Perspectives on Human Rights

COURSE CODE: M21HS06DE

Discipline Specific Elective Course

Postgraduate Programme in History

SELF LEARNING MATERIAL

SREENARAYANAGURU
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The State University for Education, Training and Research in Blended Format, Kerala

SREENARAYANAGURU OPEN UNIVERSITY

Vision

To increase access of potential learners of all categories to higher education, research and training, and ensure equity through delivery of high quality processes and outcomes fostering inclusive educational empowerment for social advancement.

Mission

To be benchmarked as a model for conservation and dissemination of knowledge and skill on blended and virtual mode in education, training and research for normal, continuing, and adult learners.

Pathway

Access and Quality define Equity.

Perspectives on Human Rights
Course Code: M21HS06DE
Semester - III

Discipline Specific Elective Course
Postgraduate Programme in History
Self Learning Material

(With Model Question Paper Sets)

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DOCUMENTATION

Dear learner,

I extend my heartfelt greetings and profound enthusiasm as I warmly welcome you to Sreenarayanaguru Open University. Established in September 2020 as a state-led endeavour to promote higher education through open and distance learning modes, our institution was shaped by the guiding principle that access and quality are the cornerstones of equity. We have firmly resolved to uphold the highest standards of education, setting the benchmark and charting the course.

The courses offered by the Sreenarayanaguru Open University aim to strike a quality balance, ensuring students are equipped for both personal growth and professional excellence. The University embraces the widely acclaimed "blended format," a practical framework that harmoniously integrates Self-Learning Materials, Classroom Counseling, and Virtual modes, fostering a dynamic and enriching experience for both learners and instructors.

The University aims to offer you an engaging and thought-provoking educational journey. The Master's program in History aims to familiarise learners with the complexities of historical research and facts through courses on historiography and research methodologies. Learners will develop skills to analyse historical dynamics, allowing them to step deeper into the nuances of historical narratives and reexamine past events with an appropriate outlook. The curriculum's interdisciplinary nature is evident in its incorporation of concepts from various fields. The Self-Learning Material has been meticulously crafted, incorporating relevant examples to facilitate better comprehension.

Rest assured, the university's student support services will be at your disposal throughout your academic journey, readily available to address any concerns or grievances you may encounter. We encourage you to reach out to us freely regarding any matter about your academic programme. It is our sincere wish that you achieve the utmost success.

Warm regards.
Dr. Jagathy Raj V. P.   01-09-2024

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Human Rights: Concept and Concern

UNIT 1

Human Rights-Introduction

Learning Outcomes

After the successful completion of the unit, the learner will be able to:

- ◆ understand the meaning and definition of human rights
- ◆ understand aware of the characteristics of human rights
- ◆ learn about evolution and landmarks in the development of human rights
- ◆ get acquainted with the classification of human rights

Background

This unit explores the origins and evolution of human rights, tracing back to ancient societies where early notions of justice laid the foundation for modern concepts. One of the earliest artefacts, the Cyrus Cylinder (539 BCE), is often considered a pioneering declaration of rights, promoting individual freedom and the protection of cultural practices. Through the medieval period, documents like the Magna Carta (1215) introduced the principle that all, including rulers, were subject to the law, a significant step toward recognising individual rights. The English Bill of Rights (1689) further advanced civil liberties, reinforcing democratic principles. Enlightenment philosophers like John Locke and Jean-Jacques Rousseau deepened these ideas, arguing for inherent rights and collective responsibilities, which strongly influenced future legal frameworks.

Human rights are defined as inherent rights and freedoms entitled to all individuals, spanning civil, political, economic, social, and cultural rights. The Universal Declaration of Human Rights (UDHR), adopted by the UN in 1948, remains a cornerstone, asserting a comprehensive list of rights. This foundation was expanded with the International Covenants on Civil and Political Rights (ICCPR) International Convenant on Economic, Social and Cultural Rights (ICESCR) in 1966, and further supported by regional frameworks like the European Convention on Human Rights (1950) and the African Charter on Human and Peoples' Rights (1986). Human rights are categorised into three generations: civil and political rights, economic and social rights, and collective rights, addressing broader societal issues, such as environmental protection. This unit provides an overview of these classifications and the key documents shaping human rights as they are understood today.

Discussion

1.1.1 Meaning of Human Rights

Human rights, as the term is most commonly used, are basic entitlements bestowed upon each and every human being by virtue of birth. The underlying idea of such rights is to ensure that all men, women and children are treated with respect and dignity. Human beings are born equal in dignity and rights. These are moral claims that are inalienable and inherent in all individuals by virtue of their humanity alone irrespective of caste, colour, creed, place of birth, sex, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. Likewise, it is our birthright to have access to opportunities, whereby we can develop to our fullest potential and achieve all that we aspire to become. These rights include the right to life, freedom and justice. These rights guarantee our dignity as human beings. It is precisely for these reasons that human rights are sometimes called 'natural rights.'

♦ *Human rights ensure respect and dignity*

1.1.2 Definitions of Human Rights

Dr. Justice Durga Das Basu – "*Human rights are those minimal rights which every individual must have against state or other public authority by virtue of his being a member of human family irrespective of any consideration.*"

Eleanor Roosevelt – "*Human Rights are not a privilege; they are a necessity. Without them, we would not be human."*

Kofi Annan – "*Human Rights are the foundation upon which justice, equality, and prosperity are built."*

The Universal Declaration of Human Rights (UDHR), 1948 defines "Human Rights as rights derived from the inherent dignity of the human person." Human Rights, when guaranteed by a written constitution, are known as fundamental rights because a written constitution is the fundamental law of the state. Therefore, human rights are essential to fostering a just society and enabling

individuals to live freely and engage fully in their communities. They promote protection of vulnerable populations, accountability for violations, and encourage governments to uphold ethical standards. Also, human rights contribute to global stability and human flourishing.

1.1.3 Features of Human Rights

Human rights are fundamental entitlements that belong to every individual by virtue of their humanity. These rights are universal and inalienable, regardless of one's race, gender, language, religion, or any other status. Human rights law serves to safeguard these inherent rights, protecting individuals and groups from actions that infringe upon their freedoms and dignity. While treaties and international law formally codify and protect human rights, they do not create them. Rather, they acknowledge and reinforce the inherent value and dignity of every human being, imposing obligations on states to respect and protect these rights, and prohibiting actions that violate them. Ultimately, human rights are an essential part of being human, and their protection is essential for ensuring the well-being and dignity of all individuals.

1.1.3.1 Human Rights are Globally Inviolable and Enduring

Human rights are universally applicable because they are grounded in the inherent dignity of every human being, regardless of individual characteristics such as race, color, sex, or religion. Their universality is not limited by cultural, religious, or political differences, as evidenced by the widespread adoption of international human rights instruments across diverse nations. While some have argued that human rights are a Western concept, a UNESCO study found that the underlying principles of human rights - including justice, dignity, and freedom from oppression - are present in all civilizations. Human rights apply equally to all individuals, and can only be restricted in specific circumstances, such as when a person is convicted of a crime by a court of law.

1.1.3.2 Inextricably Linked, Mutually Reinforcing, and Fundamentally Connected

Human rights are interconnected and interdependent, meaning that the violation of one right can have a ripple effect on the exercise of others. For instance, the right to life is closely tied to access to adequate food and living standards, while the right to participate in public office relies on access to basic education. Furthermore, the protection of economic and social rights requires the freedom to express oneself, assemble, and associate with others. This

highlights the complementary nature of civil, political, economic, social, and cultural rights, all of which are essential for upholding human dignity and integrity. Recognising the interconnectedness of human rights is crucial for achieving sustainable peace and development, a principle reaffirmed by the international community at the 1993 World Conference on Human Rights in Vienna.

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

-Vienna Declaration and Programme of Action, Paragraph 5

The Vienna Declaration also emphasises the importance of fair and equal treatment, giving rise to the fundamental principle of non-discrimination. This principle ensures that all individuals are treated with equal dignity and respect, without distinction or prejudice based on their characteristics, circumstances, or background. By upholding non-discrimination, the international community recognises the inherent worth and equality of every person, fostering an inclusive and just society where human rights can be fully realised.

1.1.3.3 The Principle of 'No Distinction' or 'Exclusion'

Discrimination against specific groups has led to some of the most severe human rights violations, highlighting the crucial importance of the right to equality and non-discrimination in international and regional human rights treaties. States are obligated to ensure human rights are protected without discrimination based on various characteristics, including sex, race, religion, and disability. While not all differentiation constitutes discrimination, any distinctions made must be justified by reasonable and objective criteria, with the burden of proof on Governments. Recognizing the need for special protection, numerous human rights instruments cater to groups with specific needs, such as women, minorities, and children. However, group-specific rights must be justified by objective reasons like vulnerability or historical discrimination to maintain universality. Temporary special measures, like preferential treatment or quotas, may be necessary to address the lingering effects of past discrimination, but must be carefully considered to avoid perpetuating new forms of discrimination. There is a

need to acknowledge the overlapping identities and experiences of individuals. This shows how various forms of discrimination interact, and helps to address unique challenges faced by those at the intersection of multiple marginalised identities.

1.1.3.4 Collective Involvement and Shared Decision-Making

♦ *Promotes informed and equitable decisions*

Every individual has the inherent right to engage in and access information about the decision-making processes that impact their lives and well-being. A rights-based approach demands active participation from diverse stakeholders, including communities, civil society organisations, minority groups, women, youth, indigenous peoples, and other identified groups. This inclusive participation ensures that the voices and perspectives of all individuals are heard and valued, enabling more informed, equitable, and accountable decision-making processes that ultimately promote the well-being of all.

1.1.3.5 Dual Responsibilities: Individual Entitlements and Collective Duties

♦ *Mutual obligations foster human dignity*

Human rights embody a dual concept of entitlements and responsibilities, where States and individuals share complementary roles. States have a tripartite duty under international law to respect, protect, and fulfil human rights, which entails refraining from actions that infringe upon or restrict human rights (obligation to respect), safeguarding individuals and groups from human rights violations (obligation to protect) and proactively promoting and facilitating the realisation of basic human rights (obligation to fulfil)

Concurrently, individuals have a reciprocal responsibility to respect the human rights of others, acknowledging that our own rights are inextricably linked to the rights of those around us. By recognising and embracing these mutual obligations, we can collectively foster a culture of human rights and dignity.

1.1.4 Classification of Human Rights

♦ *Categorised into three generations*

The concept of Human Rights has evolved over time, expanding to include various rights. This evolution is often categorised into three generations of Human Rights development: The First Generation Human rights, Second Generation Human rights and Third Generation Human rights. Several writers have identified these generations, which reflect the progression of Human Rights since their origin.

1.1.4.1 First Generation of Human Rights

The first generation of human rights emerged in the 17th and 18th centuries, primarily focusing on political concerns. These rights aimed to limit state power and ensure individual influence over policies. Two central ideas drove this development: personal liberty and protection against state violations.

1. **Civil Rights.** Civil rights provide minimal guarantees of physical and moral integrity, including:
   - Equality and liberty
   - Freedom of religion and opinion
   - Protection against torture and killing

These rights safeguard individuals' consciences and beliefs.

2. **Legal Rights**

Legal rights, also classified as civil rights, offer procedural protection in legal and political dealings, including:

   - Protection against arbitrary arrest and detention
   - Presumption of innocence until proven guilty
   - Right to appeal

3. **Political Rights**

Political rights enable participation in community and society, including:

   - Right to vote
   - Freedom to join political parties
   - Right to assemble and attend meetings
   - Freedom of expression and access to information

These rights are essential for engaging in the political process and having a voice in society.

♦ *Civil, legal, and political rights essential*

1.1.4.2 Second Generation of Rights

Second-generation rights, also known as socio-economic rights, encompass the rights to welfare, education, and leisure. These rights are essential for human dignity and focus on the basic necessities of life, equality, and access to vital social and economic goods, services, and opportunities.

Categories of Second-Generation Rights

1. **Social Rights**: Necessary for full participation in society, these rights include:

- ◆ Right to education
- ◆ Right to found and maintain a family
- ◆ Right to recreation
- ◆ Right to healthcare
- ◆ Right to privacy
- ◆ Freedom from discrimination

2. **Economic Rights**: Essential for material security and human dignity, these rights include:

- ◆ Right to work
- ◆ Right to an adequate standard of living
- ◆ Right to housing
- ◆ Right to a pension (for the old or disabled)

3. **Cultural Rights**: Vital for preserving a community's cultural identity, these rights include:

- ◆ Right to participate in the cultural life of the community
- ◆ Right to education
- ◆ Right to non-discrimination and equal protection of the laws (essential for minority communities)

These rights gained international recognition as industrialization and the rise of the working class highlighted the need for a more comprehensive understanding of human dignity and the necessities of life.

1.1.4.3 Third Generation of Rights

The third generation of human rights, which emerged in the last two decades of the 20th century, focuses on collective rights and solidarity. These rights include the right to sustainable development, peace, a healthy environment, sharing in the common heritage of mankind, communication, and humanitarian assistance. While some experts argue that these collective rights should not be considered "human rights" as they are held by communities or states rather than individuals, others recognise their importance and argue for their inclusion as human rights.

The debate surrounding third-generation rights raises concerns about potential abuses by repressive regimes, which may use collective rights as a justification to deny individual human rights. Additionally, there are concerns about accountability, as it is the international community rather than the state that is responsible for safeguarding these rights.

Despite these concerns, there is a general agreement that these areas require further exploration and attention from the international community. Some collective rights have already been recognised,

such as the right to self-determination and the human right to development, which was codified in a 1986 UN General Assembly Declaration. The African Charter on Human and Peoples' Rights also recognizes some collective rights

1.1.5 Basic Concepts of Liberty, Equality and Justice

1.1.5.1 Liberty

♦ *Liberty is freedom from oppression*

The concept of liberty is a complex and multifaceted idea that has been debated and refined by philosophers, political theorists, and scholars across various disciplines for centuries. At its core, liberty refers to the state of being free from oppressive restrictions, constraints, and limitations imposed by external forces, allowing individuals to make choices, pursue their goals, and live their lives as they see fit. The French Revolution transformed the concept of liberty, making it an important right that should be accessible to all citizens, irrespective of the physical wealth they possess.

There are various types of liberty, including:

1. **Political Liberty**: The ability to participate in the political process, vote, and engage in civic activities without fear of persecution or retribution.

2. **Personal Liberty**: The freedom to make choices about one's life, beliefs, and values, free from societal or governmental coercion.

3. **Economic Liberty**: The ability to engage in economic activities, own property, and pursue financial goals without undue interference or restriction.

4. **Social Liberty**: The freedom to interact with others, form relationships, and participate in social and cultural activities without discrimination or constraint.

The concept of liberty is often linked to the ideas of:

1. **Autonomy:** The ability to self-govern and make decisions about one's own life.

2. **Freedom:** The absence of external constraints and limitations.

3. **Rights:** Legal and moral entitlements that protect individual liberties.

4. **Justice:** The fair and impartial application of laws and rules to ensure equal liberties for all.

Theories of liberty can be traced back to ancient philosophers such as Aristotle and Cicero, who emphasised the importance of individual freedom and self-governance. In modern times, philosophers like John Locke, Immanuel Kant, and Isaiah Berlin have further developed and refined the concept of liberty. Locke's Social Contract Theory posits that individuals voluntarily surrender some of their natural rights to a governing authority in exchange for protection and the maintenance of social order. Kant's Moral Philosophy emphasises the importance of treating individuals as ends in themselves rather than means to an end and respecting their inherent dignity and autonomy.

Berlin's Two Concepts of Liberty distinguishes between Negative Liberty (freedom from external constraints) and Positive Liberty (freedom to pursue one's goals and self-actualisation). This distinction highlights the tension between individual freedom and collective well-being, and the need to balance individual liberties with social responsibilities and the common good. Throughout history, the concept of liberty has been contested and redefined in response to social, political, and economic changes. The struggle for liberty has been a driving force behind many social and political movements, including the American and French Revolutions, the Civil Rights Movement, and the fight against colonialism and imperialism.

1.1.5.2 Equality

The concept of equality is a fundamental principle in human society, politics, and philosophy, which asserts that all individuals should be treated fairly and justly, without discrimination or bias. It is a complex and multifaceted idea that has evolved over time, encompassing various aspects of human life, including law, politics, social norms, and individual relationships.

At its core, equality means that everyone should have the same opportunities, rights, and respect, regardless of their race, gender, religion, sexual orientation, age, or socioeconomic status. It involves recognising the inherent worth and dignity of every individual, and ensuring that they are not discriminated against or marginalised.

There are several types of equality, including:

- **Legal Equality**: The principle that everyone is equal before the law, and should be treated equally by the legal system, without discrimination or bias.
- **Political Equality:** The idea that all citizens should

Sidenotes (left margin):

♦ *Liberty rooted in ancient philosophy; Locke, Kant, and Berlin expanded the idea*

♦ *Kant: Respect individuals' autonomyWW Berlin: Negative vs Positive liberty*

♦ *Equality means fair opportunities for all*

have an equal say in the political process through voting, representation, and participation.

- ♦ **Social Equality**: The goal of reducing social and economic inequalities, and promoting equal access to education, healthcare, and other essential services.
- ♦ **Economic Equality**: The principle of reducing economic inequalities, through progressive taxation, social welfare programs, and labor rights.
- ♦ **Gender Equality**: The movement to eliminate discrimination and inequality based on gender, and promote equal rights and opportunities for women and men.

The concept of equality has a long history, dating back to ancient philosophers such as Aristotle and Plato, who argued that all human beings are equal in dignity and worth

♦ *Equality rooted in ancient philosophy; Locke, Rousseau, and Kant expanded equality*

Philosophers such as John Locke, Jean-Jacques Rousseau, and Immanuel Kant developed the concept of equality further, arguing that it is a fundamental human right, essential for human dignity and well-being. Locke's Second Treatise of Government (1689) posits that all individuals are equal in the state of nature, and that government exists to protect their natural rights. The concept of equality has been contested and redefined over time, with various social and political movements challenging existing power structures and advocating for greater equality. The Women's Suffrage Movement, the Civil Rights Movement, and the LGBTQ Rights Movement are examples of struggles for equality that have shaped the concept and advanced social justice.

♦ *Contemporary debates focus on inequality*

In contemporary society, the concept of equality remains a central issue, with ongoing debates around issues such as income inequality, gender pay gaps, racial and ethnic disparities, and access to healthcare and education. The pursuit of equality is an ongoing challenge, requiring continued efforts to address systemic inequalities and promote a more just and fair society.

1.1.5.3 Justice

The concept of justice is a complex and multifaceted idea that has been debated and refined by philosophers, legal scholars, and social theorists across various disciplines for centuries. At its core, justice refers to the fair and impartial application of laws, rules, and norms to ensure equal rights, opportunities, and treatment for all individuals within a society.

♦ *Justice involves the fair application of laws*

There are several theories of justice, each offering a distinct

perspective on what constitutes justice:

- ♦ Retributive Justice: Focuses on punishing wrongdoers for their crimes, ensuring they receive their "just desserts."
- ♦ Distributive Justice: Concerned with the fair distribution of resources, benefits, and burdens among members of society.
- ♦ Social Justice: Emphasises addressing systemic inequalities and promoting social change to achieve a. more equitable society.
- ♦ Restorative Justice: Seeks to repair harm and promote healing for victims, offenders, and the community.

The concept of justice is also closely tied to:

- ♦ **Law:** The legal system is a primary instrument for administering justice.
- ♦ **Morality:** Justice is often seen as a moral imperative guiding ethical decision-making.
- ♦ **Politics**: Justice is a central concern in political philosophy, shaping political systems and policies.
- ♦ **Human Rights:** The protection of human rights is a fundamental aspect of justice, ensuring dignity and well-being for all individuals.

Philosophers have contributed significantly to the development of **justice theories**:

- ♦ **Plato**: Believed justice was a universal concept, existing independently of human laws and conventions.
- ♦ **Aristotle**: Argued that justice was a mean between excess and deficiency, and that it involved treating equals equally and unequals unequally.
- ♦ **Michael Sandel**: Critiqued the notion of justice as solely a matter of individual rights, emphasizing the importance of community and civic virtue.

Throughout history, the pursuit of justice has driven social and political movements, from the Civil Rights Movement to the anti-apartheid movement. In contemporary society, debates around justice continue, focusing on issues like:

- ♦ Criminal Justice Reform
- ♦ Economic Inequality

- Racial and Social Injustice
- Gender and Sexual Equality

The concept of justice is a rich and complex idea, encompassing various theories, perspectives, and applications. Its ongoing pursuit and refinement are essential for promoting fairness, equality, and human dignity within societies.

1.1.6 Evolution of Human Rights Concept

The concept of human rights has undergone a long and arduous evolution, deeply rooted in philosophical, political, legal, and social reflections, closely tied to social-democratic traditions. From ancient times to the present day, this concept has traversed a challenging path. Initially, it emerged as a political platform during the bourgeois revolutions, gaining significant momentum in the contemporary era. As humanity faced pressing issues such as survival, cooperation, and the assertion of values, the ideas of influential thinkers like Aristotle, Cicero, Grotius, Locke, Kant, and Montesquieu found expression in various institutional documents. These documents emphasised a deliberate conception of human rights and liberties. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly on December 10, 1948, marked a historic milestone, enshrining fundamental human rights and liberties in a universal political-legal document for the first time. The recognition and respect of human rights have become indispensable conditions for a state to be considered a democratic state under the rule of law, both domestically and internationally.

The concept of human rights has its roots in the natural law doctrine, which posits that humans possess inherent rights that precede and supersede those granted by society. This doctrine has been a cornerstone of Western political theory for centuries, serving as a higher moral standard against which all other laws are evaluated. The natural law doctrine is based on the belief in a universal moral code that identifies fundamental human goods. To challenge the injustices of human-made law, an appeal was made to the higher authority of God or natural law.

The concept of natural law can be traced back to ancient times, with Aristotle being the first to articulate it in his work *Politics*. He argued that slavery or freedom is determined by law, not by human nature. Christian philosophers in the Middle Ages built upon this idea, developing the concept of human equality based on the Ten Commandments and announcing fundamental individual rights inherent to all human beings. Thomas Aquinas' theory placed the individual at the centre of a just social and legal order, with divine

law taking precedence over worldly law. He established a hierarchy of law sources, prioritising divine law, followed by natural law, and then positive law, which is derived from the first two and comprises common social rules. This framework has shaped the evolution of human rights, influencing the development of modern human rights discourse.

♦ *Aristotle linked law with human freedom*

In the 17th century, the natural law school of thought, led by Hugo Grotius, emphasised that humans are sociable beings who naturally seek peaceful coexistence and have the capacity to determine what is beneficial or harmful to society. Over time, the concept of natural law evolved into natural rights, shifting the focus from society to the individual. This transformation enabled individuals to assert claims against the government, whereas natural law had primarily served to limit state power over society.

♦ *Grotius emphasised sociability and peaceful coexistence*

This modern understanding of rights has its roots in Enlightenment political philosophy, particularly in England, France, and the United States, where the goal was to establish representative governments that would respect individual freedom. John Locke, a prominent 17th-century philosopher, played a crucial role in shaping this perspective. In his *Second Treatise on Government* (1690), Locke described a pre-societal "state of nature" where individuals relied on themselves and pursued their own interests. In this state, individuals possessed inherent rights to life, liberty, and property.

♦ *Enlightenment philosophy shaped the rights concept*

According to Locke, when individuals formed societies, their primary objective was to secure these natural rights more effectively. Consequently, they entrusted governments with the responsibility to enforce these rights, not to possess them. This idea has had a profound impact on the development of modern human rights discourse.

The philosophy of John Locke, known as classical liberalism, revolutionized the way people think about individuals, governments, and the rights that connect them. Similarly, Kant's ideas on equality and the moral autonomy of rational beings remain particularly influential. He envisioned a universal community of rational individuals who autonomously determine moral principles to secure equality and autonomy. Kant's philosophy provides a justification for human rights as the basis for self-determination, grounded in the authority of human reason.

♦ *Locke's social contract impacts human rights*

Kant's approach to ethics focuses on formal principles rather than substantive human goods. He believed that determining human goods can only be done by first understanding the formal properties of human reason. This means that human reason itself, rather than

external factors, determines the ultimate goals and objectives of human rights. Kant's ideas have shaped the development of human rights theory, emphasising the importance of rational autonomy and equality in the pursuit of human dignity.

The philosophical ideas of Locke and Kant are deeply rooted in the Enlightenment project of the 17th and 18th centuries, which had far-reaching global consequences over the next few centuries. The ideals of natural rights, moral autonomy, human dignity, and equality provided a normative foundation for attempts to reform political systems, overthrow despotic regimes, and establish new forms of political authority that could protect and promote these emancipatory ideals.

These ideals led to significant political upheavals in the 18th century. They were enshrined in landmark documents such as the United States' Declaration of Independence and the French National Assembly's Declaration of the Rights of Man and Citizen. Other prominent thinkers, including J.J. Rousseau and Montesquieu, also contributed to the discussion of human rights. Montesquieu's work, *The Spirit of Laws,* scientifically defined law, stating that laws are "necessary relations derived from the nature of things." As the problem of human rights continued to preoccupy philosophers, it entered a new phase of development towards the end of the 18th century, with the devotion of rights eventually being codified in international documents, laying the foundation for the contemporary system of international human rights law that we recognise today.

The **Magna Carta**, also known as the Great Charter, was a pivotal document in the history of constitutional law and human rights. It was originally issued in 1215 during the reign of King John of England, primarily as a response to his arbitrary rule and heavy taxation that alienated many barons. The Magna Carta was drafted by a group of rebel barons and presented to the king as a means to limit his powers and protect their rights.

The document established the principle that everyone, including the king, was subject to the law. It contains several important clauses that laid the foundation for modern legal systems. Key provisions included the guarantee of due process and the right to a fair trial, encapsulated in the famous phrase "no free man shall be seized or imprisoned…except by the lawful judgment of his peers or by the law of the land." This principle was crucial in the development of the rule of law.

Although King John initially sought to annul the Magna Carta, it

was reissued and revised several times in subsequent years. Its most significant legacy is its influence on later constitutional documents, including the United States Constitution and the Bill of Rights. The Magna Carta is often regarded as a symbol of liberty and the quest for justice, serving as an early assertion of the rights of individuals against the power of the state.

During 17th to 19th centuries, European culture saw the emergence of legal instruments that transposed these fundamental rights into legal provisions. In England, notable documents include:

- The Petition of Rights Act (June 7, 1628)
- The Bill of Rights (December 1689)
- Habeas Corpus (1679)

These documents established the parliamentary system, free elections, freedom of speech, the right to release on bail, the prohibition of cruel punishments, and the right to an independent trial. In the United States, the Declaration of Rights from the state of Virginia (June 12, 1776) asserted that all people are born equal, free, and independent, with inherent rights to life, liberty, and the pursuit of happiness. The Declaration of Independence (June 12,1776) in Philadelphia established the fundamental idea that governments are instituted by people to secure their appointed rights. These documents have had a profound impact on the development of human rights and continue to shape modern democracy.

Since World War II, the United Nations has played a vital role in defining and promoting human rights, which had previously developed mainly within nation-states. The UN has been instrumental in codifying human rights in various international and regional treaties and instruments, starting with the Universal Declaration of Human Rights (UDHR). The UDHR, adopted on December 10, 1948, was motivated by the desire to prevent future atrocities. It goes beyond merely reaffirming the right to life as a fundamental human right. The Declaration consists of a Preamble and 30 articles, enumerating specific rights such as:

- Freedom from torture (Article 5)
- Right to asylum (Article 14)
- Right to own property (Article 17)
- Right to an adequate standard of living (Article 25)

From 1948 to 1976, the UDHR stood alone as the international standard for human rights. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) entered into force in 1976, complementing the UDHR to form the International Bill

of Rights.

Nearly all UN human rights instruments adopted since 1948 have built upon the principles established in the UDHR. The ICCPR preamble emphasises that achieving the ideal of free human beings requires creating conditions for everyone to enjoy economic, social, cultural, civil, and political rights. The Covenants' entry into force marked a significant milestone, as States accepted legal and moral obligations to promote and protect human rights and fundamental freedoms. Despite this, the UDHR's influence remains widespread, shaping international human rights standards and inspiring future generations.

The Universal Declaration of Human Rights (UDHR) has had a profound impact on international human rights law, influencing numerous conventions and treaties. The 1984 Convention Against Torture and the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, for example, build upon the UDHR's principles of non-discrimination, equality, and freedom of thought and religion.

The UDHR has also informed national constitutions and regional human rights instruments, such as the Council of Europe, the Organisation of African Unity, and the American Convention on Human Rights. International Court of Justice judges have cited the International Bill of Human Rights, which includes the UDHR, in their decisions. In 1968, the International Conference on Human Rights in Teheran reaffirmed the UDHR as a common understanding of universal human rights. In 1993, the World Conference on Human Rights in Vienna reaffirmed commitment to the UDHR.The contemporary human rights doctrine has evolved significantly from the concept of natural rights. Scholars like James Nickel identify three key ways:

1. Contemporary human rights emphasise positive state action to achieve equality through welfare assistance, unlike natural rights' focus on non-interference.

