provide safeguards to the displaced. According to this policy, in cases where displacement is 400 or more families en masse in plain areas, or 200 or more families en masse in tribal or hilly areas, Desert Development Program (DDP) blocks or areas mentioned in Schedule V and Schedule VI of the Constitution of India, the appropriate government shall declare by notification in the Official

Gazette that area as 'an affected zone of the project'. From this provision it is evident that the NRP-2006 only provides safeguard to the large-scale displacement.

Moreover, the Policy provides for the formation of a 'multi-disciplinary expert group' to examine Environmental Impact Assessment (EIA) reports. According to the policy the members of the expert committee are nominated by the Central and State governments. This provision makes the process totally non-transparent and unaccountable to the affected population.

NRP-2006 also faces criticisms on the ground that it entrusts absolute power to the Ministry of Defense to acquire land in connection with national security. It is also apprehended that the policy may further cause displacement as it states, 'If sufficient Government land is not available there, then land may be purchased or acquired under the Land Acquisition Act, 1894 for the purposes of resettlement and rehabilitation plan'.

This policy outlines guidelines for rehabilitation and resettlement, providing a framework for compensating displaced persons and ensuring that their living standards are restored or improved. Despite being a positive step, the NRRP's application has been patchy and is often not enforced effectively on the ground, leading to problems with the real resettlement of displaced people.

Hence, we can say that the human rights for development-induced displacement in India are a complex and multifaceted issue. While legal frameworks exist to protect displaced communities, their implementation is often inadequate. For effective protection of human rights, it is crucial to ensure better enforcement of existing laws, meaningful participation of affected communities, fair compensation, and proper rehabilitation. Moreover, respecting the right to free, prior, and informed consent (FPIC) and prioritizing

sustainable development that includes marginalized voices are essential steps toward addressing the human rights violations caused by development-induced displacement. It has been observed that many communities, particularly tribal groups, have been advocating for better implementation of their rights through civil society organizations, legal action, and direct protest. Some development agencies and NGOs are working to strengthen grievance redressal systems for displaced communities to ensure that their concerns are addressed.

Check Your Progress

Q 1. Critically discuss the concept of development.

Q 2. Write a note on the role of U.N in developing the concept of development.

Q 3. How displacement adversely affects the Human Rights of internally displaced persons.

Q 4. Discuss the problem of development induced displacement in India.

Q 5. Critically analyse the legal framework for the development induced displacement in India.

4.7 Summing Up:

After reading this unit you have understood that human rights for development-induced displacement is a critical issue that addresses the rights of individuals and communities who are displaced due to development projects, such as the construction of dams, roads, highways, urban redevelopment, or industrial facilities. In India too, the large-scale development projects are often implemented to stimulate economic growth, infrastructure improvement, or urbanization, which resulted in significant negative consequences

for the people whose land, homes, and livelihoods are affected and violation of fundamental human rights. To safeguard human rights in the context of development-induced displacement, it is essential that development projects respect the fundamental rights of affected individuals and communities. This requires upholding the right to adequate housing, property, livelihoods, and cultural identity, as well as ensuring meaningful participation, consultation, and fair compensation. Moreover, effective mechanisms must be put in place to ensure accountability, remedy human rights violations, and prevent further harm. A rights-based approach to development can help ensure that economic growth and progress do not come at the expense of the well-being and dignity of vulnerable populations.

4.8 Reference and Suggested Readings:

Cernea, Michael 2006 Re-examining "Displacement": A Redefinition of Concepts in Development and Conservation Policies, *Social Change*, Vol 36. No 1, March,

Chris de Wet 2002 Improving Outcomes in development induced displacement and resettlement projects *Forced Migration Review* 12, February 2002

Dreze, Jean and

Amartya Sen 2002 *India: Development and Participation*, Oxford University Press, New Delhi

Ferandes, Walter and Paranjpye, V (1997) Rehabilitation Policy and Law in India: A Right to Livelihood, New Delhi. India Social Institute.

Fukuda-Parr and Shiva

Kumar 2005 Introduction in Sakiko Fukuda-Parr and A.S Shiva Kumar eds. *Readings in Human Devlopment: Concepts, Measures and Policies for a Development Paradigm,* Oxford University Press, New York.

Haq, Mahbub ul, 2005 'The Human Development Paradigm', in Sakiko Fukuda-Parr and A.S Shiva Kumar eds. *Readings in Human Devlopment: Concepts, Measures and Policies for A Development Paradigm* Oxford University Press, New York.

Oommen, T.K. 2004 *Development Discourse: Issues and Concerns* Regency Publications, New Delhi.

Roy, Arundhati 2002 *The Algebra of Infinite Justic*e, Penguin Books, New Delhi

Thukral, E.G: 1992 *Big Dams, Displaced People: Rivers of Sorrow, Rivers of Change*, Sage Publications, New Delhi

Thakkar, Himanshu2007 'The Tryst with Big Dams', *Dams, Rivers and People,* Vol 5, Issue 8-9, South Asian Network for Dams, Rivers and People, New Delhi, p-7

United Nations Development Programme 1990 Human Development Report, Oxford University Press, New York.

1992 Human Development Report, Oxford University Press, New York

1995 Human Development Report, Oxford University Press, New York

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UNIT-5
ROLE OF MEDIA IN HUMAN RIGHTS PROTECTION

Unit Structure:

5.1: Introduction
5.2: Objectives
5.3: What is Media
5.4: Role of Media in democratic countries like India
5.5: Freedom of Information as an internationally protected Human Right
5.6: Media and Human Rights Protection in India
5.7: Media and Judiciary – two strong pillars for protection of human rights
5.8: Role of Media in protecting Women Rights in India
5.9: Challenges on the independence of Media
5.10 Summing Up
5.11 References and Suggested Readings

5.1: Introduction:

Effective communication is a very important component in a society because it is through communication, that humans exchange various opinions, ideas and information. This free exchange of ideas, opinions and knowledge is a must in every democratic country and it is possible only when there is freedom of speech and expression, as envisaged by different international covenants and most of the Constitutions around the world. So, we can say that an effective communication helps in making the citizens well informed about various political happenings and thus helps in forming good government. And here comes the important role of media, which is

regarded as the fourth pillar of a democracy. A democracy can never be successful without a free and fearless press. Also, Media has always played an active role in protecting and promoting human rights. It is through media coverage that people comes to know about various problems occurring in the society. And this way, media can educate people about various happenings. In this unit, we will try to study about the media and its role in the protection of human rights.

5.2: Objectives:

In this unit, we will try to understand the growing importance of media in the protection and preservation of human rights. After reading this unit, the learners will be able to:-

- *understand* what media is,
- *acknowledge* the Role of Media in democratic countries like India,
- *discuss* the Freedom of Information as an internationally protected Human Right,
- *describe* Media and Human Rights Protection in India,
- *understand* the mutually supportive roles of both Media and Judiciary – the two strong pillars for protection of human rights.

5.3: What is Media:

The term 'Media' collectively refers to the main means of mass communication, by various means of internet, television, radio, newspapers, magazines, newsletters and various other forms of print media. Media plays a very important role in the society, which is providing correct information to the people with the ultimate goal of

educating, informing and entertaining the people. Media, by providing various useful information, influences the perceptions and behaviours of the people of the society (Padhy, S. K., Khatana, S., Sarkar, S., 2014).

Media basically refers to any communication channel for transmitting valuable information to the receivers. A wide spectrum of information from different verticals, like education, health care and global or national news are portrayed through these mediums.

5.4: Role of Media in democratic countries like India:

Media plays an important role in shaping the democracy and is called as the backbone of a healthy democracy. It empowers the citizens with various kinds of information and thus helps them become good and aware citizens. The role of media in a democratic country like ours is to equip the citizens with unbiased information, to impart knowledge in a country where so many people are suffering from the menace of illiteracy, to play a vital role in broadening the thinking of the citizens, by empowering them with the right kind of knowledge, to inculcate the spirit amongst the people so that they can fairly criticize any action of the government which goes against the spirit of justice and also to instill faith amongst the people in the process of democracy and justice. Thus, we see that, an effective media can go a long way in educating the masses. It needs mention here that the role of media has undergone a change today from a simple medium of communication to the public to being a harbinger of change in the society.

Due to the development of information and communication technology, there has been a significant change in how people express their opinions on different issues. Social media provides the people with a broad and easily accessible platform where they can

express their ideas, views and opinions to a larger section of audience. Thus, media has opened up more democratic spaces for the people to participate in the public discourse where they can also comment on the current issues and can share their thoughts on various pertinent topics. However, with the technological advancements, there has also been increase in the crime rates using internet like that of cyber crimes. The State has the responsibility to protect the human rights through legal regulations.

Thus, successful democracy demands freedom of information. It is also a key component of transparent and accountable government as it helps in exposing various corruption and mismanagement. Unless there are genuine reasons for withholding such information, everyone should have access to it. It helps in keeping the government in right track. Democracy cannot flourish if governments operate in secrecy.

Self-Asking Question

Q1. The role of media has undergone a change today from a simple medium of communication to the public to being a harbinger of change in the society. Discuss.

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Q2. Democracy cannot flourish if governments operate in secrecy. Discuss the relevance of the statement.

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5.5: Freedom of Information as an internationally protected Human Right:

Accurate and timely information is an indispensable tool and an essential precondition for effective responsive action and the promotion of human rights through various forums like that of organizations, individuals, governments or international institutions. International Human Rights NGOs (Non Governmental Organisation) like that of Amnesty International and Human Rights Watch also deals with human rights protection on the basis of presentation of information regarding alleged violations (J. F. Metzl).

The concept of human rights officially emerged on Dec. 10, 1948, when the U.N. proclaimed the UDHR (Universal Declaration of Human Rights) which contains 30 articles dealing with different category of rights. In the UDHR, there are five types of human rights, namely, personal rights, legal rights, civil and political rights and subsistence rights (Kosasi, 2020).

Freedom of expression is a very basic and fundamental human right which has been recognized by the various international instruments and also different national constitutions. In this regard, social media helps the people because it is through the social media, that the individuals can easily voice their thoughts and opinions on various relevant issues. The protection of freedom of expression on social media is based on various international and national legal frameworks. At the international level, instruments such as the UDHR and the ICCPR (International Covenant on Civil and Political Rights) explicitly acknowledge this right. Even at the regional level, efforts have been taken in this regard. For example, the European Convention for the Protection of Human Rights and fundamental freedoms also provides similar protection. And at the

national level, many countries have their own laws where the freedom of expression has been guaranteed.

There has been rapid expansion of Human Rights laws since the end of World War II. Nearly all the global, regional and sub-regional organizations have adopted Human Rights standards. Thus, no State can claim today that treatment of human rights within its jurisdiction is solely a matter of domestic concern.

So, from the above discussion, we have understood the fact that the freedom of information has been recognized as an internationally protected human right. In its very first session in 1946, the U.N. General Assembly adopted the Resolution 59(1), stating that the freedom of information is a fundamental human right and…the touchstone of all the freedoms to which the United Nations is consecrated. It has been further contended by Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, who elaborated on this aspect in his 1995 Report to the UN Commission on Human Rights, that freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked. (T. Mendel).

In our country, in 1982, the Supreme Court held that:- The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression…..disclosure of information in regard to the functioning of government must be the rule and secrecy an exception justified only where the strictest requirement of public interests so demands. We can understand the importance of freedom of expression in three ways: it is important as an aspect of human dignity, as the best means of ascertaining the truth and as a fundamental underpinning of democracy. (T. Mendel).

5.6: Media and Human Rights Protection in India:

Media is the mirror which always reflects the happenings in the society. It has immense power to influence the masses and also has the power to pressurize and criticize the drawbacks of democracy. Today, the reach of media to the common people has increased tremendously and undoubtedly media has attained the role of a very powerful weapon in virtually all spheres of life. For example, television has a myriad of different goals which ranges from entertainment to that of education. In the present era of globalization and liberalization, media has become more responsive towards the global market and commercial gains.

Our Constitution does not specially mention about the freedom of the media as in the U.S Constitution. However, the Supreme Court has very explicitly ruled that freedom of the Press is included in the guarantee of the freedom of expression. Thus, there is no need to make a separate provision for the freedom of the press. Thus, the media derives its rights from the right to freedom of speech and expression as are available to all the citizens. (R. Hassan).

Prior to Indian independence, there were some laws restricting freedom of speech and expression. It was required that all materials to be published to be submitted to pre-censorship. Moreover, the Indian Penal Code made defamation, obscenity, sedition etc equal to offences. Also the Official Secrets Act and the Press and Registration of Books Act restricted freedom of press. Behind the curtain, all these laws actually intended to curtail freedom of expression during our independence struggle. But, when India attained independence, freedom of speech and expression got recognized as our fundamental right enshrined in the Constitution of India under Article 19(1)(a) which clearly stated that all the citizens shall have the right to freedom of speech and expression (Shipra, 2008).

When the Constitution of our country was framed, a question was raised in the Constituent Assembly regarding a separate provision for press as enshrined in the American Constitution. But the chairman of the drafting committee Dr. Ambedkar opined that the editor of press and other members are all citizens and thus are entitled to fundamental rights like other citizens. Hence, the right to press was included within the ambit of Article 19(1)(a) of the Indian Constitution dealing with freedom of speech and expression. However, certain reasonable restrictions can be imposed on the freedom of expression. Article 19(2) says that the State can impose reasonable restrictions on the exercise of the freedom of expression and speech in the interests of (a) sovereignty and integrity of India; (b) the security of the State; (c) friendly relations with foreign states; (d) public order; (e) decency or morality; (f) contempt of court; (g) defamation and, (h) incitement to an offence. This Article clearly stipulated the fact that the restrictions need to be reasonable and the courts have been entrusted with the responsibility to decide in any particular case whether the restrictions imposed are reasonable or not. The Supreme Court through various judgements proclaimed the fact that freedom of speech and expression included freedom of the press also. In an important case, the Supreme Court (1962) held that the right to propagate one's ideas was inherent in the concept of freedom of speech and expression. In another two famous cases, Romesh Thapar v/s State of Madras (1950) and Brij Bhushan v/s State of Delhi (1950), the apex court held that the freedom of speech and expression included freedom of propagation of ideas. (Shipra, 2008).

5.7: Media and Judiciary – two strong pillars for protection of human rights:

As we have seen above, the media now-a-days have assumed the role of a watchdog but we also know that with great power comes great responsibilities. It is needless to emphasis on the point that a free and a healthy press is indispensable for the smooth functioning of democracy but at the same time, it need to abide by certain guidelines. A healthy democracy stands on people's support and the people, in order to actively participate in the affairs of the state, must be kept well informed about the various current issues as well as the burning topics and important issues of the day. Sound public opinion can be formed by people only if they get clear and truthful account of events. It is pertinent to mention here that both the media and judiciary need to co-operate for bringing the accussed to hook. In fact, the judiciary and the media have rather become partners in the dispensation of justice. The media acts as a catalyst in the process of dispensation of justice whereas the judiciary delivers justice to the masses.

However, in some cases, it has been seen that today the media is wavering from its actual role and trying to make easy and fast money by cashing on the news in wrong sense and wrong way. This is very unfortunate because the mutual supportive and co-operating role of both the media and the judiciary is one of the basic requirements for the success of democracy. With the invention of new technologies in the field of communications, and with the ushering in of television, internet etc., news reporting is not only restricted to newspapers. Moreover, with the emergence of liberalization policy, there came up so many private channels and thus ushered in the era of cut-throat competition. The channels started supplying various interesting colourful marketable news, rather than the true facts thereby becoming a business without

ethics. With the increasing corporatization of the media, sometimes it is seen to be overstepping its boundaries. 'Trial' is a word which is associated with the process of justice and it is exclusively carried out by the courts. But, in some cases, we find undue interference by the media in the process of delivery of justice and it is seen that the media pronounces its own verdict before the trial in court and thus ends up violating the principles of a fair trial. All these has led to the coinage of the term 'Trial by Media' which denotes too much of media activism and it refers to pre-trial exposure of a case by the media. Trial by media is the very anti-thesis of rule of law and can lead to miscarriage of justice. When such is the vital role of media, it needs to be governed by righteousness and equity and shall not fall as a victim to some monetary or other temptations. Media must embrace ethical values and virtues like that of accuracy, honesty, truth, objectivity, fairness, balanced reporting, respect and autonomy. If such values are embraced by media and if it works honestly, then it can go a long way in the protection of human rights. We have seen that in certain cases of national importance, media has played the role of a game changer by constantly keeping the public informed with the developments in the case. We know the very important role of media in exposing various scams like the 2G scam, coal block allocation scam etc. There are also some famous criminal cases like Priyadarshini Mattoo case, Jessica Lal case, Nitish Katara murder case etc, where media intervention has led to justice. Thus, many a times, we have seen both media and judiciary playing mutually supportive roles, thereby protecting human rights. Without an active media, it would not have been possible to deliver justice in the above cited cases and many more other cases. The problem crops up only when business enters and compels the media overstep its boundary. In this era of rat-race competition, in order to get more TRP, the media sometimes takes short cuts and publishes

and presents news in accordance with what the 'public is interested in' rather than what is for 'public interest'. Our law requires that the accussed must be presumed to be innocent unless proved guilty but due to undue media interference, the accussed are already held guilty in the eyes of the public before a verdict is delivered by the court. The accussed always have a constitutional right to a fair trial in the court of law, by an impartial tribunal, totally uninfluenced by media dictation. Some problems which stands as an obstacle in the path of media playing its proper role are like, high level of inaccuracies in news, creating undue sensationalism, poor coverage of the important issues, the media's short attention span, focus on huge profit margins and not serving the public etc.

Thus, from the above discussion, we have gathered the idea that the job of the media is to inform the masses but the power to decide a case solely lies in the hands of a sound judicial system. Sometimes, this line of demarcation between the duties of the two is not maintained properly and when one intrudes into the jurisdiction of the other, then that leads to problem.

Self-Asking Question

Q. The media acts as a catalyst in the process of dispensation of justice whereas the judiciary delivers justice to the masses– Discuss.

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Stop to Consider

Various ways through which media contributes towards human rights protection:-

1. By raising awareness: Media informs the public about various pertinent issues and also educates them about their rights and duties. Thus, media helps in raising awareness.
2. Exposing violations: Media exposes the news of various human rights abuses, corruption and injustice and thus pressurizes government to take appropriate action.
3. Holding authorities accountable: Media acts as a watchdog and ensures transparency in the governing process, by asking various questions to those in power.
4. Providing a voice to the voiceless: The media focuses the problems and struggles of the various marginalized groups and allows them to share their experiences and also allows different social activists and ordinary people share their experiences.
5. Advocating for policy changes: Media by focusing on the loopholes of present policies can lead towards legal reforms and policy changes for stronger human rights protections.
6. Mobilizing public action: Media, by focusing on various news about global movements for justice, can mobilize public opinions which in turn can push towards changes in human rights policies.
7. Emergency and crisis reporting: Media highlights various conflict situations, disasters, humanitarian crisis and helps in mobilizing aid and international intervention.

5.8: Role of Media in protecting Women Rights in India:

We have discussed above how media helps in the process of dispensation of justice. Here, we will discuss the role of media in the protection of women rights in particular. It needs mention here that a paradoxical situation exists in our country so far as status of women are concerned. On one hand, she is at the peak of the ladder of success and on the other hand, she is suffering the violence afflicted on her. Various problems faced by women in our country are like: lack of education and financial independence, patriarchal resistance at every level, witch hunting, discriminatory family codes, sex-selective abortions etc. Witch hunting is an evil practice based on superstitious beliefs and once an individual is labeled as a witch, various tortures are inflicted on that individual thereby violating human rights. Menstrual taboo is another problem and the public opinion towards menstrual taboo is that of silence and indifference or neglect. A research report named "Sanitation Protection: Every Women's Health Right" was published in 2010 by A. C. Neilson (Sinha, 2011), which projected this aspect of problem and revealed the dismal state of menstrual health in India. Another aspect to be mentioned here is that of democratic decentralization, which if implemented properly, can go a long way in fostering participatory democracy. Democratic decentralization, in order to succeed needs four Fs: funds, functions, functionaries and active participation of 'females'. It is because lack of participation of women in the grassroots level is posing as an obstacle in the path of genuine democratic decentralization.

Thus, above we have discussed the problems faced by women in our country. But if seen from legal angle, then we see that there is no dearth of laws for protecting women rights in India. Also, India has ratified various international conventions and human rights instruments committing to secure equal rights of women. Moreover,

our Constitution contains several articles mandating equality and non-discrimination on the ground of sex. Indian Penal Code (IPC) also deals with various types of crimes against women like that of rape, homicide for dowry, dowry deaths or their attempts, torture, molestation, sexual harassment etc. Moreover, the judiciary is serving as a great champion of women rights and from time to time has given specific guidelines for protecting women rights. But, despite the presence of so many provisions, the problems pertaining to women going unabated. And here comes the role of media which is playing a significant role in this regard i.e., protecting women rights. The media through its reach to the people, has done a lot in supporting the movement for women emancipation by focusing on the neglect and marginalization of the position of women in the society. It must be noted here that if media can be a powerful agent of change, it can be an equally powerful agent of oppression too. At times, media gives emphasis on sensationalizing the public. For example, rape stories get far more coverage than the success stories of women. Also, lack of appropriate media coverage of an issue leads to the implication that the topic is not that important. For example, at times domestic violence stories are not given proper coverage. There are also many instances of mistreatment of women by media. In view of such observation, the P. C. Joshi Committee (1985) recommended a system of regular monitoring of the portrayal of women on television.

The above discussion makes it clear that promoting a balanced and non-stereotyped portrayal of women in the media is very important so as to protect women rights. Women can be expected to play their role effectively only when they become conscious of their strength and are not deliberately marginalized by the society. Media has got to play the vital role to create awakening amongst the women so that they can understand their potential as the prime movers of change in

the society. Due to the presence of strong media, it has become possible for the women to come together and address their problems these days. In cases of witch hunting too, media has played its important role in projecting the truth and thus trying its best to stop such social evil practices. Also, media has highlighted on the important role of women in decision making process at all the platforms, including the very grassroots level. The media also plays a crucial role in protecting child rights by raising awareness about various child rights abuses.

Framing theory is a very important theory of mass communications that addresses the aspects of media coverage of the different issues and the media effects. Framing is not merely about coverage of an issue or item but it is about how the news is covered and presented. Taboo is a unique construct of human society and menstrual taboo has remained unspoken and unaddressed issue for a long time. Framing by media has led to understanding of menstruation as a natural phenomenon that needs to be embraced and not estranged (Yagnik, A. S.; 2014).

According to Google Trend Search Volume Index, 'Delhi Gang rape', 'Rape in Delhi' and 'gang-rape victim' were the top search phrases in India in December 2012 (Prasad and Nanda-Kumar, 2012).

Thus we can very well understand from the above discussion that media is always expected to bring to their audiences news based on facts. The facts have to be checked properly and should be presented in an unvarnished condition as much as possible. Sometimes, it may be necessary to present facts in a manner so as to attract readers, but too much of it makes sensation taking over the truth (Bhatt, 2003).

Stop to Consider

Some of the laws which acts as limitations on the freedom of press in India are :-

- Section 292 of the IPC provided for a statutory provision on the subject of obscene publication. Sub-section (2) of this section punishes variety of acts concerning obscene publication and obscene objects.
- The Official Secrets Act, 1923, primarily aimed at maintaining the security of the State against leakage of secret information, sabotage and the like.
- Contempt of Courts also deals with some such restrictions.
- The law of Defamation also imposes certain restrictions.
- The Prevention of Publication of Objectionable Matter Act, 1976, is an act which provides against the printing and publication of incitement to crime and other objectionable matter.
- Moreover, there is the Code of Ethics for the journalists which serve as an effective check on the unrestricted freedom. The News Broadcasters Association (NBA) has also issued certain guidelines for steamlining the functioning of the media.