2. Human rights recognise the importance of family and community in individuals' lives, unlike natural rights' individualistic approach.

3. Human rights have an international scope and orientation, requiring global action and concern, unlike natural rights' focus on individual states.

This progress has led to the recognition that protecting and promoting human rights requires international cooperation and action.

♦ *UDHR shaped international human rights standards*

♦ *UDHR influenced global treaties and conventions; eaffirmed commitment at key conferences*

♦ *Modern rights emphasise positive state action*

Summarised Overview

In this introductory unit, we've explored the concept of Human Rights from various perspectives, examining its definitions and core principles. We've traced the evolution of Human Rights, starting with the ancient emphasis on natural law and the emergence of natural rights. We've also discussed how the modern concept of Human Rights has expanded beyond natural rights, becoming a more comprehensive and complex idea. Furthermore, we've identified three distinct trends in the development of Human Rights, laying the groundwork for a deeper understanding of the concepts and advancements that will be covered in subsequent lessons and units. This foundational unit provides a crucial framework for navigating the complexities of Human Rights in the units to come.

Assignments

1. Explain the concept of Human Rights. What early legal instruments, starting with the Magna Carta, have contributed to the development of Human Rights?

2. Describe how the scope of Human Rights has expanded through the recognition of First, Second, and Third Generation rights.

3. What significant developments have occurred in the evolution of Human Rights since the adoption of the Universal Declaration of Human Rights in 1948?

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Space for Learner Engagement for Objective Questions

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UNIT 2

Approaches to the Study of Human Rights

After the successful completion of the unit, the learner will be able to:

- ♦ develop a deeper understanding of different theories of human rights
- ♦ identify the significant contributions of each theory in shaping principles of human rights
- ♦ evaluate the limitations and shortcomings of each human rights theory
- ♦ understand the strengths and weaknesses of each theories

Background

The study of human rights is enriched by several theoretical frameworks that provide distinct perspectives for understanding their nature, scope, and implementation. These approaches help scholars and practitioners critically evaluate human rights within varied social, political, and economic contexts. Among these theories, *natural rights theory*, rooted in Enlightenment thought, asserts that certain universal and inalienable rights, such as life, liberty, and property, are inherent to all individuals by virtue of their humanity. This approach, exemplified in documents like the U.S. Declaration of Independence, argues that these rights exist independent of governmental systems.

Conversely, *legal positivism* emphasises that rights are defined and protected by law, contingent on governmental or international recognition, as seen in frameworks like the Universal Declaration of Human Rights. This approach aligns rights with state-established legal systems, framing them as privileges rather than inherent entitlements. Meanwhile, the *utilitarian approach*, advocated by thinkers like Bentham and Mill, justifies rights based on their societal benefit, aiming to promote the greatest good for the greatest number, though sometimes criticised for potentially sidelining minority rights.

Lastly, *Marxist theory* examines human rights through the lens of class relations, arguing that rights are shaped by economic structures. It critiques traditional human rights as serving capitalist interests and highlights the importance of social and economic rights, advocating for collective well-being over individual liberties. These diverse perspectives collectively deepen our understanding of human rights, emphasising different dimensions and challenges in their realisation.

Keywords

Natural Law, Dictation of Right, Declaration of the Rights of Man, Positivist Philosophy, Marxist theory, Class Conflict.

Discussion

1.2.1 Natural Theory of Human Rights

One of the oldest Western philosophies on human rights is based on natural law, which stems from various philosophical and religious grounds. This philosophy posits that human rights arise from a natural, moral, religious, or biological order that transcends human laws and traditions. The Stoics and Aristotle played a crucial role in developing this tradition, with Aristotle being considered the father of natural law. Thomas Aquinas' interpretations of Aristotle's work provide evidence of this. While Sophocles and Aristotle laid the groundwork, the Stoics of the Greek, Hellenistic and Roman periods elaborated on natural law theory. They believed that natural law embodies eternal and unalterable principles of justice, aligned with right reason and nature.

♦ Natural law emphasises universal justice

Medieval Christian philosophers, notably Thomas Aquinas, emphasised natural law as a divine law that grants individuals inherent and immutable rights. However, their conception of natural law had significant limitations. Despite recognising certain rights, it perpetuated the acceptance of slavery and serfdom, thereby excluding key principles of freedom and equality. In other words, while Aquinas and his contemporaries laid the groundwork for natural law and human rights, their framework was flawed by its failure to extend these rights to all individuals, particularly those enslaved or in servitude.

♦ Natural law excluded equality and freedom

As feudalism waned, modern secular theories of natural law emerged, notably through the works of Grotius and Pufendorf. They severed natural law from religious ties, paving the way for a rational, secular understanding of natural law. Grotius posited that humans have a natural inclination to coexist peacefully, and actions aligning with rational, social nature are just, while those disrupting harmony are unjust. He defined natural law as a "dictate of right reason," emphasising moral necessity or baseness based on conformity to rational nature. As the father of modern international law, Grotius viewed the law of nations as encompassing both

♦ Grotius modernised secular natural law

human-made laws and those derived from natural law principles. This theory has profound implications for the legitimacy of international law, solidifying Grotius' legacy in shaping modern legal thought.

The natural law theory, evolved over centuries, culminated in the natural rights theory, which is the foundation of modern human rights. John Locke, a 17th-century philosopher, was the foremost proponent of this theory, as outlined in his *Two Treatises of Government* (1688). Locke's central argument was that individuals possess inherent natural rights, independent of state recognition, existing prior to the formation of any political community. He believed that natural rights stem from natural law, which originates from God. Locke posited that accurately discerning God's will provides an authoritative moral code, and each individual has a duty of self-preservation to God. This duty entails the existence of basic natural rights to life, liberty, and property, necessary for self-preservation. Locke argued that the primary purpose of investing political authority in a sovereign state is to protect and provide individuals' basic natural rights.

Locke's philosophy held that the sole justification for government is the protection and promotion of individuals' natural rights. He believed that the natural rights to life, liberty, and property set clear limits on state authority and jurisdiction. Locke argued that states exist to serve the people's interests and natural rights, not those of a monarch or ruling elite. He even justified armed resistance against governments that failed to secure natural rights. Locke's contribution to the development of human rights theory is highly significant, establishing political authority on the foundation of a right. His natural rights theory inspired the late 18th-century revolt against absolutism, influencing documents like the French Declaration of the Rights of Man, the US Declaration of Independence, and UN human rights documents. This theory provides a higher authority for protecting human rights, securing human freedom and equality, and supporting domestic and international human rights systems. It offers a basis for a superior system of law, allowing appeals against unjust state laws. Early revolutionary constitutional documents, such as the US Constitution, can even be seen as rooted in natural rights theory.

The natural rights doctrine faced a critical philosophical problem, determining the norms that constitute the law of nature and are, therefore, inalienable. Critics argued that natural rights theories are subjective, with norms deduced by the theorist, leading to varying conceptions of natural rights. This criticism intensified in the 19th

♦ *Natural rights: life, liberty, property*

♦ *Natural rights inspired revolutionary documents*

and 20th centuries, with legal scholars and philosophers viewing natural rights theory as unscientific and flawed. Conservatives saw it as too egalitarian, while radicals viewed it as perpetuating inequality. Edmund Burke acknowledged some natural rights, like life and property, but opposed universalising the concept due to its failure to consider national and cultural diversity. David Hume highlighted the dichotomy between naturalist and positivist jurisprudence, while legal positivism, which dominated the 19th century and remains influential, launched a significant attack on natural law. In the next section, we will explore how the proponents of legal theory addressed these challenges in developing human rights.

1.2.2 Legal or Positivist Theory of Rights

Legal positivism, a philosophy of law developed by Jeremy Bentham, John Austin, and other 18th and 19th-century thinkers, emphasises law's conventional and socially constructed nature. This philosophy defines law as positive norms, encompassing legislation, common law, and case law. Legal positivism focuses on formal criteria such as origin, enforcement, and effectiveness to determine what constitutes law without considering divine commandments, reason, or human rights. Emerging as a response to classical natural law theory, legal positivism rejects the idea of inherent moral constraints on legal content, instead emphasising the socially constructed nature of law.

♦ *Critics questioned natural rights' universality*

♦ *Rights stem from state-enacted laws*

Classical positivist philosophers argue that rights stem solely from state prescriptions and official enactments, rejecting any a priori or transcendent source of rights. They focus solely on the empirical realities of existing legal systems, dismissing any attempts to discern a higher notion of law. According to positivist theory, human rights are solely derived from enacted laws with attached sanctions. Views on what the law "ought" to be are considered irrelevant and lacking cognitive value. Positivists prioritise distinguishing between law as it is and law as it ought to be, criticizing natural law thinkers for blurring this distinction. At its core, positivism negates the moral and philosophical basis of human rights, emphasising a strictly empirical and state-centered approach to law.

The positivist philosophy has been criticised for divorcing law from ethical and moral foundations, leading to the obedience of immoral laws. The Nazi's anti-Semitic edicts and South Africa's apartheid practices are examples of unjust laws obeyed as positive laws. Critics argue that such laws lack internal morality and do not deserve to be called law. However, positivism also offers significant

contributions, such as focusing on specific implementation for protecting human rights and offering flexibility to meet changing needs. Positivist thinkers like Bentham and Austin advocated for legal reform, and their methodology is useful in developing international human rights law. The UN human rights treaties, developed by sovereign states, provide a legal basis for human rights protection. However, positivism's emphasis on national sovereignty undermines an international basis for human rights, viewing international law as mere positive morality rather than law. This approach also denies individuals status in international law, prioritising the nation-state as the source of law.

1.2.3 Utilitarian Theory of Rights

Utilitarianism, a principle that prioritises collective happiness, differs from natural rights theory, which emphasises individual interests. Classic utilitarianism, developed by Jeremy Bentham, evaluates actions based on their outcome, aiming to maximise overall happiness. Bentham believed that human decisions are motivated by calculations of pleasure and pain, and similarly, political decisions should aim to maximise pleasure and minimise pain. According to this view, governments and their limits should be judged by their ability to promote the greatest happiness for the greatest number rather than by individual rights. This principle requires sacrifices from individuals if the benefits to others outweigh the costs, as all individuals count equally. Utilitarian theory significantly influenced 19th-century philosophy and politics and continues to shape thought in the 20th century.

Bentham's happiness principle was highly influential in the early 19th century, with many reformers adopting utilitarian language. However, his "felicific calculus" - which aimed to calculate overall happiness by adding and subtracting individual pleasure and pain units - was criticised as impractical, if not theoretically flawed. Later, Utilitarians redefined the doctrine in terms of "revealed preferences," focusing on general welfare and maximum satisfaction of wants and preferences. This restatement appealed to economic decision-making but raised new challenges: ambiguous welfare concepts, unclear subjects of welfare, uncertain individual preferences, and difficulties in estimating consequences and their values. Despite its appeal, utilitarian value theory faces numerous conceptual and practical problems.

The value-based approach to understanding rights has a notable appeal. Utilitarian theories, in particular, offer a teleological framework that defines rightness in terms of promoting specific ends,

such as happiness, liberty, dignity, and respect. Unlike metaphysical commitments, value-based theories focus on behaviour and practical applications rather than ontological existence. This approach shifts the emphasis from abstract existence to tangible actions and their consequences, making it a more pragmatic and accessible way to address the complex issue of rights.

Utilitarianism faces criticism for neglecting individual autonomy and rights. Despite its refinements, the core principle remains maximising aggregate desires or general welfare, sacrificing individual worth and autonomy. While utilitarianism treats persons as equals in a mathematical sense, it dissolves moral personality into aggregates, allowing individual desires or welfare to be sacrificed for the perceived greater good. This approach fails to recognise true moral values and justice, leaving liberty and rights vulnerable to contingencies. The dark side of utilitarianism, where individual well-being is sacrificed for aggregate interests, has led most modern moral theorists to reject it as a prevailing philosophy. Instead, they recognise basic individual rights as constraints on aggregative principles, with rights serving as "trumps" over utilitarian calculations, as Ronald Dworkin aptly puts it.

1.2.4 Marxist Theory of Rights

Marxist theory, similar to natural law, explores human nature, but with a distinct perspective. Unlike autonomous individuals with inherent rights, Marxism views humans as "species beings," a term borrowed from Ludwig Feuerbach's philosophy. Initially, Marx used this term to describe both individual and collective human nature (Manuscripts of 1844). However, in the Sixth Thesis on Feuerbach (1845), he critiqued the traditional view of universal and permanent human nature, instead emphasising that human nature is shaped by the totality of social relations and specific historical contexts. This perspective highlights that human nature is not fixed or biological alone, but also influenced by social and historical factors, which leads to a more dynamic understanding of human beings.

Marx criticised the approach of the law of nature to human rights as idealistic and non-historical. He believed that human rights are not inherent or inalienable, but rather a product of historical and material conditions. In a capitalist society, where the means of production are monopolised, individual rights are a bourgeois illusion. Marxist theory views concepts like law, justice, and freedom as historical categories shaped by social circumstances and material conditions, which change as society evolves. The

human essence is seen as the potential for self-actualisation and need satisfaction, but this is impossible in a capitalist society where production is controlled by a few. Only in a communist society, free from class conflict, can individuals realise their potential. Until then, the state serves as a vehicle for societal transformation, and rights are granted by the state, contingent on fulfilling obligations to society. This perspective rejects the idea of individual rights rooted in a state of nature, prior to the state.

♦ *Capitalism obstructs human self-actualisation*

The Marxist system of rights has been criticised as "parental" and authoritarian, with the state dictating value choices and neglecting individuality and transcendental reason. This approach has led to the suppression of individual civil and political rights, as the interests of the Communist state are prioritised over those of the individual. Internationally, Marxist theory has proven incompatible with a universal system of human rights, as communist states refuse to recognise international norms as superior to their domestic jurisdiction. While communist governments theoretically acknowledge the international community's competence to establish transnational norms, they assert that the application of these norms is a matter of exclusive domestic jurisdiction, reflecting their belief in the unlimited role of the state in determining what is good for its citizens, viewed as "specie beings" rather than individuals with inherent rights.

♦ *State dominance limits universal human rights*

Understanding the concept of human rights is crucial in determining which rights are universal, prioritised, modifiable, and deserving of international pressure and implementation programs. This lesson explored the foundations of human rights, including their universality, moral significance, and importance. We examined various theoretical approaches, including Natural Rights, Legal, Utilitarian, and Marxist perspectives, to understand the development of human rights concepts in the past and present. Building on this theoretical foundation, future lessons will delve into how natural rights theory influenced international instruments adopted in the 20th century and beyond, furthering the advancement of human rights.

♦ *Marxism struggles with universal norms*

Summarised Overview

The Natural Rights Theory posits that rights are inherent to human nature and exist prior to government and society. These rights are considered universal, inalienable, and absolute. They include fundamental rights such as life, liberty, property, and the pursuit of happiness. Proponents like John Locke and Thomas Jefferson argue that these rights are essential to human dignity and should be protected from infringement. This theory emphasises the importance of individual rights and freedoms, serving as a foundation for modern democracy and human rights discourse.

In contrast, the Legal Rights Theory asserts that rights are created and defined by laws and legal systems. Rights vary by jurisdiction and are subject to change through legislative or judicial action. This perspective focuses on the legal framework and enforcement of rights, emphasising the role of institutions in protecting and promoting rights. Key thinkers like H.L.A. Hart and Ronald Dworkin highlight the importance of understanding rights within their legal context, acknowledging that rights can evolve over time.

The Utilitarian Rights Theory takes a more pragmatic approach, justifying rights based on their utility in promoting the greatest happiness for the greatest number. According to this view, rights can be limited or sacrificed if they benefit the majority. Jeremy Bentham and John Stuart Mill, prominent utilitarian thinkers, argue that rights should be evaluated based on their contribution to overall well-being. This theory prioritises collective happiness over individual rights, potentially leading to trade-offs between individual freedoms and the greater good.

The Marxist Rights Theory offers a critical perspective, arguing that rights are a product of class struggle and power relations. According to Marx and Engels, rights serve the interests of the dominant class (bourgeoisie), masking exploitation and maintaining social inequality. True rights, they contend, can only be achieved through a classless, communist society where economic and political power is redistributed. This theory challenges the notion of universal rights, highlighting the need for radical social change to achieve genuine equality and freedom.

We examined various theoretical approaches, including natural, legal, utilitarian, and Marxist perspectives, to understand the development of the human rights concept in past and present. Building on this theoretical foundation, future lessons will delve into how natural rights theory influenced international instruments adopted in the 20th century and beyond, furthering the advancement of human rights

Assignments

1. Write a note on John Locke's key contributions to Natural Rights Theory. How did Natural Rights theory contribute to the development of Human Rights?

2. Compare and contrast the four theories of Human Rights (Natural Rights, Legal, Utilitarian, and Marxist).

3. What led to the revival of Natural Rights Theory in the 20th century, and what are the key factors that contributed to its renewed significance?

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5. Rousseau, Jean-Jacques. *The Social Contract*, Translated by Maurice Cranston, Penguin Books, 1968.

6. Singer, Peter. *Practical Ethics,* Cambridge University Press, 2011.

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U.N and Human Rights

Learning Outcomes

After the successful completion of the unit, the learner will be able to:

♦ understand the importance of the Universal Declaration of Human Rights (UDHR)
♦ learn about the UDHR's key provisions and related organisations
♦ discover how the UDHR's principles have become more enforceable over time
♦ understand key human rights treaties and agreements
♦ know how human rights are protected internationally

Background

The United Nations has achieved a significant milestone in creating a comprehensive body of human rights law. This universal code encompasses a broad range of internationally accepted rights, including Economic, social, and cultural rights, Political and civil rights etc. The UDHR is a landmark document considered the most important of the 20th century, setting a global standard for human rights. It serves as a foundation for building a world where all individuals can live with dignity and peace. Building on the UDHR, the United Nations has expanded human rights law to include specific protections for vulnerable groups.

The Declaration of the United Nations, signed in January 1942 in Washington, was the first document to use the term "Human Rights." The signatory nations pledged to protect human rights in their own countries and others. However, the Dumbarton Oaks Conference, which drafted the UN Charter, gave little attention to human rights and fundamental freedoms. This was largely due to concerns that the Soviet Union would resist international intervention in its domestic affairs, and the British feared repercussions for their colonial relationships.

Despite initial reluctance, advocacy efforts led to a brief reference in the Charter to the UN's responsibility to promote respect for human rights and fundamental freedoms. This established a commitment from major powers to protect and promote human rights.

However, some groups felt this did not go far enough and wanted an International Bill of Rights included in the Charter.

Instead, the Charter provision for a human rights commission was realised, leading to the establishment of the United Nations Human Rights Commission. After two years, the Commission produced a Declaration of Human Rights, which was amended and adopted by the General Assembly without dissent. The Declaration is not legally binding but serves as a universal standard for achievement, aiming to promote respect and secure recognition of human rights through education, teaching, and progressive measures.

The following sections will explore human rights as outlined in the UN Charter and the Universal Declaration of Human Rights in more detail.

Keywords

United Nations, The United Nations Charter, The Universal Declaration of Human Rights, Commission on Human Rights, Economic and Social Council (ECOSOC), The United Nations Commission on Human Rights, The Human Rights Council, International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR).

Discussion

1.3.1 Human Rights and UN Charter

The United Nations Charter places significant emphasis on human rights, with provisions woven throughout the document. The preamble sets the tone by reaffirming the organisation's commitment to fundamental human rights, the dignity and worth of every individual and equal right for men and women. This foundational statement is followed by six references to human rights and fundamental freedoms in the Charter's operative provisions, demonstrating a clear dedication to protecting and promoting human rights.

♦ *Article 68 mandates human rights commissions*

Furthermore, Article 68 of the Charter mandates the Economic and Social Council to establish commissions in the fields of human rights and economic and social issues. This led to the creation of the Commission on Human Rights, a body that derives its authority directly from the UN Charter. This distinction makes the Commission one of the few UN entities with a direct charter-based mandate, underscoring the importance of human rights within the

UN's framework.

Main Provisions

i. The UN aims to promote global cooperation to address international issues, including economic, social, cultural, and human rights challenges, while upholding fundamental freedoms and human rights for all individuals, regardless of their race, gender, language, or religion.

ii. The General Assembly is responsible for initiating studies and efforts to promote human rights and fundamental freedoms, ensuring equal treatment for all without discrimination.

iii. The Economic and Social Council is tasked with establishing commissions focused on promoting human rights, as per Article 68.

iv. Although the Trusteeship system is no longer in place (as all territories have gained statehood), Article 76C emphasises the importance of respecting human rights and fundamental freedoms for all, recognising the interconnectedness of the world's populations.

♦ UN fosters global cooperation for rights

1.3.1.1 Human Rights Bodies of the UN

The United Nations plays a vital role in promoting and protecting human rights through various entities. To understand the scope of their work, it is essential to differentiate between two types of human rights bodies: Charter-based and treaty-based.

Charter Based Bodies

The Charter-based bodies are a group of entities established under the provisions of the United Nations Charter, granting them broad mandates to promote and protect human rights. These bodies have a universal scope, addressing human rights issues globally, and make decisions through majority voting. Notably, the Human Rights Council and its predecessor, the Commission on Human Rights (1946-2006), fall under this category, deriving their authority from the UN Charter through resolutions of the principal organs. To understand the evolution of human rights efforts, it's essential to briefly explore the history and work of the Commission on Human Rights before delving into the current role and functions of the Human Rights Council.

♦ The Human Rights Council replaced the Commission

Treaty-based Bodies

In contrast, treaty-based bodies are established under specific

international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These bodies include committees like the Human Rights Committee and the Committee on the Elimination of Discrimination Against Women. Their primary function is to monitor the implementation of the treaties by the state parties. They assess periodic reports submitted by countries and issue recommendations and observations based on compliance with treaty obligations

1.3.2 UN Commission on Human Rights- UNCHR (1946)

The United Nations Commission on Human Rights (UNCHR) was founded in 1946 by the Economic and Social Council (ECOSOC), making it one of the first two functional commissions established within the newly formed UN. As outlined in Article 68 of the UN Charter, the UNCHR was created to promote and protect human rights globally. Comprising representatives from 53 member states, elected annually by ECOSOC, the Commission had no permanent members. Instead, approximately one-third of its seats were up for election every May, with representatives serving three-year terms. This rotating membership ensured diverse perspectives and representation within the Commission until its dissolution. The United Nations Commission on Human Rights was tasked with a critical mission: to investigate, monitor, and publicly report on human rights conditions in specific countries and globally, shedding light on major human rights crises worldwide. Additionally, the Commission was responsible for championing and safeguarding the principles enshrined in the Universal Declaration of Human Rights, a cornerstone of international human rights law. By holding countries accountable and promoting human rights norms, the Commission played a vital role in advancing justice, dignity, and equality for all.

1.3.2.1 Features

The United Nations Commission on Human Rights underwent a significant transformation over its 60-year history, evolving through two distinct phases. Initially (1947-1967), the Commission adopted a non-confrontational approach, focusing on promoting human rights and supporting states in developing treaties while avoiding investigations or condemnations of human rights violators. This period was marked by a strong emphasis on state sovereignty.

However, in 1967, the Commission shifted towards a more interventionist policy, driven by the decolonisation of Africa and

Asia, and mounting pressure from countries to address outrageous human rights violations, particularly in apartheid South Africa. This new approach enabled the Commission to investigate and report on human rights abuses.

To enhance its effectiveness, the Commission introduced geographically focused working groups in the 1970s, allowing for targeted investigations into regional or country-specific human rights issues, such as those in Chile. The 1980s saw the establishment of theme-based working groups, concentrating on specific types of human rights abuses.

Despite these reforms, the Commission struggled with inefficiencies, largely due to the presence of human rights violators and political polarisation within the body. As a result, the Commission's credibility waned among activists and governments, ultimately leading to its dissolution in 2006. The United Nations Human Rights Council was established the same year, replacing the Commission and marking a new chapter in the UN's human rights efforts.

1.3.3 Human Rights Council -HRC (2006)

The United Nations Human Rights Commission was a focal point of controversy and reform efforts within the UN. Critics, including the US, argued that the Commission was ineffective, overly politicised, and bureaucratic. A major point of contention was the membership of countries with questionable human rights records, such as Zimbabwe, Sudan, and Saudi Arabia, which exploited their membership to avoid scrutiny and condemnation.

In response to these concerns, the High-Level Panel on Threats, Challenges, and Change recommended reforms in 2004, including universal membership and an annual global human rights report. UN Secretary-General Kofi Annan went further in 2005, calling for the Commission's abolition and replacement with a smaller, more selective Human Rights Council that would meet year-round and uphold the highest human rights standards.

After extensive negotiations, the General Assembly voted overwhelmingly to establish the new Council, comprising 47 members elected by region, with consideration given to candidates' human rights records. Although the reforms didn't fully meet the expectations of some member states and human rights organisations, the majority supported the change. Notably, the US was one of only four countries that opposed the new Council. Human rights organisations welcomed the reform and the creation of the new

Council, marking a significant step towards a more effective and credible human rights body within the UN.

The HRC was created through a resolution adopted by the UN General Assembly on March 15, 2006.The Human Rights Council is the primary UN body dedicated to promoting and protecting human rights worldwide. Established as a subsidiary organ of the General Assembly under Article 22 of the UN Charter, the Council plays a vital role in advancing human rights globally. Comprising 47 Member States, the Council convenes in Geneva, Switzerland, at least three times a year to address pressing human rights issues. The Office of the UN High Commissioner for Human Rights (OHCHR) serves as the Council's secretariat, providing critical support and expertise to drive human rights progress.

1.3.3.1 Objectives of the Human Rights Council

♦ **Promotion of Universal Respect for Human Rights:**

The HRC aims to promote the universal enjoyment of all human rights and fundamental freedoms for all individuals, without discrimination based on race, gender, ethnicity, religion, or any other status. This objective is aligned with the principles enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments.

♦ **Addressing Human Rights Violations:**

One of the core objectives of the HRC is to investigate and address human rights violations and abuses occurring around the world. The Council works to hold accountable states and other actors responsible for human rights violations, ensuring that perpetrators are identified and that victims receive justice.

♦ **Engagement in Dialogue and Cooperation:**

The HRC facilitates dialogue and cooperation among states, civil society, and other stakeholders. This engagement is essential for promoting understanding, tolerance, and respect for human rights across different cultures and political systems. The Council encourages member states to share best practices and experiences in addressing human rights challenges.

♦ **Implementation of Human Rights Obligations:**

The HRC monitors the implementation of human rights obligations by UN member states. Through mechanisms such as the **Universal Periodic Review (UPR)**, the Council assesses the human rights records of all states and provides recommendations for

improving compliance with international human rights standards.

♦ **Development of International Human Rights Law:**

The HRC contributes to the development and clarification of international human rights law by adopting resolutions and decisions that can influence the interpretation and application of human rights norms. These resolutions often address emerging human rights issues and set standards for state behavior.

♦ **Support for the Work of Special Procedures:**

The HRC supports the work of special procedures, which include independent experts, special rapporteurs, and working groups assigned to monitor and report on specific human rights issues or situations in particular countries. The Council reviews their reports and recommendations, facilitating action based on their findings.

1.3.3.2 Functions of the Human Rights Council

The Human Rights Council (HRC) has assumed the role and responsibilities of the former Commission on Human Rights, with an expanded mandate to promote and protect human rights globally. The HRC is tasked with:

- Upholding universal respect for human rights and fundamental freedoms without discrimination and ensuring equal treatment for all

- Addressing human rights violations, including severe and systemic abuses, and providing recommendations for action

- Fostering effective coordination and integration of human rights across the UN system

- Conducting a Universal Periodic Review to assess and enhance human rights protection

- Submitting an annual report to the General Assembly, outlining progress and recommendations for human rights promotion and protection

In essence, the HRC serves as the premier UN body dedicated to advancing human rights, promoting accountability, and ensuring that all individuals enjoy their inherent rights and freedoms.

♦ *Promotes accountability and universal freedoms*

1.3.4 Universal Declaration of Human Rights (UDHR)

On December 10, 1948, the United Nations General Assembly made a historic move by adopting and proclaiming the Universal Declaration of Human Rights, a cornerstone of human rights law. In accordance with the UN Charter, the Assembly urged all member states to widely disseminate the Declaration's principles, ensuring they reach every corner of the globe. Specifically, the Assembly recommended that the Declaration be:

♦ Publicised and shared with all people

♦ Displayed prominently in public spaces

♦ Read and discussed in schools and educational institutions

♦ Expounded upon to foster a deeper understanding of human rights

♦ Promote dignity and equality globally

By this, the Assembly aimed to promote a universal culture of human rights, regardless of political status or territorial boundaries, and to inspire a new era of human dignity and equality.

1.3.4.1 Objectives of the Universal Declaration of Human Rights (UDHR)

♦ **Promotion of Fundamental Freedoms and Rights**:

The UDHR aims to promote a wide array of fundamental freedoms and rights essential for the dignity of every individual. It recognises rights such as the right to life, liberty, and security; freedom of thought, conscience, and religion; and the right to work, education, and participation in cultural life. By outlining these rights, the UDHR seeks to ensure that all individuals can live free from oppression and discrimination.

♦ **Universal Applicability**:

One of the primary objectives of the UDHR is to establish that human rights are universal, inalienable, and applicable to all individuals, regardless of nationality, ethnicity, gender, or any other status. Article 1 states, "All human beings are born free and equal in dignity and rights," reinforcing the notion that these rights are inherent to all people.

♦ **Framework for International Human Rights Law**:

The UDHR serves as a foundational framework for international

human rights law. It has inspired various binding treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These treaties expand on the rights articulated in the UDHR and establish legal obligations for states to respect, protect, and fulfill human rights.

♦ **Guidance for National Legislation and Policy**:

The UDHR provides guidelines for countries in formulating national laws and policies related to human rights. Many countries have incorporated principles from the UDHR into their constitutions and legal frameworks, fostering an environment where human rights can be promoted and protected at the national level.

♦ **Promotion of Peace, Justice, and Rule of Law**:

By establishing a set of rights that all individuals are entitled to, the UDHR aims to promote peace, justice, and the rule of law globally. It emphasises that respect for human rights is crucial for fostering harmonious relationships among nations and within societies, contributing to social stability and international peace.

♦ **Awareness and Education**:

The UDHR encourages the promotion of awareness and education about human rights. It emphasises the importance of disseminating information regarding human rights and fostering a culture of respect for these rights among individuals and communities. Article 26 specifically states the right to education, highlighting its role in promoting understanding and respect for human rights.

♦ **Accountability and Non-Discrimination**:

The UDHR aims to ensure accountability for human rights violations and promote non-discrimination in the enjoyment of rights. It emphasises that everyone is entitled to their rights without discrimination of any kind, thus advocating for equal treatment and justice for all individuals.

1.3.4.2 Preamble of UDHR

The preamble of the Universal Declaration of Human Rights sets the tone for a world where dignity, equality, and human rights are the foundation of freedom, justice, and peace. It acknowledges the dark history of human rights abuses, which have led to unimaginable atrocities that have shocked the conscience of humanity. However, it also offers a vision of a better future where:

♦ Objectives of UDHR

♦ People live without fear and enjoy freedom of expression and belief

♦ Human rights are safeguarded by the rule of law

♦ Nations work together in harmony and mutual respect

To achieve this vision, UN member states pledge to work collaboratively with the United Nations to promote universal respect for human rights and fundamental freedoms. This collective commitment aims to create a world where all individuals can thrive and human dignity is upheld.

1.3.4.3 Articles of UDHR

The Universal Declaration of Human Rights (UDHR) is a groundbreaking document that outlines the fundamental rights and freedoms that every human being is entitled to. Dubbed the "International Magna Carta," it sets a universal standard for human rights applicable to all individuals and nations.

The UDHR is comprised of 30 articles, organised into four distinct categories:

Part 1: Fundamental Freedoms and Rights (Articles 1-5)

♦ Establishes the foundation of human rights, including equality, life, liberty, and security

Article 1- We are all born free and equal.

Article 2 - We are all entitled to the same rights, no matter who we are.

Article 3 - We have the right to life, liberty, and security.

Article 4 - No one shall be held in slavery or servitude.

Article 5 - No one shall be subjected to torture or cruel treatment.

Part 2: Civil and Political Rights (Articles 6-21)

♦ Outlines rights related to justice, freedom of expression, and political participation

Article 6 - We have the right to recognition as a person before the law.

Article 7 - We are all equal before the law and entitled to equal protection.

Article 8 - We have the right to an effective remedy for violations

of our rights.

Article 9 - No one shall be subjected to arbitrary arrest or exile.

Article 10 - We have the right to a fair and public hearing.

Article 11 - We are considered innocent until proven guilty.

Article 12 - We have the right to privacy and protection from arbitrary interference.

Article 13 - We have the right to freedom of movement and residence.

Article 14 - We have the right to seek asylum from persecution.

Article 15 - We have the right to a nationality and to change it.

Article 16 - Men and women have the right to marry and found a family.

Article 17 - We have the right to own property and not be arbitrarily deprived of it.

Article 18 - We have the right to freedom of thought, conscience, and religion.

Article 19 - We have the right to freedom of opinion and expression.

Article 20 - We have the right to peaceful assembly and association.

Article 21 - We have the right to participate in government and public services.

Part 3: Economic, Social, and Cultural Rights (Articles 22-27)

♦ Addresses rights to social security, work, education, and cultural participation

Article 22 - We have the right to social security and economic well-being.

Article 23 - We have the right to work, equal pay, and just conditions.

Article 24 - We have the right to rest and leisure.

Article 25 - We have the right to an adequate standard of living.

Article 26 - We have the right to education and equal access to

higher education.

Article 27 - We have the right to participate in cultural life and enjoy scientific progress.

Part 4: Implementation and Protection (Articles 28-30)

- Ensures the realization of human rights through international cooperation and protection mechanisms

Article 28 - We have the right to a social and international order that realizes our rights.

Article 29 - We have duties to our community and shall act to protect our rights.

Article 30 - Nothing in this Declaration shall be interpreted as allowing actions contrary to our rights.

1.3.4.4 Significance of the Articles

- Universal Human Rights: A Foundation for Dignity and Freedom

The Universal Declaration of Human Rights (UDHR) sets a global standard for human rights, emphasising the inherent dignity and equal rights of all individuals, regardless of their background, beliefs, or circumstances. Its core principles aim to establish a foundation for freedom, justice, and peace worldwide.

Core Provisions: Empowering Human Beings

Two pivotal articles, 3 and 27, form the heart of the UDHR's substantive provisions:

Article 3: Ensures the rights to life, liberty, and security of person, representing fundamental civil and political rights.

Article 27: Guarantees the right to an adequate standard of living, including access to necessary food, clothing, housing, medical care, and social security, embodying essential economic and social rights.

Global Responsibility and Interconnectedness

Two crucial articles, 28 and 29, underscore the collective responsibility of the international community to:

Article 28: Establish arrangements for the full realization of human rights, bridging civil, political, economic, and social spheres.

Article 29: Emphasise the responsibility of individuals towards each other, fostering a sense of global citizenship.

A Lasting Legacy with a Notable Exception

After nearly 70 years, the UDHR remains a cornerstone of human rights. While it does not explicitly address environmental rights, these can be inferred from the rights to life and an adequate standard of living, highlighting the need for continued evolution and interpretation of human rights in response to emerging global challenges.

1.3.4.5 Significance of UDHR

♦ **A Timeless Beacon of Human Rights**

On the cusp of the Cold War, the Universal Declaration of Human Rights (UDHR) emerged as a landmark achievement, defying political complexities to become the United Nations' flagship for human rights. Despite initial reservations from communist and Middle Eastern countries, the Declaration has surpassed expectations, gaining widespread recognition as a cornerstone of human rights standards.

♦ **Global Acceptance and Influence**

The UDHR has achieved significant political and moral stature, with even sceptical countries like Burma, Argentina, China, and the former Yugoslavia feeling compelled to defend themselves against allegations of non-compliance. This reluctant acceptance underscores the Declaration's influence.

♦ **Integral to the UN Charter**

The UDHR has become an integral part of the UN fabric, clarifying the content of human rights and fundamental freedoms mentioned in the UN Charter. It is frequently cited in UN General Assembly resolutions and debates, such as the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples.

♦ **Universal Recognition and Customary Law**

In 1978, 84 nations unanimously declared the UDHR a common understanding of inalienable human rights, constituting an international obligation. The widespread adoption of the two human rights Covenants (1966) and the recognition of UDHR rights as morally and practically well-founded have solidified its provisions as international customary law, binding all countries regardless of their individual views.

The UDHR's impact extends beyond its initial adoption, as its principles have been further developed and enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, which came into force in 1976. The Declaration's enduring influence has cemented its status as a foundational document for human rights worldwide.

♦ *Importance of UDHR*

1.3.5 International Human Rights Law

Human rights are fundamental entitlements inherent to every human being. International human rights law is a framework of rules and guidelines that promotes and protects these rights globally, regionally, and domestically. This body of law sets standards for governments to respect and ensure individuals' fundamental freedoms. By ratifying human rights treaties, governments pledge to safeguard specific rights and prevent violations within their territories. Regional and international monitoring mechanisms help ensure compliance and provide avenues for accountability and redress. While participation in the international human rights framework is voluntary, it serves as a crucial safeguard against government actions that may infringe on individuals' rights. The core principle is that international cooperation and oversight are necessary to protect human rights, as governments can easily violate them without external accountability. Therefore, international human rights law provides a vital framework for protecting individuals and groups from government actions that may compromise their rights.

♦ *Human rights are inherent to all individuals*

1.3.6 International Covenant on Human Rights

The International Covenant on Human Rights refers to two pivotal treaties adopted by the United Nations: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both were adopted by the United Nations General Assembly on December 16, 1966, and came into force on March 23, 1976. The establishment of these covenants marked a significant advancement in the international protection of human rights, building on the principles enshrined in the Universal Declaration of Human Rights (UDHR).

♦ *Covenants built on UDHR principles*

1.3.6.1 Objectives of the Covenants

International Covenant on Civil and Political Rights (ICCPR): The ICCPR aims to protect civil and political rights that are essential for the individual's dignity and liberty. Key rights enshrined in the ICCPR include:

- **Right to Life** (Article 6): Protects individuals from arbitrary deprivation of life and ensures legal protections against unlawful killings.
- **Prohibition of Torture** (Article 7): Forbids torture and cruel, inhuman, or degrading treatment.
- **Right to Liberty and Security** (Article 9): Ensures individuals are not arbitrarily arrested or detained.
- **Right to a Fair Trial** (Article 14): Guarantees the right to a fair and public hearing by an independent and impartial tribunal.
- **Freedom of Expression** (Article 19): Protects the right to hold opinions and express them freely.
- **Rights of Minorities** (Article 27): Ensures the protection of the rights of ethnic, religious, and linguistic minorities.

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

The ICESCR focuses on ensuring the economic, social, and cultural rights essential for human well-being. Key rights included in the ICESCR are:

- **Right to Work** (Article 6): Recognises the right to employment in favorable conditions.
- **Right to an Adequate Standard of Living** (Article 11): Protects the right to adequate food, clothing, and housing.
- **Right to Health** (Article 12): Ensures the enjoyment of the highest attainable standard of physical and mental health.

- **Right to Education** (Article 13): Guarantees the right to free primary education and access to secondary and higher education.
- **Cultural Rights** (Article 15): Protects the rights to participate in cultural life and to benefit from scientific advancements.

1.3.6.3 International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights sets

the standard for governments to uphold justice, maintain the rule of law, and respect human rights. This landmark agreement outlines the civil and political rights that governments must protect, including:

♦ Self-determination
  ♦ Life, liberty, and security
  ♦ Freedom of movement, thought, conscience, and religion
  ♦ Protection from torture, slavery, and arbitrary detention
  ♦ Right to a fair trial and privacy

The Covenant also safeguards the rights of minority groups and ensures that governments treat all individuals equally, regardless of their background or beliefs.

Notably, the Covenant allows governments to limit certain rights during a national emergency temporarily, but only to the extent necessary and with UN oversight. However, some fundamental rights, like the right to life and freedom from torture, can never be suspended.

♦ *Establishes oversight and accountability mechanisms*

To ensure accountability, the Covenant establishes a Human Rights Committee to monitor governments' progress and address individual complaints. Two Optional Protocols further strengthen the Covenant, one enabling individual to report rights violations and the other aiming to abolish the death penalty.

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

After two decades of negotiations, the International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted in 1966 and entered into force in 1976. Despite its significance, economic, social, and cultural rights have historically received less attention than civil and political rights, leading to a misconception that they are less protected under international law. However, the principles of human rights emphasise that all rights are interconnected and indivisible.

The ICESCR recognises and protects essential rights, including:

♦ Fair working conditions
♦ Social protection
♦ Adequate standard of living (food, housing, clothing)
♦ Highest attainable health standards

- Education
- Cultural freedom and scientific progress

The Covenant obliges states to take concrete steps to implement these rights, using their maximum resources, to achieve progressive realisation. The Committee on Economic, Social and Cultural Rights monitors states' implementation.

The ICESCR, along with the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), forms the foundation of international human rights standards. These conventions establish universal rights applicable to all individuals, emphasising the interconnectedness and equal importance of all human beings.

1.3.7 Other UN Agreements on Human Rights

Besides the two main agreements mentioned earlier, there is a growing number of specialised agreements that focus on safeguarding specific rights or protecting particular groups of individuals.

1.3.7.1 Convention on The Prevention of Genocide

The Convention on Genocide, adopted in 1948, was a pioneering United Nations treaty that addressed humanitarian issues in the aftermath of World War II. In response to the war's atrocities, the UN General Assembly had previously recognised genocide as an international crime in Resolution 180(II) on December 21, 1947. This resolution established that genocide entails both individual and state responsibility.

The Convention defines genocide as any of the following acts committed with the intent to destroy a national, ethnic, racial, or religious group:

- Killing members of the group
- Causing serious bodily or mental harm
- Inflicting conditions of life that lead to physical destruction
- Imposing birth prevention measures
- Forcibly transferring children to another group

The Convention has gained widespread acceptance, with the vast majority of states ratifying it. The International Court of Justice considers the prohibition of genocide a fundamental norm

of international law, applicable even in times of peace. The Court has emphasized that these principles, recognized by civilized nations, should bind states regardless of any treaty obligations.

1.3.7.2 Convention on The Elimination of All Forms of Racial Discrimination

♦ Racial discrimination inspired the UN creation

Racial discrimination was a key concern that led to the founding of the United Nations, and it has remained a major focus area for the organization. In 1965, the General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination, which came into force in 1969.

The Convention defines racial discrimination as:

"Any distinction, exclusion, restriction, or preference based on race, color, descent, national or ethnic origin that nullifies or impairs equal enjoyment of human rights in public life, including political, economic, social, or cultural fields."

♦ Includes international and impact based discrimination

This definition encompasses not only intentional discrimination but also neutral laws, norms, and practices that have discriminatory effects.

States that sign the Convention agree to:

- ♦ Eliminate discrimination in civil, political, economic, social, and cultural rights
- ♦ Provide effective remedies for racial discrimination through national tribunals and institutions
- ♦ Refrain from engaging in or supporting racial discrimination
- ♦ Review and amend policies and laws that perpetuate discrimination
- ♦ Promote integration and multiracial initiatives to eliminate barriers between races

♦ Convention aimed at eliminating racial discrimination. States required to amend discriminatory laws

The Committee on the Elimination of Racial Discrimination was established to ensure that signatory states meet their obligations. As of March 2000, 155 states had signed the Convention, demonstrating a global commitment to eradicating racial discrimination

1.3.7.3 Convention on The Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly in 1979 and entered into force in 1981.

Despite existing human rights instruments, a separate treaty was necessary to address the pervasive discrimination against women worldwide. CEDAW tackles major issues and specific areas where discrimination is rampant, including:

- Participation in public life
- Marriage and family life
- Sexual exploitation

The Convention's dual approach aims to advance women's status by:

- Ensuring equal rights and freedoms with men
- Eliminating restrictive traditional roles
- Removing social and cultural patterns that perpetuate gender stereotypes through education

States parties agree to:

- Integrate gender equality into national legislation
  - Adopt measures prohibiting discrimination against women
  - Ensure effective protection through national tribunals and institutions
  - Refrain from discriminatory acts or practices against women

♦ *Convention on the Elimination of All Forms of Discrimination against Women*

CEDAW encourages positive measures, including preferential treatment, to promote women's participation in decision-making. Article 17 established the Committee on the Elimination of Discrimination against Women to oversee implementation. By addressing systemic inequalities, CEDAW aims to ensure women's full enjoyment of human rights.

1.3.7.4 Convention Against Torture

♦ *Convention against Torture adopted in 1984*

The United Nations has established universal standards against torture, culminating in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted on December 10, 1984, and entering into force on June 26, 1987, this Convention defines torture as:

"...the intentional infliction of severe physical or mental pain or suffering on a person for purposes such as obtaining information, punishment, intimidation, or coercion, when inflicted by or with the consent of a public official."

The Convention's primary objectives are:

- Preventing torture and other prohibited acts
- Ensuring effective remedies for victims

States parties must take preventive measures, including:

- Criminalising torture
- Establishing laws and regulations to promote human rights among public servants

Despite these efforts, incidents of torture may still occur. Governments committed to eliminating torture must provide effective remedies to alleged victims, including:

- Prompt and impartial investigations into torture complaints
- Functional systems for administering justice

The Committee against Torture monitors the implementation of the Convention, ensuring accountability and protection for victims of torture.

1.3.7.5 Convention on The Rights of The Child

The United Nations has a long history of protecting children's rights, from the League of Nations to the present day. However, recent reports of child suffering, exploitation, and abuse have highlighted the need for a comprehensive and binding treaty. In response, the Convention on the Rights of the Child was adopted unanimously by the General Assembly and entered into force on September 2, 1990.

The Convention is guided by four core principles:

1. Non-discrimination and equal opportunities for all children
2. Prioritising the best interests of the child in decision-making
3. Ensuring the right to life, survival, and holistic development (physical, mental, emotional, cognitive, social, and cultural)
4. Respecting children's opinions and views, considering their age and maturity

The Convention also guarantees children's rights to:

- Free and compulsory primary education
- Protection from economic exploitation, sexual abuse, and harm
- Special treatment and education for disabled children
- Protection in armed conflicts
- Prevention of child prostitution and pornography

To monitor implementation, the Committee on the Rights of the Child was established under Article 43. This treaty marks a significant milestone in the global effort to safeguard children's rights and ensure their well-being.

1.3.7.6 Convention on The Protection of The Rights of All Migrant Workers

Throughout history, people have migrated across borders due to various factors like conflict, persecution, or poverty. Today, millions of migrant workers live in foreign countries, often facing suspicion, hostility, and integration challenges, making them vulnerable to disadvantage. To address this, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the General Assembly on December 18, 1990, and entered into force on July 1, 2003.

The Convention ensures migrant workers' human rights throughout the migration process, including preparation for migration, transit, stay, and return to their home country or residence. Migrant workers are entitled to working conditions equivalent to host country nationals, the right to join trade unions, social security, and emergency healthcare. States must establish migration policies, share information with employers, and assist migrant workers and their families. Migrant workers and their families must comply with the host country's laws. The Convention differentiates between legal and illegal migrant workers, aiming to eliminate illegal movements and employment, rather than providing equal treatment to illegal workers. The Convention on the Rights of Persons with Disabilities and its Optional Protocol - was adopted on 13 December 2006 at the United Nations Headquarters in New York - to change attitudes and approaches to persons with disabilities- advocates that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms.

1.3.7.7 Assessment and Evaluation

To ensure countries adhere to their human rights obligations, various mechanisms have been established. A key component is the creation of special committees, known as treaty bodies, which

oversee compliance with each human rights treaty. Currently, there are nine treaty bodies, each formed under a specific UN human rights treaty:

1. Human Rights Committee (HRC) - ICCPR
2. Committee on Economic, Social and Cultural Rights (CESCR) - ICESCR
3. Committee on the Elimination of Racial Discrimination (CERD) - ICERD
4. Committee on the Elimination of Discrimination against Women (CEDAW) - CEDAW
5. Committee Against Torture (CAT) - CAT
6. Committee on the Rights of the Child (CRC) - CRC
7. Committee on Migrant Workers (CMW) - ICRMW
8. Committee on the Rights of Person with Disabilities(CRPD)
9. Committee on Enforced Disappearences(CED)

♦ *Treaty bodies oversee treaty compliance, Monitor and report on human rights adherence*

These treaty bodies play a crucial role in monitoring and reporting on countries' compliance with their treaty obligations, promoting accountability and human rights protection worldwide.

Summarised Overview

As emphasised earlier, human rights are inherent and universal, entitling every individual to dignity and equality. Fundamental rights include freedom of expression, privacy, health, life, liberty, security, and an adequate standard of living. While governments bear the primary responsibility to protect citizens from human rights abuses, businesses also have a crucial role to play. The UN Charter and the Universal Declaration of Human Rights serve as foundational guides for nations and organisations worldwide. Various UN entities, such as commissions and subcommittees, work to implement Charter provisions. The Universal Declaration has inspired numerous covenants, treaties, and compacts over the past 60 years, shaping initiatives by states to promote fundamental human rights for their citizens. Recognising their legal, moral, and commercial obligations, businesses must join governments and international organisations in upholding human rights. Together, we can ensure the protection and promotion of universal human rights, fostering a more just and equitable world for all.

Our exploration began with the fundamentals of International Human Rights Law, examining its origin, meaning, and inherent nature. We then delved into the sources and core components that shape this body of law. By ratifying regional and international

treaties, states commit to safeguarding human rights and implementing domestic measures and legislation that align with their treaty obligations.

This foundational understanding of human rights protection under international law provides a crucial context for appreciating national and local initiatives aimed at protecting human rights within our country and others. It also helps identify areas that require future attention and action to advance human rights.

Equipped with this knowledge, we are better positioned to comprehend the complex landscape of human rights protection and recognise the ongoing efforts to promote and defend these fundamental rights.

Assignments

1. Discuss the significance of the Universal Declaration of Human Rights.
2. Write a brief note on Human Rights and the Charter.
3. Write a note on the Human Rights Commission. Give reasons for its replacement with the Human Rights Council.
4. Briefly consolidate the significant articles of the Declaration.
5. What are the key aspects of human rights protection under international law, and what obligations do states have in this regard?
6. How did international law pertaining to human rights originate, and what historical events or milestones contributed to its development?

Suggested Reading

1. Alston, Philip, and Frederic Megret, editors. *The United Nations and Human Rights*. Oxford University Press, 2013.
2. Franck, Thomas M. "The UN Charter and Human Rights." *American Journal of International Law*, vol. 82, no. 4, 1988, pp. 741-755.
3. Kelsen, Hans. *The UN Charter and the Universal Declaration of Human Rights*. Sage Publications, 1964.

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1. Moeckli, Daniel, et al. *International Human Rights Law*. Oxford University Press, 2018.

2. Ramcharan, Bertrand. "The Evolution of Human Rights in the United Nations." *Journal of Human Rights, vol*. 8, no. 3, 2009.

3. Robinson, Mary. "The Universal Declaration of Human Rights at 70." International Journal of Human Rights, vol. 22, no. 5, 2018, pp. 631-638.

Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

Human Rights in India

BLOCK-02

UNIT 1

Historical and Philosophical Foundations of Human Rights in India

Learning Outcomes

After the successful completion of the unit, the learner will be able to::

♦ understand the Indian perspective of human rights
♦ understand the concept of dharma through a human rights perspective
♦ develop a notion of rights in medieval and British India
♦ understand various social movements that were for human rights

Background

The evolution of human rights in India is deeply embedded in its rich cultural and intellectual heritage, where ideas of justice, equality, and moral responsibility have long been articulated. The philosophical foundation of human rights in India can be traced back to ancient texts and concepts, particularly the notion of Dharma**.** In Hindu philosophy, dharma represents a moral duty that encompasses rights and responsibilities, ensuring the well-being of individuals and society. This ethical framework emphasises that individual rights are intrinsically linked to societal responsibilities. For example, in the Bhagavad Gita, the dialogue between Lord Krishna and Arjuna underscores the importance of fulfilling one's duty (dharma) while respecting the rights of others. Such philosophical tenets reflect an early understanding of the balance between rights and responsibilities, laying the groundwork for modern human rights discourse.

Historically, the concept of human rights has undergone significant transformation through various periods in Indian history. In ancient India, the principles of equality and justice were articulated in religious texts, and philosophical schools emphasised compassion and non-violence.

The colonial period marked a turning point in the evolution of human rights in India. The struggle against British colonial rule galvanised the Indian population and raised awareness of civil rights. Leaders such as Mahatma Gandhi advocated for fundamental human rights, emphasising non-violent resistance and civil disobedience as means to challenge oppression. With India's independence in 1947, the commitment to human rights was solidified in the Constitution, which came into effect in 1950. The Indian Constitution enshrines a comprehensive framework for the protection of human rights, embedding

fundamental rights such as the right to equality, freedom of speech, and the right to life.

The current discourse on human rights in India continues to evolve, addressing contemporary challenges such as gender equality, caste discrimination, and the rights of marginalised communities. As India grapples with these issues, the historical and philosophical foundations of human rights remain crucial for navigating the complex landscape of rights and responsibilities. This unit will explore various concepts of human rights across ancient, medieval, and modern India, examining how the values of justice, dignity, and equality have been articulated and practised in the Indian context.

Keywords

Dharma, Human Rights, Colonialism and Human Rights Movements

Discussion

2.1.1 Concept of Dharma in Ancient India

Human rights are the universal rights that are inherent to all of us irrespective of our nationality, sex, religion, language, colour, or any other status. These include the right to life as the most fundamental aspect. The modern concept of human rights was adopted in the Universal Declaration of Human Rights (UDHR) by the UN General Assembly in 1948. UDHR, therefore, is regarded as the first legal document that outlines the fundamental human rights that must be universally protected.

♦ *Human rights are universal and inherent*

♦ *Ancient texts reflect rights-based frameworks*

Arun Roy viewed Western theories of human rights as suggesting that these rights require a philosophical justification. In the history of Indian civilisation, freedom of thought, speech, living, belief, and association was considered inherent to human relationships. These freedoms are considered to be natural and fundamental, which resulted in the security of literature on the concept of rights. Despite the West's rich literature about human rights and India's lack of literature on human rights, it does not imply that the concept is primarily a Western notion. The legal literature of ancient India owes to the lawgivers of the time as well as Ramayana, Mahabharatha, Arthashastra and Nitisara. Human rights, therefore, can be founded on two different frameworks: the modern political thought and philosophy of law and the concept of "Dharma" that is fundamental to Indian civilisation.

2.1.1.1 Human Rights as Dharma

Dharma is one of the ethical principles of the Hindu philosophical tradition. It is also an important goal of human life (*purusharthas*). The concept of Dharma means 'to hold, have or maintain'. The concept of dharma was conceived in different notions. Originally, Dharma signifies nothing more than the observance of Vedic rites. Later, some commentators described dharma, which covers morality and virtues. For example, Brihaspati regards kindness (daya), patience (Kshama), and appreciation of the virtues of others as part of dharma. Yajnavalkya suggests that ahimsa, satya, asteya, indrinigrah, dana, and shanti are the elements of dharma for all. The core concept of dharma, therefore, binds both kings and citizens and men and women.

♦ Dharma embodies morality and virtues

The scope of dharma in Indian tradition encompasses all aspects of human life, especially the purusharthas like dharma (righteousness), Artha (wealth), Kama (pleasure), and moksha (liberation). If each individual performs their duty and obligation to others, they will attain the quality of life. The dharma, along with other purusharthas, therefore, became the guiding principles for a worthy life.

♦ Focuses on duty and quality of life

According to Arun Roy, Indian philosophy is rooted in the concept of Dharma and Danda, which govern the state and its citizens. In Ancient India, detailed rules were established to guide kings who embodied the principles of equality before the law and equal protection of the law. The duty of the king is to administer justice accordingly. This, according to Ray, is the embryonic stage of human rights enforcement. The guiding principles are embodied in the texts, such as Vedas, Vedanta, Upanishads, Mahabharata Ramayana and Bhagavad Gita.

♦ Dharma and danda guide state-citizen relations

2.1.1.2 Dharma in various texts

There are many references in the Vedas that throw light on the existence of human rights. Human rights in India are embraced on the principle of "*Vasudhaiva Kutumbakam*," meaning welfare of all. Among the texts, the *Dharmasastras* are unequivocal in describing the concept of human rights. They emphasise the establishment of norms of social order, especially pinpointing the concept of social obligation in order to attain enlightenment. The most important among the *Dharmasastras* was the *Manavadharmasastra* (Laws of Manu).

♦ Vedas and Dharmasastras emphasise human rights

Dharma can be identified by laws. To ensure the observance of the norms of the state and to prevent violations, there must be a secular agency to regulate the people. Here, the law and the

authority of the ruler became important. Together, they form the Rajadharma and Dandaniti. Supporting this view, V. K Krishna Ayer viewed that the concept of human rights will gain meaning only if there is an independent judiciary to enforce rights. Here, the dharma is viewed as the law. In this, the Arthasastra of Kautilya asserts the importance of rights and duties that constitute human rights. The Arthasastra asserted that "in the happiness of the subjects lies the happiness of the king, and what is beneficial to the subjects is his own benefit". Kautilya also asserted the need for civil, legal, and economic rights. He intended that the king should provide maintenance to orphans, the aged, the afflicted, and the helpless. He opposed royal absolutism and stated that the King is also subordinated to the law of the state.