5.9: Challenges on the Independence of Media:

We have discussed above the role of media in the protection of human rights. Independent journalism can go a long way in protecting the rights, but this ambitious task does not come without its complications. From censorship and direct threats to that of the lack of financial resources, the challenges faced by the media are many. The challenges can be discussed as follows:-

- Physical threats and violence against the journalists – While reporting on controversial or sensitive issues like that of corruption, communal tensions etc, sometime the journalists have to face attacks, harassment or even violence. This results in silencing the dissenting voices and it undermines the public's ability to access accurate information.
- Corporate and Political influence – The overwhelming influence of the corporate and political entities on media, at times, compromises the independence of media and serves vested interests.
- Fake news and Hate Speech – Sometimes different paid news, advertorials and the proliferation of fake news undermines the credibility of the media and challenges its ability to report impartially.
- Financial dependence – Media need to be financially stable so as to avoid dependence on powerful interests which prioritizes profits over the public services. Media should not be subjected to any undue influence or control. Media monopolized by economic bodies forms a formidable challenge to the media's watchdog function.

Check Your Progress

Q.1. Discuss elaborately the role of Media in the field of Human Rights protection in general and Women rights protection in particular.

Q.2. Do you think that the relationship between the Media and the Judiciary must be mutually supportive? Explain answer with relevant examples.

Q.3. Discuss the growing importance of the role of media in the democratic countries.

5.10: Summing Up:

In today's era, both print and electronic media are playing a vital role in effectively conveying message to the people. Still at times, it is seen that there is limited coverage of the important issues. Laws alone would not suffice unless and until backed by a free, fearless and independent media. Also, the ultimate need of the hour is to restore balance between media and judiciary. Both the judiciary and media have social obligations and responsibilities and when both perform their duties as per norms and stick to the values as cherished by the founding fathers of the Constitution, then automatically the balance gets restored. Reform is also needed in media so that it can work properly. Similarly, the judiciary also need to play role in effective and efficient manner and should give justice to the people in such a manner that no room is left for any undue interference. The media and the judiciary are in fact regarded as the two most important pillars of the state upon which rests the entire edifice of the judicial system. On many occasions, the media freedom has been upheld by the highest court as a part of our democratic system. The media, to work effectively, must take into account 5 Ws: who, what, where, when, why and 1 H: How, while publishing any news. Also, a system of 'inverted pyramid style' must be followed where the most important parts of the events are placed in the very beginning. We can end our discussion with this quote of Pt. Jawaharlal Nehru, who once opined that "there is no such thing as absolute freedom. Freedom is always accompanied by responsibility. Freedom always entails an obligation, whether it is a nation's freedom or individual's freedom or a group freedom or the freedom of the Press."

5.11: References and Suggested Readings:

- Metzl, J. F. (1996). Information technology and human rights. *Human Rights Quarterly*, *18*(4), 705-746.
- Sabubun, A. V., & Hammar, R. K. R. (2024). Protection of Freedom of Expression Through Social Media from The Perspective of Human Rights. *Eduvest-Journal of Universal Studies*, *4*(3), 880-887.
- Kälin, W., &Künzli, J. (2019). *The law of international human rights protection*. Oxford university press.
- Mendel, T. (2003). Freedom of information as an internationally protected human right. *Comparative Media Law Journal*, *1*(1), 39-70.
- Shelton, D., & Carozza, P. G. (2013). *Regional protection of human rights* (Vol. 1). OUP USA.
- Ojha, P. (2011). Women's issues in India: Role and importance of media. *The indian journal of Political Science*, 87-102.
- Hassan, R. (2014). Freedom of Media in India– (A Legal Perspective). *International Journal of Humanities and Social Sciences 3.2 (2014): 191*, *202*.
- Belair-Gagnon, V., Mishra, S., &Agur, C. (2014). Reconstructing the Indian public sphere: Newswork and social media in the Delhi gang rape case. *Journalism*, *15*(8), 1059-1075.
- Padhy, S.K., Khatana, S., and Sarkar, S. (2014). Media and mental illness: Relevance to India. Journal of postgraduate medicine, 60(2). 163.

- Price, M. E., Rozumilowicz, B., and Verhulst, S.G. (Eds). (2003). Media reform: Democratizing the media, democratizing the State, Routledge.
- Athique, A. (2012). Indian Media. Polity.
- Shipra, K (2008) (Ed). Indian Law and Press. Omega publications.
- Bhatt, S. C (2003). Media-Sensation not Truth. Gyan publishing house.
- Yadav, K. P (2009) Social effects of Mass Media. Adhyayan publishers.
- Yagnik, A. S. (2014). Reframing menstruation in India: Metamorphosis of the menstrual taboo with the changing media coverage. Health care for women international, 35(6), 617-633.

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BLOCK-IV

RIGHTS OF VULNERABLE GROUPS IN INDIA

Unit 1: Constitutional protection and state responses to protection of SC and ST

Unit 2: Child Rights in India : Issues and Challenges

Unit 3: Rights of Women in India : Issues and Challenges

Unit 4: Human Rights of Persons with Disabilities

Unit 5: Prisoners' rights in India

Unit 6: Rights of Transgender Persons in India

UNIT-1

CONSTITUTIONAL PROTECTION AND STATE RESPONSE TO PROTECTION OF SC AND ST

Unit Structure:

1.1 Introduction

1.2 Objectives

1.3 Constitutional Rights for the Scheduled Castes and Scheduled Tribes

1.4 National Commission for Scheduled Castes and Scheduled Tribes

1.5 Atrocities against SCs and STs

1.6 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989

- 1.6.1 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015
- 1.6.2 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2018

1.7 PESA Act, 1996

1.8 The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013

1.9 Forest Rights Act, 2006

1.10 Policy Initiatives in States

1.11 Challenges in the Implementation of Protections

1.12 Way Forward

1.13 Summing Up

1.14 References and Suggested Readings

1.1 Introduction:

Scheduled Castes (SCs) and Scheduled Tribes (STs) are officially recognized groups in India that have historically faced

marginalization and social disadvantages. According to the United Nations, in the absence of a formal definition, the existence of a minority group can be determined using both objective and subjective criteria. These criteria, developed by various UN independent experts based on international standards, help define minority status.

Objective criteria consider shared characteristics such as ethnicity, national origin, culture, language, or religion. These aspects align with global standards outlined in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (UNDM) and Article 27 of the International Covenant on Civil and Political Rights (ICCPR), which protect the rights of individuals in ethnic, religious, and linguistic minorities. The term "race" is sometimes used alongside "ethnicity" in anti-discrimination laws, not to endorse the concept of distinct races, but to acknowledge and address the ongoing issues of racism and racial discrimination.

Subjective criteria include the principles of self-identification and the intention to maintain group identity. Under the principle of self-identification, individuals have the right to identify themselves as part of a minority group or choose not to do so (as stated in UNDM Article 3.2). Minority communities also have the right to assert their minority status and claim associated rights. Membership in a minority group can be based on objective factors like shared ethnicity, language, culture, and religion. Ultimately, preserving the identity of a minority group depends on the collective will of its members.

1.2 Objectives:

The objective of this unit is to analyze the constitutional safeguards provided to the Scheduled Castes (SCs) and Scheduled Tribes (STs) in India. After reading this unit, you will be able to—

- *assess* the state's response in ensuring their protection,
- *examine* the effectiveness of legal provisions, policies, and judicial interventions in addressing social discrimination and marginalization,
- *evaluate* the role of affirmative action and welfare measures in promoting social justice and inclusivity for SCs and STs.

Stop to Consider

Who are Scheduled Castes (SCs) and Scheduled Tribes (STs)?

The Constitution of India recognizes certain castes, races and tribal groups as Scheduled Castes and Scheduled Tribes under Article 341 and 342. Scheduled Castes include groups that historically faced untouchability, experienced social and geographical marginalization, and require special protections to safeguard their rights and interests.

1.3 Constitutional Rights for the Scheduled Castes and Scheduled Tribes:

The Indian Constitution provides comprehensive safeguards for Scheduled Castes (SCs) and Scheduled Tribes (STs) to protect their rights, ensure social justice, and promote their socio-economic development. These provisions are spread across Fundamental Rights, Directive Principles of State Policy (DPSP), and Special Provisions for SCs & STs.

1. Fundamental Rights (Part III)

The Constitution guarantees several fundamental rights to SCs and STs, ensuring their dignity, equality, and protection against discrimination.

- **Article 14**: *Right to Equality*- This article ensures that all citizens, including SCs and STs, are treated equally before the law. It prohibits discrimination and mandates equal protection under the law, preventing any form of social or institutional bias against marginalized communities.
- **Article 15**: *Prohibition of Discrimination*- This article prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. Clause (4) of this article enables the State to make special provisions for SCs and STs to uplift them educationally and socially, ensuring their full participation in national development.
- **Article 17**: *Abolition of Untouchability*- One of the most significant constitutional provisions, Article 17 abolishes untouchability and forbids its practice in any form. The enforcement of this article is supported by the Protection of Civil Rights Act, 1955, which prescribes penalties for practicing untouchability.
- **Article 19**: *Protection of Freedoms*- This article guarantees freedom of speech, movement, and association to all citizens, including SCs and STs. These freedoms empower them to voice their concerns, associate freely, and participate actively in socio-economic and political spheres.
- **Article 21**: *Right to Life and Personal Liberty*- Ensuring the right to life and dignity, this article is crucial for SCs and STs who have historically faced marginalization. It protects them

from exploitation and provides a legal basis for ensuring their security and well-being.

2. Directive Principles of State Policy (Part IV)

The Directive Principles of State Policy provide guidelines for the government to frame policies that promote social justice and welfare for SCs and STs.

- **Article 46**: *Promotion of Educational and Economic Interests*- This article directs the State to take special care to promote the educational and economic interests of SCs and STs and protect them from social injustice and exploitation. It mandates affirmative action in education and employment to uplift these communities.
- **Article 39A**: *Equal Justice and Free Legal Aid*- This article ensures that justice is not denied to any citizen due to economic or other disabilities. It directs the State to provide free legal aid to SCs and STs to help them access justice without financial constraints.

3. Special Provisions for Education and Employment

The Constitution empowers the State to take affirmative action to promote educational and employment opportunities for SCs and STs.

- ***Article 15(4)***: Special Provisions for Educational Advancement- This clause allows the State to make special provisions for the advancement of SCs and STs in education, including reservations in educational institutions and scholarships.
- ***Article 16(4)***: Reservation in Public Employment- This provision enables the State to provide reservations in public employment for SCs and STs to ensure their adequate

representation in government services and public-sector undertakings.

- ***Article 330 & 332***: Political Representation- These articles mandate the reservation of seats for SCs and STs in the Lok Sabha and State Legislative Assemblies, ensuring their political empowerment and participation in the governance process.
- ***Article 335***: Consideration in Appointments to Public Services- This article states that while maintaining efficiency in administration, the claims of SCs and STs must be taken into account in making appointments to public services and posts.

4. Protection of Civil Rights Act, 1955

It is an Act for penalising anyone who violates the rights of any Indian citizen. It is primarily known as ICRA, i.e. Indian Civil Rights Act. Protection of civil rights act, 1955 is a federal law. As per this law Indian governments cannot execute any law that violates anyone's rights. ICRA means a right accruing an individual because of the abolition of "untouchability" by article 17 of the Constitution of India. This Act only focuses on the provisions of punishment that protect untouchables from various kinds of discrimination.

Fundamental Provisions of the Protection of Civil Rights Act-

Section 3: If anyone forbids an individual to enter a religious place on the basis of caste discrimination, then he/she would be punished for one month or maximum till six months.

Section 4: if anyone forbids a person to enter a public place such as hotels, restaurants, or stops them from using their commodities on

basis of caste discrimination, then the punishment will be imprisonment of one month or six months (not more than that).

Section 5: if a person denies someone from entering the hospital, dispensary, institution, or any hostel which is for public use will be penalised with the imprisonment of one month or more but not more than six months.

Section 6: if someone denies an individual from selling goods and rendering services to any person on the basis of untouchability, then he or she will be penalised with imprisonment for one month or more but not more than six months.

Section 7: if someone forbids an individual from exercising Article 17, causing an injury, or insult, then the punishment will be imprisonment of a month or six months. Moreover, if a person occupies someone's land or other property on the ground of untouchability, then he or she will be fined as well as imprisoned.

Section 7A: On the basis of untouchability if individuals keep another person as their slave, then they will be penalised with the imprisonment of three months or more but not more than six months.

5. Constitutional Provisions for Political Representation of SCs and STs

1. **Article 330** – *Reservation of Seats in the Lok Sabha*

Article 330 of the Indian Constitution mandates the reservation of seats for Scheduled Castes and Scheduled Tribes in the Lok Sabha (House of the People). The objective is to ensure that SCs and STs have adequate representation at the national level, allowing them to participate in policy-making and governance. The number of reserved seats is determined based on the proportion of SC and ST

populations in each state or union territory. This provision ensures that marginalized communities have a say in national affairs, influencing laws and policies that directly affect their socio-economic conditions.

For instance, in the 18th Lok Sabha (2024–2029), 84 seats are reserved for SCs and 47 seats for STs across different states and union territories.

2. **Article 332** – *Reservation in State Legislative Assemblies*

Article 332 provides for the reservation of seats for Scheduled Castes and Scheduled Tribes in State Legislative Assemblies. The objective is to ensure representation at the state level, enabling SCs and STs to influence laws, policies, and welfare measures in their respective states. Similar to Lok Sabha reservations, the seats in State Assemblies are allocated in proportion to the SC/ST population in each state. It allows SC and ST representatives to participate in state governance, advocate for community issues, and oversee the implementation of welfare schemes at the state level.

3. **Articles 243D and 243T** – *Reservation in Local Governance (Panchayati Raj & Urban Local Bodies)*

To strengthen grassroots democracy and empower SCs and STs in local governance, the 73rd and 74th Constitutional Amendments (1992) introduced mandatory reservations in rural and urban local bodies.

(i) **Article 243D** – Reservation in Panchayati Raj Institutions (PRIs)

This article ensures reservation of seats for SCs and STs in: Gram Panchayats (village councils), Panchayat Samitis (block councils), Zilla Parishads (district councils). Additionally, Chairperson (Pradhan) positions are also reserved in a proportionate manner. The objective is to enhance SC/ST participation in rural self-governance,

ensuring their involvement in local decision-making. It helps in the direct implementation of welfare schemes, addressing local issues such as education, healthcare, land rights, and employment for SC/ST communities.

(ii) **Article 243T** – Reservation in Urban Local Bodies (Municipalities)

This article provides for the reservation of seats for SCs and STs in: Municipalities (Nagar Palika, Nagar Panchayat) and Municipal Corporations. The purpose is to ensure SC and ST representation in urban governance, addressing urban-specific challenges like housing, sanitation, education, and employment. It facilitates SC and ST participation in urban planning and policy implementation.

1.4 National Commission for Scheduled Castes and Scheduled Tribes

National Commission for Scheduled Castes

The National Commission for Scheduled Castes (NCSC) is a constitutional body established to safeguard Scheduled Castes (SCs) from exploitation and to promote their social, educational, economic, and cultural interests. Initially, Article 338 of the Constitution mandated the appointment of a Special Officer, known as the Commissioner for Scheduled Castes and Scheduled Tribes, to oversee issues related to these communities.

65th Constitutional Amendment Act, 1990

This amendment modified Article 338, replacing the single-member system with a multi-member National Commission for Scheduled Castes (SCs) and Scheduled Tribes (STs).

89th Constitutional Amendment Act, 2003

With this amendment, Article 338 was revised, and the National Commission for SCs and STs was bifurcated into two independent bodies in 2004:

- National Commission for Scheduled Castes (NCSC) under Article 338.
- National Commission for Scheduled Tribes (NCST) under Article 338A.

Composition

The NCSC consists of:

- A Chairperson
- A Vice-Chairperson
- Three additional Members

These officials are appointed by the President through a warrant under his hand and seal. The President also determines their service conditions and tenure.

Functions

The key responsibilities of the NCSC include:

- Monitoring and evaluating the implementation of constitutional and legal safeguards for SCs.
- Investigating complaints related to the violation of SCs' rights.
- Advising and participating in the planning of socio-economic development programs for SCs.
- Assessing developmental progress of SCs at the Union and state levels.
- Reporting annually (or as needed) to the President regarding the implementation of these safeguards.

- Recommending necessary measures for the protection, welfare, and socio-economic advancement of SCs.

Until 2018, the NCSC was also responsible for handling matters related to Other Backward Classes (OBCs). However, this function was transferred to a separate commission through the 102nd Constitutional Amendment Act, 2018.

Powers of the NCSC

- The Commission has the authority to regulate its own procedures.
- It possesses civil court powers when investigating matters or complaints, including:
- Summoning individuals and examining them under oath.
- Accepting evidence through affidavits.
- Requesting public records from courts or government offices.
- The Central and State governments must consult the NCSC on significant policy decisions affecting SCs.

National Commission for Scheduled Tribe

The National Commission for Scheduled Tribes is a constitutional body that was established by the Constitution (89th Amendment) Act, 2003. The Commission is an authority working for the economic development of Scheduled Tribes in India. The NCST is dealt with Article 338.

The NCST consists of one chairperson, one vice-chairperson and three full-time members. Out of the three members, there should compulsorily be one lady member. All the members of the Commission have a tenure of 3 years.

Functions of National Commission for Scheduled Tribes

- NCST investigates and monitors all matters related to safeguarding the provisions for Scheduled Tribes under the Constitution and evaluating the working of those safeguards.
- NCST will inquire into specific complaints concerned with the deprivation of rights and safeguards of the STs.
- The commission participates and advises on the planning process for the socio-economic development of the STs and also evaluates the progress of the various developmental activities.
- The President will be presented with an annual report of the working of those safeguards. Apart from annual reports, other reports also will be submitted to the President as and when necessary.
- The Commission will also give reports on what measures are to be taken by both the central and various state governments for effective execution of the measures and safeguards for the protection, development and welfare of the STs.
- Other functions of NCST are related to welfare, protection, development & advancement of the STs.

Self-Asking Question

Q. Write an essay on National Commission of SCs and STs.

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1.5 Atrocities against SCs and STs

In India, where class dominance remains deeply entrenched, weaker sections of society frequently endure discrimination, exclusion, and violence. Reports of such atrocities are a daily occurrence, reflecting the persistent marginalization faced by these communities. According to the last available data from the National Crime Records Bureau in 2016, over 1.44 lakh cases of crimes against Scheduled Castes and 23,408 cases against Scheduled Tribes were brought before the judiciary. A significant proportion of the victims belong to economically disadvantaged backgrounds, with women often being the most vulnerable.

Despite constitutional safeguards designed to protect the rights of Dalits in post-independence India, violence against them has continued unabated into the 21st century. Both the state and society play a role in perpetuating their marginalization, either through direct discrimination or by failing to provide adequate protection and justice. When victims of caste-based violence seek legal recourse, they frequently encounter systemic hurdles, beginning with the reluctance of law enforcement authorities to register their complaints. The police, who are responsible for filing First Information Reports (FIRs), often hesitate or refuse to do so, reflecting institutional bias that further denies justice to marginalized communities.

Caste-based atrocities are unconstitutional, as the Indian Constitution prioritizes the protection of marginalized communities and upholds the fundamental principle that every individual has the right to live with equality and dignity. To fully understand caste-based discrimination, it is essential to examine its underlying causes in society.

In 1990, the National Commission for Scheduled Castes and Scheduled Tribes conducted a study *titled Atrocities on Scheduled Castes and Scheduled Tribes: Causes and Remedies*, identifying several factors contributing to such crimes. These included land dispossession, bonded labor, debt, denial of minimum wages, caste-based prejudices, and the persistence of untouchability. Political conflicts rooted in caste divisions, the refusal of Dalits to perform traditional caste-assigned tasks such as digging burial pits, arranging cremations, and disposing of dead animals, as well as racial and physical characteristics, were also highlighted as reasons for continued caste violence. The deeply entrenched biases responsible for these atrocities can be traced back to the rigid caste system that has dominated Indian society for centuries.

During the 19th and 20th centuries, legal reforms played a crucial role in addressing social injustices. Criminal law was used as a tool to deter caste-based discrimination and enforce behavioral change. Article 17 of the Indian Constitution abolished untouchability, declaring it illegal. To reinforce this provision, Parliament enacted the Untouchability (Offences) Act in 1955, later amending it as the Protection of Civil Rights Act in 1976. This law made untouchability, arising from religious or social discrimination, a punishable offense. The preamble of the Protection of Civil Rights Act, 1976 states that its purpose is to prevent atrocities against Scheduled Castes and Scheduled Tribes, establish Special Courts for the prosecution of such offenses, and ensure relief and rehabilitation for victims. These legal frameworks serve as essential mechanisms in the ongoing fight against caste-based discrimination and violence.

1.6 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was enacted to prevent offenses of atrocities

committed against Scheduled Castes (SCs) and Scheduled Tribes (STs) by individuals who do not belong to these communities. The law prescribes strict punishments for such offenses and grants authority to the Central Government to establish rules to ensure its implementation. State Governments and Union Territory Administrations are responsible for enforcing the Act and receive financial assistance from the Central Government under a Centrally Sponsored Scheme to effectively carry out its provisions.

Nature of Offenses

The Act specifically applies to crimes where the perpetrators are non-SC or non-ST individuals. It does not cover offenses committed among members of SCs or STs. There are 37 offenses listed under this Act, which primarily focus on acts that undermine the dignity, self-respect, and rights of SC and ST individuals. These offenses include the denial of economic, political, and social rights, as well as the misuse of legal mechanisms to exploit and oppress members of these communities.

Investigation Procedure

All crimes under this Act are considered cognizable, meaning law enforcement agencies can take immediate action. Investigations must be conducted exclusively by police officers of the rank of Deputy Superintendent of Police (DSP) or higher. The investigation process is time-bound, requiring completion within 30 days, after which a report must be directly submitted to the state police director.

Special Courts for Justice

To ensure prompt legal proceedings, the Act mandates the establishment of Special Courts in every district. These courts are designated to exclusively handle cases related to offenses under this law. The State Government, with the approval of the Chief Justice of

the respective High Court, is responsible for constituting these courts. Cases are expected to be tried on a day-to-day basis to prevent unnecessary delays. Each Special Court has a designated Special Public Prosecutor, who must have at least seven years of legal experience.

- ***Punishments for Offenses*-** The Act prescribes varying levels of punishment depending on the severity of the offense. In most cases, the minimum punishment is six months of imprisonment, while the maximum extends to five years, accompanied by a fine. Certain offenses carry enhanced penalties, with minimum sentences of one year and a maximum punishment of life imprisonment or, in extreme cases, the death penalty. Additionally, the act holds public servants accountable under Section 4. If a public servant who is not a member of the SC or ST community neglects duties required under the Act, they can face imprisonment of up to six months.
- ***Immediate Relief for Victims*-** The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, mandate that authorities provide immediate relief to victims and their families. The District Magistrate, Sub-Divisional Magistrate, or another appointed Executive Magistrate is responsible for ensuring that victims receive compensation in cash or kind. This relief includes essential provisions such as food, water, clothing, shelter, medical assistance, and transportation facilities. These measures are aimed at ensuring that victims and their dependents receive timely support.

1.6.1. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015

In 2015, with a view to address the problem of atrocities against SCs and STs effectively, the government amended the existing SC/ST (PoA) Act.

- It amends existing categories and adds new categories of acts to be treated as offences under the Act.
- It specifies the following acts as amounting to sexual exploitation of women belonging to the SC or ST community:
  i. Using acts, words or gestures of a sexual nature against women belonging to the SC or ST community.
  ii. Touching a women belonging to the SC or ST community intentionally in a sexual manner without her consent.
  iii. Practice of dedicating a women belonging to the SC or ST community as a Devadasi to a temple.
- ***New offences***: The Act deems the following as offences
  i. Garlanding with footwear.
  ii. Compelling to dispose or carry human or animal carcasses, or to do manual scavenging.
  iii. Abusing SCs or STs by caste/name in public.
  iv. Attempting to promote feelings of ill-will against SCs or STs or disrespecting any deceased person held in high esteem
  v. Imposing or threatening a social or economic boycott.