2.1.1.3 Dharma in other heterodox religions

In the post-Vedic period, the rise of heterodox religions like Jainism and Buddhism was a reaction against the deterioration of the moral order and rights of the people. Religious prophets like Mahavir, founder of Jainism, postulated that the foundation of profound human freedom is Anekantavada, which embraces relative pluralism and multiple viewpoints of truth. Emperor Ashoka initiated the foundation of a humanitarian society, where he took measures to protect and secure the rights of people, especially the rights to equality, fraternity, and liberty. His policies of tolerance paralleled civil liberties, advocated security and self-control, prohibited torture and ensured peace of mind. The influence of the concept of Dharma highlights that the concept of right is not solely a Western idea. Instead, it has its origin in the ancient Indian civilisation.

2.1.2 Notions of Rights in Medieval India

The tradition of tolerance, non-violence, and respect continued to flourish in medieval times as well. The approach of the medieval rulers varied. Some were despotic and intolerant, while others were liberal and secular. Among them, the concept of human rights reached its zenith during the period of Akbar. He made an effort to provide equal treatment to the population, avoiding religious discrimination. He, therefore, made an effort to promote universal brotherhood through the policy called Tauhid-i-Ilahi or Din-e-Ilahi (divine religion). The concept aimed to promote secularism and religious tolerance.

Akbar established the Ibadat Khana at Fatehpur Sikri in 1575, which became the place for religious discussion. He used to invite scholars from different religions and regions to have an open discussion with them. This became one of the major principles that

reflected the spirit of religious tolerance and unity of humankind. Along with this, the abolition of jizya, the ban on the sale and purchase of enslaved people, and the ban on forced conversion and other measures reflected his spirit and commitment to fostering a pluralistic society.

Religious movements like Bhakti and Sufism played an important role in advancing the notion of human rights in India. The bhakti movement gained significance in the medieval period as it tried to promote a relationship with the divine. During this period, the movement challenged established social notions such as religious rituals and economic and political values. The bhakti saints like Tulsidas, Chaitanya, Meera, and Surdas preached the notion of equality and dignity through their poems. Corresponding to the bhakti tradition, Sufism emerged as the mythical expression of Islam. Sufism believed in the mystical union of soul and God, opposing the traditional notion of law and tradition.

However, it is important to note that the principle of universal brotherhood, secularism, and caste equality cannot be applied to medieval India. Issues of religious intolerance, injustice, and discrimination occurred in medieval times. The bhakti saints like Namdev, Tukaram, Jaidev, Ramananda, Ravidas, and Kabir, who come from the backward caste, tried to promote a progressive philosophy of tolerance and fought against evils like untouchability, sati, and child marriage to shape a progressive society. The movements, therefore, tried to convey the idea of human rights through their preaching. However, it is to be noted that the modern perception of human rights was not fully developed in the medieval period.

2.1.3 British Colonialism and Human Rights In India

The development of human rights in India can be traced to the period of British rule. During the struggle for independence, Indians sought fundamental freedoms, civil rights, and political rights, while resisting foreign control. The British engaged in discriminatory practices, and their repressive governance spurred a growing demand for civil liberties, which fuelled the freedom movement.

The British rulers viewed India's political and legal systems with suspicion. Lord Macaulay dismissed them as outdated and absurd, while Lord Wellesley characterised Indians as uncivilised, ignorant, and vulgar. Lord Cornwallis even described all Indians as corrupt. This widespread discrimination prevented Indians from

occupying high-ranking positions, denying them their basic social, political, and economic rights. This led to a rising demand for civil liberties and justice.

Mahatma Gandhi, alongside other leaders such as Bala Gangadhar Tilak, played a pivotal role in the struggle for civil rights and self-rule. Gandhi led non-violent protests demanding independence, while Tilak famously declared, "Freedom is my birthright, and I shall have it," which resonated deeply with the masses and encouraged widespread participation in the fight for self-governance and basic human rights.

The Charter Act of 1833 established the Law Commission, marking a significant step towards legal reform in India. The commission's work resulted in key legal measures, such as the Indian Penal Code (1862), which is still in force today. Other important laws, such as the Indian Succession Act, were also passed during this period, helping to shape India's modern legal system.

On 1st November 1858, the Queen Victoria Proclamation was issued, promising equality, dignity, and protection for Indian rulers and citizens. Often referred to as the "Magna Carta of the People of India," the proclamation aimed to ensure the material and moral welfare of Indians. It also addressed issues of racial discrimination, granting Indians the same rights as British subjects.

The Indian National Congress (INC), founded in 1885, became a crucial organisation in the fight for human rights. The Constitution of India Bill (1895), also known as the Home Rule or Swaraj Bill, demanded self-government and fundamental rights, including freedom of speech, property, and equality before the law. This document is considered the first unofficial draft of India's constitution and influenced future legal reforms in the country.

In 1925, the INC adopted the Declaration of Rights, which called for freedoms such as the right to free speech, expression, and assembly, alongside the right to a fair trial and the elimination of racial discrimination. The Nehru Report of 1928 expanded these demands, proposing constitutional guarantees for freedom of profession, expression, and religion, as well as free primary education. It also recommended legislative provisions for Muslims in areas where they were in the minority.

The Sapru Committee Report of 1945 addressed issues related to the rights of minorities and included provisions for freedoms such as equality, speech, press, and religion. This report contributed significantly to the formation of the Indian Constitution, emphasising the need to protect the fundamental rights of all citizens.

Under British rule, India experienced significant legal and social reforms. The abolition of practices such as sati, the establishment of Western education, and the creation of a formal judiciary and penal code were all major milestones. These reforms helped shape India's legal and social framework, paving the way for the protection of civil rights and the establishment of the Indian Constitution.

2.1.4 Questions of colonialism and racism

Opposition to colonialism and racial discrimination is deeply rooted in our national identity. After gaining independence, India has strongly opposed these forces of fascism, imperialism, and racism. The racial supremacy of the Britishers was highlighted throughout their rule in India through their policies, like the Ilbert Bill and the Government of India Act of 1919. These developments emphasise the deep-rooted racial prejudices of the British colonial rulers and reveal the extent of racial discrimination that prevailed in India.

India has advocated against racism with a view that it is a violation of the fundamental principle of freedom. In India, the struggles of Mahatma Gandhi against these imperialistic notions were notable. His experience of racial discrimination in South Africa helped him to develop his philosophy of satyagraha and non-violence. He brought these principles to India and took a stand against colonial repression and discrimination. The efforts to eradicate the issues of the caste system, especially for the low caste Hindus, whom he called Harijans, showed his passionate and unwavering fight against apartheid and his support to fight against racism in South Africa.

Concerning the present scenario, the report presented by the United Nations in 2022 on the matter of racism, discrimination, and colonialism needs to be addressed. According to the United Nations report, it is observed that the legacy of colonialism persists in the world through racism, racial discrimination, and intolerance. The report urged the states to dismantle the racial structures of the government and promote human rights and sustainable development for a better life. The report also highlighted that the burden of colonialism continued to affect the Global South, where political independence and decolonisation have not positively impacted the sustainable development or achievement of human rights, especially the right to development and socioeconomic rights of the people. The report underlines the connection between colonialism and present forms of racism, racial discrimination, and intolerance faced by people of Africa, Asia, and other indigenous people.

2.1.5 Social movements of the 19th and 20th centuries in India

Social movements of the 19th century helped to invoke the idea of human rights in the minds of the people. Social movement is a broad term that includes any collective effort to tackle some widespread social problems. According to Joseph Gusfield, 'social movements are socially shared demand for change in some aspect of social order'. For example, the labour movement, peasant movement, and reform movement come under this category.

There are some differences in the concept of the social reform movement and social movement. As mentioned above, the social reform movements are part of larger social movements. The social reform movement aimed to eradicate social malpractices and irrational belief systems and to bring changes to the social system. The social reform movements are led by social reformers who challenge existing social norms and advocate for social change. For example, Raja Rammohan Roy crusaded for the abolition of sati, which led to the enactment of the 'Bengal Sati Regulation Act' in 1829. Similarly, with the effort of Iswar Chandra Vidyasagar, the Hindu Widow's Remarriage Act of 1856 was passed.

Some of the features of social movements are as follows:

♦ Collective actions often directed against the state demanding new policies for the eradication of social malpractices.

♦ Collective mass mobilisation

♦ Social movements are carried out through a formal or informal organisation with leadership.

♦ Participants share common ideologies and common orientations for social change.

♦ It emerges to address the issues of the tribal populations, their access to the forest, and conserving the environment and settlements.

♦ Protest is the most important form of collective action in social movements. Social movements also plan campaigns and rallies and engage with media to spread the movement.

2.1.5.1 Kinds of Social Movements

Social movements can be categorised into three types. Redemptive, Reformist and Revolutionary. Redemptive social

movements aimed to change the personal consciousness and behaviour of the members. For example, Sree Narayana Guru led the Ezhava community in Kerala to change their social practices. Social Reformist movements aimed for the gradual change in the social and political structures. Reform movements like Brahmo Samaj, Prarthana Samaj, and the Aligarh movement were examples. Revolutionary movements are often radical in nature, aim to change social relations, and often seize state power to achieve their needs. For example, the Bolshevik Revolution in Russia and the Naxalite Movement in India. Some of the well-known social movements in the country are the Chipko movement, Save Silent Vellery, Narmada Bachao Andolan, Koel Karo, Chattisgarh Mukti Morcha, Appiko movement, Swadhyay movement, Karnataka Rajya Raitha Sangha. These movements kept a distance from the political parties. However, the ideologies for the movement are derived from the political parties. For example, the ideologies of Mahatma Gandhi and shades of socialism were incorporated into this movement.

♦ Types of Social Movements Defined

2.1.5.1.1 Environment based movements

a. Chipko movement:

Chipko Andolan is the first ecofeminist environmental movement in India. The movement started in the 1970s to protect trees and forest regions from deforestation. The people protested against deforestation by hugging the trees from being cut. The movement was led by Chandini Prasad Bhatt and Sunderlal Bahuguna. The movement originated in the foothills of the Himalayas when a village female community leader, Gaura Devi, took a stand against the woodcutters. This incident marked the beginning of the movement, and later, it spread to other parts of the country. The significance of the movement is that it was the first ecofeminist movement which relied completely on the participation of women. Women were the core strength of the movement.

♦ Chipko Movement led by women

b. Save Silent Valley Movement 1973

This movement is a social movement that aims to protect Silent Valley in the Palakkad district of Kerala. The movement started in 1973 and continued until 1986, when Silent Valley was declared a National Park. The protest was focused on protecting the valley from flooded by the hydroelectric project. The movement underlines the importance of protecting the environment. Environmental groups like Narmada Bachao Andolan, Bombay Natureal History Society, and Silent Valley Action Forum actively participated in the campaign. The movement witnessed the support of leaders like Vandana Shiva, Medha Patkar, Baba Amte, Sunita Narain, and

♦ Save Silent Valley for Eco-Preservation

Sunderlal Bahuguna.

c. Narmada Bachao Andolan 1985

The movement was against the construction of big dams across the Narmada River under the Sardar Sarovar Project. The project aimed at constructing 30 large dams, 135 medium dams and 3000 smaller dams on the Narmada River. The movement was supported by diverse indigenous groups, farmers, environmentalists, and human rights groups. The project displaced numerous people from their settlements and caused severe environmental damage. This led to the mass mobilisation of the people, resulting in the formation of the Narmada Bachao Andolan or Save Narmada movement. Environmental movements in India have played an important role in advocating for ecological sustainability and social justice. These grassroots efforts highlight the intersection of environmental protection and human rights, mobilizing communities to demand accountability from the government and industry while promoting sustainable development practices.

2.1.5.1.2 Class movements

Peasant movements were the result of persistent economic and political issues. Between 1858 and 1914, these movements were localised and focused on specific movements. For example, the Bengal revolt of 1859 and the Deccan riots of 1857 were the initial localised movements. During the independence struggle also, these localised movements can be visible. For example, the Bardoli Satyagraha in 1928 and the Champaran Satyagraha of 1917 were concentrated on specific issues. Between the 1920s and 1940s, issues of the peasants were represented through several peasant organisations. The first among these was the Bihar Provincial Kisan Sabha of 1929 and the All-India Kisan Sabha of 1936. These organisations raised their voice for the peasants and oppressed groups. The growth of the peasant organisation became preeminent during the two movements: The Tebhaga movement (1946-47) and the Telangana movement (1946-52).

During the post-independence period, the new land reforms, abolition of zamindaris, reduction in the significance of land revenue, and the introduction of the public credit system brought significant changes in the phase of the peasant movement. The major peasant movement after 1947 was the Naxalite struggle that originated in the Naxalbari region of Bengal in 1967 and the New Farmers Movements in the 1970s. The New Farmer's Movement began in Punjab and Tamil Nadu. These movements involved farmers whose demands included granting fair prices, (taxation,

and non-payment of works). Peasant movements in India have historically addressed agrarian issues, land rights, and social injustices. Significant uprisings include the Champaran Satyagraha (1917) against oppressive indigo farming practices and the Kheda Satyagraha (1918), which protested against unfair taxation during the famine. More recently, movements like the 2020 farmers' protests highlighted grievances against new agricultural laws perceived as detrimental to farmers' livelihoods. These movements reflect the ongoing struggle for justice, rights, and sustainable farming in India.

2.1.5.1.3 Women's movements

The social reform movements of the 19th century discussed issues of women, such as widow remarriage, child marriage, education, etc. The 20th century saw the emergence of women's organisations like the Women's India Association in 1917, the All-India Women's Conference of 1926, National Council for Women in India in 1925.

Understanding some of the important social women led by women post-1947 is significant when discussing women's participation in social movements. Their participation during the 1970s addressed various issues of social change. Some of the movements include the Chipko Movement, Narmada Bachao Andolan (1985), and the Anti-Arrack movement in Andhra Pradesh (1992).

Along with organised struggle, the women's movement began to focus on social issues against women. Issues of inheritance, right to employment, against sexual harassment, and dowry. One of the milestone achievements in the struggle for Muslim women's rights in India was the Shah Bano Case of 1985. This case challenged the prevailing Muslim personal law. It resulted in the enactment of Muslim Women (Protection on Divorce Act), 1986, which aimed to invalidate the Supreme Court decision of allowing maintenance only for the iddat period (a short period after divorce). The Shah Bano case, therefore, brought the significance of gender justice and equality in India.

Women's movements in India have played a pivotal role in advocating for gender equality and social justice. Post-independence movements addressed issues like dowry, violence, and discrimination. Recent initiatives focus on rights to safety, reproductive health, and political representation. These movements have significantly contributed to policy changes and heightened awareness of women's rights in society.

Summarised Overview

The concept of human rights is considered to be of Western origin, where we have the theory of natural rights of the Greeks, the Legal theory of rights of Thomas Hobbes, John Austin and Jeremy Bentham, the Legal realist theory of Rights, and the Marxist theory of rights. However, it is also necessary to understand the Indian perspective of human rights. For us, ancient texts, inscriptions, and other sources showed different aspects of human rights through the concepts of dharma, *Anekantavada*, and legal ideologies. In the medieval period, these notions are reflected in Akbar's Din-e-Ilahi, Ibadat Khana, and through the bhakti tradition. The bhakti poets and saints propagate the idea of human rights. However, it is to be noted that the modern concept of human rights was not fully developed during both periods.

The modern development of human rights in India is said to have begun at the time of British rule. During this period, people resisted foreign rule by demanding fundamental freedoms and civil and political rights. We have opposed colonialism because of its deep-rooted traditions of exploitation, racism and oppression. These oppositions were reflected in the freedom struggle. The report of the United Nations in 2022 suggests that the legacy of colonialism persists in the world through racism, racial discrimination, and intolerance. The burden of colonialism has affected the Global South from a social and economic perspective.

Social movements in India have a significant place in invoking the idea of human rights in the minds of the people. This has emphasised the principles of freedom, dignity, social and economic equality, and freedom of women and indigenous people.

Assignments

1. What are the different theories of the origin of human rights?
2. What is the role of national movements in spreading the idea of human rights?
3. Discuss the impact of social movements in the struggle for rights.

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

Human Rights in Independent India

Learning Outcomes

After the successful completion of the unit, the learner will be able to:

- ♦ understanding the Constitutional provisions of fundamental rights, directive principles and fundamental duties
- ♦ analyse the significance of human rights in protecting and promoting the welfare of the state
- ♦ evaluate the role of the judiciary in expanding human rights

Background

The independence of India in 1947 was a momentous event that signified not just the end of colonial rule but also the beginning of a new era characterised by the aspiration to establish a democratic state founded on the principles of human rights. Indian leaders, influenced by the ideals of justice, liberty, equality, and fraternity, recognised that the newly independent nation must prioritise the protection and promotion of human rights to ensure dignity for all citizens. This commitment was strongly rooted in the historical context of colonial oppression and the global human rights discourse that emerged after World War II.

The Constituent Assembly of India, formed in 1946, played a crucial role in the drafting of the Constitution, which came into effect on January 26, 1950. Recognising the importance of human rights, the Assembly incorporated key provisions inspired by the UDHR and various international covenants into the Constitution. One of the most significant features of the Constitution is the Fundamental Rights enshrined in Part III, which guarantees essential civil liberties that are vital for the protection of individual freedom and equality. Complementing the Fundamental Rights are the Directive Principles of State Policy outlined in Part IV of the Constitution. They reflect the commitment to fostering a welfare state aimed at reducing inequalities and addressing the socio-economic disparities that persist in Indian society.

In addition to Fundamental Rights and Directive Principles, the Constitution also includes Fundamental Duties, which were added by the 42nd Amendment in 1976. The

role of the Indian Judiciary in interpreting and enforcing these constitutional provisions is critical. The judiciary has been instrumental in expanding the scope of human rights through landmark judgments.

Keywords

Indian Constitution and Human Rights, Fundamental Rights and Duties, Directive Principle of State Policy, Indian Judiciary

Discussion

2.2.1 Human Rights under the Indian Constitution

Fig 2.2.1

The Constitution of India demonstrates a strong commitment to human rights. It states the basic human rights and freedom, guaranteeing their enjoyment by all the citizens of India irrespective of their caste, colour or religion. Additionally, the Constitution has also established legal institutions in the country to enforce these fundamental rights, comprising liberty, equality and social justice. There are also constitutional safeguards to ensure effective representation of socially and economically underprivileged groups in the legislatures and public services.

♦ *The constitution ensures human rights for all citizens*

The Constitution of India guarantees human rights to every citizen. The Constituent Assembly incorporated the essence of the rights declared by the UN General Assembly to the Constitution of India through the Universal Declaration of Human Rights

(UDHR). On 10th December 1948, the U.N General Assembly in Paris proclaimed and adopted the Universal Declaration of Human Rights, which influenced the development of the Indian Constitution. The UDHR comprises human rights, which include civil, political, socio-economic, political and collective rights.

2.2.1.1 UDHR and Indian Constitution

Article 1 of UDHR says that "all are born free and equal in dignity and right". Article 2 is about the principle of non-discrimination. Article 3-21 is about civil and political rights. It includes the right to life, liberty and security enshrined in Article 3, slavery in Article 4, torture and ill-treatment in Article 5 and the prohibition against arbitrary arrest in Article 9. The right to a fair trial, proven guilty, and right to privacy are in Articles 10, 11 and 12, respectively. Freedom of movement, opinion, assembly, right to seek asylum and right to nationality in Articles 13, 19, 20, 14 and 15. The right to marry, the right to own property, the right to freedom of thought, conscience and religion and the right to participate in government are enshrined in Articles 16, 17, 18 and 21.

Socio-economic and cultural rights are enumerated in Articles 22-29. The right to social security is in Article 22, the right to work, freedom to choose employment, equal pay for equal work in Article 23, the right to rest and leisure in Article 24, the right to an adequate standard of living in Article 25, right to education in Article 26. Cultural rights are addressed in Article 27. Article 28 says that everyone is entitled to social and international freedom set by the Declaration. Article 29 imposes duties on individuals towards the community. Article 30 says that "Nothing in this Declaration grants any State, group, or person the right to engage in activities aimed at the destruction of the rights and freedoms set forth herein".

Following the adoption of UDHR, the United Nations began to draft the International Bill of Rights, which resulted in the International Covenants. The drafting of the Covenants was done in two legal documents: the International Covenant of Civil and Political Rights (ICCPR) came into force on December 16,1966 which focused on civil and political rights prevailed in Western societies and the International Covenant of Economic, Social and Cultural Rights (ICESCR) of 3rd January 1976 which aimed to focus in the social, economic and cultural rights of the third world countries.

India, as a member of the United Nations, was a signatory to the Universal Declaration of Human Rights (1948). The UDHR

outlines the fundamental rights which are universally recognised. These rights are, therefore, reflected in Part III of the Indian Constitution, which ensures the fundamental rights of all citizens. A discussion of fundamental rights and duties is provided below.

2.2.2 Fundamental Rights in India

Fundamental Rights are essential rights guaranteed by the Constitution of India, designed to protect individual liberties and uphold the dignity of all citizens. Enshrined in Part III of the Indian Constitution, these rights serve as a cornerstone for the country's democratic framework and play a pivotal role in ensuring justice, liberty, equality, and fraternity. The historical context in which these rights were established, their classification, and the judicial interpretations surrounding them underscore their significance in contemporary Indian society.

The inclusion of Fundamental Rights in the Indian Constitution was influenced by various historical, political, and social factors. The framers of the Constitution were deeply aware of the struggles against colonial rule, where individual freedoms were often curtailed. The Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, also served as a guiding principle for the rights articulated in the Indian Constitution. The desire to create a just and equitable society led the Constituent Assembly to prioritise the protection of individual rights, ensuring that citizens could live with dignity and freedom.

2.2.2.1 Classification of Fundamental Rights

The Indian constitution assures all its citizens of certain fundamental rights. The Constitution of India gives the greatest priority to these civil liberties. They are guaranteed to be above all other laws of the nation. They encompass many basic individual rights like equality before the law, freedom of speech and expression, freedom of association and peaceful assembly, freedom of religion and the right to constitutional remedies for the protection of civil rights, for instance, the Habeas Corpus. The fundamental rights were incorporated into the Indian constitution with the aim to eradicate the inequalities and discriminatory social practices of the past. They abolished the practice of untouchability and also forbade differentiation on the basis of gender, religion, race, caste, or place of birth. It also prohibited discrimination between human beings and atrocities like forced labour. They even protected the cultural and educational rights of minorities by safeguarding the right to retain their unique culture and discrete languages. The minorities were also given the freedom to set up and execute their own educational

institutions.

Fundamental Rights are categorised into six main groups, each aimed at safeguarding different aspects of individual liberty:

1. Right to Equality (Articles 14-18):

- ♦ Article 14: Equality before law and equal protection of laws.
- ♦ Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth.
- ♦ Article 16: Equality of opportunity in matters of public employment.
- ♦ Article 17: Abolition of untouchability.
- ♦ Article 18: Abolition of titles (with exceptions).

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

- ♦ Article 19: Protection of certain rights regarding freedom of speech, assembly, association, movement, residence, and profession.
- ♦ Article 20: Protection with respect to conviction for offenses.
- ♦ Article 21: Protection of life and personal liberty (expanded by the judiciary to include the right to live with dignity).
- ♦ Article 22: Protection against arrest and detention in certain cases.

3. Right Against Exploitation (Articles 23-24):

- ♦ Article 23: Prohibition of traffic in human beings and forced labor.
- ♦ Article 24: Prohibition of employment of children in hazardous occupations.

4. Right to Freedom of Religion (Articles 25-28):

- ♦ Article 25: Freedom of conscience and free profession, practice, and propagation of religion.
- ♦ Article 26: Freedom to manage religious affairs.
- ♦ Article 27: Freedom from taxation for the promotion

of any particular religion.

- Article 28: Freedom from attending religious instruction in educational institutions.

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

- Article 29: Protection of interests of minorities by allowing them to conserve their culture.
- Article 30: Right of minorities to establish and administer educational institutions.

6. Right to Constitutional Remedies (Article 32):

- Article 32: Right to move the Supreme Court for the enforcement of Fundamental Rights. This is often referred to as the "heart and soul" of the Constitution, allowing citizens to seek judicial intervention against violations of their rights.

Fundamental Rights are integral to the Indian Constitution, embodying the aspirations of a diverse and democratic society. They serve as a powerful tool for individuals to seek justice, equality, and protection against oppression. As India continues to evolve, the ongoing struggle for the realisation of these rights remains vital for ensuring a just and equitable society. The exploration of Fundamental Rights within the Indian Constitution provides essential insights into the challenges and achievements in the promotion and protection of human rights in India, emphasising the need for continued vigilance and advocacy to uphold these foundational principles.

♦ Fundamental Rights ensure judicial intervention

2.2.3 Nature and Implementation of Fundamental Rights and Duties

Throughout history, people have struggled against injustice and exploitation and fought for a better life. Fundamental rights are crucial for citizens as they protect them from injustice, exploitation, and inequality. Many of the human rights reflected in the fundamental rights are mentioned in the Universal Declaration of Human Rights. Those rights which are not included in the fundamental rights are addressed in the Directive Principles of State Policy.

The Constitution of India ensured fundamental rights for all citizens of India. The fundamental rights establish the obligations and responsibilities of the state towards the citizens. These are the rights which are justiciable as the courts enforce them. This means that if the state fails to uphold these rights, the citizens can approach the court to restore the rights. The rights are included in Part III of

♦ Fundamental rights are justiciable

the Constitution from Articles 12 to 35. These rights are applied to all people irrespective of race, religion, place of birth, sex, caste etc.

2.2.3.1 Implementation of Fundamental Rights

The enforcement of Fundamental Rights is critical to their effectiveness. The Indian judiciary plays a vital role in this process. Key aspects of implementation include:

♦ *Articles 32 and 226 ensure enforcement*

1. **Judicial Enforcement**: The Supreme Court and High Courts have the authority to enforce Fundamental Rights through judicial remedies. Article 32 allows individuals to approach the Supreme Court for en forcement, while Article 226 empowers High Courts to issue writs for the enforcement of these rights within their jurisdiction. The judiciary has interpreted Fundamental Rights expansively, often linking them to the broader principles of justice and equality.

♦ *Access to Justice*

2. **Public Interest Litigation (PIL)**: The introduction of PIL has revolutionised access to justice in India. It allows individuals or groups to file petitions on behalf of those whose rights are violated, especially the marginalised and underprivileged. PIL has facilitated judicial intervention in cases of systemic injustices, including environmental degradation, women's rights, and social inequality.

♦ *Government commitment to human rights*

3. **Landmark Judgments**: The judiciary has played a pivotal role in interpreting and expanding the scope of Fundamental Rights through landmark judgments. In **Maneka Gandhi v. Union of India (1978)**, the Supreme Court ruled that the right to life and personal liberty under Article 21 cannot be curtailed without a fair and just procedure. Similarly, in **Vishaka v. State of Rajasthan (1997)**, the Court laid down guidelines for preventing sexual harassment in the workplace, establishing a robust framework for women's rights.

♦ *Promote human rights*

Recognising the significance of human rights, the Government of India established the National Human Rights Commission in 1993 to ensure the enjoyment of rights. This framework underlines the commitment to safeguard and promote human rights through constitutional provisions and institutional apparatuses.

2.2.3.2 Implementation of Fundamental Duties

Fundamental Duties in India are enshrined in Article 51A of the Constitution, introduced by the 42nd Amendment in 1976. These duties were formulated in response to the need for citizens to recognise their responsibilities alongside the rights guaranteed in the Constitution. They serve as a reminder that citizenship entails not only rights but also obligations toward the nation and society, fostering a sense of collective responsibility and civic engagement.

♦ *Promotes collective responsibility and civic engagement*

The genesis of Fundamental Duties can be traced to the socio-political environment of the 1970s, marked by the Emergency period (1975-1977) and growing disillusionment with governance. The framers of the Constitution recognised that while rights are essential for individual freedom, the collective progress and stability of society depend on the active participation of citizens in upholding democratic values. The need to promote a sense of responsibility and civic awareness among citizens led to the incorporation of Fundamental Duties into the constitutional framework.

♦ *The emergency period influenced Fundamental Duties*

2.2.3.3 Content of Fundamental Duties

Article 51A outlines ten Fundamental Duties, which emphasise the moral responsibilities of citizens. These duties are:

♦ *Uphold loyalty to constitutional principles*

1. **To abide by the Constitution and respect its ideals and institutions**: This duty emphasises the importance of loyalty to the Constitution and the principles it embodies, such as justice, liberty, equality, and fraternity. It encourages citizens to uphold democratic values and maintain respect for constitutional authorities.

2. **To cherish and follow the noble ideals that inspired the national struggle for freedom**: Citizens are reminded of the sacrifices made during the freedom struggle, reinforcing the ideals of democracy and social justice. This duty urges individuals to honor the legacy of the independence movement and to work towards the progress of the nation.