Preventing SCs or STs from undertaking the following activities will be considered an offence:

i. Using common property resources.
ii. Entering any place of worship that is open to the public.
iii. Entering any education or health institution.

iv. Presumption as to the offences: If the accused was acquainted with the victim or his family, the court will presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise.

• ***The Act specifies the duties of public servants***: Under the earlier Act, the Court of Sessions at the district level was deemed a Special Court. The amendment specifies that an exclusive Special Court and exclusive Special Public Prosecutor must be provided at the district level. These Special Courts must be established where offences are less in number. Cases should be disposed of within two months.

• The amendment also added a chapter on the rights of victims and witnesses. It specifies the duty of the State to make arrangements for the protection of victims, their family, and witnesses.

1.6.2. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2018

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2018, was enacted by Parliament in August 2018. Following Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, a new section was added as follows:

Section 18A:

Under this Act:

(a) No preliminary inquiry shall be required for registering a First Information Report (FIR) against any individual.

(b) The investigating officer does not need prior approval to arrest a person accused of committing an offence under this Act, and only

the procedures outlined in this Act or the Code of Criminal Procedure shall apply.

2. The provisions of Section 438 of the Code of Criminal Procedure, which pertain to anticipatory bail, shall not be applicable to cases under this Act, regardless of any judgment, order, or directive issued by any court.

1.7 PESA Act, 1996

The Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) was introduced to address the longstanding demands of India's tribal communities for greater autonomy and self-governance. Enacted on December 24, 1996, the Act aimed to establish self-rule in Fifth Schedule areas by extending the provisions of the Panchayati Raj system to tribal regions.

Historically, tribal communities in India have faced marginalization, displacement, and loss of land and resources. To counter these challenges and safeguard their rights, PESA was framed based on the 73rd and 74th Constitutional Amendments. The Act sought to enhance local self-governance in Scheduled Areas and ensure tribal control over land, forests, and other natural resources.

Key Provisions of the PESA Act, 1996

- *Gram Sabha Empowerment*: PESA strengthens the Gram Sabha (village assembly) by giving it the authority to plan and implement development projects, manage local resources, and oversee governance in tribal areas.
- *Village-Level Governance*: The Act establishes village-level institutions such as the Gram Panchayat and Panchayat Samiti to oversee development activities and deliver basic services.

- *Decentralized Decision-Making*: It vests substantial powers in the Gram Sabha and Gram Panchayat for natural resource management, environmental protection, and economic regulation.
- *Mandatory Consultation*: Government agencies must consult the Gram Sabha before initiating any development projects in Scheduled Areas.
- *Financial Autonomy*: The Act allows the transfer of funds to Gram Sabhas and Panchayats to ensure effective local governance.
- *Land Rights Protection*: The consent of the Gram Sabha is mandatory before acquiring or transferring tribal land, ensuring protection from land alienation.
- *Cultural Safeguards*: The Act preserves tribal customs, traditions, and social practices by prohibiting any interference in their way of life.

Impact of the PESA Act

Since its enactment, the PESA Act has played a vital role in empowering tribal communities and ensuring their participation in governance. Some key outcomes include:

- *Greater Tribal Empowerment*: Strengthened local governance through Gram Sabhas and Panchayats.
- *Land Protection*: Prevented exploitation by requiring tribal consent before land acquisition.
- *Cultural Preservation*: Helped safeguard indigenous traditions and practices.
- *Decentralization*: Promoted grassroots governance by shifting decision-making power to the village level.
- *Improved Basic Services*: Enhanced access to education, healthcare, and drinking water in tribal areas.

Challenges in Implementation of PESA Act

Despite its objectives, the PESA Act faces several obstacles in execution:

- *Limited Coverage*: It does not apply to tribal populations in non-Scheduled Areas.
- *Lack of Awareness*: Many tribal communities remain unaware of their rights under PESA.
- *Resource Constraints*: Gram Sabhas and Panchayats often lack funding and infrastructure.
- *Skill Deficit*: Shortage of trained personnel affects the effective functioning of local institutions.
- *Political Interference*: Decisions of the Gram Sabha are sometimes overridden by political interests.
- *Legal Conflicts*: PESA sometimes clashes with other laws like the Forest Rights Act and Wildlife Protection Act, causing hurdles in implementation.

1.8 The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013

The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, is a significant legislative measure aimed at eliminating manual scavenging, a dehumanizing practice that has historically affected Scheduled Castes (SCs). Manual scavenging involves the manual cleaning, disposal, or handling of human excreta from dry latrines, sewers, or septic tanks, often without protective gear. Despite being outlawed in earlier legislation, the practice persisted due to social discrimination, lack of enforcement, and economic dependency. This Act seeks to prohibit manual scavenging entirely and provide rehabilitation measures for those engaged in it.

The Act explicitly bans the employment of individuals as manual scavengers and prohibits the construction or maintenance of insanitary latrines that require manual cleaning. It mandates the use of modern technology for cleaning sewers and septic tanks, eliminating the need for human intervention. The legislation also requires local authorities to conduct surveys to identify manual scavengers and ensure their rehabilitation through alternative employment opportunities. The Act offers financial assistance, skill development programs, and other socio-economic benefits, such as housing and scholarships for the children of affected families, to facilitate a dignified livelihood transition. To ensure accountability, the Act prescribes stringent penalties, including fines and imprisonment, for those who employ manual scavengers or fail to comply with the provisions. It also establishes vigilance committees at the district and state levels to monitor the implementation of the law. However, despite its robust framework, challenges remain in its enforcement. Reports suggest that manual scavenging continues in many parts of the country due to weak monitoring, lack of awareness among affected communities, and inadequate rehabilitation measures. Moreover, workers often lack access to alternative livelihoods, forcing them to continue working under hazardous conditions.

Judicial interventions have played a crucial role in addressing these challenges. In 2014, the Supreme Court of India directed the government to identify and rehabilitate all manual scavengers while ensuring compensation for families of those who died while cleaning sewers. Additionally, schemes like the Self-Employment Scheme for Rehabilitation of Manual Scavengers (SRMS) and the establishment of the National Safai Karamchari Commission (NSKC) aim to provide financial and institutional support for their welfare.

Despite these measures, the successful eradication of manual scavenging requires stronger enforcement, public awareness campaigns, and comprehensive rehabilitation efforts. The state must actively ensure the mechanization of sanitation work, provide sustainable employment opportunities, and uphold the dignity of affected communities. Until these steps are fully realized, manual scavenging will continue to be a severe violation of human rights and social justice.

1.9 Forest Rights Act, 2006

The Forest Rights Act, 2006 (FRA), is a landmark legislation that seeks to recognize and vest forest rights in Scheduled Tribes (STs) and other traditional forest dwellers who have historically been dependent on forests for their livelihood. Prior to this Act, forest-dwelling communities faced eviction and marginalization due to restrictive colonial-era forest laws that denied them formal rights over land and resources. The FRA aims to correct these historical injustices by granting legal recognition to their customary rights over forest land.

The Act provides for individual forest rights, granting tribal families ownership and usage rights over forest land for habitation, cultivation, and livelihood. It also recognizes community forest rights, empowering gram sabhas to manage, protect, and conserve forest resources. Additionally, it grants rights to minor forest produce, grazing lands, and traditional water bodies, ensuring the socio-economic security of forest-dependent communities. One of the key features of the FRA is the role of the Gram Sabha in verifying and approving claims to forest land, ensuring a decentralized and participatory approach. This counters the bureaucratic and often exclusionary practices of forest departments.

However, the implementation of the Act has faced significant challenges, including bureaucratic resistance, delayed recognition of rights, and conflicts between conservation policies and tribal rights.

Despite its challenges, the Forest Rights Act has empowered forest-dwelling communities by restoring their legal rights over land and resources. It has strengthened their role in forest governance, promoting sustainable development and environmental conservation. Continued efforts are required to ensure its effective implementation and prevent the displacement of marginalized communities in the name of conservation and development.

1.10 Policy Initiatives in States

Reservation Policies

Reservation policies play a crucial role in ensuring representation and opportunities for SCs and STs in education, employment, and governance. The policy provides for reserved seats in educational institutions, government jobs, and legislative bodies to promote inclusivity and social mobility. Over the years, reservation policies have contributed to reducing caste-based inequalities and empowering marginalized communities. However, implementation challenges such as bureaucratic delays, lack of awareness, and social opposition continue to hinder their full effectiveness.

Special Component Plan (SCP) and Tribal Sub-Plan (TSP)

The Special Component Plan (SCP) for Scheduled Castes and the Tribal Sub-Plan (TSP) for Scheduled Tribes are major financial initiatives aimed at promoting their socio-economic development. These plans ensure targeted budgetary allocations for SCs and STs, focusing on education, health, employment, and infrastructure development in tribal and backward areas. The implementation of

SCP and TSP has helped in the creation of livelihood opportunities and access to essential services. However, challenges such as fund misallocation, delays in disbursement, and lack of proper monitoring mechanisms affect the desired outcomes.

Eklavya Model Residential Schools (EMRS)

The Eklavya Model Residential Schools (EMRS) scheme is an initiative by the Indian government to provide quality education to Scheduled Tribe students. These schools are established in tribal-dominated areas to offer free education, modern infrastructure, and skill development opportunities. EMRS aims to bridge the educational gap and enhance the participation of ST students in higher education and employment. The program has shown positive results in improving literacy rates among tribal communities, but the lack of adequate funding, infrastructure, and trained teachers remains a challenge.

Pradhan Mantri Adarsh Gram Yojana (PMAGY)

The Pradhan Mantri Adarsh Gram Yojana (PMAGY) is a key initiative aimed at the holistic development of villages with a significant SC population. Launched in 2009, the scheme seeks to bridge the socio-economic disparities faced by SC communities by providing better infrastructure, healthcare, education, and livelihood opportunities. Under this scheme, villages with at least 50% SC population are selected for development with financial assistance from both central and state governments. The primary objectives include improving sanitation, drinking water supply, education, healthcare, and connectivity in these villages. The scheme integrates resources from other development programs like MGNREGA, PM Awas Yojana, and Swachh Bharat Mission to ensure comprehensive rural development.

Vanbandhu Kalyan Yojana (VKY)

The Vanbandhu Kalyan Yojana (VKY) is a dedicated scheme for the welfare and development of Scheduled Tribes. Launched in 2014 by the Ministry of Tribal Affairs, it focuses on improving the quality of life of tribal communities through targeted interventions in education, health, employment, and infrastructure development. VKY follows a holistic approach, ensuring sustainable livelihood opportunities, skill development, and access to modern amenities in tribal-dominated regions. The scheme promotes entrepreneurship, financial inclusion, and self-employment among STs. Additionally, it strengthens the implementation of the Forest Rights Act, enabling tribal communities to claim their land and forest-based livelihoods

Stand Up India Scheme

The Stand Up India Scheme, launched in 2016, aims to promote entrepreneurship among SCs, STs, and women by providing financial assistance for setting up enterprises. Under this scheme, each bank branch is mandated to offer loans to SC and ST entrepreneurs, encouraging self-employment and economic independence. The initiative plays a vital role in fostering entrepreneurship, reducing dependence on traditional caste-based occupations, and promoting financial inclusion. However, barriers such as lack of awareness, difficulties in loan processing, and inadequate business training for beneficiaries need to be addressed to improve its effectiveness.

Educational and Economic Empowerment

To improve access to education, the government provides reservations in educational institutions and scholarships like the Post-Matric Scholarship Scheme for SC and ST students. Programs like the National Overseas Scholarship enable students to pursue higher education abroad. Additionally, financial assistance and

coaching centers have been established to prepare SC/ST students for competitive exams.

Economic empowerment is promoted through reservations in government jobs and public sector enterprises. Institutions like the National Scheduled Castes Finance and Development Corporation (NSFDC) and National Scheduled Tribes Finance and Development Corporation (NSTFDC) provide financial support to SC/ST entrepreneurs.

1.11 Challenges in the Implementation of Protections

Despite constitutional and legal safeguards, challenges persist:

Continued Discrimination and Violence: Atrocities against SCs and STs, including caste-based violence and exclusion, remain prevalent.

Underutilization of Funds: SCSP and TSP funds often remain underutilized due to bureaucratic inefficiencies.

Poor Implementation of Laws: Delays in legal proceedings and weak enforcement mechanisms hinder justice.

Economic Disparities: SCs and STs continue to face economic marginalization, landlessness, and unemployment.

Educational Barriers: High dropout rates among SC and ST students due to financial constraints and social discrimination.

Political Representation Issues: Despite reservations, SC and ST representatives often lack decision-making power.

More than a dozen crucial annual reports of the national commissions for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs) have not been made public for up to seven years now. The National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST) have not submitted their annual reports to the President for

the last two years (Lakshman, 2025). Glaring loopholes in the SC/ST Act wide enough for the accused to escape (Singh, 2023). The law meant to protect Dalits is at the centre of a political - legal controversy, but the ground reality will not change until fundamental problems are addressed (Jyoti, 2018).

1.12 Way Forward

To enhance the effectiveness of protections for SCs and STs, the following steps are recommended:

Strengthening Legal Frameworks: Strict enforcement of laws against discrimination and expeditious handling of atrocity cases.

Ensuring Proper Fund Utilization: Improved monitoring and accountability in SCSP and TSP fund allocation.

Enhancing Educational Access: Expansion of scholarships, coaching centers, and digital education initiatives.

Economic Empowerment Programs: Greater support for SC/ST entrepreneurs through skill training and financial inclusion.

Community Awareness and Advocacy: Strengthening awareness campaigns on rights and legal provisions.

Political Empowerment: Encouraging leadership training and participation in governance for SCs and STs.

Check Your Progress

1. What are the Constitutional Rights for SCs and STs?
2. What do you know about Protection of Civil Rights Act 1955?
3. Discuss about the constitutional provisions for political representation of SCs and STs.
4. Discuss about PESA Act, 1996.
5. Discuss about the functions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989.
6. What are the Policy Initiatives in States for protection of SCs and STs.
7. What do you know about the Forest Rights Act 2006?

1.13 Summing Up

The constitutional provisions and state response towards the protection of Scheduled Castes (SC) and Scheduled Tribes (ST) have significantly contributed to their upliftment, but their effectiveness remains uneven. While legal frameworks have provided safeguards against discrimination and social exclusion, the real impact on the ground has been hindered by several socio-political and administrative challenges. The abolition of untouchability and legal protection against caste-based discrimination have helped in reducing overt forms of exclusion, yet subtle and indirect discrimination persists in many aspects of life, including employment, education, and access to public spaces.

The reservation system in education, employment, and political representation has provided a platform for SCs and STs to participate in mainstream society. It has enabled greater access to government jobs, higher education, and legislative bodies, allowing many from these communities to achieve social mobility. However, the benefits have not been uniformly distributed, as many among the SCs and STs, particularly in rural and remote areas, still face severe economic deprivation and social ostracization. The lack of quality education, skill development, and employment opportunities continues to limit their overall progress, leading to economic dependence and vulnerability. State initiatives such as scholarships, special financial schemes, and welfare programs have sought to address these gaps, but bureaucratic inefficiencies and corruption often prevent the intended beneficiaries from fully accessing these benefits. Additionally, crimes against SCs and STs, including atrocities and caste-based violence, remain a persistent issue despite stringent legal protections. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been a crucial tool in addressing these crimes, yet the underreporting of cases, slow

judicial processes, and systemic biases within law enforcement agencies hinder justice for victims. Many perpetrators of caste-based crimes go unpunished, weakening the deterrent effect of such laws. For ST communities, laws related to land rights and forest dwellers' protections have been instrumental in recognizing their traditional rights. However, large-scale displacement due to development projects, mining activities, and infrastructure expansion continues to threaten their livelihoods and cultural identity. In many cases, legal provisions remain only on paper, as implementation is marred by state inaction and corporate influence. While the state has taken steps to promote tribal welfare through special grants and self-governance initiatives, the effectiveness of these measures remains limited due to a lack of political will and poor enforcement.

Despite these shortcomings, there have been notable successes. Increased literacy rates, political awareness, and the emergence of leaders from SC and ST communities in various fields indicate a positive shift. Social movements and activism have also played a crucial role in demanding better implementation of laws and policies. However, deep-seated caste prejudices and structural inequalities require more than just legal safeguards. A holistic approach involving stronger law enforcement, social awareness campaigns, economic opportunities, and inclusive policymaking is essential for ensuring true empowerment. While constitutional provisions have provided a foundation for protection, their effectiveness will depend on continuous efforts to bridge the gap between policy and practice, ensuring that SCs and STs can exercise their rights with dignity and equality.

1.14 References and Suggested Readings

Agarwal, U.C. (2003). Reservation for whom, why and how much: Constitutional provisions and judicial verdicts. *Indian Journal of Public Administration, 49* (2), 107-118.

Ambagudia, J. (2019). Scheduled tribes, reserved constituencies and political reservation in India. *Journal of Social Inclusion Studies, 5* (1), 44-58.

Jyoti, D. (2018). SC/ST Act: More symbolic than effective. *Hindustan Times*. https://www.hindustantimes.com/india-news/sc-st-act-more-symbolic-than-effective/story-S9ZgRCOl2kPDivsPhQJ18M.html

Lakshman, A. (2025). Over a dozen annual reports of SC, ST and OBC panels yet to be made public. *The Hindu*. https://www.thehindu.com/news/national/more-than-dozen-annual-reports-across-commissions-for-scs-sts-and-obcs-yet-to-be-made-public/article69490457.ece

Ramdas, R. (2021). *Poverty and education: Attainments and challenges for tribal communities.* Contemporary Voice of Dalit.

Singh, B. (1983). Constitutional and statutory provisions for the weaker sections of the society. *Indian Journal of Public Administration*, *29* (2), 299-316.

Singh, P. (2023). Challenges to Justice: HC Decisions Raise Concerns About Effectiveness of the SC/ST 'Prevention of Atrocities Act'. *The Mooknayak*. https://en.themooknayak.com/india/challenges-to-justice-high-court-decisions-raise-concerns-about-effectiveness-of-the-scst-prevention-of-atrocities-act

Verma, R.C. (2017). *Indian Tribes Through the Ages*. New Delhi: Publications Division, Ministry of Information & Broadcasting.

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UNIT-2
CHILD RIGHTS IN INDIA ISSUES AND CHALLENGES

Unit Structure:

2.1 Introduction
2.2 Objectives
2.3 U.N Conventions Relating to Children
2.4 Act/Laws in India Relating to Rights of the Child
2.5 Constitutional Provisions Relating to Children
2.6 Issues Violating Child Rights in India
2.7 Summing Up
2.8 References and Suggested Readings

2.1: Introduction:

On the occasion of commemorating 'International Day against Drug Abuse and Illicit trafficking', the NCPCR (National Commission for Protection of Child Rights) with Narcotics Control Bureau had organized a national consultative cum review meeting on implementation of Joint Action Plan on 'prevention of drugs and substance abuse among children and illicit trafficking' on June 30, 2024 at New Delhi. There it was contended that substance abuse and drug addiction have emerged as one of the most pressing issues amongst children and younger generation today and that the consequences of such abuse can be profoundly detrimental to both physical and mental health which can impair growth, damage organs and can lead to chronic health problems. It was further contended there that various children in street situations have been identified as vulnerable to drug and substance abuse. Another report on Child Labour in Automobile Industry in India – A fact-finding report

(2022-23) also highlighted on prevailing child labour in such industries.

Children are the future of any nation and thus, their rights need to be protected under all circumstances, so as to ensure their well-being and development. When we talk about the rights of the children or issues violating rights of the children, we will have to understand that we are talking about the rights of those who are not aware of those rights, nor can they fight for those rights. Therefore, it is for the adults to consider, formulate and fight for those rights and also to see that these rights are not violated by anyone. Children worldwide are facing various problems like that of child prostitution, child pornography and other different forms of exploitation. Not only that, the children at times are also victims of rape, beatings, displacement, drugs, addiction and other forms of psychological abuses. Different steps have been taken throughout the world for protecting child rights, yet, several issues still persist which violates child rights. It is in this context that we need to be aware about child rights and must take appropriate steps so that child rights get protected. Children are amongst the most vulnerable sections of the society, and thus they are in need of special care, protection and support. Thus, in this unit, we will try to study about child rights in its entirety and also deal with the various issues violating child rights in India.

2.2: Objectives:

This unit deals with various aspects concerning child rights and also deals with the various issues violating child rights in India. After reading this particular unit, the learners will be able to:-

- *understand* international arrangements dealing with protection of child rights,
- *discuss* various Indian Law relating to Child's rights,
- *analyse* the Constitutional provisions relating to children in our country,
- *describe* the various Issues violating child rights in India.

2.3: U.N Conventions Relating to Children:

In the year 1924, the Geneva Declaration on the Rights of the Child was adopted and thereafter, the United Nations restarted the process in 1959 when another Declaration on the rights of the child was adopted. Thereafter, the year 1979 was celebrated as the International year of the Child. Thereafter, the General Assembly adopted on 20th November, 1989, the United Nations Convention on the Rights of the Child, which came in force on 2nd September, 1990, after receiving the necessary ratification. Two Optional Protocols to the Convention on the Rights of the Child were also adopted on May 25, 2000, which are as follows: Optional Protocol on the Involvement of Children in Armed Conflict and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

Let us now discuss in detail about United Nations Convention on the Rights of the Child. The Convention recognizes the following important rights of the child:-

1. **Right to life:** Article 6(1) of the convention says that a child has the inherent right to life. Capital punishment cannot be given to a person below eighteen years of age.
2. **Right to parental care:** Article 9(1) of the convention says that a child has the right to be cared by parents.

3. **Health of the Child:** Article 24(1) of the convention contemplates that the child has the right to the highest attainable standard of health and thus, special attention must be given to the health of the children.
4. **Right to Education:** Article 28 of the convention says that universal, compulsory and free primary education is a matter of right for the children.

   Some other rights stipulated by the convention are as follows:-

   Right to acquire nationality (Article 7), right to a standard of living adequate for the child's physical, mental, spiritual and social development (Article 27) etc.

   Millennium Development Goals, 2000, pledges to promote respect for human rights and to endeavour to protect and promote full spectrum of rights, which definitely includes child rights.

2.4: Acts/ Laws in India Relating to Right of the Child:

Let us now focus our attention on some of the laws in our country dealing with child rights:-

1. **Child Marriage Restraint Act, 1929:** This Act prohibits child marriage and provides that whoever performs or conducts such a child marriage is liable to punishment. Under Section 6 of the Act, it is said that where a minor contracts a child marriage, any person having charge of the minor who promotes or permits such marriage or negligently fails to prevent such marriage from being solemnized, shall be punishable.
2. **Child Labour (Prohibition and Regulation) Act, 1986:** The main objective of the Act is to prohibit engagement of children in various occupations and processes which

are unsafe and harmful to the child. Establishment, for the purpose of this Act means a shop, commercial establishment, workshop, farm, residential hotel, restaurant, theatre or other places of public amusement. The provisions of the Act can be considered to be an improvement over the repealed Act of the Employment of Children Act, 1938. It needs mention here that this Act is solely devoted to the child workers and there is a welfare spirit of the Act. But it also suffers from certain inherent weaknesses. For example, it does not speak for abolition but just for prohibition and regulation of the child labour. Section 13 of the Act empowers the appropriate government to make rules for the health and safety of the children employed in any such establishment but it has not specified any period within which such rules are required to be made. Also, the Act has not taken care of the children working in the unorganised sectors.