♦ *Honor freedom struggle and its ideals*

3. **To promote harmony and the spirit of common brotherhood among all people**: This duty under scores the need for unity in diversity, encouraging citizens to foster goodwill and understanding among different communities, religions, and cultures. It aims to combat discrimination and promote inclusivity in a pluralistic society.

♦ *Promote harmony and unity in diversity*

4. **To protect and improve the natural environment**: Recognising the growing importance of environmental conservation, this duty urges citizens to take responsibility for safeguarding the environment, including forests, rivers, and wildlife. It reflects an increasing awareness of ecological issues and the need for sustainable development.

5. **To safeguard public property and avoid violence**: This duty emphasises the importance of protecting public assets and infrastructure. Citizens are encouraged to engage in peaceful protests while rejecting violence and vandalism, which undermines societal harmony.

6. **To strive towards excellence in all spheres of individual and collective activity**: This duty promotes the pursuit of excellence in education, work, and community engagement. It encourages citizens to contribute positively to society and to cultivate a spirit of innovation and improvement.

7. **To provide opportunities for education to their child or ward**: This duty reflects the importance of education as a fundamental right and encourages parents to ensure that their children have access to quality education, thus fostering a more informed and empowered citizenry.

8. **To develop a scientific temper, humanism, and the spirit of inquiry and reform**: This duty emphasises the need for critical thinking and rationality in societal practices, urging citizens to question superstitions and embrace progressive ideas.

9. **To safeguard the dignity of women**: This duty recognizes the importance of gender equality and the need to protect women's rights and dignity in society.

10. **To value and preserve the rich heritage of our composite culture**: This duty encourages citizens to respect and promote India's diverse cultural heritage, ensuring the preservation of traditions, languages, and art forms.

2.2.3.4 Implementation of Fundamental Duties

While Fundamental Duties are not legally enforceable like Fundamental Rights, they carry significant moral and ethical

weight. They serve as guiding principles for citizens, encouraging them to actively engage in promoting societal well-being. The implementation of these duties can be approached through several mechanisms:

1. **Educational Initiatives**: The promotion of Fundamental Duties begins with education. Incorporating the concept of civic responsibility into school curriculums can help instill a sense of duty in future generations. Awareness programs and workshops can further educate citizens about their rights and responsibilities.

♦ *Educational instills civic responsibility*

2. **Role of Civil Society and NGOs**: Civil society organisations and non-governmental organisations (NGOs) play a crucial role in promoting awareness of Fundamental Duties. They can organise campaigns and community programs aimed at fostering civic responsibility, environmental stewardship, and social harmony.

♦ *NGOs foster awarwness and harmony*

3. **Judicial Interpretation**: Although Fundamental Duties are not enforceable in the same manner as Fundamental Rights, the judiciary can interpret and apply them in cases involving public interest. Courts can invoke Fundamental Duties to emphasise the need for citizens to uphold their responsibilities, particularly in matters of public interest litigation (PIL).

♦ *Judiciary invokes duties in public cases*

4. **Government Initiatives**: The government can encourage the observance of Fundamental Duties through various policies and programs. For instance, initiatives aimed at environmental protection can invoke the duty to improve the natural environment, promoting active participation among citizens.

♦ *Government policies encourage active participation*

5. **Civic Engagement**: Citizens can fulfill their Fundamental Duties through active participation in the democratic process, community service, and efforts to promote social justice. Engaging in local governance, volunteering, and advocating for public welfare can significantly contribute to the realisation of these duties.

♦ *Active participation strengthens democracy*

The Fundamental Duties enshrined in the Indian Constitution play a crucial role in promoting a culture of responsibility and civic engagement among citizens. While they may not be enforceable by law, their moral and ethical significance cannot be overstated. By fostering a sense of duty, the Constitution encourages citizens to

♦ *Educational, civil society, judicial, and government roles support implementation*

actively participate in the democratic process, contributing to the collective well-being of society.

2.2.4 Directive Principles of State Policy and Human Rights

The Constitution lays down certain Directive Principles of the State Policy, where the provisions contained in it shall not be enforced by any court, which means that these are non-justiciable rights and are 'fundamental in the governance of the country'. It is the duty of the state to apply these principles to make law. While fundamental rights are meant for the citizens to claim, however, Directive Principles do not automatically confer rights upon individuals.

♦ *State must apply these principles in law*

The Directive Principles are incorporated in Part IV of the Indian Constitution, which comprises the Articles from 36-51. The Directive Principles are borrowed from the Constitution of Ireland. The Directive Principles ensure welfare rights like adequate means of livelihood, equal pay for equal work, health, fair wages, humane working conditions, right to work, education, justice, legal aid and proper nutrition.

♦ *Article from 36-51*

The major articles that are assured in the Directive Principles are:

i. Article 38: reducing and eliminating poverty

ii. Article 39 (a): equal means of livelihood for all citizens

iii. Article 39 (b): manage community resources.

iv. Article 39 (c): prevent concentration of wealth

v. Article 39 (d): guarantee equal pay for equal work

vi. Article 39 (e): prevention of abuse in labour, including child labour.

vii. Article 39 (f): child development

viii. Article 39 A: provide legal aid.

ix. Article 40: organise village democracies

x. Article 41: right to work, education and Public Assistance

xi. Article 42: provide good working conditions.

xii. Article 43: ensure living wage and standard of life.

xiii. Article 43 A: securing worker participation in the in-

dustries

xiv. Article 44: implementing uniform civil code in the country.

xv. Article 45: provide education and childhood care to children until six years.

xvi. Article 46: promote the educational and economic interest of the weaker section.

xvii. Article 47: work to raise the standard of living, improving nutrition, public health and prohibition of intoxicating drinks and drugs.

xviii. Article 48: Animal husbandry and agriculture.

xix. Article 48 A: conserve the environment, forest and wildlife

xx. Article 49: Protection of monuments.

xxi. Article 50: Separation of the judiciary from the executive

xxii. Article 51: promote international peace and security.

The Constitution of India functioned as the protector of basic rights through Fundamental Rights and Directive Principles of State Policy. Almost all rights provided in the Universal Declaration of Human Rights are covered in these two parts of the Constitution.

2.2.4 Judiciary and Human Rights in India

Even in the most advanced democracies, human rights continue to be violated because the law enforcement machinery does not carry out their role responsibly in protecting human rights. This is true for India also. In India, despite the fact that we have a very responsible judiciary, army, and police force, the National Human Rights Commission of India (NHRC) was hitherto established on 12 October 1993. Its statute is contained in the Protection of Human Rights Act (PHRA), 1993 as amended by the Protection of Human Rights (Amendment) Act, 2006. The NHRC is an embodiment of India's concern for the promotion and protection of human rights. Some of the human rights violations classified by the NHRC are deaths in police and judicial custody, encounter deaths, illegal arrest, custodial violence, atrocities on scheduled castes and scheduled tribes, indignity to women, sexual harassment and exploitation of women, abduction, rape, murder, dowry demand, child labour, child marriage and communal violence.

The judiciary has become the key defender of human rights in India. In the case of Ajay Hasia v. Khalid Mujib, the Supreme Court of India stated that "…it has a special duty to expand the scope and meaning of fundamental rights and to advance human rights jurisprudence…". Both the Supreme Court and the High Court, therefore, have broad powers to enforce fundamental rights. The contribution of the judiciary can be understood in two forms: human rights under Article 21 and through Public Interest Litigation. Along with these, the five writs also became the mechanism through which the judiciary exercises its authority in order to ensure human rights.

2.2.4.1 Article 21 and broadened interpretation by the Judiciary

Article 21 of the Indian Constitution states that "…*No person shall be deprived of his life or personal liberty except according to the procedures established by law*…". The Supreme Court asserted that the procedures under Article 21 must be just, fair and not arbitrary or oppressive. This allowed the right to legal aid and speedy trial for the poor. The judiciary has also broadened the scope of the 'right to life and personal liberty' in the article. It now includes all vital conditions for living a life with dignity. This allows the judiciary to discuss issues within criminal justice and law enforcement.

2.2.4.2 Public Interest Litigation and Judicial Activism

Justice P. N Bhagawati described the objectives of Public Interest Litigation (PIL) as "countering state repression, *governmental lawlessness*, administrative deviance and exploitation of disadvantaged groups, as well as the denial of their rights and entitlements". Therefore, PIL in India serves to address the issues of parliamentary apathy and governmental neglect. A distinctive feature of the PIL is the relaxed rules on *locus standi* (the right to move to the court), allowing everyone to report a violation of fundamental rights to the courts of India.

Justice Krishna Iyer explained that PIL aids those affected by governmental lawlessness, administrative negligence, public health issues, environmental pollution, consumer protection and social exploitation. The development of PIL is crucial for democracy as it promotes social justice through professional advocacy. The Supreme Court's intervention through PIL has expanded the scope of human rights protection in India, which ensured justice and

dignity for marginalised individuals.

2.2.4.3 Writs in the Indian Constitution

♦ *Writs as powers of the judiciary*

The Supreme Court and High Court of India can issue writs if there is any violation of fundamental rights. Writs are written orders that are given by the Supreme Court or the High Court. These orders contain constitutional remedies for the citizens against the violation of their fundamental rights. Article 32 of the Constitution allows the Supreme Court of India to issue writs, while Article 226 of the Constitution allows the High Court to issue writs.

♦ *Types of writs*

There are mainly five types of writs. Habeas Corpus, Mandamus, Prohibition, Qua-Warranto and Certiorari. The writ of Habeas Corpus is used when unlawful detention occurs. When this writ is issued, a person who is detained has to be produced before the court. Mandamus literary means "we command." This is issued when the court finds that the particular officer is not doing his legal duty and thereby invading the rights of an individual. Prohibition is issued by a higher court when a lower court considers a case going beyond its jurisdiction. Qua-Warranto is issued when a court finds that a person is holding the office but is not entitled to hold the office; this writ is issued. The Qua-Warranto writ, therefore, restricts that officer from acting as an illegal office holder. Under Certiorari, the court orders the lower court or another authority to transfer the pending matter before it to the higher authority or the court. Therefore, by protecting fundamental rights through writ and judicial activism, the judicial institution ensures that the rights of marginalised citizens are considered and protected. It works to provide equal access to all citizens without any discrimination.

Summarised Overview

The concept of human rights in independent India reflects the idea of fundamental rights and duties, directive principles of state policy, and the role of the judiciary. These became the pillars of the constitution that have been integral to the development of the nation and its people. The Constitution of India demonstrates a strong commitment to human rights. It states the basic human rights and freedom, guaranteeing their enjoyment by all the citizens of India irrespective of their caste, colour or religion. The Constitution has also established legal institutions in the country to enforce these fundamental rights, comprising liberty, equality and social justice.

The principles of human rights are enshrined in the Universal Declaration of Human Rights (1948), the International Covenant of Civil and Political Rights (ICCPR), International Covenant of Economic, Social and Cultural Rights (ICESCR). The

Constituent Assembly of India adopted these principles while framing our Constitution. These rights are, therefore, reflected in Part III of the Indian Constitution, which ensures the fundamental rights of all citizens.

Fundamental rights are crucial for citizens as they protect them from injustice, exploitation, and inequality. Many of the human rights reflected in the fundamental rights are mentioned in the Universal Declaration of Human Rights. Those rights which are not included in the fundamental rights are addressed in the Directive Principles of State Policy. Fundamental rights are justiciable rights enforced by the courts. The rights are included in Part III of the Constitution from Articles 12 to 35. In contrast, the Directive Principles are non-justifiable. These are incorporated in Part IV of the Indian Constitution, which comprises the Articles from 36-51. Part IV (A) of the Constitution summarises the eleven fundamental duties of citizens under Article 51 A. These are the moral obligations of citizens to promote and uphold unity and patriotism in India. The Constitution of India, therefore, functioned as the protector of basic rights through Fundamental Rights and Directive Principles of State Policy.

The judiciary has become the key defender of human rights in India. The contribution of the judiciary can be understood through Article 21, Public Interest Litigation and Writs. Through these, the judiciary has allowed all citizens to access legal aid and speedy trials without any discrimination.

Assignments

1. Discuss the significance of Fundamental Rights as enshrined in the Indian Constitution. How do these rights contribute to the protection and promotion of human rights in India?

2. Examine the role of the Indian judiciary in interpreting the Directive Principles of State Policy concerning human rights. Discuss landmark Supreme Court cases where the Court has invoked the DPSP to promote human rights

3. Discuss the nature and significance of Fundamental Rights and Duties as enshrined in the Indian Constitution. In your response, critically analyse how these rights and duties interact to promote social justice and civic responsibility.

Suggested Reading

1. Holladay Zachary, "Public Interest Litigation in India as a Paradigm for Developing Nations", *Indiana Journal of Global Legal Studies*, Vol 19, Issue 2, 2012.

2. Ray Arun," *National Human Rights Commission: Formation, Functioning and Future Prospects*", Volume 1 and 2, Khama Publishers, Delhi, 1997.

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2. Human Rights Law in India: AN Overview. https://www.ihra.co.in/uploads/pdf/Human_rights_law_in_India.pdf

3. Universal Declaration of Human Rights in United Nations Human Rights https://www.un.org/en/about-us/universal-declaration-of-human-rights

4. International Covenant of Economic, Social and Cultural Rights in United Nations Human Rights, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

5. International Covenant of Civil and Political Rights, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

6. Directive Principles of State Policy https://www.mea.gov.in/Images/pdf1/Part4.pdf

Space for Learner Engagement for Objective Questions

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UNIT 3

Statutory Protection for Human Rights in India

Learning Outcomes

After the successful completion of the unit, the learner will be able to:

♦ understand the statutory bodies that protect human rights in India
♦ understand the role of the National Human Rights Commission and State Human Rights Commission
♦ learn about the Protection of Human Rights Act 1993
♦ understand the provisions and role of the Right to Information Act, 2005

Background

The exploration of human rights in India necessitates a thorough examination of the legislative and institutional frameworks that underpin the protection and promotion of these rights. Central to this discourse is the tumultuous period between 1975 and 1977, commonly referred to as the Emergency, during which Prime Minister Indira Gandhi imposed significant restrictions on civil liberties. This period marked a critical juncture in the history of human rights in India, as it not only intensified the struggle for the restoration of democratic rights but also revealed the weaknesses and vulnerabilities within the country's bureaucratic, judicial, and political systems.

During the Emergency, the government undertook measures that severely curtailed fundamental rights, leading to widespread public discontent and protests. The suspension of civil liberties and the clampdown on political dissent heightened awareness of the need for robust mechanisms to safeguard human rights. Citizens, activists, and various organisations mobilised to demand the restoration of democratic principles and regional autonomy. This period highlighted the necessity for systemic reforms to address the pressing issues related to governance and human rights.

In response to the growing awareness and activism surrounding human rights, India witnessed the introduction of several significant legislative and institutional measures aimed at protecting these rights. Among the most notable developments was the Protection of Human Rights Act of 1993, which laid the groundwork for a comprehensive human

rights framework in the country. This landmark legislation established the National Human Rights Commission (NHRC), a pivotal body tasked with the promotion and protection of human rights in India. In addition to the NHRC, the Act also facilitated the creation of State Human Rights Commissions (SHRCs) in various states, ensuring that human rights protection is not confined to the national level but is also addressed at regional and local levels. Moreover, the rise of non-governmental organisations (NGOs) in India has been instrumental in advancing human rights causes.

The present unit will delve into the major statutory organisations established to protect against human rights violations in India. It will explore the functions and effectiveness of the NHRC and SHRCs, analysing their roles in addressing grievances, conducting inquiries, and influencing policy changes. Additionally, the unit will examine the interplay between governmental institutions and civil society organisations in promoting human rights awareness and fostering a culture of accountability.

Keywords

National Human Rights Commission, State Human Rights Commission, Protection of Human Rights Act 1993, Right to Information Act 2005.

Discussion

2.3.1 National Human Rights Commission (NHRC)

♦ *Amended by Protection of Human Rights (Amendment) Act 2006*

The National Human Rights Commission (NHRC) was established on 12th October 1993. The NHRC was established under the Protection of Human Rights Act (PHRA) 1993. The Act was later amended by the Protection of Human Rights (Amendment) Act 2006. The establishment of the Commission is aligned with the Paris Principles, which are based on the principles of pluralism, independence and effectiveness adopted in Paris in October 1991. These principles were adopted by the United Nations General Assembly on December 20, 1993.

2.3.1.1 Composition of NHRC

Section 3 of the PHRA l states that the Commission shall consist of a Chairperson, Members, Secretary General, Heads, Sub-Heads and other staff.

Chairperson and Members:

a. Chairperson who had been the Chief Justice of the Supreme Court

b. One member who has been a Judge of the Supreme Court

c. One member who has been Chief Justice of the High Court

d. Two members are to be appointed from a person who has knowledge of human rights.

The Chairperson and the members of NHRC were appointed by the President of India based on the recommendations of the committee comprising the Prime Minister as Chairperson, the Speaker of Lok Sabha, the Home Minister, Leaders of opposition in both Lok Sabha and Rajya Sabha and the Deputy Chairman of the Rajya Sabha. The term of the office of the Chairperson of the NHRC is five years or until the age of 70.

2.3.1.2 Functions of the Commission

- To inquire, on its own initiative or a petition by the victim, into the complaints of violation of human rights or negligence of rights.
- Intervene in any court proceedings involving issues of human rights violation, with the approval of the court.
- Visiting any jail or institutions under state government where individuals are detained after informing the state.

- Recommending measures for the effective implementation of the laws.
- Studying treatise on human rights and providing recommendations for its implementation,
- Undertaking and promoting research in the field of human rights.
- Promoting human rights literacy.
- Supporting NGOs working in the field of human rights.

2.3.2 State Human Rights Commission

The Protection of Human Rights Act of 1993 establishes the State Human Rights Commission along with the National Human Rights Commission. The establishment of a state-level human commission would offer faster redressal of complaints. By 31 March 2001, the State Human Rights Commission was established in the states of West Bengal, Kerala, Himachal Pradesh, Maharashtra, Manipur, Rajasthan, Madhya Pradesh, Tamil Nadu, Assam, Jammu and

Kashmir, and Punjab.

2.3.2.1 Constitution of State Human Rights Commission

♦ A Chairperson who served as Chief Justice of the High Court

♦ One Member who has been a judge of a high court or district judge in the state and has a minimum of seven years of experience as a district judge.

♦ One Member is appointed from the individual knowing matters of human rights.

♦ The State Commission shall have a Secretary who serves as the Chief Executive Officer and exercises powers and functions delegated by the State Commission.

♦ The State Commission is authorised to investigate human rights violations only in subjects listed in List II and List II in the Seventh Schedule to the Constitution. The Chairperson and the Members were appointed by the Governor of the State. The objectives and duties of the SHRC are the same as those of the NHRC.

♦ *Kerala State Human Rights Commission*

The Kerala State Human Rights Commission was constituted on 11th December 1998 as per the Protection of Human Rights Act 1993. The Governor of Kerala appointed the first Commission, which consisted of Justice M.M. Pareed Pillai as Chairperson and Dr S Balaraman and T.K Wilson as Members of the First Commission.

2.3.3 Protection of Human Rights Act, 1993 (PHRA)

The Protection of Human Rights Act 1993 (PHRA) aims to establish a National Human Rights Commission, State Human Rights Commission and Human Rights Court in various states to improve the protection and address the issues of human rights violations. The Act came into force on September 28,1993. The PHRA aims to provide a constitution for the National Human Rights Commission (NHRC), State Human Rights Commission (SHRC), and Human Rights Courts for the protection of human rights.

♦ *The Protection of Human Rights Act came into force in 1993*

2.3.3.1 Features of the Protection of Human Rights Act, 1993

♦ Protect human beings from violation of their rights.

The rights include the right to liberty, equality, and dignity, which were guaranteed by the Constitution.

♦ To ensure the protection of these rights from the abuses committed by the state bodies.

♦ The Act ensures the enactment of institutions that aim to ensure the welfare of individuals.

♦ Establishment of the National Human Rights Commission, State Human Rights Commission (SHRC) and Human Rights Courts.

♦ Provided a definition of Human Rights, "*the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenant and enforceable by courts in India*".

♦ Provided the Constitution, functions, power and procedures of NHRC, SHRC and Human Rights Courts.

2.3.4 Right to Information Act (RTI) 2005

The Right to Information (RTI) Act of 2005 aims to empower the citizens of India by providing access to information under the control of public authorities. The Act aims to provide transparency and accountability in the functioning of public institutions, both at the central and state levels. The Act established two commissions: the Central Information Commission and the State Information Commission.

2.3.4.1 Objectives of the RTI Act

♦ Empower citizens to seek information about public authorities.

♦ Promotes transparency and accountability of the public institutions.

♦ Helps to reduce corruption in the government.

♦ Develop an informed citizen

♦ Allow citizens to access information from public authorities.

2.3.4.2 Right To Information and Obligations of Public Authorities

The RTI Act defines the right to information as "the right to access information that is available under the Act and held or under the control of the public authority" [Sec 2 (j)]. According to section 3 of the Act, every citizen has the right to information. The Act

specifies that the right is valid against the public authorities. The public authorities are required to periodically publish information about their organisation, employees, rules and regulations, budget allocation, and expenditures.

The RTI Act establishes an executive wing to execute the right to information. There is a Public Information Officer (PIO) in every public institution who provides information to individuals upon their request. PIOs are held responsible for receiving and handling applications for information in accordance with the time frame.

Not all information about public institutions comes under the purview of the Act. Section 8 of the Act specifies that certain types of information are exempt from disclosure. These include information that could compromise the integrity of the country, security, and strategic and economic interests of the state. Information that could breach the privilege of parliament or state legislature, trade secrets, and foreign confidential information were some of the other categories.

2.3.4.3 Procedures for requesting information

The person who seeks information under the Act must submit a request in writing or through electronic media along with the prescribed fee. The request has to be submitted to the Central Public Information Officer or State Public Information Officer of the concerned public authority. The request must specify the particulars of the information sought. In the Act, an applicant is not required to provide any justification for requesting the information.

They also do not need to provide any personal details other than those required to contact them. The Central or State Public Information Officer, upon receiving the request, must respond as soon as possible, within thirty days. They must either provide the information or reject the request for the reason outlined in sections 8 and 9 of the Act, stating the issue of exemption. If the information concerns the life and liberty of the person, the maximum time is 48 hours.

2.3.4.4 Central and State Information Commission

Under sections 12 and 15, the Act provide the establishment of the Central and State Information Commission. The Central Information Commission is led by a Chief Information Commissioner and supported by Central Information Commissioners. The President of India appointed these officers. Similarly, the State Information Commission is headed by the State Chief Information

Commissioner and supported by State Information Commissioners, who were appointed by the Governor.

Section 18 of the Act provides information regarding the powers of the Commission:

The commission can receive and investigate complaints from individuals who;

a. Has been unable to submit requests for information because no PIO (Public Information Officer) had been appointed by the public authority.

b. Has been denied access to information.

♦ *Commission investigates complaints related to information access*

c. Has not received any response to their request within the stipulated time.

d. Finds the fee charged is unreasonable.

e. The Commission can investigate if the public authority provides false or misleading information.

f. During the inquiry of the complaint, the Commission had the right to examine the records that were under the control of the public authority. The public authority cannot withhold any documents on any grounds.

Summarised Overview

Human rights in India are protected through statutory bodies like the National Human Rights Commission and the State Human Rights Commission. Along with these, legislative frameworks like the Protection of Human Rights Act 1993 and the Right to Information Act 2005 also made an effort to restore human rights.

The National Human Rights Commission (NHRC) was established on 12th October 1993 under the Protection of Human Rights Act (PHRA) 1993. Section 3 of the PHRA states that the Commission shall consist of a Chairperson, Members, Secretary General, Heads, Sub-Heads and other staff. NHRC inquires, on its own initiative or a petition by the victim, about complaints of violation of human rights or negligence of rights. The Protection of Human Rights Act of 1993 establishes the State Human Rights Commission along with the National Human Rights Commission. The establishment of a state-level human commission would offer faster redressal of complaints.

The Protection of Human Rights Act 1993 (PHRA) aims to establish a National Human Rights Commission, State Human Rights Commission and Human Rights Court in various states to improve the protection and address the issues of human rights violations. The Act came into force on 28th September 1993.

The Right to Information (RTI) Act of 2005 aims to empower the citizens of India by providing access to information under the control of public authorities. The Act aims to provide transparency and accountability in the functioning of public institutions, both at the central and state levels.

Assignments

1. Analyse how did the Paris Principle influence the establishment of NHRC?
2. Analyse the impact of RTI and PHRA on the development of Human Rights in India.
3. Review recent developments to the RIT Act in India.

Suggested Reading

1. "The Protection of Human Rights Act", published by National Human Rights Commission, 1993, New Delhi
2. Arun Ray, *National Human Rights Commission: Formation, Functioning and Future Prospects,* Volume 1 and 2, Khama Publishers, Delhi, 1997 and 2004.

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1. Right to Information Act, https://rti.gov.in/RTI%20Act,%202005%20(Amended)-English%20Version.pdf,2005
2. Human Rights Law in India: AN Overview. https://www.ihra.co.in/uploads/pdf/Human_rights_law_in_India.pdf

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Human Rights and Vulnerable Groups

BLOCK-03

Women and Children

Learning Outcomes

After the successful completion of the unit, the learner will be able to :
♦ make the student understand the issues related to women and children
♦ understand the role of government bodies in developing and implementing policies related to women and children
♦ understand the growth and development of children's rights policies in India

Background

India has always faced deep-rooted societal issues that have adversely affected the rights of women and children. Historically, women in India faced discrimination, inequality, and limited opportunities. Child marriage, dowry, and gender-based violence were prevalent practices that curtailed the potential of women and girls. While significant strides have been made in recent decades, challenges persist, particularly in rural areas in various parts of the and among marginalised communities. Ensuring the protection and promotion of women's and children's rights remains a critical endeavour for India's social and economic development.

Keywords

Women's Rights, Minority, Children's Rights, NCPCR, NCW, Indian Constitution, Vishakha guidelines, Child Labour, RTE, Juvenile Justice

3.1.1 Rights of Women - Concept and History

The notion of women's rights in India has experienced notable development. It can be observed that this is linked to the socio-political and cultural shifts. A complex interplay between religious ideas, societal conventions and reformist ideas has moulded women's status in India. Post-independence, our Constitution included fundamental rights and directive principles aimed at achieving equality. This also includes several provisions to ensure gender equality. However, it can also be observed that there has been inconsistent progress towards the practical realisation of these rights.

The idea of women's rights can be traced back to the 18th and 19th centuries, when movements for equality, suffrage, and social reforms began to emerge in different parts of the world. The global recognition of women's rights as a fundamental aspect of human rights was a gradual process influenced by political, social and philosophical developments.

3.1.1.1 Global Milestones in Women's Rights

1. The Enlightenment and Early Feminism (18th Century)

♦ During the Enlightenment in Europe, thinkers like Mary Wollstonecraft (author of *A Vindication of the Rights of Woman* in 1792) began to challenge the status quo and argue for women's rights, particularly in education and participation in public life.

♦ Wollstonecraft's work is considered one of the earliest expressions of feminist philosophy, advocating that women are not naturally inferior to men but have been denied opportunities for intellectual and moral development.

2. First-Wave Feminism (19th to Early 20th Century)

♦ The first wave of feminism focused primarily on women's suffrage (the right to vote), legal rights, and property rights.

♦ The Seneca Falls Convention in 1848 in the United States is often seen as a turning point in the women's rights movement. The convention produced the Declaration of Sentiments, which called for equal rights

Margin notes:

♦ *Women's rights have evolved due to socio-political shifts*

♦ *Global women's rights recognition grew in the 18th-19th centuries*

♦ *Wollstonecraft advocated for women's right in education*

♦ *Feminist Philisophy emerged challenging women's inferiority*

for women in education, employment, and voting.

- Countries like New Zealand became the first to grant women the right to vote in 1893, followed by other nations in the early 20th century, including the UK (1918) and the US (1920).

3. Post-War Human Rights and Second-Wave Feminism (Mid-20th Century)

- After World War II, there was a global shift toward recognising human rights, and women's rights were increasingly recognised as an integral part of this movement.

- The Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, declared that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as... sex." This was a critical step in the formal recognition of women's rights as human rights.

- The second wave of feminism in the 1960s and 1970s expanded the focus from suffrage to issues like reproductive rights, workplace equality, sexual violence, and legal inequalities in marriage and family life.

3.1.1.2 The Role of the United Nations in Advancing Women's Rights

The United Nations has played a pivotal role in promoting and institutionalising women's rights at the global level. Its efforts began in earnest after the adoption of the UDHR, and several key initiatives have since been launched to ensure women's equality and empowerment.

Contributions of UN

1. **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),** 1979

- CEDAW is often referred to as the "international bill of rights for women." It is a landmark treaty that defines discrimination against women and provides a comprehensive framework for governments to eliminate gender inequality.

- Countries that ratify CEDAW are required to take concrete measures to improve women's rights in areas like education, healthcare, employment, and legal protections.