3. **The Juvenile Justice (Care and Protection of Children) Act, 2000:** This Act repealed the previous Juvenile Justice Act of 1986. This is an Act to consolidate and amend the law relating to the juveniles in conflict with law and children in need of care and protection. This Act provides for proper care, protection and treatment by catering to the developmental needs of the child by adopting a child-friendly approach while adjudicating and disposing of matters in the best interest of the child and for the ultimate rehabilitation through various institutions established under the Act. This Act was enacted keeping in view the United Nations Convention on the Rights of the Child, 1989. According

to the Act, juvenile in conflict with law means a juvenile who is alleged to have committed an offence. Chapter II of the Act deals with the provisions of law relating to juveniles in conflict with law.

Also, India has been an active participant in many of the international discourse on child rights and ratified the CRC in 1992, thereby reaffirming its earlier acceptance of the Universal declaration of the rights of the child.

It is pertinent to mention here that the laws, policies and practice of child welfare have undergone a significant change if we look from a historical perspective. Earlier there was the concept of authority and control so far as the child welfare is concerned. It was only during the twentieth century that the concept of child rights emerged. This shift in focus from the 'welfare' to that of the 'rights' approach is very significant. Rights signifies entitlements. This rights perspective has been embodied in the United Nations Convention on the Rights of the Child, 1989 (UNCRC, 1989). India ratified the convention in Dec 1992. (Bajpai).

Let us now focus our attention on the some more laws protecting child rights. These are like: IPC, 1860; Factories Act, 1948; Indian Contract Act, 1870; Mines (Amendment) Act, 1952; Apprentices Act, 1961; Juvenile Justice Act, 2015 etc. The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted to protect the children from offences of sexual assault, sexual harassment, pornography. Under the POCSO Act, the term 'child' has been defined to mean any person below the age of 18 years. There are some other laws to be mentioned here: Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of production, supply and distribution) Act, 1992; Prohibition of Child Marriage Act, 2006; Right to Children to free and compulsory

Education Act, 2009 etc. Several criminal laws also gives special protection to the children like that of IPC, 1860, Indian Evidence Act, 1872, CrPC, 1973. Also, there are other Acts like The Immoral Traffic (prevention) Act, 1956, which was amended in 1987, which tried to curb trafficking amongst young persons.

A number of policy initiatives, plans and programmes have been undertaken in India. Some of these policies and plans related to children are:- National Policy on Education, 1986; National policy on child labour, 1987; National Nutrition policy, 1993; National Health Policy (NHP), 2002; National Charter for children, 2003; National Policy for persons with disabilities, 2006; National policy for children, 2013.

2.5: Constitutional Provisions Relating to Children:

Indian Constitution has various provisions for the protection of the rights of the children. The following are some of the fundamental rights of Indian citizens provided under Article 19 of the Constitution: freedom of speech and expression, freedom of assembly, freedom to form associations, freedom of movement, freedom to reside and to settle and freedom of profession, occupation, trade or business. All these fundamental rights as enshrined in the Constitution are available to all the citizens. Children are not only entitled to the wide range of rights available to all Indian citizens, but are also accorded additional rights having a sympathetic view towards them. New dimensions were given to the fundamental rights through various judicial pronouncements and child's right to education has been given expanded meaning by the Supreme Court so as to enable the children receive the much needed education. Right to equality has been guaranteed under the Constitution but protective discrimination has been allowed in

favour of women and children. Article 21 gives right to life and personal liberty. It has been contended by the judiciary that right to life does not merely mean animal existence but it also means something more i.e., the right to live with human dignity. In accordance with this right also, child rights have been protected. Also, employment of children below the age of 14 years is strictly prohibited under the Constitution and thus, no child can be employed in any hazardous activity. Article 39, which is a directive principle of state policy, enjoins that it is the duty of the state to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength. It is also regarded as the duty of the State to ensure that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and also to see that childhood and youth are protected against exploitation and against moral and material abandonment. In consonance with such provisions, various landmark judgements have been passed from time to time to protect child rights. For example, in M. C. Mehta v/s State of Tamil Nadu, it has been held by the judiciary that the children cannot be employed in match factories which are directly connected with the manufacturing process as it constitutes hazardous employment.

Let us here focus our attention on the various Fundamental Rights and Directive Principles of State Policy, which deals specifically with child rights:

- Prohibition of employment of children in hazardous employment (Article 24).
- The State shall endeavour to raise the level of nutrition and standard of living and to improve public health (Article 47).

- To provide for free and compulsory primary education (Article 45).
- Right to adequate means of livelihood [Article 39(a)].
- Right against economic exploitation [Article 39(e)-(f)].
- Right of children and the young to be protected against exploitation and to opportunities for healthy development, consonant with freedom and dignity [Article 39(f)] etc.

Different legislations also tried to prohibit employment of a child. For example, The Mines Act, 1952, the Merchant Shipping Act, 1958 and the Motor Transport Workers Act, 1951, prohibits employment of a child below the age of 15 years.

The above discussion makes it clear that Article 45 mandated the State to make the provision for free and compulsory education for the children below the age of 14 years within the time limit of 10 years from the date of the commencement of the Constitution. Article 46 mandated the State to promote with special care the educational interest of the weaker sections of the society. Moreover, the active role of judiciary in the interpretation of Article 21 of the Indian Constitution has brought the right to education within the scope of Article 21 of the Constitution. In Unni Krishnan's case, the right to education was more elaborately explained and engrafted within the ambit of Article 21 of the Constitution. Thereafter, a fundamental right to education has been incorporated into the Constitution vide the Constitution (86^{th} Amendment) Act, 2002, which makes education for 6 to 14 years old a fundamental right.

Stop to Consider:

Some facts about Juvenile Justice system:

The focus of the Juvenile Justice Act has always been on the humane treatment of the juveniles in conflict with the law. The law no doubt acknowledges the culpability of the juveniles for their crimes but gives them a second chance by means of rehabilitation. The Juvenile Justice (Care and Protection of Children) Act, 2015, has been passed by the Parliament amidst intense controversy and debate and it has replaced the previous Juvenile Justice (Care and Protection of Children) Act of 2000. This Act allows for juveniles in conflict with law in the age group of 16 to 18 to be tried as adults, if they are involved in heinous crimes. The Act has further been amended in the year 2021.

Focusing on the problems dealing with delinquents are that in our country, the juvenile homes are overcrowded and are under-equipped with professionals. The juveniles are in need of sustained counseling but most of the juvenile homes do not have proper in-house counselors.

Self-Asking Question

Q. It has been contended by the judiciary that right to life does not merely mean animal existence but it also means something more i.e., the right to live with human dignity – explain the statement.

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2.6: Issues violating child rights in India:

In our country, various ancient texts dealt with child issues. The Ramayana, the Mahabharata and the laws of Manu are India's most popular and the ancient texts referring to the status of children within Indian society (Kakar, 1982). We have seen from the above discussion that our Constitution also guaranteed various rights to the children. Along with granting children the Constitutional rights, free India made prominent the needs and rights of the children through the Five-year plans, which set the developmental goals for each successive five year period. Each five year plan has resulted in an increased availability of the resources and facilities for meeting the various needs of the children. The adoption of the National policy for children in 1974 recognised children as the 'nation's supremely important asset' while declaring it the State's responsibility to provide for their needs (Rao, 2010).

We have seen above that there are various laws as well as judicial pronouncements protecting child rights in our country. But unfortunately, despite various Constitutional safeguards and legal frameworks, violations of child rights going on unabated in our country. These violations can be of various types, like ranging from child labour and trafficking to that of lack of education and healthcare. Let us now discuss about the diversified issues violating child rights in our country:

1. **Child Labor:-** This is a serious problem which violates child rights. Despite the enactment of the Child Labour (prohibition and regulation) Act, 1986, children are exploited even today. Many children are employed in hazardous works. Due to problems like that of poverty, lack of education and weak enforcement of laws, these problems are continuing in the society.

2. **Child Trafficking:-** This is yet again a very serious problem concerning child rights. Children are abducted and trafficked for forced labor, sexual exploitation and even for organ trade. Due to their tender age, the child can be lured easily with false promises of employment or better living conditions. Various acts like that of Immoral Traffic (prevention) Act, 1956, and the Juvenile Justice Act of 2015 has been enacted with the aim of protecting child rights against immoral trafficking and all, but due to problem in proper implementation process and also due to lack of awareness, these problems still continue to endanger the children.
3. **Violation of Educational Rights:-** We know that education is a fundamental right now, yet, millions of children are deprived of quality education even today. Different factors stands as obstacles like that of poverty, child marriage, gender discrimination, lack of proper infrastructural facilities etc. which prevents the children from accessing quality education. Due to the pressing problem of poverty, many children are removed from schools as they need to work and support their families. Especially girl child and those from marginalized communities are specially deprived of education due to gender bias issues. During pandemic, more educational disparities were created because many children were unable to access online education facilities.
4. **Child Marriage:-** Even after the enactment of Prohibition of Child Marriage Act, child marriage is still widely rampant in many parts of the country. In rural areas and amongst the economically weaker sections, this practice is more prevalent. This problem leads to other problems like that of

early pregnancy issues, health complications, deprivation of education, domestic abuse etc. It has been contended that child marriage continues to persist in India, with 1 in 4 girls being married before the age of 15 (International Institute of Population Sciences, 2006). Despite national laws prohibiting child marriage, it remains as the norm in many of the states and mass marriages of children in the public functions continue to be performed in the presence of public officials (India Alliance for Child Rights, 2005; Law Commission of India, 2008).

5. **Malnutrition and Poor Health Issues:-** Poverty, inadequate nutrition and lack of access to proper healthcare issues are intricately related issues. It is because due to malnutrition, children's immune system gets adversely affected thereby making them susceptible to diseases and impairing their cognitive development. Provision for mid-day meal was made so as to enable children have education without being hungry but that system also got adversely affected due to entry of corruption in some places.
6. **Child Mortality:** India accounts for 25% of child deaths worldwide and fifty percent of these deaths are from preventable causes (UNICEF, 2008). When the poor parents are forced to choose, they opt to invest in their son's health, nutrition and education over that of their daughter (Jansankhya Sthiratakosh, 2006). This is especially true for the second and third born girls (Bhan, 2001).
7. Other problems are also there like that of physical abuses, sexual abuse, domestic violence etc. It needs mention here that many cases of child sexual abuse are unreported due to fear of societal repercussions and also due to lack of awareness. In many cases, it is seen that even family is

trying to make the child shut their mouth against such abuse, due to the fear of stigma. Also, homelessness is yet another problem affecting the child rights. Despite the presence of various shelter homes and rehabilitation centres, yet the fact remains that a significant number of children still lives on the streets, deprived of shelter and other basic necessities. Not only that, female child are killed even before their birth which led to the enactment of the Pre-Natal Diagnostic Act, 1994, which bans sex determination tests.

It is clear from the above discussion that in spite of the national efforts to provide legal protection against discrimination, girl child in India continue to suffer serious forms of discrimination based on unchallenged and unchanged harmful beliefs and traditions. The Committee (CRC 2000, 2004) listed the persistence of discriminatory social attitudes and also harmful traditional practices towards girls, including problems like that of female infanticide, selective abortions, low school enrollment and high drop-out rates amongst girls and also early and forced marriages. The above cited are some of the ways rights of the girl child in India are violated. However, due to grassroots level campaigning along with the various efforts led to the landmark ruling in the case of Unnikrishnan, J.P v/s State of Andhra Pradesh which carved the path to the 86th Constitutional Amendment Act (2002) which under Article 21 guaranteed as fundamental right free and compulsory education to every child between the ages 6 and 14.

Thus, we see that there are various issues which are violating child rights in our country and to combat this problem, the need of the hour is urgent attention of the policy makers and civil society. Only presence of legal framework is not enough. The need of the hour is effective enforcement of those laws. The civil society must take it as

a moral responsibility to protect the child rights under all circumstances.

Check Your Progress

Q.1. Explain the various Constitutional provisions relating to children in India. Do you think that child rights are protected in our country? Substantiate your answer with suitable examples.

Q.2. What are the different laws dealing with child rights in our country?

Q.3. Explain the various issues violating the child rights in India.

Q.4. What is juvenile delinquency? Explain.

Q.5. Discuss the various socio-economic factors contributing to child labour in our country.

Q.6. How does poverty affect access to educational facilities for the children in the rural areas? Explain with reference to pandemic situation.

2.7: Summing Up:

The above discussion makes us clear about the fact that a child of today is the responsible citizen of the future. So, proper child care is of utmost importance if we want to have a good section of citizens in the future. We have also seen above that both in the international as well as the national forum, there are no dearth of steps taken for child rights protection. For example, the U.N General Assembly adopted on 20th Nov, 1989, the UN Convention on the Rights of the Child which came in force on Sept. 1990. Article 1 of the convention provided that all persons below the age of 18 years are to be treated as children. Even in our country, we have seen that

there are lots of acts or laws dealing with child rights protection. But despite the presence of these wide spectrum of laws, we find child rights violations in broad day light and also we find violation of law by child. Now-a-days, the problem of juvenile delinquency is on rise thereby posing as a formidable challenge before the society. This problem has become much more prominent and has come to limelight more after the Delhi gang-rape case. So, now the urgent need of the hour is to strike a proper balance between child rights protection and at the same time, educating the child properly about their obligations towards the society. Care need to be taken so that the delinquent children who have deviated their paths and have gone to dogs, receive proper treatment and become healthy members of the society. Many quarters have demanded reforms in the existing laws dealing with delinquents. Moreover, we have also discussed about the various issues violating child rights in our country and thus, proper steps should be taken to implement properly the laws and other measures taken to protect child rights.

2.8: References and Suggested Readings:

- Grewal, I. K., & Singh, N. S. (2011). Understanding child rights in India. *Early Education & Development*, *22*(5), 863-882.
- Bajpai, A. (2018). *Child rights in India: Law, policy, and practice*. Oxford University Press.
- Rai, A., Palit, S., &Mitra, S. (2014). Child Rights in India: Contemporary Challenges. *Journal of the National Human Rights Commission India.*
- Chahal, D., & Kumar, R. (2017). Educational rights of children: Issues, challenges and solution: Journey of independent India. *Educational Quest-An International*

Journal of Education and Applied Social Sciences, *8*(spl), 257-262.

- Pandey, A. (2023). CHILD ABUSE, STATUS, AND RIGHTS IN INDIA: AN IN-DEPTH EXAMINATION. *A VISION OF NEP 2020-INDIA'S 2047 ON HIGHER EDUCATION*, 155.
- Sen, A. (2007). Children and human rights. *Indian Journal of Human Development*, *1*(2), 235-245.
- Kant, A. (2003). *Law relating to women and children*. Central law publications.
- Basu, D. D. (1997) *Introduction to the Constitution of India* (18th ed.), Prentice Hall of India pvt. Ltd., New Delhi.

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UNIT- 3

RIGHTS OF WOMEN IN INDIA: ISSUES AND CHALLENGES

Unit structure:

3.1 Introduction
3.2 Objectives
3.3 Convention on The Elimination of All Forms of Discrimination Against Women
3.4 Indian Laws Relating to Women Rights
3.5 Women Rights and Environment
3.6 Indian Constitution and Women's Rights
3.7 Various Issues Violating Women Rights in India
3.8 Summing Up
3.9 References and Suggested Readings

3.1: Introduction:

On examination of the data regarding women rights from the years 2017 to 2022, it has been observed that three major crimes tops the list: cruelty by husband and relatives, assault on women with the intent to outrage her modesty and kidnapping and abduction constituted more than 70% of the total crime committed against women (Women and Men in India – 2024).

Women constitute a vital part of the society. Woman gives birth to child and cares for the health, education etc. of the child. Thus, she maintains the child properly and makes the future of a nation. Realizing her importance in the society, more attention has been given towards her amelioration in the recent years. Gender justice is a universal concern these days and considering its importance, Convention on the Elimination of all forms of discrimination against Women (CEDAW) has been passed by the United Nations and

signed by India. In our country, there is no dearth of provisions for protecting women rights. But despite the Constitutional guarantees and various legislative protections, it is seen that women's rights continue to be challenged by various deep-rooted social, cultural and economic issues. It is true that India has made progress in improving the status of women in various sectors but still violations of women rights also going on parallely. These violations are often reinforced by the traditional patriarchal structures and mindsets. In this unit, we will try to study about the various parameters of women rights and also various issues violating the women rights in our country.

3.2: Objectives:

After reading this unit, the learners will be able to:-

- *understand* the need for protection of women rights,
- *know* the provisions of the Convention on the elimination of all forms of discrimination against Women,
- *discuss* Indian Laws relating to Women rights,
- *describe* the relationship between Women rights and environment,
- *understand* the Constitutional provisions protecting women rights in our country,
- *analyse* the various issues violating women rights in India.

3.3: Convention on the elimination of all forms of discrimination against Women:

The General Assembly on November 1967 adopted a declaration on the Elimination of Discrimination against Women and in order to implement the principles set forth in the declaration, a Convention

on the Elimination of all forms of Discrimination against Women was adopted by the General Assembly on Dec. 18, 1979. The Convention came into force in 1981 and was ratified by India in the year 1993. The Preamble to the Convention explains that despite the existence of various instruments, women still do not have equal rights with men. Discrimination against women continues to exist in every society. Article 1 of the Convention defines the term 'discrimination against women' as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. (Anjani Kant)

The state parties to the convention condemned discrimination against women in all its forms and agreed to eliminate all forms of discrimination against women by undertaking the following measures:-

1. To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein;
2. To adopt appropriate legislation and other measures to prohibit all kinds of discrimination against women;
3. To establish legal protection of the rights of women on an equal basis with men;
4. To refrain from engaging in any act or practice which results in discrimination against women;
5. To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
6. To repeal all national penal provisions which contribute discrimination against women. (Anjani Kant)

Article 17 of the convention made a provision for the establishment of a Committee on the elimination of discrimination against women which shall look into the implementation of the provisions of the convention. The state parties shall report periodically to the committee about the various measures which they have adopted to give effect to the provisions of the Convention. The committee thus acts as a monitoring system to oversee the implementation of the convention. (Anjani Kant)

A World Bank study (2002) found that gender equality is essential for countries economies. It has been rightly argued by Aguilar (2002), that sustainable development is not possible without equity. Thus, it is clear that gender equality is not only a question of fundamental human rights, but also instrumental and a precondition for environmental conservation and sustainable development. Women all over the world have got a crucial role to play in contributing towards an ecologically sound environment. Sustainable development will be an elusive goal unless and until women's contribution towards environmental management is recognized and supported. At the Millennium Summit in New York, world leaders promised in the Millennium Declaration to promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.

Thus, today the whole world recognizes the fact that real development cannot take place if it by-passes women, who not only represents half of the humanity but also represents the very kernel around which social change takes place. Even the United Nations global conferences on development have all acknowledged the fact that sustainable developmental policies which do not involve women and men alike will not succeed in the long run. The UN General Assembly in 2000 convened a special session on women in

2000: Gender equality, development and peace. At the Beijing + 10 Review, 2005, it was made clear that gender equality and human rights need to be placed at the centre of human development and human security. In June 2012, the Rio + 20 Conference on Sustainable development was held in Rio de Janeiro, Brazil. Also, the UN Commission on the Status of Women had its 57th session at the UN Headquarter in New York in march 2013, where the priority theme was announced as the elimination and prevention of all forms of violence against women. Also, three conferences were held during UN Sponsored International Women's Decade (1976-1985). The first World Conference on Women was held in Mexico City, 1975. The 2nd UN Conference on Women was held at Copenhagen, 1980, and the 3rd conference was held in Nairobi, Kenya, 1985. The 4th World Conference on Women was held at Beijing, 1995. Prior to these UN sponsored conferences, many other conferences were held at the international forum to protect the women rights. For example, 1st International Socialist Women's Conference (1907), International Congress of Women at Hague (1915) etc. In July 2010, the UN General Assembly took some concrete steps so as to bring about gender equality and women empowerment. The United Nations has been celebrating 8th March as International Women's Day since 1975. The official UN theme for the International Women's Day 2012 was: Empower Rural Women – End Hunger and Poverty.

Now-a-days, women's empowerment has become a vital issue of concern for all the societies because the goal or motto of sustainable development and the realization of human rights for all is not possible in the absence of gender equality. Gender equality prevails in a society where both men and women enjoy the same opportunities, rights and obligations in all the spheres of life and are able to share equally the distribution of power, and have equal opportunities for financial independence, have equal access to the

educational opportunities. Gender equality can be achieved by giving more autonomy to the women to manage their own lives and to plan her own family.

It is to be mentioned here that one of the most potent weapons to minimize the gender gap and empowering women is through education. "Education is one of the most important means of empowering women with the knowledge, skills and self-confidence necessary to participate fully in the development process" – ICPD Programme of Action. It is in this context that the Cairo Consensus, 1994, recognized education, especially for women, as a force for the social and economic development. But, unfortunately, it is seen that women literacy rates are lower in the developing countries as compared to men.

Self-Asking Question:

Q. Sustainable development will be an elusive goal unless and until women's contribution towards environmental management is recognized and supported. Discuss.

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3.4: Indian Laws Relating to Women Rights:

1. The Dowry Prohibition Act, 1961:- Under this Act, both the giving and receiving of dowry has been prohibited. Section 3(1) of the Act says that any person either giving or receiving of dowry or abetting the giving or receipt of it is punishable under the Act.

2. Maternity Benefit Act, 1961 (amended in 1995):- The Constitution of India guarantees to Women equal opportunities in employment, equal wages for equal work and this had led to the formulation of several laws to protect the employment, remuneration and terms of employment of women. Under the Maternity Benefit Act, 1961, certain benefits are given to working women.

3. Equal Remuneration Act, 1976:- This Act provides that –

(a) In work of equal value, skill and effort, women are paid as much as men.

(b) In opportunity for employment or promotion, women may not be discriminated against on grounds of gender except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force. The Equal Remuneration (amendment) Act, 1987, provides that no discrimination shall be made in any condition of service subsequent to recruitment such as promotions, training or transfer.

4, The Indecent Representation of Women (prohibition) Act, 1986:- This Act provides that indecent representation of women in any form has been prohibited. Indecent representation means the depiction in any manner of the figure, form, body or part of the body in such a way that degrades the image of woman.

5. The National Commission for Women Act, 1990:- In 1990, this Act was passed and under this Act, the central government shall constitute a body to be known as the National Commission for Women which is to exercise the powers or perform the functions assigned to it under the Act. It shall exercise functions like, investigating and examining all the matters relating to the safeguards provided for women under the Constitution and other laws, reviewing the existing provisions of the Constitution and other

laws affecting women and to suggest remedial measures to meet any lucanae or shortcomings in such legislation.

6. The Family Courts Act, 1984:- This Act also provides women with the right to get justice.

7. The Special Marriage Act, 1954:- This Act provides women equal rights with men in cases of marriage.

8. The Protection of Women from Domestic Violence Act, 2005:- This is an important legislation in our country intended to protect women from domestic violence. This Act has been passed to protect women from physical, emotional, sexual, verbal and economic abuse and also to provide legal remedies to women suffering from such violence.

9. The Medical Termination of Pregnancy Act, 1971:- This Act was enacted to regulate the conditions under which a pregnancy can be legally terminated by a registered medical practitioner. Thereafter, it has been amended many times, the most recent in 2021, which expands access to safe and legal abortions.

Under various other Acts like that of Plantation Workers Act, Construction Workers Act, Factories Act, The Employees State Insurance Act, The Hindu Marriage Act, The Hindu Succession Act, Immoral Traffic (prevention) Act, provisions have been made for women rights protection.

Moreover, Indian judiciary from time to time has tried to protect women rights through the weapon of judicial activism. For example, in Vishakha v/s State of Rajasthan, the Hon'ble Supreme Court tried to protect rights of women at work places, in Bhagwan Das v/s State of Haryana and R. D. Gupta v/s Lt. Governor, Delhi Administration, the Hon'ble Supreme Court reiterated the principle of equal pay for equal work.

The Indian Penal Code has also devoted various sections for the protection of women rights. Let us discuss here the sections and the related offences. For example, sections 304-B deals with dowry death, 313 (causing miscarriage without woman's consent), 325 (grievous hurt – wife beating), 354 (assault or criminal force to woman with the intent to outrage her modesty), 366 (kidnapping, abducting or inducing woman to compel her marriage), 366-A (procuration of minor girls), 366-B (importation of girl from foreign country), 376 (rape), 493 (cohabitation caused by a man deceitfully inducing a belief of lawful marriage), 497 (adultery), 498-A (subjecting a woman to cruelty), 509 (word, gesture or act intended to insult the modesty of woman) etc.

Stop to Consider

International Events relating to Women:

Some of the landmark international events are cited here which highlighted on the importance of women:-

1945:- The UN Charter reaffirms the equal rights of Women and Men in its preamble.

1946:- Establishment of the United Nations Commission on the status of Women.

1948:- UDHR propagated that all human beings are born free and equal in dignity and rights.

1975:- 1st United Nations World Conference on Women and the start of the United Nations Decade for Women.

1979:- Convention on the Elimination of all forms of discrimination against Women (CEDAW).

1985:- The United Nations 3rd World Conference on Women.

1991:- The WEDO (Women's Environment and Development Organisation) which recognises the role of world women in environment and development.

1992:- The Rio declaration and Agenda 21, which has given importance to women rights. Rio principle 20 reads – women have a vital role in environmental management and development. Their full participation is therefore essential in achieving sustainable development.

1995:- The World Summit for Social Development in Copenhagen calls for the eradication pf poverty and the promotion of social justice and Women's rights. Also it was the year of the UN 4th World Conference on Women in Beijing.

2000:- Beijing + 5 which recognised several emerging issues for women. Also, the Millenium Declaration promises to promote gender equality and empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.

2002:- The World Summit on Sustainable Development in Johannesburg.

3.5: Women Rights and Environment:

As early as in 1970s, an interest in women and environment was sparked as a result of a book titled 'Woman's role in Economic Development' written by Esther Boserup. But it was Indian physicist Vandana Shiva who introduced the issue of women and the environment at the first World Conference on Women in Mexico city in 1975. However, after the 1985 United Nation 3rd World Conference on Women, the concept of gender and environment came into prominence and it gained full recognition in 1995 at the

United Nations 4th World Conference on Women. It has been realized that the active participation of women in the environmental policies are very essential for the proper implementation of the commitments of the Beijing Platform for Action (1995), the World Summit on Sustainable Development (2002) and the Millennium Development Goals. We can quote here Amartya Sen, who rightly said: advancing gender equality may be one of the best ways of saving the environment, and countering the dangers of overcrowding and other adversities associated with population pressure. The voice of women is critically important for the world's future – not just for women's future. The Centre for Science and Environment, in their – the state of India's Environment Report (1984-85) – argued that probably no other group is more affected by environmental destruction than poor village women. It is because every dawn brings with it a long march in search of fuel, fodder and water. It does not matter if the women are old, young or pregnant but the crucial household needs have to be met day after weary day. As ecological conditions worsen, the long march becomes even longer and more tiresome. Even in the urban areas, women's health is adversely affected due to environmental issues like high concentration of polluting substances. Various studies have shown the direct effects of chemicals and pesticides on the human health and more particularly on women health. Various studies have found an association between breast cancer and pesticides and also one study by the World Health Organization has found that women who are exposed to pesticides face a higher risk of abortion.

3.6: Indian Constitution and Women's Rights:

Indian Constitution has certain provisions for the protection of women. Some of them are included in Part III dealing with Fundamental Rights which are enforceable in a court of law and

others have been incorporated in Part IV on Directive Principles of State Policy.

- Equality before law and equal protection of law (Art. 14)
- Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth (Art. 15). However, Art. 15(3) says that nothing in this article shall prevent the State from making any special provision for women and children.
- Article 16 guarantees equality of opportunity in matters of public employment.
- Right to adequate means of livelihood [Art. 39(a)].
- Right to both sexes to equal pay for equal work [Art. 39 (d)].
- Right against economic exploitation [Art. 39(e)-(f)].
- Right to equal opportunity for justice and free legal aid [Art. 39A].
- Right to humane conditions of work and maternity relief (Art. 42).
- Right to a living wage and conditions of work ensuring decent standard of life for workers (Art. 43).
- To promote educational and economic interests of the weaker sections and to protect them from social injustice (Art. 46).
- The state shall endeavour to raise the level of nutrition and standard of living and to improve public health (Art. 47).
- Article 243D(3) declares that one third of total number of seats in panchayat should be reserved for women.

Apart from these Constitutional provisions, there are other provisions under Indian Penal Code (IPC) and Criminal procedure code (CrPC) for protecting women rights. Section 125 of Criminal Procedure Code provides for speedy and effective remedy against persons who neglect or refuse to maintain their wives, children and

parents. Section 354 of IPC provides punishment for a person who assaults or uses criminal force on any woman intending or knowing it to be likely that he will thereby outrage the modesty of a woman. Section 509 of IPC prescribes punishment for a word, gesture or act intended to outrage the modesty of a woman.

Stop to Consider

Sexual Harassment at Workplace: -

Against the growing social menace of sexual harassment of women at the workplace, the Hon'ble Supreme Court has issued certain guidelines in the famous 'Vishaka v/s State of Rajasthan' case, after taking note of the fact that the present laws in the country are not been able to adequately provide for specific protection of women from sexual harassment in workplaces.

3.7: Various issues Violating Women Rights in India:

There are various issues violating women rights. Domestic violence is widely prevalent but has remained largely invisible in the public domain. Violence against women transcends boundaries and though forms of violence may vary, yet the basic purpose is same that is to subjugate women. Some forms of violence like that of rape are universal forms of violence and others like dowry, female foeticide etc. are perpetuated by specific communities and cultures. Keeping all these challenges in mind, the Protection of Women from Domestic Violence Act, 2005, has been enacted. This path-breaking legislation seeks to protect women from all forms of domestic violence and harassment. Let us now discuss here about the issues violating women rights in our country:-

- **Domestic Violence:-** This is a vital issue violating women rights in our country despite the enactment of Protection of Women from Domestic Violence Act, 2005. More unfortunate is that many cases of domestic violence goes unreported due to the fear of social stigma, fear of retaliation and at times due to the lack of awareness about rights.
- **Rape and Sexual Assault:-** This is another issue which leads to violation of women rights. The National Crime Records Bureau (NCRB) data has shown increase in the number of rape cases over the years.
- **Harassment in Public Spaces:-** Harassment like that of eve-teasing deters many women from pursuing education or careers in various male-dominated areas.
- **Educational Disparities:-** Many girls especially in rural areas are facing this problem because of factors like drop out, early marriage, household responsibilities or lack of access to educational institutions.
- **Workplace Discrimination:-** In some places, women workers faces wage disparities, limited opportunities for advancement and in extreme cases, harassment of different types in workplace.
- **Political Under-Representation:-** Despite various Constitutional provisions proving for equality of men and women and reservation policies in local governing bodies, yet, women remain under represented in various forums.
- **Lack of Autonomy:-** Though women have made progress in various fields, yet, in some cases, even today women lack the freedom and autonomy to take decisions regarding

family planning, pregnancy, abortion, routine domestic affairs etc.

- **Sex-Selective Abortions:-** Despite the presence of law which makes such practices illegal, yet, the practice of female foeticide persists somewhere.
- **Trafficking Problem:-** Women and child trafficking problem persists which leads to gross violation of rights. They are often trafficked for forced labour and sexual exploitation.
- **Dowry:-** We have studied above about dowry prohibition Act but unfortunately, despite the presence of this Act, dowry-related violence continuing which even claims life in extreme cases. Moreover, it puts burden on women and their families economically as well as emotionally.
- **Acid Attack:-** This is a severe violation of women's rights. It causes life-threatening injuries and long-term physical and psychological sufferings. This directly leads to attack on women's bodily autonomy and dignity.

Check Your Progress:

Q1. Discuss the various laws prevailing in India protecting women rights.

Q2. Are the current laws like the Dowry Prohibition Act and Protection of Women from Domestic Violence Act been able to protect women rights in India? Discuss.

Q3. What are the different challenges faced by women in our country while accessing education and economic opportunities?

Q4. Discuss the various issues violating women rights in India.

3.8: Summing Up:

From the above discussion, it is clear to all of us that if we want to attain progress and the goal of sustainable development, then we must move closer to the concept of gender equality. Both the concepts of good governance and sustainable development will be hard to achieve until and unless we move closer to gender parity. The crying need of the hour is to recognize the vital and important role of women in the society. The above discussion makes us clear about the fact that the violation of women's rights in our country is a multifaceted problem deeply rooted in historical, cultural and structural inequalities. Empowering women through education, economic independence and legal literacy is the need of the hour. For ensuring the safety and security of women, there is requirement of a proper understanding of the systemic faults that lie behind the escalation of such crimes. Provisioning of infrastructure, tightening of laws, setting up of fast-track courts, speedy trials etc. might lead to wider solution but the processes that shape mindsets and attitudes need to be corrected first. The situation is much more critical in the developing countries. This critical situation can be tackled effectively if the women themselves become conscious about their rights. Moreover, changing the attitude of the society and removing the age old superstitions can go a long way in combating the problems.

3.9: References and Suggested Readings:

- Dr. Agarwal, H. O., (2007). Human Rights. Central Law Publications, Allahabad, 10th ed.
- Dr. Tripathi, S. C. (2008). Environmental Law, 3rd ed., Central Law Publications.

- Chockalingam, K. And Raj Kumar, C. (Ed). (2007). Human Rights, Justice and Constitutional empowerment, Oxford University Press.
- Kant, Anjani. (2003). Law relating to Women and Children, Central Law Publications.
- Jaswal, P. S. and Jaswal, N. (1999). Environmental Law, Pioneer publication.
- Sanajoaba, N. (Ed). (1994). Human Rights (principles, practices and abuses), Omsons publications, New Delhi.

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UNIT-4
HUMAN RIGHTS OF PERSONS WITH DISABILITIES

Unit Structure:

4.1 Introduction
4.2 Objectives
4.3 Differently Abled Persons and Their Human Rights
4.4 National Initiatives Dealing with Differently Abled
4.5 Various Problems Concerning Differently Abled Persons
4.6 Charity Approach Versus the Human Rights Approach
4.7 Summing Up
4.8 References and Suggested Readings

4.1: Introduction:

Human Rights ensure that each individual leads a life of dignity, free from fear and any kind of deprivation. Rights are very essential for our lives because they add respect to our lives. Human rights always strive for social welfare and aim for the overall development of man. These rights ensure protection from arbitrariness of any kind. Without these rights, we cannot dream of leading a life of dignity. However, many of these rights are blatantly violated across the world. All the human rights are interrelated, interdependent and indivisible. In this unit, we are concerned with the rights of the differently abled persons. They are also entitled to enjoy all the rights without any deprivation. But are they able to enjoy all the rights granted to them? It's a matter of genuine concern.

Differently abled persons are those suffering from one or the other impairment or disability and thus, they need care and protection. Being differently abled is a complex phenomenon and sometimes it

goes beyond childhood to that of adulthood. It needs mention that disabilities may be of different types like that of hearing loss, limb deformities, psychiatric disorders etc. The disability occurs either by the birth or accident. Victims of such disabilities have to strive for their very survival. Thus, there are different types of disabilities which makes a person differently abled. Disabilities of such types need to be seen in wider context of human development and social justice. The contest over disability's definition came into limelight as there was disability activism in the U.S and U.K in the 1970s. In many countries, the law requires proper definition of disability in order to assess which citizens qualify for disability benefits. In this particular unit, we will try to study about the various issues related to the rights of the differently abled in its entirety.

4.2: Objectives:

This unit deals with the different issues related to the rights of the differently abled. After reading this particular unit, the learners will be able to:-

- *understand* the meaning of the differently abled persons,
- *describe* the various measures taken to promote the rights of the differently abled persons,
- *know* the National Initiatives dealing with differently abled,
- *discuss* the Various problems concerning differently abled persons,
- *analyse* the Charity Approach versus the Human Rights Approach concerning the rights of the differently abled.

4.3: Differently abled persons and their Human Rights:

Disability refers to the consequence of impairment which may be physical, cognitive, mental, sensory, developmental or the result of combination of some which ultimately leads to the restrictions on an individual's ability to participate in what is considered as normal in the everyday society. Thus, disabilities arise out of obvious deficiencies in the anatomical structures, sensory functions and the intellectual developments.

It needs mention here that the people who are suffering from such disabilities also need to have human rights. But unfortunately, it is seen that their rights get violated often. They are also seen to be isolated from the mainstream activities and socially marginalized. Thus, we can say that they face discrimination in virtually all aspects of life. This hampers their personality development and they often have no voice or a very feeble voice in the democratic process of the society. Even if they try to raise their voice, they are often ignored and thus, they are forced to confront segregation, discrimination, barriers and stereotypes. Even in families having such persons, we find various family issues. The family suffers from tension, at times financial constraint due to ongoing process of treatment. In some cases, we find even occurrences of demographic life events, divorce or birth of another child owing to the disability of one child.

However, it needs mention here that over the past two decades, there has been dramatic shift in the perspective related to differently abled persons. There has been change from an approach motivated by charity towards persons with disabilities to one based on their rights. It has been contended that all human beings, irrespective of their disabilities, must have certain rights which are unchallengeable. The Universal Declaration of Human Rights (UDHR) mentioned that all human beings are born free and equal in rights and dignity. Also,

UN authoritatively endorsed this view. It made vital contribution to the process of raising consciousness about the human rights of persons with disabilities and in stimulating the positive changes throughout the world. The United Nations passed the Standard Rules on the Equalization of Opportunities for People with Disabilities, which has been adopted by the General Assembly in Dec. 1993. Moreover, an International Legal Awareness related to the rights of the differently abled persons was started in 1961, when the declaration on Social Progress and Development was adopted by the United Nations General Assembly. The declaration on the rights of mentally retarded persons was also adopted by the General Assembly in 1971 which emphasized on the fact that the mentally challenged persons have the same rights as that of other normal human beings. Thereafter, the adoption of Declaration on the Rights of Disabled Persons in the year 1975 heralded a new beginning in which it was stipulated that the disabled persons have the inherent right to respect for their human dignity. Not only that, it was also stipulated that irrespective of the origin, nature and seriousness of their handicaps and disabilities, the differently abled persons have the same fundamental rights like that of other fellow citizens of the same age. Thus, all these provisions implies that the differently abled persons have the right to enjoy a decent life as normal as others. The year 1981 was declared as International year of Disabled persons and place of action was called for and consequently, an important formulation of World Programme of Action came into existence in the year 1982. In order to implement the activities as recommended in the World Programme of Action, the period of 1983-1992 was declared as UN Decade of Disabled Persons. In 2002 again, a Biwako Millennium Framework was adopted and the underlying idea of the framework was to work towards an inclusive, barrier free and right based society for the persons with disabilities.

In 2006 again, the Convention on Rights of Persons with Disabilities was adopted. The purpose of all these documents was to expand the opportunities for the full participation of the disabled persons in all the societal activities. It was asserted that the states must work hand in hand so as to eradicate the various social stigmas attached to the disabled persons.

Self-Asking Question:

Q. There has been change from an approach motivated by charity towards persons with disabilities to one based on their rights. Discuss the relevance of the statement.

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4.4: National Initiatives Dealing with Differently Abled:

Indian Constitution does not have any specific provisions dealing with the rights of the disabled persons. However, various provisions of the Constitution like that of the Preamble, the Directive Principles of State policies and the fundamental rights enshrined in the Constitution stands testimony to the commitment of the state towards the well-being of its people including the disabled persons. The very basic foundation of the Constitution is the principle of social justice and respect for the human rights. The various constitutional provisions as envisaged throws a light on the very positive role of the state to work for the upliftment of the status of various disadvantaged groups. For example, Article 41 enjoins that

the state shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement. Article 46 says that the state shall take steps to promote the educational and economic interests of the weaker sections and to protect them from social injustice. Under Article 39-A of the Constitution, equal opportunities for securing justice are not to be denied to any person by reason of economic or other disabilities. Article 14 guarantees right to equality – equality before law and equal protection of law.

In addition to the above mentioned constitutional provisions, there are also many other statutes which deals with the promotion and protection of the rights of the disabled persons. Some of the statutes dealing with protection of rights of the vulnerable section of population are like that of the payment of Gratuity Act, 1972, Equal Remuneration Act, 1976, The Factories Act, 1948 etc. The Mental Health Act of 1987 differentiated and identified both mental illness and mental retardation. The Rehabilitation Council of India Act, 1992, was enacted so as to provide for the minimum standards in training and qualification for rehabilitation professionals working in the various disciplines. Thereafter, The Persons with Disabilities (Equal Opportunity, protection of rights and full participation) Act has been passed in the year 1995. This Statute was passed by the Indian government in accordance with Asia Pacific Decade of Disabled Persons (1993-2002). This legislation is a big step towards the protection of the rights of differently abled and physically challenged persons.

It is pertinent to mention here that during early 1980s, some landmark developments took place in the International Disability Rights Movement, which brought about a change in the attitudes of the Government of India. The Persons with Disabilities Act, 1995, is

a landmark piece of legislation because it stated the fact that people with the disabilities has the right to equal opportunities and full participation and that these rights would be protected by the law. This Act also provides useful guidance regarding the type and nature of measures to be taken that would help in equalizing the opportunities for the enjoyment of the basic rights and freedom by all. In addition to the Act of 1995, there are some other legislations also which are relevant to the rights of the people with disabilities. These include the National Trust Act of 1999, National Policy on Disability, 2006. This policy adopted by the government of India in Feb. 2006 recognized that the persons with disabilities are valuable human resources for the country and thus seek to create an environment where the people can get an equal opportunity and full protection of their rights and which also ensures full participation in the society by all.

It is true that there are Constitutional provisions and the Persons with Disabilities Act, 1995, yet it is unfortunate that the differently abled persons are suffering from various problems and their rights are not safeguarded properly. Only laws will not suffice, their effective implementation need to be done. As per the Persons with Disabilities Act, 1995, disability refers to problems like that of blindness, low vision, hearing impairment, locomotors disability, mental retardation etc. The Disability Act has stipulated several provisions to overcome these barriers. For example, chapter VIII of the Act deals with the provisions of non-discrimination. Also the Act provides with various measures like – to provide auditory signals, provide facilities for wheelchair users, to engrave for help of the blind persons or persons with low vision, special toilets for wheelchair users, Braille symbols, auditory signals in lifts etc. However, the appropriate government and the local authorities are directed to take all these measures within the limits of the economic

capacity and development and as a result, the target group is seen in some cases to be deprived of many benefits as guaranteed by the Act. There are fourteen chapters and seventy-four sections in the Act. But this Act has not been implemented strictly by the administration. Moreover, the provisions of the Act also not known by many disable persons who are illiterate.

Judiciary in our country also helped giving protection to the rights of the differently abled. In the case of Suchitra Srivastava v/s Chandigarh Administration, the apex court dealt with the reproductive rights of a woman with mental retardation and clearly recognized the right to legal capacity of women with mental retardation to take independent decisions on her pregnancy. In another case, it was held that jailing of non-criminal mentally ill persons is illegal and unconstitutional. Thus, the active role of the judiciary in recognizing the education, employment, social security, non-discrimination and other rights of the disabled individuals is really commendable. The judiciary has always been very alert about the different issues concerning the differently abled like that of denial or non availability of admissions in the educational institutions, non-implementation of reservation in the employment, non availability of medical and other social security benefits.

India has signed the Biwako Millenium Framework for Action towards an inclusive, barrier-free, rights-based society for people with disabilities. India also adheres to the Salamanca Statement and Framework for Action and the UN Standard Rules on the Equalization of Opportunities for persons with Disabilities.

The Persons with Disabilities (Equal Opportunity, protection of rights and full participation) Act, 1995 – This Act enacted in the year 1995 deals with the issues such as prevention and early detection of disability, employment, education, non-discrimination and social security issues. The Act addresses various issues related

to the seven categories of impairment defined as 'disability' under the Act. These disabilities are like blindness, low vision, leprosy cured, hearing impairment, locomotor disabilities, mental illness and mental retardation. The Act also establishes the Central Co-ordination Committee and Central Executive Committee at the center level and State Co-ordination Committees and Executive Committees at the State level, so as to review and monitor the compliance with the Act. There are also provisions for forums for grievance redressal in the form of the Offices of the Chief Commissioner of Persons with Disabilities and the State Commissioners are authorized to take up complaints relating to the deprivation of rights of the differently abled persons and also to take up the grievances relating to the non-implementation of laws, rules and administrative orders. The Act provided various relief measures to the differently abled persons or persons with disabilities in the areas of education, employment, accessibility and social security under three broad principles of distributive justice, anti-discrimination and welfare measures.

Moreover, The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, also addresses the issues of persons with disabilities who are considered as vulnerable due to the nature of their impairments. Moreover, Goal 4 (SDG4) of the 2030 Agenda for Sustainable Development requires educational systems to ensure inclusive and equitable quality educational and promote opportunities for lifelong learning for all.

It needs mention here that all the different attempts made till date in our country are for providing equal rights and opportunities for the persons with disabilities are purely based on the medical model which concentrates more on physical and anatomical factors. Thus, the issues with regard to the mentally disabled persons are not

addressed properly as their very identity is ambiguous in the eyes of law. The disabilities created by the society in the form of barriers and different attitudinal barrier of the society are not taken into account. This lack of social, economical and legal perspective makes such protection discriminatory. However, it needs mention here that our country is working in conformity with UN Convention on the Rights of Persons with Disabilities, 2006. Also, there are scope of amendments to the existing legislation and thus, we can hope of giving better protection to the differently abled persons in future by strict implementation of the laws.

4.5: Various Problems Concerning Differently Abled Persons:

The problems and discrimination faced by the differently abled persons are due to the prejudice and ignorance of the society. There are some stereotyped presumptions in our society like differently abled people are always dependent on others or that they need helping hands and charity. Some even belief that it is a kind of punishment inflicted on them for the sins they have committed in their previous life. Due to such prevailing illogical wrong notions, it is seen that the differently abled persons become victims and are seen as the objects of pity and charity. They are denied many facilities and also are deprived of enjoying the same opportunities as other people due to the lack of access to the essential services. Also, sometimes it is seen that some differently abled persons live in the conditions of extreme poverty, without education or employment opportunities. Thus, from the above discussion, we see that the discrimination faced by the differently abled are widespread, cutting across the geographical boundaries.

The major issues of concern are thus: disability as a reason of discrimination, lack of educational opportunities for them, lack of

employment avenues and livelihood opportunities, lack of access in many other fields, denial of access to some civil and political rights, marginalization and discrimination faced by the women with disabilities. Let us discuss here in detail about some of the problems confronted by differently abled persons:-

1. **Poorly Designed Educational Institutions –** The majority of the schools in India are poorly designed and thus very few are equipped to meet the unique needs of the students with disabilities or students with special needs. However, currently the right to education for persons with disabilities has evolved new approach to disability in the perspective of human rights. Schemes have been introduced for imparting them education through open schools or open universities. Steps are also taken to train adequate number of teachers to deal with such students.
2. **Employment Related Problem –** The differently abled persons are considered as burden on their families. Thus, employment avenues must be increased so that the differently abled persons find good employment. The human resource departments of most corporations have not been convinced till now about employing these persons in different responsible positions. They neither invest in training nor modify the workplaces in a way that would suit persons with special needs.
3. **Problem Related to Health –** Special care need to be taken to diagnose the problem and take preventive steps towards the children having special needs. Actually these kinds of children having special needs are in dire need of proper counseling. For that purpose, special kind of training of the medical professionals are also needed. But unfortunately, it is seen that differently abled persons are forced into mental

hospitals where they face unsanitary conditions and experience involuntary treatment including electroshock therapy. Due to the lack of awareness, people with psychological disorders are ridiculed, feared and stigmatized. We have come across disturbing news where it was revealed that in a shelter home somewhere in Delhi, people with mental disabilities are suffering from problems like overcrowding and unhygienic living conditions which led to the illness of persons there.