2. International Women's Year and the World Conferences on Women

♦ 1975 was declared International Women's Year by the UN, which also marked the start of the United Nations Decade for Women (1976-1985). This led to the convening of several important world conferences on women's rights:

- ♦ The First World Conference on Women in Mexico City (1975).

- ♦ Subsequent conferences were held in Copenhagen (1980), Nairobi (1985), and the landmark Beijing Conference (1995), where the Beijing Declaration and Platform for Action were adopted. This document remains one of the most comprehensive global policy frameworks for advancing gender equality and women's empowerment.

3. Sustainable Development Goals (SDGs), 2015

♦ Gender equality is one of the core goals in the 2030 Agenda for Sustainable Development. Goal 5 is dedicated to achieving gender equality and empowering all women and girls, addressing issues like violence, discrimination, and access to education and healthcare.

4. UN Women (Established in 2010)

♦ The establishment of UN Women in 2010 was a major step forward in consolidating various UN efforts to advance women's rights. The organisation leads global advocacy for gender equality, focusing on areas like women's economic empowerment, leadership, and ending violence against women.

3.1.1.2 Origins of Women's Rights in India

During British rule in India (1757-1947), colonial policies both influenced and catalysed social reform. Western-educated Indian leaders began to question traditional customs that marginalised women, including child marriage, widow burning (*Sati*), and female infanticide. Pioneering reformers like Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar championed the rights of widows and young girls, leading to the passage of laws such as the Abolition of Sati Act (1829) and the Hindu Widow Remarriage Act (1856). These reform movements marked the beginning of institutional recognition of women's rights in India, drawing attention to the necessity of legal measures to protect women.

The 19th and early 20th centuries saw the growth of women's organisations, often led by educated women from privileged backgrounds who advocated for education, the right to own property, and social autonomy for women. Leaders like Sarojini Naidu and Kamini Roy worked tirelessly to bring women's issues into the national consciousness, participating in political discourse and fostering a sense of identity among Indian women.

The Trajectory

1. Social Reform Movements in the 19th Century

- Early reformers like Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar played a significant role in addressing women's issues, particularly in the areas of widow remarriage, education and the abolition of sati (the practice of burning widows on their husbands' funeral pyres).

- The passage of the Sati Abolition Act in 1829 and the Widow Remarriage Act of 1856 were some of the first legal steps towards women's rights in India.

2. Women in the Indian Independence Movement

- The Indian freedom struggle provided a platform for women to participate actively in the public sphere. Leaders like Sarojini Naidu, Kamala Nehru and Aruna Asaf Ali played important roles in India's fight for independence, while Mahatma Gandhi encouraged women's participation in social reform movements.

- The involvement of women in the independence movement also spurred the demand for political rights and equality, leading to the inclusion of gender equality in the Indian Constitution.

3. Post-Independence Legal Reforms

- The Constitution of India (1950) guarantees equality before the law and equal protection of the law (Article 14), prohibits discrimination on the basis of sex (Article 15), and provides for affirmative action in favour of women (Article 15(3)).

- Key legal reforms post-independence includes the Hindu Marriage Act 1955, the Hindu Succession Act 1956, and the Equal Remuneration Act 1976.

4. The Women's Movement in the 1970s and 1980s

- The women's movement in India gained momentum in

the 1970s, focusing on issues like dowry deaths, violence against women and workplace discrimination. The Mathura rape case in 1972 and subsequent protests led to major reforms in India's rape laws in 1983.

♦ Feminist organisations like SEWA (Self-Employed Women's Association) emerged during this period, advocating for the rights of women in informal sectors of the economy.

5. Contemporary Legal Reforms

♦ In recent years, there have been significant legal reforms aimed at improving women's rights in India. The Protection of Women from Domestic Violence Act, 2005, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, and the Criminal Law (Amendment) Act, 2013, following the Nirbhaya case are some of the major milestones.

♦ India has also taken steps to improve the representation of women in politics through the 73rd and 74th Constitutional Amendments (1992-93), which reserve seats for women in local self-government bodies (panchayats and municipalities).

♦ Reforms enhances women's legal protections

3.1.2 Indian Constitution and Status of Women

The Indian Constitution, adopted on January 26, 1950, serves as the foundational legal document of the country. It embodies the ideals of justice, liberty, equality and fraternity, with specific provisions aimed at promoting and protecting the rights of women. This section explores the historical development of women's rights in India, the constitutional provisions that support them, and the broader implications of these provisions on gender equality.

♦ It aims to protect women's rights

After gaining independence in 1947, India enshrined gender equality in its Constitution, reflecting its commitment to dismantling discriminatory practices. The Constitution of India (1950) guarantees fundamental rights to all citizens and prohibits discrimination on the basis of gender. Articles 14 (Equality before the law), 15 (Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth), and 16 (Equality of opportunity in matters of public employment) formed the backbone of legal equality for women. Article 39, within the Directive Principles of State Policy, further advocates equal pay for equal work for men and women and seeks to ensure safe and humane conditions for working women.

♦ India's Constitution guarantees gender equality

In the 1950s, the Hindu Code Bills, including the Hindu Marriage Act (1955), the Hindu Succession Act (1956), and the Hindu Adoption and Maintenance Act (1956), provided significant rights to Hindu women regarding marriage, inheritance and property ownership. However, personal laws for Muslims, Christians, and other communities did not immediately undergo similar reforms, contributing to inequalities among women of different religious backgrounds.

3.1.2.1 Provisions for Women in the Indian Constitution

The Indian Constitution contains several provisions that specifically address the rights and welfare of women:

Fundamental Rights (Part III)

- Article 14: Guarantees equality before the law and equal protection of the laws. This provision ensures that women have the same legal rights as men.

- Article 15: Prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. It empowers the state to make special provisions for women and children.

- Article 16: Ensures equality of opportunity in matters of public employment, thus promoting women's participation in the workforce.

Directive Principles of State Policy (Part IV)

- Article 39(a): Directs the state to provide adequate means of livelihood for all citizens, with a focus on women.

- Article 39(e): Promotes equal pay for equal work, addressing wage disparities between men and women.

- Article 42: Mandates the state to make provisions for securing just and humane conditions of work and for maternity relief, directly benefiting women in the workforce.

Fundamental Duties (Part IV-A)

- Article 51A(e): Encourages citizens to promote harmony and the spirit of common brotherhood, emphasising respect for women's rights.

Legislative Developments : Post-Constitution

Following the adoption of the Constitution, several key legislations have been enacted to bolster women's rights:

1. The Hindu Succession Act (1956):

♦ Ensured equal inheritance rights for women in Hindu families, marking a significant step towards gender equality in property rights.

2. The Dowry Prohibition Act (1961):

♦ Aimed at prohibiting the practice of dowry, which has historically led to discrimination and violence against women.

3. The Maternity Benefit Act (1961):

♦ Provided maternity leave and benefits for women in the workforce, recognising their dual roles as workers and caregivers.

4. The Protection of Women from Domestic Violence Act (2005):

♦ Offered legal protection to women against domestic violence, emphasising the need for a safe and supportive environment.

5. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013):

♦ Established mechanisms to prevent and address sexual harassment in workplaces, promoting safer work environments for women.

Despite the constitutional and legislative framework, women in India continue to face significant challenges:

♦ Socio-Cultural Barriers: Deep-rooted patriarchal norms and cultural practices often hinder the implementation of laws aimed at promoting gender equality.

♦ Economic Inequality: Women still experience disparities in employment opportunities, wages, and access to resources.

♦ Violence Against Women: Gender-based violence remains a pervasive issue, calling for stricter enforcement of laws and greater awareness.

The Indian Constitution lays a robust framework for the protection and promotion of women's rights. While significant

strides have been made since its adoption, ongoing challenges necessitate continuous efforts toward achieving true gender equality. The vision of a just and equitable society, as envisaged by the Constitution, can only be realised through collective action, sustained advocacy and a commitment to uphold the rights of all citizens, especially women.

3.1.3 Vishakha Guidelines

The Vishakha Guidelines, formulated in 1997 by the Supreme Court of India, represent a significant milestone in the legal framework addressing sexual harassment in the workplace. These guidelines were established in response to a landmark case involving the gang rape of a social worker, Bhanwari Devi, who was seeking justice for the harassment she faced while trying to prevent child marriages. The guidelines not only highlighted the pervasive issue of sexual harassment but also provided a structured approach to its prevention and redressal.

Historical Context

The genesis of the Vishakha Guidelines can be traced back to the social and legal climate of the 1990s in India, characterised by rising awareness about women's rights and gender-based violence. Despite the existence of laws addressing sexual violence, there was a significant gap in the legal framework concerning harassment in workplaces. The case of Bhanwari Devi brought to the forefront the inadequacies of protecting women against sexual harassment and the need for explicit legal provisions.

3.1.3.1 Key Provisions

The Vishakha Guidelines established a comprehensive framework to address sexual harassment in the workplace, encompassing several critical elements:

1. Definition of Sexual Harassment:

♦ The guidelines provided a broad definition of sexual harassment, including any unwelcome behaviour of a sexual nature that creates an intimidating, hostile, or humiliating environment for women in the workplace.

2. Responsibilities of Employers:

♦ Employers were mandated to take proactive steps to prevent sexual harassment. This included creating awareness about the issue, implementing measures for a safe workplace and establishing internal complaints mechanisms.

3. Internal Complaints Committee (ICC):

♦ The guidelines called for the establishment of an Internal Complaints Committee to handle complaints of sexual harassment. This committee should consist of a majority of women and be empowered to conduct inquiries into complaints.

4. Confidentiality and Protection:

♦ The guidelines emphasised the need for confidentiality in the handling of complaints, as well as protection for the complainant against any retaliation or victimisation.

5. Punitive Measures:

♦ The guidelines prescribed penalties for those found guilty of sexual harassment, thereby creating a deterrent against such behaviour.

3.1.3.2 Impact of the Vishakha Guidelines

The introduction of the Vishakha Guidelines had a profound impact on workplace dynamics in India:

♦ **Awareness and Training**: Organisations began to recognise the importance of creating a safe and respectful work environment. Awareness programs and training sessions were instituted to educate employees about sexual harassment and their rights.

♦ **Policy Formulation**: Many institutions developed and implemented sexual harassment policies in compliance with the guidelines, fostering a culture of accountability.

♦ **Judicial Precedent**: The guidelines set a precedent for subsequent legal interpretations and judgments related to sexual harassment cases in India, reinforcing the judiciary's commitment to upholding women's rights.

Legislative Developments

The Vishakha Guidelines laid the groundwork for legislative action, leading to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This Act formalised the provisions of the Vishakha Guidelines into law and provided a more comprehensive framework for addressing sexual harassment in various workplaces, including public and private sectors.

Key Features of the 2013 Act

- Broader Definition: The Act expanded the definition of sexual harassment to include various forms of unwelcome sexual behaviour.

- Mandatory Committees: It mandated the establishment of Internal Complaints Committees in organisations with a certain number of employees.

- Awareness Programs: The Act required organisations to conduct workshops and awareness programs to educate employees about their rights and responsibilities.

Recommendations and Observations

To enhance the effectiveness of the Vishakha Guidelines and the 2013 Act, several measures can be taken:

- Enhanced Training: Regular training programs should be conducted for all employees, including management, to foster a culture of respect and equality.

- Awareness Campaigns: Organisations should launch awareness campaigns to educate employees about the provisions available to them.

- Support Systems: Establishing robust support systems, including counselling services, can encourage victims to come forward and seek justice.

The Vishakha Guidelines stand as a testament to the progressive legal framework established to combat sexual harassment in the workplace in India. By addressing a critical gap in the protection of women's rights, these guidelines have played a crucial role in fostering safer work environments. However, the journey towards complete gender equality and safety in the workplace requires ongoing commitment from society, organisations, and the government to ensure that the spirit of these guidelines is fully realised.

3.1.4 National Commission for Women

The National Commission for Women (NCW) is a statutory body established by the Government of India to advocate for and protect the rights and interests of women. It was created under the National Commission for Women Act, 1990, and became operational on January 31, 1992. The NCW plays a pivotal role in addressing issues related to women's rights, gender equality and legal reforms. Over the years, it has contributed to significant advancements in policies and laws aimed at ensuring women's safety, dignity and empowerment.

Historical Context and Formation

The NCW was formed in response to growing concerns over gender disparities, discrimination and violence against women in India. During the 1970s and 1980s, the women's rights movement in India gained momentum, with activists advocating for reforms to address issues like dowry, domestic violence, rape and unequal representation in the workforce and politics. The need for a specialised body that would focus on these issues and give women a platform for their grievances became apparent.

The enactment of the National Commission for Women Act, 1990, was a landmark step in institutionalising efforts for women's empowerment. The Commission was given the mandate to review the constitutional and legal safeguards for women, recommend remedial legislative measures and facilitate the redressal of grievances related to violations of women's rights.

3.1.4.1 Mandate and Functions

The NCW's primary mandate is to review and monitor laws that affect women, ensure their implementation and recommend amendments or new legislation to bridge gaps in gender equality. The Commission's functions include:

1. **Review of Legislation**: The NCW reviews and scrutinizes existing laws to assess their effectiveness in promoting gender justice and addressing women's issues. It provides recommendations for amendments or new laws where necessary.

2. **Legal Support and Redressal of Grievances**: Women facing legal issues or injustice can approach the NCW, which offers them guidance and support. The Commission can take up cases suo motu or on the basis of complaints, ensuring that women's voices are heard.

3. **Safeguarding Rights and Investigating Violations**: The NCW has the power to investigate and examine cases of rights violations. This can include violations of constitutional provisions, existing laws, or instances where state agencies fail to protect womens rights.

4. **Awareness and Advocacy**: The NCW conducts awareness campaigns, workshops and seminars to spread knowledge about women's rights and gender equality. It works to empower women by providing them with information on their legal entitlements and social rights.

5. **Research and Documentation**: The Commission researches various issues concerning women and publishes reports that inform policymakers and stakeholders about the current status of women in different areas, such as health, education, employment and violence.

6. **Consultative Role**: The NCW often works in collaboration with various government agencies, NGOs and civil society organisations. It plays an advisory role in the drafting of policies, reforms, and laws that impact women.

3.1.4.2 Organisational Structure

The NCW is composed of a chairperson, members, and a member secretary. The chairperson, usually a woman with experience in women's rights and social work, is appointed by the central government. The members of the commission are experts in law, social work and academia, ensuring that the Commission has a multidisciplinary approach to its functions. The member secretary, who is an officer of the rank of Secretary to the Government of India, manages the day-to-day operations of the Commission. The NCW also has state commissions that operate at the state level, facilitating greater outreach and providing a platform for local issues to be addressed.

Key Initiatives and Achievements

Over the years, the NCW has launched several key initiatives that have had a lasting impact on women's rights and empowerment in India. Some of these are:

1. **Legislative Contributions**: The NCW has been instrumental in advocating for landmark laws such as:

♦ **The Protection of Women from Domestic Violence Act, 2005**: This Act was a significant step in addressing domestic violence and providing women with a legal framework for seeking protection and redressal.

♦ **The Sexual Harassment of Women at Workplace** (Prevention, Prohibition, and Redressal) **Act, 2013**: Following the recommendations of the NCW, this law was enacted to protect women from sexual harassment in the workplace, ensuring a safe working environment.

♦ **The Criminal Law** (Amendment) **Act, 2013**: Following the brutal 2012 Delhi gang rape, the NCW played a key role in pushing for amendments to existing rape laws, leading to stricter punishments for sexual offenses.

2. **Nirbhaya Fund**: The NCW has been involved in the administration of the Nirbhaya Fund, which was established to support initiatives aimed at improving the safety and security of women in India. This fund has been used for projects such as setting up One-Stop Crisis Centers and helplines for women in distress.

3. *Beti Bachao, Beti Padhao (BBBP)*: The NCW has supported and worked in conjunction with the government's flagship initiative, Beti Bachao, Beti Padhao (Save the Daughter, Educate the Daughter), which aims to improve the child sex ratio and promote the education of girls.

4. **Cybercrime and Online Safety**: The NCW has taken cognizance of the rising incidents of cybercrime, particularly those targeting women. It has initiated several awareness campaigns about online safety, helping women navigate issues related to cyber harassment, cyberstalking and online abuse.

5. **Helplines and Counseling Services**: The Commission operates helplines and provides counselling services to women who face harassment, violence, or discrimination. It has partnered with various NGOs and civil society organi sations to extend its reach to rural areas, where access to legal support may be limited.

Challenges Faced by NCW

Despite its successes, the NCW faces several challenges that affect its effectiveness:

1. **Limited Enforcement Powers**: While the NCW can investigate complaints and recommend action, it does not have direct enforcement powers. Its recommendations are advisory and it relies on the cooperation of law enforcement agencies and state governments to implement its suggestions.

2. **Underfunding**: The NCW operates with limited financial resources, which constrains its ability to conduct large-scale campaigns, investigations, or interventions. Many women, particularly in rural areas, remain unaware of the Commission's existence and the services it offers.

3. **Backlog of Cases**: Like many other legal institutions in India, the NCW faces a backlog of cases due to the sheer volume of complaints it receives. This can result in delayed redressal of grievances, which affects its credibility among women seeking timely intervention.

4. **Lack of Autonomy**: While the NCW is a statutory body, its dependence on government appointments and funding can sometimes affect its autonomy. Critics argue that a truly independent NCW would be more effective in addressing issues of women's rights.

3.1.5 Child Rights in India and Commission for Protection of Child Rights (NCPCR)

The National Commission for Protection of Child Rights (NCPCR) is an apex body in India established under the Commission for Protection of Child Rights (CPCR) Act, 2005. It serves as a watchdog for ensuring the protection and promotion of child rights across the country. Operating under the aegis of the Ministry of Women and Child Development, the NCPCR's mandate is to ensure that laws, policies and programes in India are in line with the country's obligations under the United Nations Convention on the Rights of the Child (UNCRC), which India ratified in 1992.

Since its inception in March 2007, the NCPCR has played a crucial role in advocating for children's rights, addressing violations, and advising the government on measures to promote child welfare. Its efforts are essential in a country where millions of children face challenges like poverty, child labour, abuse, lack of access to education and health disparities. This essay explores the structure, mandate, functions, key initiatives and challenges faced by the NCPCR.

Challenges Faced by Marginalised Groups of Children

1. **Children from Lower-Caste Communities :** Despite constitutional protections, lower-caste children, especially those from Scheduled Castes (SCs) and Scheduled Tribes (STs), encounter discrimination in accessing education, healthcare and social services. In schools, discrimination can range from social segregation to exclusion from essential services like mid-day meals, impacting their health and educational outcomes. These children are also more vulnerable to exploitative child labour practices and experience higher dropout rates due to economic pressures and social discrimination.

2. **Children with Disabilities:** Disabled children in India face significant barriers to education, healthcare, and social inclusion. Although the Rights of Persons with Disabilities Act, 2016 provides for inclusive education, children with disabilities often lack access to spe-

♦ *NCPCR ensures child rights protection*

♦ *Monitors policies and laws for child welfare*

♦ *Discrimination in education and healthcare*

♦ *Barriers in education and healthcare access*

cialized services and accommodations in mainstream schools. Stigma and a lack of awareness about disabilities further limit their ability to participate fully in society, impacting their right to education, healthcare and social integration.

3. **Indigenous Children (Adivasi Children)** : Indigenous or Adivasi children, primarily from remote and rural areas, often lack access to quality education and healthcare due to geographic isolation, poverty and language barriers. Additionally, they face a high risk of malnutrition, inadequate healthcare, and displacement due to developmental projects, which disrupt their cultural and social continuity. Indigenous communities traditionally have high poverty rates, which exacerbates the lack of basic resources for children.

4. **Migrant Children:** Children from migrant families face disruptions in education, lack of healthcare, and inadequate living conditions due to frequent relocations. The lack of residency documentation also restricts their access to government welfare programs, including schooling and health services. Migrant children are particularly vulnerable to child labor, trafficking and other forms of exploitation.

♦ *Lack of education, healthcare and resources*

♦ *vulnerable to exploitation and child labour*

3.1.5.1 Structure of NCPCR

♦ *chairperson and members appointed by government*

- **Composition**: The NCPCR consists of a chairperson and six members. The chairperson, a prominent figure with experience in child rights and welfare, is appointed by the central government. At least two of the six members must be women. Members are chosen for their expertise in law, education, child health, juvenile justice or human rights.

- **Member Secretary**: The Member Secretary manages the Commission's day-to-day operations, ensuring coordination among the members and overseeing administrative tasks.

This multi-disciplinary structure ensures that the NCPCR addresses a wide spectrum of issues related to child protection and development.

3.1.5.2 Mandate of NCPCR

The overarching mandate of the NCPCR is to ensure that all laws, policies, programes, and administrative mechanisms affecting children are in line with child rights and welfare. The key focus areas include:

- **Protection of Children from Abuse**: The Commission monitors and addresses all forms of violence, exploitation, and abuse faced by children, including child trafficking, sexual abuse, and child labor.

- **Ensuring the Right to Education:** Under the Right to Education (RTE) Act, 2009, the NCPCR monitors the implementation of free and compulsory education for children aged 6-14. It ensures that the education system is inclusive and accessible to all children.

- **Juvenile Justice**: The Commission oversees the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015, which provides for the rehabilitation and social integration of children in conflict with the law.

- **Health and Nutrition**: It monitors the government's efforts to provide children with proper nutrition, healthcare, and access to services like immunisation and maternal care.

3.1.5.3 Functions of the NCPCR

The NCPCR performs a variety of functions to ensure that children's rights are protected across various domains. These functions can be categorised as follows:

1. Monitoring and Investigating Child Rights Violations:

- The NCPCR takes cognizance of violations of children's rights, either *suo motu* (on its own) or through complaints filed by individuals or organisations.

- It conducts inquiries into cases of child abuse, exploitation, or neglect and can recommend action to be taken against offenders.

2. Research and Documentation:

- The Commission conducts research on critical issues affecting children, such as child labour, trafficking, and juvenile justice. This research is used to inform policy decisions and identify areas for intervention.

- It compiles reports and publishes recommendations to create public awareness and advocate for changes in laws and practices.

3. Policy Review and Recommendations:

- The NCPCR reviews existing laws and government policies to ensure they align with child rights.

- It suggests amendments or new legislation where gaps exist, ensuring that the legal framework is updated to reflect the changing needs of children.

4. Public Awareness and Advocacy:

- The NCPCR conducts campaigns, workshops, and seminars to raise awareness about child rights among various stakeholders, including government officials, civil society organisations and the general public.

♦ *Campaigns and workshops raise awareness*

- It works to spread awareness in both rural and urban areas, focusing on the most marginalised and vulnerable children.

5. Collaboration with Other Agencies:

- The Commission works with other government agencies, NGOs and international bodies to coordinate child welfare programs and share best practices.

- It collaborates with state governments, state commissions, and district-level bodies to ensure that child rights are enforced at every level of governance.

3.1.5.4 Key Initiatives and Achievements

1. Right to Education (RTE) Act Monitoring:

♦ *Monitors RTE Act implementation*

- The NCPCR has been instrumental in monitoring the implementation of the RTE Act, ensuring that children, especially those from marginalised communities, have access to free and compulsory education.

- It works to address complaints related to violations of the RTE Act, including issues of discrimination, lack of facilities, and out-of-school children.

2. Child Labour Reforms:

♦ *Advocated for child labour elimination*

- The NCPCR has actively advocated for the elimination of child labour, leading to reforms such as the Child Labour (Prohibition and Regulation) Amendment Act, 2016, which prohibits employment of children below 14 years in any form of labour.

- It monitors instances of child labour, especially in hazardous industries and works with enforcement agencies to rescue and rehabilitate affected children.

3. Protection from Sexual Offences:

♦ *POCSO act enforcement*

- The Commission has played a significant role in implementing the Protection of Children from Sexual Offences

(POCSO) Act, 2012, which provides a strong legal framework to address sexual crimes against children.

♦ It monitors the enforcement of the Act and raises awareness among communities and law enforcement agencies about the rights and protections available to children under POCSO.

4. Child Trafficking and Missing Children:

♦ The NCPCR has worked extensively to combat child trafficking and track missing children. It collaborates with the police, child protection organisations, and the judiciary to bring trafficked children to safety and prosecute offenders.

♦ The Commission has supported initiatives such as Operation Smile and Operation Muskaan, which are focused on rescuing missing children.

5. Juvenile Justice System Reforms:

♦ The NCPCR has been actively involved in strengthening the juvenile justice system in India, ensuring that children in conflict with the law receive fair treatment and are rehabilitated.

♦ It monitors juvenile homes and correctional facilities, ensuring that the children housed in these institutions are treated with dignity and have access to education and healthcare.

3.1.5.5.4 Challenges Faced by NCPCR

Despite its significant contributions, the NCPCR faces several challenges in executing its mandate:

♦ **Limited Resources:** The Commission often faces a shortage of financial and human resources, which hampers its ability to monitor cases across the vast and diverse regions of India. This results in delays in addressing complaints and implementing programmes.

♦ **Lack of Enforcement Power:** While the NCPCR can make recommendations and issue guidelines, it does not have the authority to enforce its decisions. It relies on the cooperation of state governments and law enforcement agencies, which can sometimes delay justice for affected children.

♦ **Widespread Child Rights Violations:** The sheer scale of child rights violations, particularly in rural and mar-

ginalised communities, is overwhelming. Issues like child labour, trafficking, malnutrition, and lack of access to education are deeply entrenched, making it difficult to effect systemic change in a short time.

- ♦ **Inadequate Awareness:** Despite its efforts, there is still a significant lack of awareness about child rights, especially in rural areas where many children remain unaware of the protections and services available to them.

The National Commission for Protection of Child Rights (NCPCR) has been a cornerstone of child welfare in India, advocating for the protection and promotion of children's rights across the nation. Through its monitoring, advocacy, and research, the Commission has brought attention to the critical issues facing children and has worked to shape policies that ensure a safer and more equitable environment for them. While challenges remain, the NCPCR's efforts have led to significant reforms in areas such as education, child labour, and juvenile justice. Moving forward, greater resources, enhanced enforcement powers, and increased public awareness will be essential in ensuring that every child in India is protected from exploitation and can realise their full potential in a safe and supportive environment.

3.1.6 Child Labour and Juvenile Justice

India has a robust legal framework aimed at protecting children from exploitation and ensuring their welfare, particularly in the areas of child labour and juvenile justice. These laws are essential to safeguarding children's rights and ensuring their physical, emotional and mental development. Below are the major legal provisions regarding child labour and juvenile justice in India. India has made significant progress in addressing child labour, particularly with laws that prohibit or regulate the employment of children in various sectors.

The Child Labour (Prohibition and Regulation) Act, 1986 (Amended in 2016)

The Child Labour (Prohibition and Regulation) Amendment Act, 2016, is the principal legislation governing child labour in India. Key provisions include:

- ♦ **Prohibition of Employment of Children Below 14 Years**: The Act prohibits the employment of children (below 14 years of age) in all occupations and processes, with some limited exceptions for family enterprises and the entertainment industry, provided that it does not interfere with education.

- Regulation of Adolescent Labour: The Act also regulates the employment of adolescents (14-18 years of age), prohibiting their employment in hazardous occupations and processes such as mining, chemical factories, and industries involving explosives.

- **Penalties:** The law imposes strict penalties for employers who violate child labor laws, including imprisonment and fines. Repeat offenders face harsher penalties.

- **Rehabilitation of Rescued Child Laborers:** The Act mandates that the government ensures rehabilitation for rescued children, primarily through educational programs and social integration efforts.

- **National Child Labour Project (NCLP):** The government also runs rehabilitation programmes under the NCLP Scheme, which focuses on withdrawing children from hazardous work and providing them with education and vocational training.

♦ Rehabilitation through education and training

The Right to Education (RTE) Act, 2009

The Right of Children to Free and Compulsory Education (RTE) Act, 2009, complements child labour laws by mandating free and compulsory education for children aged 6-14 years. By ensuring access to education, the RTE Act indirectly prevents child labour, as children are required to attend school rather than engage in work.

♦ The RTE Act ensures free education

The Factories Act, 1948

While the primary aim of this Act is to regulate labour conditions in factories, it also includes provisions for child labour:

- Prohibition of Employment of Children Below 14: The Act prohibits the employment of children under 14 in factories.

- Work Conditions for Adolescents: Adolescents (aged 14-18) are allowed to work in non-hazardous industries, subject to strict working hours and health and safety regulations.

♦ Act regulates factory labour conditions

The Mines Act, 1952

This Act prohibits the employment of children below 18 years in mines due to the hazardous nature of work. It also includes provisions for ensuring safe working conditions for adults.

3.1.6.1 Background and Evolution of Juvenile Justice in India

The roots of juvenile justice in India trace back to the colonial

era, with the Apprentices Act of 1850 marking the first effort to deal with young offenders through vocational training rather than punishment. Over the years, other laws, such as the Madras Children Act, 1920 and the Bombay Children Act, 1924, emerged, laying a foundation for child welfare in India. After independence, the government enacted the Children Act of 1960, aiming for a more comprehensive framework to address juvenile delinquency.

India ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992, which introduced international standards for the protection of children's rights. In response, India enacted the Juvenile Justice Act of 1986 to align with these standards. However, this act was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000, following growing concerns over child rights, which was later amended and replaced by the JJ Act of 2015, currently the primary law governing juvenile justice in India.

The Juvenile Justice (Care and Protection of Children) Act, 2015

This Act replaced the earlier Juvenile Justice (Care and Protection of Children) Act, 2000, bringing in several reforms. Its key features include:

Definition of a Juvenile: A juvenile is defined as anyone below the age of 18. The law distinguishes between two categories:

- Children in Conflict with the Law: Children who are alleged or found to have committed an offence.

- Children in Need of Care and Protection: Children who are abused, abandoned, or neglected and require the state's intervention.

Distinction between children in conflict and need.

Provisions

- **Children in Conflict with the Law (Aged 16-18):** In a major departure from previous laws, the 2015 Act allows juveniles aged 16-18 to be tried as adults for heinous crimes (e.g., rape, murder) if they are found to have committed such offenses. However, the decision to try a child as an adult is made by a Juvenile Justice Board after assessing the child's mental and physical capacity to commit such crimes.

- **Juvenile Justice Boards (JJBs):** Every district must have a Juvenile Justice Board to handle cases involving children

in conflict with the law. The JJB consists of a judicial magistrate and two social workers, ensuring a child-sensitive approach.

- **Child Welfare Committees (CWCs):** For children in need of care and protection, the law mandates the creation of Child Welfare Committees in each district. CWCs are responsible for ensuring that such children are provided with care, protection, education and rehabilitation.

- **Adoption Provisions:** The Act streamlines adoption procedures, making it easier to adopt children through legal channels. It includes provisions for both domestic and inter-country adoptions, with safeguards to prevent trafficking.

- **Foster Care and Institutional Care:** The Act promotes foster care as an alternative to institutionalisation for children who cannot be cared for by their biological families. It also lays down the rules for the management of children's homes and other residential facilities to ensure the well-being of children in need of care.

- **Restorative Justice:** The Act promotes the idea of rehabilitating children in conflict with the law through rehabilitation and reintegration rather than punitive measures. The focus is on counselling, education, vocational training and family reintegration where possible.

The Protection of Children from Sexual Offences (POCSO) Act, 2012

While not directly part of the juvenile justice system, the POCSO Act, 2012, is crucial in the context of protecting children from sexual offences. It establishes strict legal provisions to ensure the safety of children from sexual abuse and exploitation. It complements the juvenile justice framework by ensuring that children, particularly those in need of care and protection, are safeguarded from abuse within institutions or other settings.

POCSO Act: Protects children from sexual abuse

- **The Indian Penal Code (IPC):** Certain sections of the IPC, such as Section 376 (rape), Section 363-374 (kidnapping and trafficking), and Section 302 (murder), provide legal provisions for punishing those who commit crimes against children.

- **The Bonded Labour System (Abolition) Act, 1976:** This Act prohibits the employment of children in bonded labour situations and mandates penalties for those who exploit children through bonded labour.

Margin notes:

- ♦ *CWCs ensure care and protection*
- ♦ *Adoption procedures are streamlined*
- ♦ *Promotes foster care over institutional care*
- ♦ *Restorative Justice empasises rehabilitation*
- ♦ *POCSO Act protects children from sexual abuse*

♦ The Apprentice Act, 1961: While encouraging skill development, this Act regulates the age for apprenticeship training to prevent child labour under the guise of apprenticeships.

3.1.6.2 Challenges and Criticisms of the Juvenile Justice System in India

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) brought several critical reforms to India's juvenile justice system, particularly by distinguishing between categories of offences and introducing the option of treating juveniles aged 16-18 as adults in cases of heinous crimes. However, the Act has faced significant criticism and challenges, particularly concerning implementation, resources and concerns about upholding children's rights. Here's a closer look at these issues:

♦ Implementation, resources, children's rights concerns

1. Controversy Over Trial as Adults for Certain Juveniles

♦ **Age-Based Classification:** One of the most debated provisions of the JJ Act allows for juveniles aged 16-18 to be tried as adults for heinous crimes (offences punishable by seven years or more). Critics argue that this approach contradicts the fundamental rehabilitative ethos of juvenile justice by exposing young offenders to the punitive adult criminal justice system, which may lead to severe psychological effects and stigmatisation.

♦ Critics argue age based classification contradicts rehabilitition

♦ **International Criticism:** The UN Committee on the Rights of the Child and various child rights organisations have expressed concern, stating that trying juveniles as adults contravenes the Convention on the Rights of the Child (CRC), which India has ratified. The CRC emphasises rehabilitation over punishment and calls for treating children under 18 with a focus on reintegration.

♦ Contradicts the CRC India ratified

2. Implementation Challenges

♦ **Inadequate Infrastructure and Personnel**: The JJ Act mandates the establishment of Juvenile Justice Boards (JJBs), Child Welfare Committees (CWCs), and various types of child care institutions. However, many states struggle with a shortage of trained personnel, leading to delays in case processing, a lack of individualised care and poorly maintained facilities.

♦ Implementation struggles with infrastructure and personal shortage

♦ **Resource Constraints**: Funding shortages lead to inadequate facilities in observation homes and special homes, where children often lack access to basic amenities, qual-

ity education, vocational training and mental health support. These resource limitations also make it difficult to implement comprehensive rehabilitation programmes, which are essential to reintegrate juveniles back into society.

3. Social Stigma and Barriers to Reintegration

♦ **Stigmatisation of Juvenile Offenders:** The social stigma associated with juvenile offenses makes it difficult for young offenders to reintegrate into society after serving their terms. This stigmati sation is particularly severe for those tried as adults, as they are often denied access to formal education or meaningful employment, exacerbating their chances of recidivism.

♦ **Lack of Support Systems:** Families and communities are often unprepared or unwilling to support the reintegration of juvenile offenders, particularly if the offense was serious. This lack of community-based support can undermine rehabilitation efforts, making it challenging for juveniles to escape cycles of poverty and crime.

4. Limited Capacity and Training of Juvenile Justice Personnel

♦ **Lack of Specialised Training:** Many members of JJBs, CWCs, and staff at child care institutions lack specialised training in child psychology, social work and legal procedures necessary to effectively address the needs of young offenders and children in need of care. This knowledge gap can lead to inappropriate handling of cases, poor assessment of juvenile maturity and inadequate support during rehabilitation.

♦ **High Workload and Case Backlogs:** Overburdened juvenile justice boards often struggle to handle cases promptly, leading to prolonged detention periods and delayed access to justice for juveniles. Additionally, many CWCs face excessive workloads, which hinders their ability to provide individual attention to children in need of care and protection.

5. Inadequate Safeguards in Child Care Institutions

♦ **Reports of Abuse and Exploitation:** Numerous reports highlight abuse, neglect and exploitation within juvenile homes and shelter facilities, including sexual abuse, physical violence and denial of basic rights. Poor monitoring mechanisms and insufficient staff training contribute to

Sidebar notes (left margin):

♦ *Stigma makes reintegration difficult*

♦ *Communities struggle to support reintegrating*

♦ *Personal lack specialised training*

♦ *High work load boards cause delayas in Justice*

♦ *Includes several abuse and violonce*

these problems, exposing children to further trauma instead of offering them safety and rehabilitation.

♦ **Lack of Rehabilitation Programmes**: In many juvenile care institutions, there is a lack of structured programmes for mental health care, skill development, or vocational training, which are crucial for the personal growth and future livelihood of young offenders. Without access to these programmes, many juveniles remain unprepared for life outside institutions.

♦ Lack of mental health and skill development programmes

6. Failure to Address Socio-economic and Cultural Contexts

♦ **Neglect of Socio-economic Factors:** Juvenile justice often fails to account for the socioeconomic backgrounds of offenders, particularly those from marginalised communities. Poverty, lack of educational opportunities, and familial neglect often contribute to juvenile delinquency, yet the justice system lacks mechanisms to address these root causes, such as community-based interventions or preventive programmes.

♦ Juvenile justice neglects Socio-economic factors

♦ **Discrimination Against Marginalised Groups:** Juveniles from marginalised communities, including Scheduled Castes (SC), Scheduled Tribes (ST) and religious minorities, often face additional prejudice and stereotyping within the juvenile justice system. These juveniles may receive harsher treatment or fewer opportunities for rehabilitation, limiting their access to fair justice and equitable reintegration.

♦ Limited access to fair justice and rehabilitation

7. Insufficient Focus on Psychological and Emotional Needs

♦ **Mental Health Support:** Mental health issues are common among juvenile offenders, often stemming from experiences of trauma, neglect, or abuse. However, mental health services are scarce within juvenile justice institutions, and many children are left without psychological counselling, contributing to long-term emotional issues.

♦ Lack of mental health services for juvenile

♦ **Failure to Account for Maturity:** The assessment process to determine whether juveniles aged 16-18 should be tried as adults primarily relies on assessing their "maturity." Critics argue that this assessment is subjective and lacks a standardised psychological evaluation, leading to inconsistencies in determining a juvenile's cognitive and emotional readiness for adult trial procedures.

♦ Maturity assessment lacks standardisation

8. Over Reliance on Incarceration

♦ **Insufficient Alternatives to Detention:** The JJ Act

♦ *Limited implementation of non-custodial measures*

emphasises the importance of non-custodial measures, yet there is limited implementation of alternatives such as community service, probation, or restorative justice. Juveniles are often placed in detention facilities, even for minor offences, which can expose them to negative influences and reduce their chances of effective rehabilitation.

♦ *Minimal post-release support for Juveniles*

♦ **Limited Post-Release Support:** For juveniles exiting the system, post-release support is minimal, leaving many without guidance or resources to reintegrate into society successfully. This lack of aftercare increases the risk of recidivism, particularly for those without family or community support.

Summarised Overview

Women's rights, which encompass equality in social, economic and political spheres, have evolved globally since the 18th century, gaining momentum with movements for suffrage, education and workplace equality. In India, these efforts began with social reform movements in the 19th century and continued post-independence with constitutional guarantees of equality and subsequent legal reforms. The National Commission for Women (NCW), established in 1992, plays a crucial role in safeguarding women's rights by addressing violations, reviewing legal frameworks and recommending improvements. Similarly, children's rights, grounded in the UN Convention on the Rights of the Child (UNCRC), 1989, are safeguarded in India through various laws that guarantee education, protection from exploitation and equality. The National Commission for Protection of Child Rights (NCPCR), formed under the CPCR Act, 2005, is responsible for ensuring that laws and policies adhere to the principles of child rights. It works to protect children from abuse, exploitation and neglect while advocating for their rights to education and development. Key areas covered include juvenile justice under the Juvenile Justice (Care and Protection of Children) Act, 2015, which focuses on rehabilitation for juveniles in conflict with the law and child labor laws like the Child Labour (Prohibition and Regulation) Amendment Act, 2016, which prohibit the employment of children under 14 in hazardous work. Overall, the unit highlights the ongoing efforts, both nationally and internationally, to ensure the rights of women and children are upheld through comprehensive legal and institutional mechanisms.

Assignments

1. Critically evaluate the historical development of women's rights in India.

2. What are the various organisations that work for child rights in India? Elaborate their structure and functions.

3. The Constitution of India has several provisions to ensure that women are protected from discrimination and violence. Critically evaluate.

Suggested Reading

1. Bajpai Asha, *Child Rights in India*, Oxford India, 2005.

2. Bindra Anju, *Women and Human Rights*, Mangalam Publishers & Distributors, Delhi, 2007.

3. Chhibber, Bharti, "Women's Rights Are Human Rights," *World Affairs: The Journal of International,* Issues 22, no. 1, 2018

4. Desai, A.R., ed., *Violations of Democratic Rights in India,* Popular Prakashan, *Bombay,* 1986.

5. Devasia V.V., *Women, Social Justice and Human Rights*, APH, New Delhi, 2009.

6. G.S. Bajwa, *Human Rights in India,* Anmol Publications, 1996.

7. Kiran Asha, *The History of Human Rights*, Mangalam Publications, Delhi, 2011.

Reference

1. Pandey, S. R., & Satyam, S. *Rights of Women: National and International Perspective.* GLS Law Journal, 6(2), 1-11, 2024

2. Parveen, M. S. *A Critical Analysis on National Commission for Protection of Child Rights. Indian JL & Legal Rsch.*, *2*, 1,2021

3. "Women's Rights in India: An Analytical Study of The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and The Indian Constitution, Legislations, Schemes, Policies & Judgements", National Human Rights Commission, India, 2021.

Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

Minorities, Dalits and Tribals

Learning Outcomes

After the completion of this unit, the learner will be able to:

- ♦ make the student understand the issues related to minorities, Dalits and tribals
- ♦ study the role of government bodies in developing and implementing policies related to marginalised communities
- ♦ understand the growth and development of human rights policies in India with regard to marginalised sections

Background

The concept of minority rights gained global prominence after World War II, particularly with the establishment of the United Nations and its endorsement of the Universal Declaration of Human Rights in 1948. In India, discussions on minority rights have been shaped by a complex history of colonialism, the 1947 Partition, and the vision of the Indian Constitution's founders to create a secular, democratic society that protects a diverse population. The study of minority groups, Dalits and tribal communities is deeply rooted in India's complex social structure and its ongoing journey toward democracy and social justice.

Under the guidance of Dr. B.R. Ambedkar, the Indian Constitution introduced several transformative provisions aimed at protecting these communities. Untouchability was officially abolished through Article 17, which imposed penalties for its practice. The Constitution established reservations for Scheduled Castes (SCs) and Scheduled Tribes (STs) in education, employment and political representation, as outlined in Articles 15(4), 16(4), 330, and 332, aiming to provide these communities with greater access to opportunities and voice in governance. Additionally, the Constitution recognised the cultural and educational rights of religious and linguistic minorities through Articles 29 and 30, allowing these groups to preserve their distinct identities. The establishment of National Commissions for Scheduled Tribes and Scheduled Castes further ensured that protective measures would be actively overseen and maintained. This constitutional framework provided a formal legal acknowledgment and protection for minorities, Dalits and tribal communities, profoundly shaping the discourse on social equity in post-independence India.

Discussion

3.2.1 Defining Minorities

The term "minority" generally refers to a smaller group within a larger population that differs in certain characteristics, such as religion, language, ethnicity, or culture, and which may hold a distinct identity within society. A minority group typically lacks the political or social power of the majority, resulting in potential marginalisation. In democratic societies, protecting minority rights is essential to ensure that these groups retain their cultural identity, receive equal treatment, and have equitable access to resources. In India, for instance, minorities are defined in both religious and linguistic terms. The Constitution recognises religious minorities such as Muslims, Christians, Sikhs, Buddhists, Jains, and Zoroastrians (Parsis). Similarly, linguistic minorities, determined by the regional majority language, are protected under Article 29 and Article 30, ensuring their cultural preservation.

♦ *Minorities may lack political or social power*

In today's increasingly diverse and interconnected world, the concept of "minority" is critical in defining social, political and legal environments. Despite its importance, identifying what constitutes a minority group is a hard and often contentious matter. This complexity originates from the diverse nature of human identities, as well as the various settings in which minority status is relevant. At its root, the issue of defining minorities stems from the lack of a globally acknowledged definition. What constitutes a minority might vary greatly based on the sociological environment, historical background and specific criteria used. This lack of consensus has profound consequences for policymaking, legal safeguards and the lived experiences of individuals and communities all across the world.

♦ *Defining minorities is complex and contested*

Traditionally, minorities have been identified using a variety of methods. The numerical method, which is likely the most intuitive, defines minorities as numerically inferior groups to the general population. However, this oversimplified definition falls short in many real-world situations. For example, under apartheid in South Africa, the Black majority was systematically repressed by a White

minority, demonstrating the limitations of a strictly numerical definition. This brings us to another critical approach: classifying minorities according to their non-dominant position in society. This viewpoint focuses on power dynamics rather than numbers, acknowledging that a group's influence and access to resources are sometimes more important than its size. The United Nations has mainly followed this approach, emphasising minority groups' non-dominant status in its working definitions

In recent years, the concept of self-identification has emerged as a central theme in discussions regarding minority status. This method emphasises the significance of a group's own view of its uniqueness, incorporating a subjective aspect into the definition. It recognises that identity is not only imposed from the outside but also formed and maintained inwardly. The legal and policy world complicates the definition of minorities. Different countries and international organisations may have different official definitions, which are often influenced by historical, political and cultural factors unique to their surroundings. In India, for example, the attention has mostly been on religious and linguistic minorities, as evidenced by the 1992 National Commission for Minorities Act.

3. 2.1.1 International Framework for Minority Rights

The United Nations (UN) has played a crucial part in establishing an international framework for minority rights. Following WWII, the world community became increasingly concerned about the preservation of minorities. The United Nations Charter and the Universal Declaration of Human Rights (1948) established the foundation for minority protection by emphasising the ideals of non-discrimination and equality. Various UN bodies and processes, such as the Human Rights Council, the Office of the High Commissioner for Human Rights (OHCHR) and the Independent Expert on Minority Issues, have helped to defend minority rights over the years.

The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992). In 1992, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted, marking a turning point in the subject. This Declaration represents the most comprehensive UN document on minority rights to date.

Key Provisions:

- **Protection of existence and identity:** According to Article 1, states must safeguard and advance minorities' national, ethnic, cultural, religious and linguistic identities.

- **Participation rights**: According to Article 2, minorities are entitled to a meaningful role in public, cultural, religious, social, and economic spheres.

- **Cultural enjoyment:** According to Article 2, minorities are entitled to the enjoyment of their own customs, religious practices, and language usage in both public and private settings.

- **Education and mother tongue:** According to Article 4, states must implement policies in the sphere of education to promote awareness of minority groups' histories, customs, languages and cultures.

Implementation Challenges

Despite its importance, the implementation of the 1992 Declaration confronts significant hurdles.

- **Non-Binding nature:** As a Declaration, it is not legally binding on governments, which may limit its enforceability.

- **Identifying issues:** The absence of a globally acknowledged definition of minority can result in disagreements about which groups are entitled to protection.

- **Balancing rights:** States frequently face challenges in balancing minority rights with national unity and territorial integrity.

- **Limited resources:** Many countries, particularly in the developing world, lack the resources to implement the Declaration's requirements properly.

- **Political will:** Implementation is frequently dependent on the political will of governments, which can be influenced by majority interests or other political concerns.

- **Monitoring mechanisms:** The lack of a specific treaty body to monitor implementation may undermine the Declaration's efficacy.

Despite these challenges, the 1992 Declaration remains an important tool in the international framework for protecting minority rights, serving as a benchmark against which state actions can be examined and supported.

♦ *Acts as a benchmark for state actions*

3.2.1.2 Legal and Sociological Perspectives on Minorities

In sociological terms, minorities are not just identified by numerical size but also by their position within social hierarchies and access to power structures. This means that a minority group could be large in number but still marginalised, as is sometimes the case with racial or ethnic minorities. In the legal framework, the United Nations Minorities Declaration (1992) and the International Covenant on Civil and Political Rights (ICCPR) define minority rights to ensure equality, protect cultural heritage, and prevent discrimination. The UN outlines minorities based on language, religion, and ethnicity, focusing on self-identification as a key criterion, meaning individuals must have the freedom to define their own group identity. In India, the National Commission for Minorities (NCM) recognises six religious minorities based on certain criteria, although the concept of self-identification is not uniformly applied. Indian legal frameworks, influenced by post-colonial and pluralistic values, provide constitutional guarantees to minorities, focusing on their rights to culture, language and religion, making India a secular, inclusive state.

Challenges in Defining Minorities

Defining minorities is complex because the term can encompass various factors like power dynamics, social status, regional dominance and political considerations. Legal definitions of minority status can shift over time, affected by changing demographics, political agendas, and social movements.

♦ **Cultural and Regional Variations:** In many nations, what constitutes a "minority" varies by region. In India, for example, linguistic minorities differ by state, meaning a linguistic group may be a majority in one region and a minority in another.

♦ **International Challenges**: Globally, countries often define minorities based on national history and socio-political structures. For instance, while the UN broadly addresses minorities under cultural, religious and linguistic frameworks, each member state may interpret these definitions based on its domestic context.

3.2.1.3 Religious Minorities

1. Muslims

♦ Muslims constitute around 14% of India's population, making them the largest religious minority. Despite con-

stitutional protections, they face socio-economic and political challenges. These include lower access to education and employment opportunities compared to the national average, as highlighted in the Sachar Committee Report (2006), which documented the community's underrepresentation in government jobs, higher dropout rates and limited access to healthcare.

♦ **Government Initiatives:** The Prime Minister's 15-Point Program for Minorities addresses social and economic needs, promoting schemes for education, skill development, and economic inclusion. However, challenges in implementation persist, with Muslims still facing discrimination in housing, job opportunities and political representation.

2. Christians

♦ Christians form about 2.3% of India's population and have established educational and healthcare institutions serving both their community and society at large. However, Christian minorities, particularly in rural areas and states like Odisha and Chhattisgarh, have faced instances of violence, forced conversions and restrictions on religious practices.

♦ **Legal Protections and Challenges:** Under Article 25, Christians, like all religious groups, are granted the freedom of religion, but anti-conversion laws in several states have raised concerns about potential violations of this right. The National Commission for Minorities (NCM) and civil rights organisations continue to monitor these issues, calling for stronger enforcement of protections.

3. Sikhs

♦ Sikhs, mainly concentrated in Punjab, comprise about 1.7% of the Indian population. Historically, Sikhs have played a significant role in India's independence movement and today, they maintain cultural autonomy in Punjab. However, the 1984 Anti-Sikh Riots left a lasting impact, with demands for justice for victims persisting in civil society.

♦ **Autonomy and Representation:** The Sikh community has political influence in Punjab, with dedicated educational institutions and a robust presence in the Indian military. Yet, ongoing grievances about representation and autonomy continue, underscoring the importance of maintaining protections under Articles 25 (freedom of religion) and 26 (managing religious affairs).

♦ *Muslims Socio - economic and Political Challenges*

♦ *Christians face violences and restrictions especially in rural areas*

♦ *Sikhs contribute significantly to India's independence*

3.2.1.4 Ethnic and Tribal Minorities

1. Scheduled Tribes (STs)

- India's Scheduled Tribes, constituting about 8.6% of the population, are recognised as marginalised communities in need of special protections. These groups, spread across India's central and northeastern regions, often face challenges related to displacement, loss of traditional lands, and inadequate access to healthcare and education.

♦ PESA enables tribal self governance with uneven implementation

- **Legal and Constitutional Safeguards:** Articles 244 and 275 of the Indian Constitution provide for special administrative arrangements in tribal areas, ensuring the preservation of tribal culture and autonomy in governance. Additionally, the Panchayats Extension to Scheduled Areas Act, 1996 (PESA) empowers tribal communities in self-governance, though its implementation remains uneven.

- **Challenges:** Industrialisation and mining projects have led to large-scale displacement of tribal communities, particularly in Jharkhand, Chhattisgarh and Odisha. Resistance movements like those against the POSCO project highlight the ongoing struggle for land rights, with advocates calling for stronger enforcement of protective laws like the Forest Rights Act (2006).

2. Northeast India's Indigenous Ethnic Minorities

- The northeastern region of India, home to numerous ethnic communities such as the Nagas, Mizos and Assamese, has distinct cultural identities. These communities face unique challenges in balancing integration with national policies and preserving their ethnic autonomy.

♦ Articles 371 ensures regional autonomy

- **Special Constitutional Provisions**: Articles 371(A) to (I) provide varying degrees of autonomy to northeastern states, protecting land, culture and administrative autonomy. For instance, Nagaland (Article 371A) has special provisions allowing it to manage resources and preserve customary laws.

- **Political and Economic Challenges:** Ethnic conflicts and demands for autonomy persist, exacerbated by underdevelopment and limited state infrastructure. Although the Sixth Schedule allows some regional governance, demands for separate states or greater autonomy remain prominent, reflecting ongoing ethnic tensions in the region.

3.2.1.5 Linguistic Minorities

1. Tamil Speakers in Karnataka and Maharashtra

♦ Tamil speakers in the border districts of Karnataka and Maharashtra face identity challenges, with tensions arising from linguistic differences. Language disputes have historically led to tensions, impacting public services, educational opportunities and political representation.

♦ **Protection Measures:** Linguistic minorities are protected under Articles 29 and 30 of the Constitution, which ensures cultural preservation and the right to establish educational institutions. Despite these protections, the linguistic conflicts in Karnataka and Maharashtra highlight the challenges of linguistic accommodation in a multilingual nation.

2. Punjabi Speakers in Delhi

♦ Punjabi speakers, primarily migrants from Punjab, have a significant presence in Delhi. Although they are not an official linguistic minority in Delhi, the community's contributions to local culture and economy are notable. Issues of linguistic identity arise, particularly concerning cultural preservation and representation in schools and local government.

3. Bengali Speakers in Assam

♦ Bengali-speaking communities in Assam have faced legal and social challenges, particularly regarding citizenship. The National Register of Citizens (NRC) in Assam brought these issues to the fore, leading to fears of statelessness among Bengali Muslims and Hindus.

♦ **Legal Safeguards and Challenges:** While linguistic minorities are constitutionally protected, the NRC and Citizenship Amendment Act (CAA) have raised concerns regarding the rights of linguistic minorities in Assam. Many argue that these policies have led to marginalisation and uncertainty over the legal status of Bengali-speaking populations.

3.2.1.6 Socially Marginalised Minorities

1. Dalits (Scheduled Castes)

♦ Dalits, or Scheduled Castes, comprise around 16.6% of India's population and have historically faced significant discrimination and exclusion. Although caste-based dis-

crimination is constitutionally outlawed (Article 17), it persists in various forms, particularly in rural areas where caste hierarchies are deeply entrenched.

♦ **Legal Protections and Affirmative Action:** The Constitution provides affirmative action through reservations in education, employment and political representation under Articles 15, 16, 330, and 332. Laws like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 aim to curb caste-based violence, though underreporting and weak enforcement remain challenges.

♦ **Current Issues**: Economic and social disparities continue to affect Dalits, with limited access to land, quality education, and healthcare services. In some regions, Dalit communities still face violence, restrictions on temple entry, and exclusion from public spaces.

2. Adivasis (Indigenous Tribes)

♦ While constitutionally recognised as Scheduled Tribes, Adivasis represent diverse ethnic communities with unique cultural identities. Although granted rights to land and self-governance, Adivasis often face displacement due to industrial projects and conservation efforts.

♦ *Adivasis face displacement due to industrialization*

♦ **Forest Rights and Autonomy:** The Forest Rights Act (2006) allows Adivasis to claim land rights within forests, addressing historical injustices. However, implementation has faced hurdles, with many tribal claims rejected or delayed, leading to land loss and conflicts.

3. Nomadic and Denotified Tribes

♦ Nomadic and denotified tribes, such as the Banjaras and Nats, face unique challenges due to their non-sedentary lifestyles and historical criminalisation under colonial laws. Although the Habitual Offenders Act (1952) decriminalized these communities, stigma and social exclusion remain.

♦ *Nomadic tribes face unique challenges*

♦ **Government Initiatives:** Various commissions, including the National Commission for Denotified, Nomadic, and Semi-Nomadic Tribes (NCDNT), have recommended affirmative actions, though implementation has been limited, and these communities remain marginalised.

3.2.2 Constitutional and Legal Protection for Minorities in India

The Indian Constitution, which came into effect in 1950, offers a comprehensive framework for safeguarding the rights of minorities.

This framework embodies the vision of Dr. B.R. Ambedkar and other drafters of the Constitution, who aimed to create a pluralistic and inclusive society. The Constitution of India has the term minority, but no definition is given. The Supreme Court and various High Courts have so far depended on statistical criteria. Any community that does not constitute more than 50% of the state is thus called a minority. The Indian Constitution recognises two types of minorities based on language and religion.

The Constitution provides two sets of rights for minorities:

'Common domain' - The rights that fall in the 'common domain' are those that are applicable to all the citizens of our country.

'Separate domain' - The rights which fall in the 'separate domain' are those which are applicable to minorities only, and these are reserved to protect their identity.

The main provisions of the Constitution for minorities are as follows:

Article 29: Protection of Interests of Minorities

Article 29(1) safeguards the right of Indian citizens to preserve their language, script or culture.

Article 29(2) prohibits discrimination based on religion, race, caste, or language in state-run educational institutions or receiving state aid.

Article 30: Minorities' Right to Establish and Administer Educational Institutions.

Article 30(1) guarantees all minorities, regardless of religion or language, the right to create and manage educational institutions of their choosing.

Article 30(2) prevents the state from discriminating against any educational institution when awarding funding on the basis that it is managed by a minority.