4. **Problem Related to Access –** It refers to the problem of differently abled persons regarding barrier free access to the buildings, public places like services, airport etc. For example, airport loudspeaker announcements can be understood by people but they may not be so for deaf or hard of hearing people. Similarly, signs of information are of no values to a person who is vision impaired. Thus, their special needs must be taken special care. Problem arises mostly as their needs are not considered in designing the features in those places.
5. **Discrimination and Inequality –** Discrimination at different places makes their lives more problematic and sorrowful. If they are not discriminated and given equal opportunities with others, then their lives can be better.

Other problems confronting the differently abled are like: illiteracy, loss of social status, inhuman treatment, loss of identity. International humanitarian laws make it a point that the society uses its resources in such a way that all the individuals including the persons having any kind of disability gets equal opportunity to participate in the society.

The central aim of all the above discussed pieces of legislations is to consider the differently abled persons as holder of equal rights and not the objects of charity. Even they are entitled to the following rights: the equal right to education, the right to employment, the right to health, the right to non-discrimination, the right to security etc.

Stop to Consider:

The Rights of Persons with Disabilities (RPWD) Act, 2016:

This act has been enacted by the government of India on the grounds of the PWD Act of 1995. It was enacted due to the limitations of the PWD Act of 1995 and the unsolved problems of the disabled persons. This Act involves 17 chapters and 102 sections. The sections are very important for the empowerment of the disabled persons. It was passed to uphold the rights and dignity of persons with disabilities.

The Act increases the number of recognized disabilities from 7 to 21 which includes the following –

- Autism spectrum disorder.
- Cerebral palsy.
- Muscular dystrophy.
- Chronic neurological conditions.
- Specific learning disabilities.
- Speech and language disability.
- Acid attack victims.
- Parkinson's disease.
- Multiple sclerosis.
- Thalassemia, Hemophilia and Sickle cell disease.
- Mental illness and others.

The Act provides for 4% reservation in government jobs and 5% reservation in higher educational institutions.

Self-Asking Question

Q. Differently abled persons often become victims and are seen as the objects of pity and charity. Why? Discuss.

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4.6: Charity Approach Versus the Human Rights Approach:

The Charity Approach always considered the differently abled persons having dependency and thus showed sympathy to them, whereas, the Human Rights Approach considers that these people need not sympathy but empathy and should be treated with equality, not with discrimination. The Charity Approach believed on their exclusion from mainstream whereas, the rights-based approach believed in the inclusion. Charity approach regarded that differently abled persons are characterized by dependence, segregation, and disempowerment whereas human rights approach considered in the autonomy of the differently abled persons and thus wanted their integration in the mainstream activities and also contended for a barrier-free environment where there will be empowerment of differently abled persons.

Thus, we see that, earlier the attitudes of our societies were different and issues relating to disability tend to be ignored, marginalized or subject to pity and relying on charity. It was reflected in the policies which focused only on the institutional care, medical rehabilitation and welfare benefits. However, over the last decades, there have been marked paradigm shift in thinking. This gradual shift in thinking has started as a result of pressure from the disability

movements and other civil society groups. Words like 'inclusion' and 'empowerment' came to be used. From viewing disability as a personal problem that needs to be cured, emphasis has been given on the society's attitude towards persons with disabilities. Thus, there has been a shift from welfare policies and charity for dealing with disabilities to an approach based on Human Rights and equality. Thus, according to the charity approach, the persons with disabilities were considered as victims and objects of pity, charity, institutional care and medical rehabilitation or welfare benefits. This view has been replaced by one which regards persons with disabilities as active subjects having equal rights, capable of taking their own decisions and thus contributing to the society. The European Social Charter illustrated this paradigm shift very well. For example, in 1961, the article was entitled 'the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement'. After 35 years, this became 'the right of persons with disabilities to independence, social integration and participation in the life of the Community'. The revised social charter thus obligated the states to see that the persons with disabilities are employed in the ordinary working environment or attend the mainstream schools, by adjusting the conditions to their needs. The UN Convention on the Rights of persons with Disabilities, which entered into force in 2008, codified the paradigm shift in thinking in a legally binding instrument and non-discrimination, accessibility, inclusion in society and the freedom to make one's own choices became the core principles. (https://rm.coe.int/16806da803)

The UN Convention on the Rights of persons with Disabilities recognized that the persons with disabilities are not just passive recipients of charity but they are autonomous individuals with the right to actively participate in the society. Thus, the convention aims

to remove all discriminations and promoted inclusion, accessibility and equality for the people with disabilities.

Check Your Progress:

Q.1. What are the different rights guaranteed to the differently abled individuals under the National and International law? Discuss.

Q.2 Do you think that the current laws and policies have ensured accessibility of the persons with disabilities in the public spaces? What are the different barriers faced by them?

Q.3 Are inclusive educational policies being properly implemented in the educational institutions? What are the different support systems they are getting academically?

Q.4 Comment on the different challenges faced by the differently abled persons in seeking employment and in their workplaces.

Q.5 How effective are the different schemes and programmes for the differently abled persons?

4.7: Summing Up:

Thus, we see that the major rights of the differently abled persons are the right to have an independent life, right to barrier free access, right to proper education and employment, equality of opportunities and non-discrimination. There must be awareness raising programmes to change the way society operates and to pave the way for the differently abled persons to fully participate in the societal activities. It must be understood by all that already disability made them lose many things in life and their mental strength will also lose if they are to struggle for their survival. Those working in the

community disability programmes must understand the fact that they have responsibilities to look into local cultural factors affecting the disabled people, and accordingly need to communicate findings to the policy makers and the program managers. There is the need of total overhaul in the thinking process of the society regarding disabled persons so that the needs of the disabled persons are met by inclusive rather than exclusive social attitudes, coupled with the individually focused rehabilitation process wherever necessary. In our country, it has been seen that due to lack of awareness, lack of resources, lack of community based services, many babies born with abnormalities continue to live without proper diagnosis and therapy and as a result, such abnormalities remain till adulthood. An entire range of disability issues need to be addressed such as the cause of disability, whether proper care taken or not, rehabilitation process, empowerment measures, mainstreaming through education, proper employment, health care etc. Steps need to be taken to eliminate the different barriers thereby paving the way for their full participation in the society.

4.8: References and Suggested Readings:

- Chhabra, S. (2016). Differently abled people and their life. *Global Journal of Medical and Clinical Case Reports*, *3*(1), 001-004.
- Kaur, A. (2017). Differently abled persons and human rights: Issues and responses. *International Journal of Law and Legal Jurisprudence Studies*, *2*(1), 2348-8212.
- Pandit, A., & Saha, B. (2023). Issues Related to differently Abled Learners at Inclusive Schools. *International Journal of Creative Research Thoughts (IJCRT)*, *11*(9), 384-391.

- Bhadange, C. P. (2014). Socio-Legal Issues of Differently Abled Persons of India. In *UGC Sponsored National Seminar On 'Equitable Society with Equal Opportunities'* (p. 90).
- Vispute, S. B. (2021). THE PROBLEMS OF DIFFERENTLY-ABLED PERSONS IN INDIA AND REMEDIES FOR THE EMPOWERMENT OF THEIR RIGHTS.

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UNIT-5

PRISONERS' RIGHTS IN INDIA

Unit Structure:

5.1 Introduction
5.2 Objectives
5.3 Prisoners Rights – an Overview
5.4 International and National Arrangements Dealing with Prisoners' Rights
5.5 Human Rights of the Prisoners in India
5.6 Indian Judiciary and the Rights of the Prisoners
5.7 Historical Background of Prison and Prisoners
5.8 Some Other Measures for Prison Reform
5.9 Summing Up
5.10 References and Suggested Readings

5.1: Introduction:

In this society, we all are living together and for peaceful co-existence it is our duty to maintain law and order. We all are bound to obey law. However, at times, due to some unfortunate reason or situation, people tend to violate law which can never be allowed by the justice system. Hence, these law breakers are put behind the bars or inside the places of detention. Thus, prisons are the places for the detention of the people who are charged or convicted for violating the law. While staying inside the prison, these prisoners lose all the contacts with the outside world. Neither they can go out of the prison to meet others nor others are allowed to meet them frequently. It is at this critical juncture that we need to be concerned with the rights of the prisoners. Because prisoners are also human beings and thus are entitled to the basic human rights. They have violated law and that is why, they have been punished. However,

that does not mean that they have waived off all their basic rights. In this particular unit, we will make an attempt to study about the Prisoners Rights in India.

5.2: Objectives:

Prisoners are also human beings and hence their rights need to be protected. In this era of welfare state, it becomes an obligation for the civil society to look into the matter of prisoners rights. After reading this particular unit, the learners will be able to:-

- *understand* about the need of protection of the prisoners' rights,
- *describe* various provisions, both national and international, regarding protection of the prisoners' rights,
- *analyse* the status of prisoners' rights in our country.

5.3: Prisoners Rights – An Overview:

In order to understand properly about prisoner's rights, we need to understand firstly what is prison and who is actually a prisoner. We have already discussed that prisons are the places for the detention of the people who are charged or convicted for violating the law. The term 'prisoner' refers to one who is detained in a jail or prison for committing a crime against the law of the land and for that reason, deprived of their liberty against their will. The term 'prisoner' has been well defined under Sec. 1 of the Prison Security Act of 1992. It refers to somebody who is caught and convicted as a result of a court order or other legal requirement that he be taken in legal custody. It needs mention here that prisoners have fundamental legal rights which cannot be taken away even when they are imprisoned. (Nitin Rawat).

Prisons are places for reformation and rehabilitation of the offenders. They are not only the places of torture and punishment. But unfortunately, prison has become a synonym for an unhygienic, overcrowded and unsatisfactory living conditions, a place like hell on earth. It must be borne in mind that a prisoner, a convict or under-trial or a detenue does not cease to be a human being. Even inside the prison walls, the human element or the respect of individual dignity must be given due priority. We all know the fact that the civil society of today ensures that the citizens enjoy their rights properly and the entire criminal justice system exists for it. However, these very rights are denied to those who fail in following the rules and regulations of the civil society. But in a welfare state, it must be the concern for a civil society to look into the matter as to how these offenders are treated inside the prisons. In the absence of this basic concern, treatment of the offenders is not possible. It must be seen that even inside the jail, the prisoner is allowed to enjoy the basic human rights. It is pertinent to mention here that the UDHR, 1948, stipulated that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Keeping in consonance with this principle, the World Community has agreed to ensure a dignified life to each and every individual. Even Article 21 of Indian Constitution reflected this sentiment as it recognizes that the right to life covers within its ambit right to live with human dignity. Thus, we see that the rights of the prisoners can be realized only through the effective and meaningful means of prison reforms which basically stands for extension of human rights even within the prison walls as guaranteed by the law of the land. (Suman Kumar)

It must be mentioned here that the traditional role of prisons was to make people realize their mistakes by curtailing their liberties and rights and thus the treatment inside the prison was to reorient the human mind. It is also true that once inside the prison, either as an

accused or as a convict, a prisoner loses certain rights especially the right to freedom. But then the vital question is can a punitive deprivation take away all the fundamental freedoms? It must be borne in mind that every prisoner is a human being and human beings are entitled to certain basic rights always. The Constitution of India also grants certain fundamental rights to its people and these rights can be taken back only by the procedure established by law, not otherwise.

Following are some of the sources which deals with the prisoners' rights: the UDHR, 1948; The Standard Minimum Rules for the Treatment of Prisoners (SMRTP), 1955; The International Covenant on Civil and Political Rights (ICCPR), 1966; Declaration on Protection from Torture, 1975 etc.

We can understand from the above discussion that certain minimum basic rights must be allowed to the prisoners like:-

- The prisoner cannot be subjected to any inhuman treatment or undue physical torture.
- The human dignity of the prisoner must be respected within the prison domain.
- A prisoner has the right to have proper medical attention in case of any illness.
- As per the requirement of the season, the prisoner must be given the outfit and bedding.
- Prisoner must be given opportunity to communicate with the outside world in the form of prison visiting system.
- The prisoner must be given the right to practice his/her own religion.
- Prisoner should be given the right to file a petition for bail, legal aid or speedy trial.

- Soon after completion of the sentence, the prisoner must be released.

The above discussed are some of the basic rights which a prisoner is entitled to while staying inside prison.

It is pertinent to observe here that the English word 'jail' is derived from the old French 'prison' and it refers to a place where people are physically confined and deprived of various personal freedoms (Crighton and Towl, 2008). Section 3 of the Prison Act, 1894, also defines a Jail as a police lock-up or any place declared by the state government through general or special orders to be a subsidiary jail (Prison Act, 1894). Once we are well acquainted with the meaning of jail and prisons, we should also know about human rights protection within these institutions. It we go through the various definitions of Human Rights, we find that these rights are universally accepted principles and rules which help the individuals to fulfill their full potential and live life in an environment of freedom, justice and peace. As stated by Raphael (1967), Human Rights are inherent to individuals simply because they are human beings. However, if we look at the prisons all over the world, we find that the prisoners are subjected to human rights abuses worldwide and thus, there is need for reform and rehabilitation within the existing system. Often the prisoners are treated inhumanly, harassed and humiliated by the prison officials and also by fellow inmates. Moreover, overcrowded conditions in the prisons further add to the misery of the prisoners and make their living conditions unbearable. Inadequate food, clothing, bedding and inadequate health care facilities further make the conditions within the prisons more pathetic and deplorable. In the absence of any reformative approach and proper engagement opportunities within the prisons, it is often seen that the prisoners end up becoming more

hardened criminals after their release, which does more harm to the society. (A. Meena).

Self-Asking Question:

Q. Overcrowded conditions in the prisons further add to the misery of the prisoners and make their living conditions unbearable. Discuss.

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5.4: International and National Arrangements Dealing with Prisoners' Rights:

Let us now have a look at the various International and National arrangements dealing with prisoners' rights. It needs mention here that the Preambles to the Universal Declaration of Human Rights (UDHR) and the two International Covenants on Human Rights emphasize that: recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the World (UDHR, 1948). Even Principle 1 of the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (1988) provides that: All persons under any form of detention or imprisonment shall be treated humanely and with respect for the inherent dignity of the human person. This principle is again confirmed in the Basic principles for the Treatment of Prisoners and Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations in 1955 (A. Meena).

It is pertinent to note here that we are repeatedly saying that the prisoners should not be subjected to any form of torture. Now the question is what is Torture? Torture is actually an act by which severe physical or mental pain or suffering is intentionally inflicted on a person, other than that which is inherent in or incidental to lawful sanctions. Even the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defined Torture and contended that torture should not be inflicted on the prisoners. It is also contended that no prisoner shall be subjected, even with his or her consent, to any medical or scientific experimentation which may be detrimental to health. Article 7 of the ICCPR and Principle 22 of the Body of Principles for the protection of all persons under any form of Detention or Imprisonment also confirms this right of the prisoners. Article 3 of the Code of Conduct for law Enforcement Officials further stated that law enforcement officials cannot use unnecessary force but may use force only when it is strictly necessary (Code of Conduct for Law Enforcement Officials, 1979). Again, Principle 34 of the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment, 1988, provides that all deaths in custody, incidents of torture and ill-treatment, and disappearances of the prisoners need to be properly investigated. It needs mention here that each state has its own prison manual which specifies the rules and regulations of the prisons under their jurisdiction. (A. Meena).

From the above discussion, it is very clear to all of us that reformation of the prisoners must be actually the motto of the prisons, where the offenders are rehabilitated through educational, training and the counseling programmes. However, various reports projects deplorable condition of the prisons like overcrowded cells, extended incarceration of accused prisoners, unsatisfactory living conditions, indifferent and harsh treatment of prisoners and all these

have become the major issue of concern over the years. Thus there is the urgent need for reform. By upholding human rights protection within the prisons, the societies can actually strive towards achieving justice, peace and respect for the inherent dignity of human kind.

The SMRTP is the only document which outlines the treatment of the prisoners. Even the ICCPR resolution states that the treatment of the prisoners must be 'humane'. The Declaration on Protection from Torture, 1975, is another important document adopted by the UN in this direction. In 1977, the UN General Assembly drew the attention of the member states to SMRTP and asked them to implement and incorporate the provisions in their domestic legislation. In Dec 1990, it further elaborated the basic principles on the treatment of the prisoners. In 1895, Gladstone Committee recommended the need for better after care of the discharged prisoners. Amnesty International also has adopted certain standard rules for the treatment of the prisoners in the year 1955.

Coming to the provisions for protection of prisoners' rights in our country, we find that in addition to laws and rules, the Indian Judiciary has played a vital role in protecting prisoners' rights, as evident from these cases:-

- Justice V. R. Krishna Iyer in Sunil Batra v/s Delhi Administration, 1978, stated that criminals cannot be deprived of fundamental rights merely because they have committed offences.
- In Charles Sobhraj v/s Superintendent, 1978, it has been further contended that prisoners are also human beings and thus there is need of protection of fundamental human dignity and the right to make the prisoner a better human being.

- Imprisonment is for punishment, not for incarceration (John Vague, 1994).

5.5: Human Rights of the Prisoners in India:

Prisons constitute an integral part of the criminal justice system of any country. However, the objectives of imprisonment may vary from country to country, like it may be punitive, deterrent, reformative or rehabilitative. Various human rights approaches and legislations as well as the judiciary from time to time have facilitated various changes in the approaches of the criminal justice system. Even the United Nations also provided certain guidelines for the treatment of the prisoners.

In India, apart from the Constitution which guarantees a number of fundamental rights upon its citizens, various legislations also deals with the rights of the prisoners. However, despite the presence of so many legislations, fact remains that there are still various issues pertaining to the prisoners which need to be addressed. These are like:-

- Many of the prisoners are under trials and there is need of speedy trial so as to absolve the innocent.
- Even after bail is granted, prisoners are not released.
- Medical aid not given properly to the prisoners.
- Insensitive attitude of the jail authorities towards the prisoners.
- Harsh mental and physical torture meted out to the prisoners which are not coherent with the punishment given by the court.

Thus, above we have discussed some of the issues pertaining to the prisoners which are a matter of concern. Our Constitution, under Article 21, states that no person shall be deprived of his life or

personal liberty except according to the procedure established by law. In accordance with this rights, the Supreme Court of India has developed human rights jurisprudence for protecting the rights of the prisoners. Thus, deprivation of life and liberty is justifiable only if it is done in accordance with the procedure established by law. In Maneka Gandhi v/s UOI, the apex court laid down that the procedure cannot be arbitrary, unfair or unreasonable. Similarly, in other cases too, this rule has been upheld by the judiciary. Thus, we can see from the above discussion that the Indian Judiciary has been very active and vigilant in protecting the rights of the prisoners.

Certain pertinent rights of the prisoners which have been recognized are as follows:-

- **Right to Compensation:-** A prisoner, an under trial or a detainee can claim for compensation for the violation of his rights while in police custody, by approaching the Supreme Court under Article 32 and High Court under Article 226.
- **Fair Procedure:-** The principle of natural justice should be followed i.e., the prisoner has the right to fair procedure. For example, in cases where the accused is not represented by any advocate, in the interest of justice, the Court need to appoint a competent counsel. Also measures need to be taken so as to ensure that the confessions are voluntary, not taken forcibly.
- **Humane Sentencing:-** There is the right to humane sentencing that is, the judiciary need to look into the matter that proportionate quantum of punishment is awarded to the accused depending upon the gravity of the offence.
- **International Obligations:-** The issue of human rights and treatment of the prisoners by the States should conform to the international obligations. For example, while dealing

with the prisoners' rights, different Human Rights Committees, ICCPR, ICESCR etc. must be taken into account.

- **Right to Speedy Trial:-** Any person who is denied the right to speedy trial can directly approach the Supreme Court under Article 32 for enforcing such rights. One of the vital issue of human rights pertaining to the under trials is the delay in the trial of the cases. It needs mention here that the right to speedy trial comes within the ambit of Article 21 of the Constitution, which ensures just, fair and reasonable procedure. This right has become a universally recognized human right of the prisoner because it is a rule that everyone is presumed to be innocent until and unless the guilt is proved. That is why, the speedy trial of offences is regarded as one of the basic objectives of the justice delivery system so as to punish the guilty and to absolve the innocent as soon as possible. The innocence of the accused has to be determined, otherwise there will be denial of justice.

- **Right to Reasonable Wages:-** Whenever the prisoners are made to work in the prison, they must be paid at the reasonable rate. In M. Giasuddin v/s State of A. P., the court directed the State to take this into account.

After discussing the pertinent rights of the prisoners, we can now discuss about the major problems faced by prisons today:-

- **Overcrowding:-** Overcrowding is a dilemma as the prisons are less in number. The Transfer of Prisoners Act, 1950, was passed to avoid over-population in prisons.

- **Mental Illness:-** It has been seen in some of the studies that many of the prisoners have mental health issues like substance addiction, anxiety, depression, disorders etc.

- **Gang Activity:-** This is yet another problem and this is done because of vulnerable feelings of the prisoners and they feel that turning to gangs is a way to protect themselves from other inmates.
- **Private Prisons:-** It is a kind of inequality between the rich and the poor class of the society which motivates the poorer ones to commit more offences.

It is to be borne in mind here that the main objective of prison is to bring back the offenders to the mainstream of the society. As rightly said by Mahatma Gandhi: hate the crime and not the criminal. It is true that we do not have codified rights of the prisoners but the judiciary has been trying its best to protect the prisoners' rights. The Prisoners Act, 1894, dealt with the issue of cruelty of the prisoners and said that any excesses if committed on a prisoner, the prison official will be liable for that.

It needs mention here that the three major components of the criminal justice system are: Police, judiciary and prison. The duty of police is to catch the law breakers and thereby ensure peace to the citizens, then the judiciary awards punishment to the offenders and thereafter the prison is there to treat the offenders. The judiciary acts as the guardian of the Constitution, interpretes the law and imparts justice in the society. However, we have understood from the above discussion that the British pattern of our prison administration needs thorough reform. It is true that there is no specific mention of prisoners' rights in the Constitution. However, the Constitution provides for certain fundamental rights which are enumerated in Part III of the Constitution. These fundamental rights may be available to the prisoners too. Besides the Constitution, there are certain other statutes like – the Prison Act, 1894, the Prisoners Act, 1900 and the Prisoners (Attendance in Courts) Act, 1955, and through these Acts certain rights are conferred on the prisoners. The

Prison and Police Manuals also have certain rules and safeguards for the prisoners. Even the Criminal Procedure Code and the Indian Penal Code has certain provisions for protecting the rights. The Criminal Procedure Code (CrPC) requires the investigations to be completed within a stipulated time period. It is pertinent to mention here that the scope of the fundamental rights has been expanded and extended to the prisoners also through various judicial decisions. In various cases like A. K. Gopalan case, Maneka Gandhi v/s UOI case etc, the question of rights of the prisoners was raised. In the year 1978, the Supreme Court delivered a historic judgement in the Maneka Gandhi case where the court accepted that 'law' as contained in Article 21 of the Indian Constitution denotes a fair and reasonable law which was raised in the A. K.Gopalan v/s State of Madras case (Kumar, S).

5.6: Indian Judiciary and the Rights of the Prisoners:

The discussion of the following cases will explain as to how the judiciary has played pivotal role from time to time in protecting the prisoners' rights.

- In the case of State of Maharashtra v/s Prabhakar Pandurang, 1966, the right to expression has been discussed while dealing with the question of his right of reading and writing books while in jail, thereby extending the scope of Article 21 by the court.
- The case of Suresh Chandra v/s State of Gujarat, 1976, was a step towards correctional approach.
- In the case of Charles Sobhraj v/s Delhi Administration, 1978, prisoners rights were protected. In Shobraj case, the punishment of solitary confinement was regarded as violation of Article 21 of the Constitution.

- In the case of Sunil Batra v/s Delhi Administration (I), the practice of keeping undertrials with convicts in jail was regarded by the Supreme Court as inhuman.
- In Sunil Batra v/s Delhi Administration (II), more of prison reforms were set out by the judges as guidelines.
- In Sheela Barse v/s Union Territory, it was held that jailing of non-criminal mentally ill persons is unconstitutional and directions were given to stop confinement of such persons.
- In Rama Murthy v/s State of Karnataka, the Supreme Court issued certain guidelines to the various authorities for the streamlining of prison reforms in India.
- In State of Andhra Pradesh v/s Challa Ramkrishnan Reddy, it was held that the prisoners will not lose their basic rights. In this case, it was stated that prisoners whether a convict, under-trial or detenue, does not cease to be a human being and while lodged in jail, he enjoys all his fundamental rights as mentioned by the Constitution including Article 21 dealing with right to life.

The Court also gave certain guidelines regarding bar-fetters and laid down that the grounds for imposing fetters would be given to each victim in his language. Also, bar-fetters can be done only with the approval of the Chief Judicial Magistrate or a Sessions Judge. In the Sunil Batra – I case, solitary confinement was challenged on the ground that it was substantive punishment which only a court of law could award and not the prison authorities. The Supreme Court opined that solitary confinement amounts to infringement of right to life and personal liberty. It was held that solitary confinement can only be imposed in exceptional cases where a convict can be threat to other prisoners. This solitary confinement has a degrading and dehumanizing effect on the prisoners because it leads to disastrous

effect on the physical and mental health of the prisoner. The right to speedy trial was established in the case of H. Khatun v/s Home Secretary Bihar, 1979. The use of fetters was again challenged in Prem Shankar Shukla v/s Delhi Administration case, 1980. Both handcuffing and fettering have been found violative of Article 21 of the Constitution of India by the Supreme Court in the case, as these are inhuman, unreasonable, harsh and arbitrary. However, it has been contended that a person in custody can only be handcuffed if there is the danger of escape and breaking out of police control. Case of Sunil Batra (II) v/s Delhi Administration, 1980, Supreme Court converted a letter enumerating the grievances of the inmates into a writ of Habeas Corpus petition so as to provide speedy remedy. Moreover, the judiciary also laid down that inadequate food, hard and harsh labour, keeping under-trials with the hardened criminals, overcrowding etc without hearing the prisoner amounts to the infringement of the basic Constitutional rights as contained in Article 21. Similarly, in the case of Kishore Singh Ravinder Dev v/s State of Rajasthan, 1981, the apex court treated a telegram as a writ petition and thereby provided relief to the inmate. In the case of M. H. Wadanrao Hoskot v/s State of Maharashtra, the court held that the right to legal aid is one of the ingredients of the procedure to give fair justice to the prisoners. In People's Union of Democratic Rights v/s UOI, the Supreme Court includes within the scope of Article 21, the right to live with basic human dignity and the State cannot deprive anyone of this right except just, fair and reasonable procedure established by law. It has also been contended in Sunil Batra case that the prisoners are not wholly denuded of their fundamental rights but they are entitled to all the Constitutional rights unless it has been constitutionally curtailed.

From time to time, the Supreme Court has given various directions for the amelioration of the prison conditions. These are like:-

1. Young offenders need to be separated from exploitation by adults.
2. The prisoners need legal protection also.
3. The Prison Act and the Prison Manual needs modification so that they become just and rationale.
4. The State shall take all the necessary steps to keep up to the standard minimum rules for treatment of the prisoners recommended by the United Nations etc.

Thus, from the above discussion, it is clear that the judiciary has been very active in responding to issues of human rights violations in the prisons and in the process recognized certain rights of the prisoners as enshrined under Articles 19, 21, 22, 32, 37 and 39A of the Constitution. Moreover, the Public Interest Litigations (PIL) have also done a lot in the field of protection of the prisoners' rights. The Apex court has clearly spelt out that the purpose and justification for a sentence of imprisonment or similar such measures is ultimately to protect the society against crime. Thus, the objective of the imprisonment is not only punitive but it is also reformative. We also see from the above discussion that the pragmatic and the humanistic approach of the judicial system have played a very vital role in the protection of the prisoners' rights. The need of the hour is that the punishment centric approach has to be replaced by the prisoner centric approach.

5.7: Historical background of Prison and Prisoners:

Lord Macaulay in his book "Minutes of 1835" very clearly spelt out that imprisonment is the punishment to which we must chiefly trust. The above sentence makes us clear that he was in favour of the establishment of such rules and regulations, with the aim of destroying the criminal streak among the convicted offenders. Lord

Macaulay was in favour of the deterrent and retributive theory of punishment like that of whipping, solitary confinement and death penalty. On the other hand, Mahatma Gandhi represented the humanist, compassionate and correctional approach as the process towards achieving civilized justice. In the earlier times, the American courts were hesitant to recognize the existence of prisoner's rights and as a result, there was dehumanizing conditions in the prisons. However, judicial interference has changed to some extent the prison conditions by restricting the abuses of discretionary powers by the prison authorities.

If we look back into our history, we find that there are descriptions of prisons throughout. For example, in Manusmriti, it was stated that the prisons are places for keeping the evil and wrongdoers. However, the post independent period saw major changes in our prison system and government also took special interest in it. In 1951, experts were invited from United Nations so as to study the prison administration and also to suggest some suggestions regarding the prisoners' rights. The rights of the prisoners get deprived when they are behind the bars and hence the growing concern for the protection of the prisoners' rights. All the prisoners are entitled to the human rights and the fundamental freedoms as set out in UDHR, ICESCR, ICCPR and also the Optional Protocols as well as other rights which are set out under other United Nations Covenants. In 1955, Amnesty International prepared certain rules and regulations for the betterment of the prisoners. Some are highlighted below:-

- Men and Women to be kept in separate institutions.
- Also there is the need of separation of the prisoners convicted for the civil and criminal offences.
- Perception of equality should be there.

- Availability of at least one qualified medical officer who has the knowledge of psychiatry.

The needs for reforms in the Prisoners' rights and conditions were taken way back in 1835 when Lord Macaulay projected the terrible conditions of Indian prisons. After Macaulay's efforts, several other laws were also passed which dealt with the prisoners' rights.

Self-Asking Question

Q. The Public Interest Litigations (PIL) have also done a lot in the field of protection of the prisoners' rights. Discuss.

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Stop to Consider

Four legislations that govern the administration of prisons in India are:-

1. The Prisons Act, 1894.
2. The Prisoners Act, 1900.
3. The Transfer of Prisoners Act, 1950, and,
4. The Prisoners (Attendance in Courts) Act, 1955.

5.8: Some Other Measures for Prison Reform:

Prison, being a state subject, the day-to-day administration of the prisons are governed by the respective Jail manuals. The All India Committee on Jail Reforms (1980-83), more popularly known as the Mulla Committee, drafted a model prison bill on the lines of the standards recommended by the Standard Minimum Rules for

Treatment of the Prisoners, 1955. The Committee headed by Justice A. N. Mulla, studied the rules and conditions of the prisons of various states in India and recommended that a 'Model Prison Manual' need to be prepared by the Government of India and to be circulated to the States. Justice H. R. Bhardwaj clearly stated that the slow pace of criminal justice system is responsible for overcrowding in the prisons. Even the National Human Rights Commission has suggested changes in the prison legislations. In 1977, Ismail Committee in its report submitted the allegations of ill treatment and beating and made suggestions for prison reforms and rights of the prisoners. In 1979, the Tamil Nadu Prison Reforms Commission was constituted which made some progressive suggestions for the prisoners. In 1986-87, National Expert Committee on Women Prisoners was constituted under the headship of Justice V. R. Krishna Iyer. In 1991-93, the 9th Kerala Legislature Estimate Committee made certain suggestions regarding the rights of the prisoners in the State of Kerala. The Travancore-Cochin Prisons Act, 1915, was enforced in Kerala (P. K. Srivastava).

Thus, from the above discussion, we gather idea that various steps have been taken for bringing about prison reforms. However, it also needs mention that the Prisons Act, 1894, and the respective state jail manuals require immediate amendments so as to ensure fair and just procedure while dealing with the prisoners.

Check Your Progress:

Q.1. Discuss the role played by Indian Judiciary in the protection of the rights of the prisoners.

Q.2. Discuss the various national as well as international arrangements for the protection of the prisoners' rights.

Q.3. What are the various issues confronting the rights of the prisoners? Explain.

5.9: Summing Up:

We can sum up by saying that prisons are no more simply the institution having retributive and deterrent aspects of punishment. But prisons are also places to help the prisoners become more responsible, creative and potential citizens. Various steps have already been taken so as to improve the conditions of prisons but much more is required to be done. Central government along with the NGOs need to play vital role in bringing about reform in prison administration. Surprise visits must be given by the authorities so as to solve the problems there. Mahatma Gandhi rightly said that 'hate the sin and not the sinner' because there is always a chance for a sinner to become a pious mind. This chance need to be given to the prisoners. However, we see that even after so many years of independence, the conditions of prisons in India appear not to have improved much. Various problems are yet to be solved. Problems like drug racket, alcoholism, smuggling, violence, theft, un-constitutional punishment by way of solitary cellular life and transfer in other jails etc. are confronting the prison system. The role of the judiciary, legislature, press, media and most importantly the participation of the people cannot be sidelined for formulating a comprehensive prison management policy at the national level.

5.10: References and Suggested Readings:

- Kumar, S. Prisoners' Rights in India: An Overview. *DISCUSSANT*.

- Yadav, A. (2015). Prisoners' Rights in India: An Analysis of Legal Framework. *Indian JL & Just.*, *6*, 131.
- Verma, P. (2018). Rights of Prisoners under Indian Law. *Pen Acclaims*.
- Gupta, R. K., & Singh, K. (2016). Human rights of prisoners in India. *Imperial Journal of Interdisciplinary Research*, *2*(11).
- Rawat, N. (2022). Laws Regulating the Rights of Prisoners. *Issue 2 Indian JL & Legal Rsch.*, *4*, 1.
- MEENA, M. A. HUMAN RIHTS OF PRISONERS IN INDIA LEGAL SYSTEM–A STUDY.
- Srivastava, P. K. (2021, March). *PRISONERS RIGHTS UNDER INDIAN CONSTITUTION*.
- Kumar, N. (1986). *Constitutional Rights of Prisoners: A Study of Judicial Trends*. Mittal Publications.

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UNIT-6
RIGHTS OF TRANSGENDER PERSONS IN INDIA

Unit Structure:

6.1. Introduction
6.2. Objectives
6.3. History of Transgender Rights
    6.3.1. Historical Context of Transgender Rights in India
6.4. Legal Milestones Regarding Transgender Rights in India
6.5. Social and Economic Challenges in Transgender Rights in India
6.6 Activism and Community Resilience in Transgender Rights in India
6.7. Media and Representation of Transgender Rights in India
6.8. Future Discourse on Transgender Rights in India
6.9. Summing Up
6.10 References and Suggested Readings

6.1. Introduction:

India is home to a diverse and historically rich transgender community, often referred to as *Hijras*, *Aravanis*, *Jogappas*, and other region-specific identities. Despite their longstanding cultural presence, transgender persons have faced systemic marginalization, violence, and legal invisibility. However, over the last two decades, India has witnessed significant legal and social shifts aimed at recognizing and protecting transgender rights. This unit will explain the transgender rights in India and issues related to the enjoyment of these rights.

6.2. Objectives:

After reading this unit you will be able to-

- *trace* the history of transgender's rights in India,
- *examine* the Legal Milestones Regarding Transgender Rights in India,
- *assess* the Social and Economic Challenges in Transgender Rights in India,
- *discuss* Activism and Community Resilience in Transgender Rights in India,
- *analyse* the role of Media and Representation of Transgender Rights in India,
- *examine* the Future Discourse on Transgender Rights in India.

6.3. History of Transgender Rights:

The concept of gender diversity is not new—transgender, non-binary, and gender non-conforming people have existed across cultures and societies for centuries. In ancient civilizations such as those in Mesopotamia, Egypt, and indigenous cultures in the Americas and the Pacific Islands, individuals who did not conform to binary gender roles were often respected and held spiritual or social significance. For example, the *Two-Spirit* people in many Native American tribes occupied important cultural and religious roles.

However, with the spread of colonialism and the rise of rigid Western gender norms—especially influenced by Victorian and Christian ideologies—many of these diverse gender identities were erased, criminalized, or pathologized. Transgender individuals began facing legal restrictions, social exclusion, and medical labeling as mentally ill or deviant.

The modern transgender rights movement began taking shape in the mid-20th century. In the United States, the **Compton's Cafeteria Riot (1966)** and the **Stonewall Riots (1969),** both led by transgender women and drag queens, are considered pivotal moments. These events helped spark broader LGBTQ+ rights movements. In the decades that followed, countries began to decriminalize gender variance, allow gender reassignment surgery, and offer legal recognition of gender identity.

Yet, global progress has been uneven. While some nations like Argentina, Malta, and Denmark have adopted progressive gender recognition laws based on self-identification, others still criminalize or fail to protect transgender individuals, especially in parts of Africa, Asia, and Eastern Europe.

6.3.1. Historical Context of Transgender Rights in India

The history of transgender individuals in India is both rich and complex, rooted deeply in the subcontinent's cultural, religious, and social fabric. For centuries, transgender persons—often referred to in India as *Hijras*, *Kinnars*, *Aravanis*, *Jogappas*, and other regional identities—have existed in society with varying degrees of recognition and respect. In ancient Indian texts and mythology, gender diversity was not only acknowledged but often revered. For example, the *Mahabharata* includes the story of Shikhandi, a warrior born female but identifying and living as male, and *Aravan*, whose ritual marriage to a transgender woman is still celebrated in Tamil Nadu. In the *Ramayana*, Lord Rama blesses the Hijras for their loyalty, asking them to remain behind while he goes into exile, a narrative that some Hijra communities trace their lineage to.

During the medieval period, particularly under the Mughal Empire, transgender persons—especially eunuchs—often held important

positions within royal courts, as guards of harems, advisors, and performers. Their presence was institutionalized and they enjoyed patronage and social recognition. These roles gave them a unique status, especially within elite circles. Historical records from the Mughal period reflect a complex understanding of gender identity that went beyond the binary, a far cry from the criminalization and marginalization that would follow in later years.

The significant shift in the status of transgender people came with the onset of British colonial rule in the 18th and 19th centuries. The colonial administration, guided by Victorian morality and Western notions of gender and sexuality, viewed transgender persons and Hijra communities as deviant and unnatural. This resulted in the criminalization of their existence. The **Criminal Tribes Act of 1871,** a particularly draconian law, classified Hijras and other nomadic or gender-nonconforming communities as "criminals by birth." This law granted police sweeping powers to surveil, arrest, and punish individuals merely for being transgender. Public performances, traditional blessings at weddings and births, and even dressing in gender-nonconforming attire were criminalized, and entire communities were forcibly evicted or broken up. The Act institutionalized stigma and reinforced a culture of discrimination that would persist long after independence.

After India gained independence in 1947, the legal system carried over many colonial-era laws and prejudices. The Criminal Tribes Act was repealed in 1952, but its legacy continued through police practices and societal attitudes. Transgender persons remained excluded from mainstream social, educational, and economic systems. The law offered little to no protection against discrimination, violence, or harassment, and transgender people continued to live on the margins of society, often forced into sex work, begging, or ceremonial roles to survive. Their participation in

public life, access to healthcare, education, and employment, and recognition as citizens remained severely restricted.

It wasn't until the late 20th and early 21st centuries that transgender people in India began to organize more formally and assert their rights. Grassroots movements and advocacy efforts brought attention to the legal invisibility and systemic oppression faced by the community. Activists highlighted the contradiction between India's constitutional promise of equality and the reality of exclusion experienced by transgender persons. The early 2000s saw some progressive judgments by courts recognizing the need for social justice, culminating in the landmark NALSA v. Union of India judgment by the Supreme Court in 2014. This judgment marked a historic reversal of centuries of exclusion by legally recognizing transgender persons as a "third gender" and affirming their fundamental rights.

Therefore, it can be said that the historical context of transgender rights in India reveals a journey from ancient reverence and medieval inclusion to colonial criminalization and post-independence neglect. However, recent decades have seen a resurgence of recognition and rights-based advocacy, driven by the tireless efforts of transgender activists and allies. Understanding this history is essential to appreciating the significance of recent legal victories and the ongoing struggle for true equality and dignity.

6.4. Legal Milestones Regarding Transgender Rights in India

The legal recognition of transgender rights in India has evolved significantly over the past few decades, moving from invisibility and criminalization to formal recognition and protection under the law. This journey, however, has been gradual and often shaped by

the persistent efforts of activists, civil society, and the transgender community itself.

A. Early Legal Silence and the Shadow of Colonial Law

For many years after independence, Indian laws remained largely silent on the existence and rights of transgender persons. The colonial-era Criminal Tribes Act of 1871, though repealed in 1952, left behind a lasting legacy of stigma. Transgender persons were often viewed through a lens of criminality and moral deviance, with little to no legal protection against violence or discrimination. The Indian Penal Code (IPC), particularly Section 377, further complicated matters. Though aimed at criminalizing "unnatural" sexual acts, it was frequently used to harass and penalize transgender and queer individuals. For decades, transgender people had no legal status, and the law provided no recognition of their identity, nor access to basic rights such as education, employment, or healthcare.

B. National Legal Services Authority (NALSA) v. Union of India (2014)

A ground breaking shift came with the Supreme Court's judgment in the NALSA **case** on April 15, 2014. This case was filed by the National Legal Services Authority on behalf of the transgender community, seeking recognition of their gender identity and constitutional rights. The Court ruled in favor of the petitioners and recognized transgender persons as the "third gender" under the Constitution of India. The judgment was revolutionary for several reasons:

- It affirmed that gender identity is an integral part of personal autonomy and dignity, protected under Article 21 (right to life and personal liberty).

- It declared that transgender persons have the right to self-identify their gender, whether male, female, or third gender, without being forced to undergo sex reassignment surgery or medical certification.
- The Court directed both the central and state governments to treat transgender individuals as socially and educationally backward classes, making them eligible for reservations in education and employment.
- It mandated the formulation of social welfare schemes for transgender persons, and the implementation of public awareness campaigns to reduce stigma and discrimination.

This landmark judgment established a strong constitutional foundation for transgender rights in India and was widely hailed as a progressive step toward gender justice.

C. Decriminalization of Section 377 – Navtej Singh Johar v. Union of India (2018)

Although not specifically about transgender persons, the Navtej Singh Johar judgment in 2018 had a profound impact on the broader LGBTQ+ community, including trans individuals. In this case, the Supreme Court decriminalized consensual same-sex relationships by striking down parts of Section 377 of the IPC, which had been used to harass and criminalize queer individuals for decades.

The Court emphasized the right to privacy, dignity, and equality, and recognized that sexual orientation is an inherent part of identity. For transgender persons—many of whom face discrimination due to both gender identity and sexual orientation—this ruling was a crucial step in affirming their constitutional rights.

D. The Transgender Persons (Protection of Rights) Act, 2019

In response to the NALSA judgment, the Indian government introduced legislation to provide statutory protection to transgender persons. After considerable debate and revisions, the Transgender Persons (Protection of Rights) Act was passed in 2019. The important provisions of the Act include:

- Prohibition of discrimination against transgender persons in education, employment, healthcare, housing, and public services.
- The right of transgender individuals to self-perceived identity, although legal recognition still requires a certificate from a District Magistrate.
- Mandates the formation of welfare schemes, creation of rehabilitation centers, and appointment of official grievance redressal mechanisms in establishments.
- Provides for the establishment of a National Council for Transgender Persons to advise the government on policies and monitor implementation.

However, the Act has been heavily criticized by activists and the transgender community. Critics argue that the requirement of a certificate undermines the principle of self-identification recognized in NALSA. Additionally, the Act lacks strong enforcement mechanisms and fails to specify penalties for discrimination in many cases, leading to concerns about its effectiveness in practice.

E. Rules under the Transgender Act (2020)

In 2020, the government released the Transgender Persons (Protection of Rights) Rules, detailing the procedures for obtaining identity certificates and outlining responsibilities of various institutions. While the rules aimed to clarify parts of the 2019 Act,

many within the transgender community continued to protest, stating that the bureaucratic process remained intrusive and failed to respect personal dignity.

Despite its limitations, the Act and its accompanying rules mark the first time transgender rights have been comprehensively addressed in Indian statutory law.

F. Emerging Jurisprudence and State-Level Reforms

Several Indian states have taken progressive steps independently. Tamil Nadu was one of the first states to recognize transgender persons in government welfare schemes. It introduced free sex reassignment surgeries, established a transgender welfare board, and allowed transgender individuals to apply for ration cards and educational scholarships.

Courts across the country have also issued progressive rulings in support of transgender rights. For example, the Madras High Court in 2021 directed a ban on conversion therapy and ordered the inclusion of gender and sexuality education in schools, in response to a case filed by a lesbian couple seeking protection. Similarly, the Karnataka government in 2021 became the first state to implement 1% reservation for transgender persons in public employment.

It may be noted here that the legal journey of transgender rights in India reflects a broader shift from colonial-era criminalization and invisibility to a growing recognition of dignity, identity, and equality. Landmark judgments like NALSA and Navtej Johar, alongside legislative attempts like the 2019 Act, have created a framework for rights and protection. However, legal recognition must now translate into real social transformation, with inclusive implementation, awareness, and strong community involvement. The fight for transgender rights is far from over, but the milestones achieved so far offer a strong foundation to build upon.

6.5. Social and Economic Challenges in Transgender Rights in India

Despite recent legal recognition and constitutional protections, transgender persons in India continue to face numerous social and economic challenges. These barriers are deeply rooted in historical stigma, patriarchal norms, lack of institutional support, and limited access to opportunities. Legal reforms alone are insufficient without parallel shifts in societal attitudes and economic inclusion.

1. Social Stigma and Discrimination:

At the heart of many challenges is entrenched social stigma. Transgender individuals are frequently viewed as "deviants" or outsiders, leading to widespread discrimination, ridicule, and exclusion**.** From a young age, many transgender people are bullied or harassed in schools, often forcing them to drop out early. This contributes to a lack of formal education, which further compounds their marginalization.

Family rejection is another major issue. Upon expressing their gender identity, many transgender persons face abandonment, emotional abuse, or violence from their own families, pushing them into homelessness or unsafe environments. This early social exclusion deprives them of a critical support system and often leaves them to fend for themselves with limited resources.

Social invisibility also means that transgender persons are often excluded from public life. They are rarely represented in mainstream media, political spaces, or community leadership roles, reinforcing harmful stereotypes and denying them a platform to advocate for themselves.

2. Barriers to Education:

Access to quality education remains one of the biggest hurdles for transgender individuals in India. Due to bullying, discrimination from teachers and peers, and lack of supportive school environments, many transgender children either do not enroll in school or drop out prematurely. There is a lack of gender-neutral facilities, such as restrooms and uniforms, and school curricula rarely include positive representations of gender diversity.

Even when transgender persons manage to complete their education, they may find it difficult to obtain identity documents that reflect their self-identified gender, which becomes a barrier in pursuing higher studies or applying for scholarships.

Without adequate education and skills training, their ability to access formal employment opportunities is severely limited, perpetuating a cycle of poverty and social exclusion.

3. Employment Discrimination and Economic Marginalization:

Most transgender persons in India face widespread discrimination in the job market**.** Many employers are reluctant to hire them due to bias, misinformation, or fear of backlash from other employees or customers. As a result, a vast majority are excluded from formal sectors and remain unemployed or underemployed**.**

Due to lack of alternatives, many are forced to rely on traditional or informal means of livelihood**,** such as performing blessings at weddings and childbirths (*badhai*), sex work, or begging. While these occupations are culturally significant in some regions, they are not sustainable and leave individuals vulnerable to exploitation, violence, and police harassment**.**

Even when transgender persons are employed, they often face hostile work environments, harassment, and lack of workplace

policies that recognize their identity or protect them from discrimination. There are minimal policies on gender-neutral hiring, inclusive training, or health insurance coverage for gender-affirming treatments.

4. Lack of Access to Healthcare:

Access to affordable and respectful healthcare is a major concern for transgender people in India. Many healthcare professionals lack training in gender-affirming care, and transgender patients often face misgendering, humiliation, or outright denial of service in hospitals and clinics.

Mental health support is also severely lacking. Given the high rates of trauma, social rejection, and violence faced by transgender individuals, there is a pressing need for culturally competent psychological care, which remains unavailable or unaffordable to many.

Gender-affirming surgeries and hormone therapies, though recognized by the state, are still largely inaccessible due to high costs and lack of trained professionals**.** Government schemes that offer such treatments are often under-publicized or difficult to navigate due to bureaucratic hurdles.

5. Issues with Legal Identity and Documentation:

Despite the Supreme Court's recognition of self-identified gender in the NALSA judgment, many transgender persons still struggle to obtain identity documents—such as Aadhaar cards, voter IDs, ration cards, and passports—that accurately reflect their gender. The **Transgender Persons (Protection of Rights) Act, 2019,** mandates a certification process that is often bureaucratic, intrusive, and varies from district to district.

Without proper documentation, transgender persons are unable to access welfare schemes, open bank accounts, get jobs, or even rent accommodation**.** This legal invisibility further reinforces their exclusion from social and economic systems.

6. Housing Insecurity and Homelessness:

Due to family rejection and discrimination in housing, many transgender people experience housing insecurity**.** Landlords frequently refuse to rent homes to transgender individuals, or exploit them by charging higher rents. In urban centers, many transgender persons live in shared accommodations or informal settlements without basic amenities, making them more vulnerable to disease, abuse, and eviction.

Public housing schemes often do not include transgender persons as a distinct category, making it difficult for them to qualify for government housing support. Safe shelters or trans-inclusive hostels are rare and underfunded.

7. Violence and Lack of Legal Protection:

Transgender individuals are frequently subject to physical violence, sexual assault, and police brutality**,** often with impunity. Crimes against transgender persons are underreported, and survivors face institutional apathy when they seek justice.

Though the 2019 Act prohibits discrimination, it has been criticized for offering weak enforcement mechanisms and inadequate penalties for abuse or violence. Transgender persons are rarely provided police protection, and there are very few gender-sensitive training programs for law enforcement agencies.

8. Limited Political Representation and Participation:

Transgender persons are vastly underrepresented in politics and governance. Although a few individuals have contested and even

won local elections, such as Madhu Bai Kinnar (Raigarh mayor) and Ganga Kumari (Rajasthan Police), they are exceptions rather than the norm.

Political parties seldom include transgender persons in leadership roles or candidate lists. This lack of representation limits their ability to influence policy decisions and advocate for the needs of their community. Furthermore, voter registration is hampered by lack of documentation and fear of discrimination at polling booths.

So, you have learnt that while recent legal reforms in India—such as the NALSA judgment and the Transgender Persons Act—have laid the groundwork for recognizing transgender rights, social and economic challenges remain deeply entrenched. Discrimination in education, employment, healthcare, and housing continues to marginalize transgender persons. Real change will require not just laws, but systemic reforms in institutions, widespread awareness campaigns, inclusive policies, and active efforts to empower transgender voices in all spheres of life.

Empathy, dignity, and equal opportunity must guide India's path forward if the promise of equality for all—enshrined in the Constitution—is to be truly realized for its transgender citizens.

6.6 Activism and Community Resilience in Transgender Rights in India

While legal reforms and policy changes have contributed to the progress of transgender rights in India, much of the momentum has come from grassroots activism and the resilient efforts of the transgender community itself. Faced with centuries of marginalization, discrimination, and invisibility, transgender persons and their allies have carved out spaces of dignity, resistance, and hope through organized activism, cultural assertion, and

community-led initiatives. Their struggles and triumphs form the backbone of the transgender rights movement in the country.

- **Early Voices and the Birth of a Movement**

Transgender activism in India began to gain visibility in the late 20th century, particularly in the 1990s, when HIV/AIDS advocacy brought the struggles of marginalized communities into focus. Hijra and Aravani communities—long marginalized and stereotyped—began organizing around issues of health, dignity, and survival. NGOs and community-based organizations started mobilizing transgender persons, providing sexual health education, HIV prevention, and building support systems.

Groups such as the Sangama (Bangalore) and Naz Foundation (Delhi) played crucial roles in not only promoting health but also highlighting the structural discrimination faced by transgender people. This period marked the beginning of self-assertion, with transgender individuals stepping into leadership roles and demanding visibility in public discourse.

- **Legal Advocacy and Landmark Cases**

It has already been mentioned above that activists have been central to securing legal rights for transgender persons through strategic litigation. One of the most significant examples is the NALSA v. Union of India (2014) case, which was brought forward with the active participation of transgender individuals and civil rights lawyers. The judgment, which legally recognized transgender persons as a "third gender" and affirmed their right to self-identify, was not just a legal victory but a product of years of tireless activism.

Another milestone was the Navtej Singh Johar v. Union of India (2018) case, where activists helped decriminalize same-sex relationships under Section 377 of the Indian Penal Code. Although

the petitioners were not all transgender, the ruling had a wide impact on the broader LGBTQIA+ community, including transgender people who were often targeted under this law.

Activists continue to challenge problematic aspects of the Transgender Persons (Protection of Rights) Act, 2019, especially the requirement for certification and the lack of robust penalties for discrimination. Protests, petitions, and public dialogues have kept pressure on the government to amend the law in line with the NALSA judgment and international human rights standards.

- **Community-Led Organizations and Safe Spaces**

In the absence of institutional support, transgender communities across India have built networks of mutual care, survival, and empowerment. For example, Sahodari Foundation (Tamil Nadu), founded by Kalki Subramaniam, works for transgender empowerment through art, media, and education. Transgender Welfare Equity and Empowerment Trust (TWEET Foundation), led by trans activists, focuses on youth leadership, employment, and policy advocacy. Humsafar Trust (Mumbai) and Nazariya (Delhi) provide psychosocial support, legal aid, and conduct research to inform public policy.

These community-led organizations function not only as service providers but as hubs of resistance and solidarity, offering safe spaces for transgender individuals to express themselves, heal from trauma, and reclaim agency.

- **Cultural Assertion and Media Visibility**

Transgender activists have also used art, film, literature, and social media as tools of resistance and awareness. Activists like Laxmi Narayan Tripathi have played pioneering roles in public advocacy by appearing in national and international media, representing India

at the United Nations, and demanding dignity and rights for transgender people.

Films such as *Naanu Avanalla...Avalu* (Kannada), *Super Deluxe* (Tamil), and documentaries like *Call Me Heena* have brought transgender narratives into the cultural mainstream. These representations, often led by or made in consultation with the community, help challenge stereotypes and foster empathy among the general public.

Social media platforms have further amplified trans voices. Trans influencers, writers, and educators use these spaces to share personal stories, raise awareness, and build communities beyond geographical constraints.

- **Protests, Public Campaigns, and Political Participation**

The transgender community in India has shown remarkable resilience through peaceful protests, pride marches, and public campaigns. After the 2019 Transgender Persons Act was passed, activists across the country organized protests, calling it regressive and demanding amendments. Cities like Delhi, Chennai, Bengaluru, and Kolkata witnessed strong trans-led mobilizations, often in collaboration with student groups, feminists, and queer collectives.

Moreover, political participation has begun to take root. Madhu Bai Kinnar, a transgender woman, became the mayor of Raigarh in Chhattisgarh in 2015. Ganga Kumari became Rajasthan's first transgender police constable. Such breakthroughs reflect a growing assertion of political agency and inspire others to demand representation.

Although progress is slow and often met with resistance, these acts of civic participation signal a transformative shift in public perception and community confidence.

6. Intersectionality and Inclusive Activism

Transgender activism in India has increasingly adopted an intersectional approach, recognizing that issues of caste, class, religion, region, and disability intersect with gender identity. Many trans persons belong to Dalit, Adivasi, or minority communities and face multiple layers of oppression. Activists have started to address these intersections in their work, ensuring that transgender rights are understood within the broader framework of social justice.

For example, alliances between trans rights groups and Dalit movements, labor unions, and feminist collectives have emerged, promoting solidarity and shared struggle. This coalitional politics has helped broaden the transgender rights movement and root it in the lived realities of India's diverse population.

The history of transgender activism in India is a powerful testament to the strength, resilience, and agency of a community that has been historically marginalized. Despite legal setbacks, social exclusion, and systemic neglect, transgender individuals and their allies have created a vibrant movement—one that combines legal advocacy, community care, cultural production, and public resistance. Their efforts have not only won important rights but have also transformed the public conversation on gender, identity, and justice in India.

True progress will require that this activism be met with responsive governance, inclusive policy-making, and societal transformation. Until then, the transgender community continues to lead with courage, compassion, and a vision for a more equal and humane society.

6.7. Media and Representation of Transgender Rights in India

The role of media in shaping public perceptions of transgender people in India has been both transformative and problematic. Over the years, the media landscape has evolved from reinforcing harmful stereotypes to offering nuanced, empowering, and inclusive narratives. Despite ongoing challenges, increasing visibility in mainstream and alternative media has significantly contributed to awareness, dialogue, and the gradual normalization of transgender identities in Indian society.

- **Historical Misrepresentation and Stereotyping**

Historically, transgender persons in Indian media were often reduced to comic relief, villains, or objects of fear and curiosity**.** In mainstream Bollywood and regional cinema, transgender characters—usually hijras—were depicted as loud, superstitious, and menacing. Their portrayals relied heavily on caricatures and exaggerated behaviors that dehumanized the community, reinforcing social exclusion and mockery.

Films like *Sadak* (1991), which portrayed a transgender villain in a negative light, reflected the deep-seated prejudices of the time. News media also contributed to marginalization, often using sensationalist language such as “sex-change,” “eunuch,” or “third gender” without understanding the diversity of transgender identities. These depictions contributed to widespread ignorance, stigma, and misunderstanding of the lived realities of transgender persons.

- **Shifting Narratives in Film and Television**

In recent years, there has been a significant shift in representation, especially in independent and regional cinema. Films like *Tamanna* (1997) attempted to humanize hijra identities, while *Daayraa* (1996) explored gender fluidity with sensitivity. However, it was more

recently that mainstream narratives began portraying transgender people with greater dignity and complexity.

The Kannada film *Naanu Avanalla…Avalu* (2015), based on the life of trans activist Living Smile Vidya, and the Tamil film *Peranbu* (2018), which includes a trans character played with nuance and empathy, marked a turning point in cinematic representation. The Hindi film *Super Deluxe* (2019) featured actor Vijay Sethupathi in a powerful role as a transgender woman, challenging gender norms and presenting a multi-dimensional character.

Though these films have drawn critical acclaim, they have also been criticised for casting cisgender actors in trans roles, sparking important conversations about authenticity and inclusion in casting practices.

- **Transgender Voices in Journalism and Digital Media**

With the rise of digital media, transgender individuals have begun reclaiming their narratives, offering first-person perspectives, and challenging dominant discourses. Social media platforms such as Instagram, YouTube, and Twitter have provided unfiltered, democratic spaces where transgender voices can be heard without the mediation of mainstream editors or producers.

Trans journalists, bloggers, and influencers are using these platforms to speak about mental health, gender identity, healthcare access, discrimination, and joy—highlighting both struggles and successes. Pages like *Trans Vision* and platforms like *Queer Ink*, *Gaysi Family*, and *The News Minute* have become hubs for trans-inclusive journalism and storytelling.

Notably, transgender news anchors like Padmini Prakash (Lotus TV, Tamil Nadu) and Maaviya Malik (Pakistan, with relevance to South Asian representation) have broken barriers by appearing on

television screens, challenging public perceptions and normalizing transgender visibility in professional spaces.

- **The Role of Documentaries and Web Series**

Documentary films have played a crucial role in highlighting the lived experiences of transgender persons in India. Films like *Call Me Heena* (2017), *Purple Skies* (2014), and *I Am Not a He* (2017) provide raw and powerful portrayals of identity, resilience, and community.

The rise of web series has also created space for more diverse and bold storytelling. Shows like *Taali* (2023), based on the life of trans activist Laxmi Narayan Tripathi, have brought transgender issues into mainstream OTT platforms. Though played by a cis actor (Sushmita Sen), the series helped spark dialogue around legal rights, community resilience, and the history of hijra communities. Despite criticisms regarding casting, these productions have opened the door for greater public understanding and empathetic engagement with the transgender experience.

- **Advertising and Corporate Representation**

Indian advertising is gradually becoming more inclusive, though still cautiously so. Brands like Brooke Bond Red Label and Vicks have featured transgender individuals in heart-warming commercials that promote acceptance and diversity. The 2017 Vicks campaign telling the story of trans mother Gauri Sawant gained national attention and appreciation for its message of unconditional love and chosen family.

These representations signal a slow but promising shift in corporate social responsibility and inclusive branding. However, critics argue that such campaigns often tokenize trans identities without addressing deeper structural issues or involving trans people in decision-making and creative processes.

- **Challenges of Authentic Representation**

While visibility has increased, one of the persistent issues is the lack of authentic representation. Transgender roles are still mostly portrayed by cisgender actors, often without meaningful consultation with the community. This results in portrayals that may lack depth, accuracy, or respect.

Moreover, the diversity within the transgender community—including Dalit, Bahujan, Adivasi, Muslim, disabled, and rural trans persons—is rarely reflected in mainstream media. This creates a narrow and often urban-centric image of transgender life, excluding the voices of those at the intersections of multiple oppressions.

There is a pressing need for more trans writers, directors, editors, and media producers to tell their own stories and shape their own narratives. Until the media industry becomes more inclusive behind the scenes, authentic representation will remain a challenge.

- **Positive Impact of Media Visibility**

Despite limitations, increased visibility in media has had a positive cultural impact. Public conversations around gender identity, legal rights, and discrimination are now more widespread than ever before. Educational institutions, corporate offices, and families are beginning to engage with issues of gender diversity with greater openness.

The presence of transgender persons in media has also inspired many from the community to come out, organize, and advocate for themselves. It provides role models for young trans individuals and sends a powerful message that transgender people are not invisible or voiceless—they are artists, professionals, leaders, and storytellers.

So now it is clear that media, as both a mirror and a moulder of society, has played a complex yet increasingly constructive role in advancing transgender rights in India. From early misrepresentations to more recent strides in inclusive storytelling, the evolution of transgender representation reflects a broader societal shift toward recognition and respect. However, true media justice will be achieved only when transgender persons are not just visible, but also empowered to tell their own stories, shape public narratives, and lead conversations on identity, equality, and dignity.

Stop to Consider

Measures for Care of LGBTQ Community in India:

In response to parliamentary inquiries regarding measures for the care of the LGBTQ+ community in India, the government has implemented several initiatives aimed at safeguarding their rights and ensuring equitable access to services. A committee chaired by the Cabinet Secretary, with members from the Ministries of Home Affairs, Women and Child Development, Health and Family Welfare, and the Department of Social Justice and Empowerment, was constituted to examine and recommend actions for the welfare of the queer community. This committee has addressed issues such as enabling joint bank accounts with partner nomination rights, facilitating access to ration cards, and ensuring protection against harassment based on gender identity or sexual orientation. Furthermore, advisories have been issued to state and union territory governments to uphold the rights of LGBTQ+ individuals in areas like healthcare, public services, and law enforcement. These advisories emphasize the need to eliminate discrimination and harassment, ensuring that queer individuals have equal access to essential services without fear of coercion or violence.

Despite these measures, challenges persist. The Transgender Persons (Protection of Rights) Act, 2019, while a step forward, has faced criticism for provisions that require transgender individuals to undergo gender-affirming surgery to legally change their gender marker, which contradicts the 2014 Supreme Court ruling that upheld the right to self-identification without medical intervention. Additionally, the Act does not provide for affirmative action, such as reservations in education and employment, which were recommended by the Supreme Court in the NALSA judgment.

Moreover, while the government has taken steps to address issues like access to welfare schemes and protection against discrimination, the implementation of these measures has been inconsistent, and the community continues to face societal stigma and legal challenges. The absence of a comprehensive legal framework that recognizes same-sex marriages and provides for adoption rights for LGBTQ+ couples further underscores the need for legislative reforms to ensure full equality and protection for the queer community in India.

6.8. Future Discourse on Transgender Rights in India

As India progresses in the realms of social justice, equality, and inclusion, the future discourse on transgender rights is poised to move beyond legal recognition towards substantive justice, empowerment, and systemic transformation. While landmark judgments and increasing visibility have laid the groundwork, the real challenge lies in ensuring that the rights of transgender persons translate into meaningful changes in everyday life. The future discourse must be intersectional, inclusive, and community-led, with a focus on dignity, equity, and representation.

1. Moving Beyond Legal Identity to Social Integration

The NALSA judgment (2014) and the Transgender Persons (Protection of Rights) Act (2019) established the legal identity of transgender persons. However, future discourse must shift towards full social integration, where trans individuals are not merely recognized on paper but are fully accepted in families, workplaces, educational institutions, healthcare systems, and public life.

This means tackling deep-rooted social stigma through education, sensitization campaigns, and inclusive policies at all levels. State institutions, from police departments to schools and panchayats, need to be trained to respect and uphold the rights of transgender people. The focus must be on creating environments that do not just tolerate, but affirm, transgender identities.

2. Inclusive Education and Employment Policies

One of the most critical areas for future reform is education and employment. Despite legal rights**,** transgender persons continue to face high levels of school dropout, unemployment, and workplace discrimination. The future must see the formulation and implementation of inclusive education policies—such as gender-neutral bathrooms, trans-inclusive curricula, scholarships, and teacher training.

In employment, there must be strong affirmative action policies, skill development programs, and workplace anti-discrimination guidelines. Government and private sectors alike must move toward active hiring of transgender individuals in diverse roles—not as tokens but as qualified professionals. Legal mandates for job reservations and targeted outreach programs will be key to enabling trans persons to access economic independence.

3. Healthcare Access and Gender-Affirming Care

Future discourse must prioritize universal and dignified access to healthcare, including gender-affirming medical care. Currently, most public hospitals lack the infrastructure or trained personnel to provide hormonal therapy, surgery, or even basic healthcare services with respect and sensitivity. Many trans persons are forced to rely on unregulated, expensive, or dangerous alternatives.

Moving forward, the healthcare system must integrate transgender health needs into public health policy. This includes insurance coverage for gender-affirming procedures, counseling services, and reproductive and sexual health services tailored to transgender individuals. Additionally, trans persons must be included in health research, data collection, and health workforce development.

4. Legal Reforms and Protection Mechanisms

Although the Transgender Persons Act of 2019 was intended to protect rights, it has faced criticism from activists for failing to align with the NALSA judgment. The future must involve revisiting and amending this legislation, particularly the provisions related to self-identification, certification process, and weak penalties for discrimination or violence.

There is also a need to strengthen legal protection mechanisms against hate crimes, gender-based violence, and police brutality. Dedicated legal aid services, fast-track courts, and trans-inclusive shelters and crisis centers must be established. The future legal landscape should also consider the unique needs of transgender persons under family law, inheritance, marriage, and adoption—areas that are still murky and exclusionary.

5. Intersectionality and Representation

Future discourse on transgender rights must be firmly rooted in intersectionality, recognizing how caste, religion, region, class, and disability intersect with gender identity. The experiences of a Dalit trans woman in rural Bihar are very different from those of an upper-class trans man in urban Delhi. Policies and activism must reflect this diversity.

Moreover, representation matters. Future efforts must ensure that transgender persons are not just passive recipients of aid or visibility, but active leaders in policymaking, media, academia, and governance. Representation in political offices, university faculties, and government commissions must be encouraged and normalized. The future will be shaped not only by legislation but by the voices and leadership of transgender individuals themselves.

6. Community-Led Development and Self-Determination

The way forward must also involve supporting community-led initiatives. Transgender collectives, NGOs, cooperatives, and housing projects should be empowered through state and private support. Community resilience and mutual aid networks have long been lifelines for trans persons; future development frameworks must build on and fund these grassroots models**.**

Self-determination must remain at the heart of all future discourse. Transgender persons must have the autonomy to define their identities, goals, and needs without state policing or societal gatekeeping. This includes respecting non-binary identities, localized gender terms, and indigenous traditions that challenge the Western gender binary.

7. Embracing Cultural Shifts Through Media and Art

Cultural representation will continue to play a vital role in shaping the future of transgender rights in India. Films, web series, literature, and digital art must become platforms for trans storytelling, self-expression, and resistance. There must be funding, training, and platforms for trans artists, writers, actors, and creators to tell their own stories.

Now you have understood that art and media have the power to challenge prejudices, create empathy, and spark change—and the future of transgender rights will depend on how cultural narratives evolve. This includes the responsible role of journalists, content creators, and influencers in building a just and inclusive society.

The future of transgender rights in India lies not only in legislation, but in transformative societal change, community empowerment, and the dismantling of structural inequalities. The path forward requires courage, collaboration, and commitment across all sectors—government, civil society, media, education, and healthcare. Most importantly, it requires that transgender persons are not merely seen, but heard, respected, and empowered as equal citizens of the nation.

In a truly inclusive India, transgender rights will not be a fringe issue but a central pillar of our democratic values and collective humanity.

Stop to Consider

Citizenship Amendment Act (CAA) 2019, on Transgender Right:

The **Citizenship Amendment Act (CAA), 2019** in India, which provides a path to citizenship for non-Muslim refugees from

Pakistan, Bangladesh, and Afghanistan, raises critical concerns for transgender individuals, particularly those from marginalized religious communities. While the Act mentions six religious groups—Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians—it does not explicitly consider gender identities, leaving transgender persons from excluded religious backgrounds, especially Muslims, vulnerable to statelessness and legal uncertainty. Moreover, transgender refugees often lack official documents to prove their religion, nationality, or date of entry, making it difficult for them to meet the CAA's requirements. This creates a layered exclusion where transgender individuals face discrimination not just based on religion or nationality, but also on gender identity, compounding their marginalization within the framework of citizenship.

Self-Asking Question

Do you think education plays and important role in dealing with the issue of transgender right? Explain.

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Check Your Progress

1. Trace the history of transgender's rights with special reference to India.
2. What is **Stonewall Riots (1969)?**
3. Discuss the Legal Milestones Regarding Transgender Rights in India
4. What is the NALSA case?
5. Explain decriminalization of section 377.

6. Discuss the social and economic challenges in transgender rights in India.
7. Write a short note on Activism and Community Resilience in Transgender Rights in India.
8. Assess the Future Discourse on Transgender Rights in India.

6.9. Summing Up

Transgender rights in India have come a long way, from criminalization and invisibility to constitutional recognition and activism. While progress is evident, meaningful change requires not just legal reforms but shifts in societal attitudes, policies, and institutional accountability. A truly inclusive India must embrace and uphold the dignity, identity, and rights of all its citizens—regardless of gender.

6.10. References and Suggested Readings

Patel, A. R. (2010). India's Hijras: The Case for Transgender Rights. *Geo. Wash. Int'l L. Rev.*, *42*, 835.

Mehta, R. (2021). Analysing Transgender Rights in India. *Indian JL & Legal Rsch.*, *2*, 1.

Ung Loh, J. (2018). Transgender identity, sexual versus gender 'rights' and the tools of the Indian state. *Feminist Review*, *119*(1), 39-55.

Shankar, A. (2021). An Overview of the Transgender Rights in India. *Indian JL & Legal Rsch.*, *3*, 1.

Mahabalshetti, G. (2023). The Evolution of Transgender Rights in India: A Critical Analysis. *Issue 2 Indian JL & Legal Rsch.*, *5*, 1.

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