Article 350a: Facilities for Instruction in Mother-Tongue at Primary Stage.This article provides facilities for instruction in the mother tongue at the primary stage of education for children belonging to linguistic minority groups.

Article 350b: Special Officer for Linguistic Minorities

This provision establishes the office of a Special Officer for Linguistic Minorities, appointed by the President of India, to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution.

Other Relevant Constitutional Provisions:

Article 14: Equality before law

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth

Article 16: Equality of opportunity in matters of public employment

Article 25-28: Freedom of religion

Article 347: Special provision relating to language spoken by a section of the population of a State

3.2.2.1 National Commission for Minorities

The National Commission for Minorities (NCM) is a statutory body established under the National Commission for Minorities Act of 1992. Its formation demonstrates India's commitment to safeguarding and advancing the rights of minority communities.

♦ Reflects India's commitment to minority welfare

Composition

♦ The NCM consists of a Chairperson, a Vice-Chairperson, and five Members selected by the Central Government.

♦ Members, including the Chairperson and Vice-Chairperson, must be people of eminence, skill and integrity who belong to minority populations.

Selection by the Central Government ensures representation

Function and Power

♦ Analyse how minority development has progressed under the Union and the States.

♦ Monitor the effectiveness of the safeguards enshrined in the Constitution and laws passed by Parliament and state legislatures.

♦ Monitors and advises on safeguarding effectiveness

♦ Make recommendations on how to implement safeguards to protect minorities' interests efficiently

♦ Investigate specific concerns of denial of minorities' rights and safeguards and take them up with the appropriate authorities.

♦ Cause studies to be conducted into problems stemming from any prejudice against minorities and offer solutions for their elimination.

♦ Conduct investigations, research and analysis on the socioeconomic and educational development of minorities.

- Suggest relevant actions for any minority to be implemented by the Central or State governments.
- Submit special or periodic reports on any issue affecting minorities to the Central Government.

3.2.3 Citizenship and Refugee Issues

♦ Citizenship connects individuals to the state

Citizenship is a fundamental concept in modern nation-states that defines an individual's connection with the state. It encompasses the rights and duties that come with being a member of a political community. The concept of citizenship has evolved greatly over time, from its origins in ancient Greek city-states to its contemporary form in a variety of modern democratic republics.

IMPORTANT ASPECTS OF CITIZENSHIP INCLUDE

- Citizenship provides legal status, granting persons certain rights and protections under the laws of a specific state.
- **Rights and Responsibilities**: Citizens often have a variety of rights (e.g., voting, property ownership, social benefits) and are expected to carry out certain responsibilities.
- **Political Participation:** Citizenship frequently grants the right to engage in the political process, including voting and running for office.
- Citizenship can play an important role in shaping a person's identity and sense of belonging to a national group.
- **Protection:** States must protect their populations within and outside their borders.

Citizenship can be earned in a variety of ways:

Jus soli (right of soil): Citizenship is awarded to people born within a country's borders.

Jus sanguinis (right of blood): Citizenship is passed down through parents.

♦ Citizenship ensures rights and protections

Naturalisation: Citizenship is awarded to foreign nationals who meet specific state requirements. The status of citizenship is important when it comes to minority rights. It can be used to promote inclusion by ensuring that all members of a society have equal rights and protections. However, it can also be a means of exclusion, especially when certain groups experience hurdles to gaining or fully enjoying their citizenship rights.

3.2.3.1 Refugee: Definition and Status

According to the 1951 United Nations Convention Relating to the Status of Refugees, a refugee is someone unable or unwilling to seek protection in their home country due to fear of persecution for reasons of race, religion, nationality, membership in a social group, or political opinion.

This definition highlights several key elements:

- Well-founded fear of persecution: The fear must be justified given the individual's circumstances.

- Persecution can be based on race, religion, nationality, social group membership, or political views.

- Outside the country of nationality, the individual must have crossed an international boundary.

- Fear of persecution keeps them from returning and this is particularly relevant for refugees fleeing persecution and those focused on cultural preservation.

3.2.3.2 International Refugee Law: Foundations, Principles and Challenges

International refugee law is the body of legislation governing refugees' protection and rights. Its foundation is the 1951 Refugee Convention and the 1967 Protocol.

International Refugee Law (IRL) is an established body of legal principles and frameworks designed to protect individuals forced to flee their countries due to persecution. Emerging primarily after the devastation of World War II, IRL encompasses definitions, protective measures and the obligations of states toward refugees, forming a vital part of international human rights and humanitarian law. The origins of IRL can be traced back to the early 20th century, with some precedents set during the interwar period. Efforts by the League of Nations, such as the 1921 issuance of the Nansen Passport, marked early attempts to address the needs of displaced individuals and stateless persons. However, it was after the Second World War that refugee protection became a formalised and international priority. In response to large-scale displacement and the atrocities experienced during the war, the United Nations created structures to protect and aid refugees, starting with the establishment of the UN High Commissioner for Refugees (UNHCR) in 1950.

The foundational document of IRL, the 1951 Refugee Convention, set the first legally binding international standards for the treatment of refugees. According to the Convention, a refugee

is defined as someone who has a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion. This definition captures not only the personal vulnerabilities of displaced individuals but also frames refugee protection as a response to broader social and political pressures. However, the 1951 Convention initially contained temporal and geographic limitations, addressing only those displaced by World War II within Europe. This restriction was lifted in 1967 with the Protocol Relating to the Status of Refugees, extending the Convention's protections universally and removing historical constraints. Together, the Convention and Protocol constitute the core legal framework for refugee protection under international law.

One of the most important principles enshrined in the 1951 Convention is the principle of non-refoulement. This principle prohibits states from expelling or returning refugees to territories where they might face threats to life or freedom due to persecution. Non-refoulement is not only a pillar of IRL. Still, it is also widely recognised as a norm of customary international law, obliging states to avoid endangering refugees, even in cases where individuals may not have formal refugee status. Another essential aspect of IRL is the right to seek asylum, which is an internationally recognised norm, although there is no binding obligation on states to grant asylum. This right underscores a state's duty to assess claims and to consider international obligations even when not required to accept every applicant. The UNHCR plays a vital role in monitoring the implementation of these principles, advising states on their obligations, and supporting the rights and well-being of refugees through practical assistance and advocacy.

Refugee Status Determination (RSD) is the process by which authorities assess whether an individual qualifies for refugee status based on the standards set forth by the 1951 Convention. This determination process is fundamental for providing protection and assistance but can be challenging due to variations in procedures across countries. In many states, RSD is governed by national law and often influenced by international standards, although there are sometimes disparities in interpretation and implementation. For instance, credibility assessments can be difficult, with applicants required to provide evidence of their persecution, which can be complex given the circumstances under which they may have fled. Delays and administrative backlogs can further hinder access to timely protection, affecting the rights of individuals seeking refuge. In addition, challenges related to legal representation and procedural transparency can impact fairness in the process, requiring continuous oversight and support by the UNHCR and other international bodies

♦ Regional frameworks expand refugee protection criteria

Regional frameworks have expanded the scope and application of IRL, acknowledging different forms of displacement beyond the criteria set by the 1951 Convention. In Europe, the European Union (EU) has developed a Common European Asylum System, which creates standardised approaches across member states regarding asylum procedures and rights for refugees. The African and Latin American regions have broadened their definitions further. The Organisation of African Unity's 1969 Refugee Convention and the 1984 Cartagena Declaration in Latin America include additional grounds for refugee status, such as fleeing generalised violence or events that seriously disturb public order. These regional instruments reflect different socio-political realities and enhance IRL's relevance in diverse contexts.

♦ Statelessness increases vulnerabilities and risks

Today, IRL faces various contemporary challenges as the number of displaced people reaches unprecedented levels. Refugee crises stemming from conflicts in countries such as Syria, South Sudan, and Afghanistan underscore the need for stronger international solidarity and fair burden-sharing. Protracted refugee situations, where individuals remain in limbo for extended periods, often without sustainable solutions, expose the limits of the current system. The plight of stateless persons also intersects with IRL, as statelessness-lacking a legal nationality-can compound vulnerabilities. Stateless individuals may lack access to basic rights and protections, heightening their risk of exploitation and discrimination.

♦ Climate change played a major role

The impacts of climate change are another emerging challenge. Although IRL traditionally does not include people displaced by environmental factors within the "refugee" definition, increasing recognition of climate change's role in forced migration has prompted calls for expanded frameworks. Some argue for the adoption of specific protections for "climate refugees," a concept that remains contested but reflects the growing need for responsive and flexible legal systems.

♦ Climate change impacts lead to forced migration

To address these issues, international cooperation has increased, albeit with varying results. In 2018, the UN General Assembly adopted the Global Compact on Refugees, a non-binding agreement aimed at promoting responsibility-sharing and establishing durable solutions. While it lacks the enforceability of a treaty, the Compact provides a practical framework for enhancing international cooperation. Technological advancements are also reshaping the landscape of refugee registration and identification, with digital systems and biometrics improving registration processes and service delivery.

The Key Principles of International Refugee Law are:

♦ **Non-refoulement:** As already stated, this concept prevents states from returning refugees to countries where they face persecution.

♦ **Non-discrimination:** Refugees should not face discrimination based on their ethnicity, religion, or country of origin.

♦ **Non-penalisation:** Refugees who present themselves to authorities immediately should not be penalised for illegal entry or residence in a country.

♦ **Refugee Rights:** The Convention establishes a number of rights for refugees, including the ability to work, education, public relief and aid, and access to courts.

Other Key Instruments in International Refugee Law Include:

♦ Regional agreements, such as the 1969 OAU Convention in Africa and the 1984 Cartagena Declaration in Latin America, broaden the concept of a refugee.

♦ The UN High Commissioner for Refugees (UNHCR) Statute specifies the organisation's mandate to provide worldwide protection to refugees.

♦ Despite the existence of this legislative framework, implementation issues remain. This includes:

♦ Different states have interpreted the refugee designation differently. Many countries are implementing more restrictive asylum policies. The challenge of dealing with large-scale refugee movements and persistent refugee situations.

♦ *International Refugee Law*

3.2.3.3 India's Approach to Refugees and Citizenship

India's approach to refugees and citizenship is multifaceted, influenced by its historical experiences, geopolitical considerations, and domestic politics. India has not signed the 1951 Refugee Convention or its 1967 Protocol. Despite this, India has a long history of hosting large numbers of refugees. The country's response to refugees has been mostly adhoc and varied depending on the specific group and political circumstances.

♦ Tibetan Refugees: Following the Dalai Lama's departure to India in 1959, India welcomed a large number of Tibetan refugees, providing them with help and relative independence.

- Sri Lankan Tamil Refugees: Throughout the civil conflict (1983–2009), India received multiple waves of Tamil refugees from Sri Lanka. While many have returned, a sizable number remain in camps in Tamil Nadu.

- Afghan Refugees: India has been hosting Afghan refugees since the Soviet invasion in 1979, with successive waves following continuous conflicts.

- Rohingya Refugees: The Indian government has taken a more restrictive attitude to Rohingya refugees from Myanmar, referring to them as illegal immigrants and security dangers.

Citizenship Approach

Rather than *jus soli*, which is citizenship by birth in the territory, India's citizenship government is based mostly on the concept of *jus sanguinis*, or citizenship by descent. The Citizenship Act of 1955, which has undergone multiple amendments, regulates citizenship in India.

The key features are:

- **Citizenship by Birth:** Citizenship was granted to anybody born in India up until 2004. This has been limited by later revisions, which now mandate that at least one parent be an Indian citizen.

- **Citizenship by Descent:** If either parent was an Indian citizen when the individual was born, they are eligible to claim Indian citizenship if they were born outside of India.

- **Naturalisation and Registration:** Foreign nationals can become citizens of India by naturalising (after living in India for a predetermined amount of time) or registering (for people of Indian descent).

- The Citizenship Act of 1955 governs nationality

Recent Developments

The Citizenship (Amendment) Act, 2019 (CAA) has sparked intense debate. For religious minorities of Hindu, Sikh, Buddhist, Jain, Parsi, and Christian descent who fled persecution in Pakistan, Bangladesh, and Afghanistan prior to December 31, 2014, this amendment offers a route to Indian citizenship. Muslims are not included under this provision, which has raised questions about its compliance with India's secular constitution and claims of religious discrimination. In India, the relationship between minority rights

and citizenship is nuanced and frequently divisive. Statelessness among minority groups has been brought up by issues like Assamese illegal immigrants' National Register of Citizens (NRC), which attempts to identify them.

3.2.4 Scheduled Castes and Scheduled Tribes

The Constitution of India recognises certain castes, races and tribal groups as Scheduled Castes and Scheduled Tribes under Articles 341 and 342. Scheduled Castes are those castes/communities who suffer from the age-old practice of untouchability, who are subjected to geographical isolation and need special consideration for safeguarding their interests.

3.2.4.1 Commission for Scheduled Castes and Scheduled Tribes

The Commission for Scheduled Castes (SCs) and Scheduled Tribes (STs) is a vital institution in India aimed at safeguarding the rights and interests of historically marginalised and oppressed communities. Both Scheduled Castes and Scheduled Tribes have faced centuries of discrimination and socio-economic exclusion, making it imperative for the Indian Constitution to incorporate specific provisions for their protection. These provisions were translated into the formation of dedicated commissions tasked with addressing the challenges and rights of these communities.

Formation and Evolution

The idea of a dedicated commission for the SCs and STs traces its origins to the period of India's independence movement. The fight for independence from British rule was intertwined with concerns about social justice and the inclusion of marginalised groups. Leaders like Dr. B.R. Ambedkar, a key architect of the Indian Constitution and an advocate for the rights of Dalits (Scheduled Castes), emphasised the need for constitutional mechanisms to protect these groups from exploitation and discrimination.

The Constitution of India, adopted in 1950, recognised the historical disadvantages faced by the SCs and STs and mandated the creation of special provisions for their upliftment. Article 338 of the Indian Constitution provided for the appointment of a Special Officer to investigate and monitor all matters relating to the safeguards provided for the SCs and STs. This provision led to the establishment of the Commission for Scheduled Castes and Scheduled Tribes in 1950. However, over time, with the growing need for more specialised attention to these communities, the

♦ Scheduled Castes face untouchability and isolation

♦ Recognizes citizens' responsibilities alongside rights

♦ Dr. Ambedkar's advocacy for marginalised groups

commission was bifurcated into two separate bodies: the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST), through the 89th Constitutional Amendment Act of 2003. This amendment was critical in ensuring that each group received focused attention and had a dedicated body to address its concerns.

♦ *Bifurcation of the commission in 2003*

3.2.4.2 Key Functions of the Commission for Scheduled Castes and Scheduled Tribes

The primary role of these commissions is to protect and promote the social, educational, economic and cultural rights of SCs and STs. Their functions are comprehensive and span various domains. Some of the most significant functions are outlined below:

1. Monitoring and Safeguarding Constitutional and Legal Rights

♦ *Ensuring implementation of constitutional safeguards*

- The commissions ensure that the safeguards provided under the Constitution and other laws for the protection of SCs and STs are effectively implemented.

- They look into complaints related to violations of these rights, including cases of discrimination, exclusion or harassment.

2. Investigating and Monitoring Programs and Policies

♦ *Investigation of complaints related to rights deprivation*

- The commissions investigate complaints about the deprivation of rights of SCs and STs.

- They monitor the implementation of development programs and welfare schemes designed for these communities, ensuring that government policies reach the beneficiaries effectively.

3. Reporting to the President of India

♦ *Reports presented to Parliament for awareness*

- The commissions submit annual and special reports to the President of India, detailing the working of constitutional safeguards, government policies and the conditions of SCs and STs.

- These reports are presented to both houses of Parliament and act as a crucial tool in understanding the state of SC and ST communities in the country.

4. Advisory Role

♦ *Advising government on socio-economic measures*

- The commission advises the government on specific measures needed to improve the socio-economic conditions of SCs and STs.

- They also recommend legal reforms to address issues related to untouchability, bonded labour, atrocities against

SCs and STs, and land alienation faced by STs.

5. **Investigating Atrocities**

- The commissions play a significant role in addressing crimes and atrocities committed against SCs and STs.

♦ *Addressing crimes and atrocities against SCs/STs*

- They have the authority to take suo motu cognizance of cases of violence, atrocities and discrimination. This includes examining cases related to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. **Promoting Socio-Economic Development**

- The commissions encourage government and private sector participation in creating opportunities for SCs and STs in education, employment and entrepreneurship.

♦ *Encouraging participation in education and employment*

- They push for the proper implementation of reservation policies in educational institutions and government jobs, which are meant to provide a level playing field for members of SC and ST communities.

7. **Oversight of Educational Opportunities**

- Ensuring equal access to educational opportunities for SCs and STs is one of the commissions' key responsibilities. This includes monitoring the implementation of scholarships, special quotas and other educational benefits.

♦ *Preventing discrimination in educational admissions*

- The commissions review the admission processes in educational institutions to prevent any form of discrimination or exclusion against students belonging to SC/ST communities.

3.2.4.3 Structure and Composition of the Commissions

The National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST) are composed of a chairperson, a vice-chairperson, and three other members. All members, including the chairperson, are appointed by the President of India, and their terms of service are determined by the government. The NCSC and NCST operate through regional offices across the country to ensure that their services are accessible to all parts of India. These regional offices help handle complaints, conduct investigations, and monitor policies at the ground level. This decentralised approach ensures that the commissions are responsive to the needs of SC and ST communities in different

♦ *Regional offices ensure accessibility across India*

regions.

3.2.4.4 Major Achievements and Challenges

Over the years, both the NCSC and NCST have contributed significantly to improving the socio-economic status of SCs and STs in India. Some of the major achievements include:

♦ **Reduction in caste-based discrimination:** Though not eliminated, awareness and action through laws like the Prevention of Atrocities Act have contributed to reducing the intensity of caste-based violence and discrimination.

♦ **Reservation in education and employment:** The commissions have successfully overseen the implementation of the reservation system, which has enabled greater access to education and job opportunities for SC and ST communities.

♦ **Empowerment through welfare programmes:** Monitoring the execution of government programmes like the National Rural Employment Guarantee Scheme (NREGS) and the Tribal Sub-Plan has contributed to the economic empowerment of marginalised communities.

Despite these achievements, challenges remain

♦ **Persistent caste-based atrocities:** Despite stringent laws, atrocities against SCs and STs continue to be reported. The commissions face the challenge of addressing these crimes effectively, especially in rural areas where law enforcement may be inadequate.

♦ **Ineffective implementation of policies:** There are often gaps in the implementation of government policies and welfare schemes intended for SCs and STs. Corruption, bureaucratic inefficiencies, and lack of awareness among beneficiaries are common issues.

♦ **Educational disparities:** While access to education has improved, many SC and ST students still struggle with poverty, discrimination, and a lack of proper infrastructure, particularly in rural and tribal areas.

3.2.5 LGBTQ Rights

♦ Focus on legal protection and social respect

LGBTQ (Lesbian, Gay, Bisexual, Transgender, and Queer) rights have been a significant social and political issue worldwide, evolving over decades of activism, legal battles, and changing societal attitudes. The quest for equal rights for LGBTQ individuals revolves around the demand for recognition, respect and legal

protection, as they have historically faced discrimination, violence and exclusion based on their sexual orientation and gender identity.

Globally, the movement for LGBTQ rights can be traced back to the early 20th century, with significant milestones in the late 1960s, such as the Stonewall Riots in the United States, which are often considered the birth of the modern LGBTQ rights movement. Since then, many countries have made strides toward equality, including the decriminalisation of same-sex relationships, the legalisation of same-sex marriage and the introduction of anti-discrimination laws. For example, countries like Canada, the Netherlands and Germany have implemented comprehensive legal frameworks that ensure equal rights for LGBTQ individuals.

Despite these advancements, the situation for LGBTQ people varies significantly across the world. In many countries, especially in parts of Africa, the Middle East and Asia, LGBTQ individuals continue to face criminalisation, violence and social exclusion. Homosexuality is still illegal in more than 60 countries, and in some nations, it is punishable by death. At the international level, organisations like the United Nations (UN) and Amnesty International have been working to promote LGBTQ rights as fundamental human rights. The UN, in particular, has made significant efforts to address the rights of LGBTQ individuals through its Human Rights Council and the Free & Equal Campaign, advocating for equality and the protection of LGBTQ people from discrimination and violence.

In recent years, the focus has also shifted to include transgender rights, with growing recognition of the unique challenges faced by transgender individuals, including access to healthcare, legal recognition of gender identity, and protection from violence. The global movement for LGBTQ rights continues to grow, advocating for a more inclusive and equitable world for people of all sexual orientations and gender identities.

The LGBTQ community has long faced discrimination, marginalisation, and exclusion in many societies worldwide, including India. The fight for equal rights, legal recognition and social acceptance has been a persistent struggle for this community. In recent years, there has been significant progress in recognising and protecting the rights of LGBTQ individuals, particularly transgender persons. A major milestone in this journey in India was the enactment of the Transgender Persons (Protection of Rights) Act, 2019, which aims to ensure the protection, equality and inclusion of transgender individuals.

◆ *Countries like Canada and Germany lead with legal reforms*

◆ *Regional offices ensure accessibility across India*

◆ *Advocacy for inclusion across all identities*

◆ *LGBTQ faced discrimination and exclusion*

3.2.5.1 Historical Context of LGBTQ Rights in India

The LGBTQ community in India has historically faced severe social stigma, legal challenges and discrimination. The British-era Section 377 of the Indian Penal Code (IPC) criminalised same-sex relationships, branding them as "unnatural offences." This law was a major impediment to the rights and dignity of LGBTQ individuals. After years of legal battles and activism, the Supreme Court of India, in a landmark judgement in 2018, decriminalised consensual same-sex relationships between adults by reading down Section 377. This judgement marked a significant step towards acknowledging the rights of LGBTQ individuals. However, the decriminalisation did not directly address issues related to gender identity, particularly for the transgender community, whose challenges were more complex and multidimensional.

3.2.5.2 The NALSA Judgment: Foundation for Transgender Rights

The first significant recognition of transgender rights in India came through the National Legal Services Authority (NALSA) vs the Union of India judgement in 2014. The Supreme Court ruled that transgender persons should be recognised as the "third gender" and that they should be entitled to fundamental rights and government welfare schemes like any other citizen. This judgment directed the government to take steps to prevent discrimination and to create policies that ensure the inclusion and well-being of transgender persons.

The NALSA judgement also underscored the right of transgender individuals to self-identify their gender, emphasising that no one should be compelled to undergo medical procedures, such as gender reassignment surgery, as a prerequisite for changing their gender identity. This landmark ruling laid the foundation for subsequent legislative efforts aimed at protecting the rights of transgender persons in India.

3.2.5.3 The Transgender Persons (Protection of Rights) Act, 2019: Key Features and Provisions

In line with the NALSA judgment, the Transgender Persons (Protection of Rights) Act, 2019 was enacted by the Indian Parliament to ensure the protection, equality, and dignity of transgender individuals. The act is a crucial piece of legislation that addresses the specific challenges faced by the transgender

community.

Key Provisions of the Transgender Persons (Protection of Rights) Act, 2019

Definition of Transgender Persons

♦ The act defines a transgender person as someone whose gender does not match the gender assigned at birth. This includes trans-men, trans-women and individuals who identify as neither male nor female, as well as persons with intersex variations.

Right to Self-Perceived Gender Identity

♦ One of the fundamental provisions of the act is the recognition of a transgender person's right to self-perceive their gender. A transgender person has the right to choose to be identified as male, female or transgender without the need for any medical or surgical intervention.

Prohibition of Discrimination

♦ The act prohibits discrimination against transgender persons in various fields, including education, employment, healthcare, access to goods and services, housing and the right to move freely in public spaces.

Certificate of Identity

♦ Transgender persons are required to obtain a certificate of identity from a District Magistrate. This certificate formally recognises their gender identity. However, for individuals who undergo gender affirmation surgery, the act mandates a revised certificate to be obtained. This provision has faced criticism for undermining the right to self-identify, as it places the power of validation in the hands of government authorities.

Right to Residence

♦ The act provides transgender individuals the right to reside in their household and not be excluded from family or the community. If families are unwilling to accept transgender individuals, they may be placed in rehabilitation centers.

Education and Employment

♦ The act mandates that educational institutions funded or

recognised by the government ensure equal opportunities for transgender students. It also calls for the creation of welfare schemes and programs that promote the economic inclusion of transgender persons, such as reservation in employment and vocational training programs.

Healthcare Provisions:

♦ The government is required to take steps to ensure transgender persons have access to healthcare services. This includes setting up separate HIV surveillance centers, sex reassignment surgeries, and counselling services, ensuring that transgender persons receive necessary medical care without discrimination.

Welfare Schemes:

♦ The act calls for the formulation and implementation of welfare schemes that specifically target transgender individuals. These schemes aim to promote their economic and social empowerment.

Punishment for Offences:

♦ The act provides for punishment ranging from six months to two years imprisonment for crimes against transgender persons, including physical abuse, sexual abuse, forced labour, and denial of access to public goods and services.

3.2.5.4 Positive Impacts of the Act

Legal Recognition:

♦ For the first time, the transgender community in India is recognised under a formal legal framework, which provides legal protection from discrimination and violence.

Social Inclusion:

♦ The act emphasises the inclusion of transgender persons in educational institutions, public services, and employment, marking a step towards breaking the stigma and marginalisation associated with the community.

Healthcare Access:

♦ By mandating healthcare provisions, the act seeks to address the long-standing issue of medical discrimination faced by transgender individuals, especially in accessing sex reassignment surgeries and mental health counselling.

♦ *Protection Act of 2019*

♦ *Positive impacts*

3.2.5.5 Criticism and Controversy

While the Transgender Persons (Protection of Rights) Act, 2019 was a significant step forward in addressing the rights of transgender individuals, it has been met with considerable criticism from various quarters, including activists, legal experts and members of the transgender community.

Major Criticisms

Certificate of Identity Requirement

- One of the most controversial provisions is the requirement for transgender persons to obtain a certificate of identity from the District Magistrate. Critics argue that this goes against the self-identification principle upheld by the NALSA judgement, as it places the power of validation with the authorities rather than recognizing the individual's self-declared identity.

Lack of Reservation

- The act does not provide for specific reservations in education or public employment for transgender persons, despite their disadvantaged socio-economic status. Activists have pointed out that without such affirmative action, true equality will remain elusive for the community.

Vague Definitions and Enforcement

- Some of the terms and provisions in the act, such as the definition of "discrimination" and "abuse," have been criticised for being vague, making enforcement difficult.

Weak Punitive Measures

- The punishment prescribed for crimes against transgender persons is seen as too lenient, especially in cases of sexual and physical violence. The sentence of two years imprisonment is significantly less severe than penalties for similar offences under other laws.

3.2.5.6 Addressing the Lacune

While the Transgender Persons (Protection of Rights) Act, 2019 is a landmark step towards addressing the historical exclusion of transgender persons, the criticism surrounding it points to several areas that need improvement. To truly empower transgender individuals and ensure their full participation in society, future amendments to the act could include:

- Removing bureaucratic hurdles related to identity certificates and embracing a more self-identification-based approach.

- Introducing reservations in educational institutions and employment, as has been done for other marginalised communities.

- Strengthening punitive measures for crimes against transgender persons to provide better legal protection.

- Promoting awareness and sensitisation programs to combat the deep-rooted social stigma associated with gender nonconformity.

♦ The Act ensures legal recognition for transgender persons

The Transgender Persons (Protection of Rights) Act, 2019 is a crucial step in ensuring the rights and dignity of transgender individuals in India. While the act has opened doors for legal recognition and protection, its shortcomings highlight the ongoing challenges faced by the transgender community. As India moves toward a more inclusive society, continued advocacy, legal reforms, and greater public awareness are essential to ensure that the rights of transgender persons and the broader LGBTQ community are fully realised and protected.

Summarised Overview

The rights of minorities, Scheduled Castes (SCs), Scheduled Tribes (STs), and the LGBTQ community in India, their historical context, constitutional provisions and contemporary developments are important in studying and understanding human rights. The challenges of defining minorities, emphasising the sociopolitical marginalisation faced by ethnic, linguistic, religious and gender minorities are also important. The pivotal role of international frameworks, particularly the United Nations (UN), in advancing minority rights also needs highlighting. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (1992) serves as a landmark document that affirms the right of minorities to preserve their culture, language and religion and provides a global standard for their protection.

In India, the Constitution ensures the protection of minority rights, particularly through Articles 29 and 30, which safeguard cultural and educational rights, and Articles 14 and 15, which guarantee equality and non-discrimination. The establishment of the National Commission for Minorities (NCM) in 1993, which plays a crucial role in monitoring and protecting the rights of minority groups in India, ensured that constitutional guarantees are effectively implemented.

It is important to understand the historical marginalisation of Scheduled Castes and Scheduled Tribes, who have been subjected to centuries of social exclusion and economic

deprivation due to the entrenched caste system. Constitutional provisions like Article 17, which abolishes untouchability, and Article 46, which promotes the economic and educational interests of SCs and STs, are highlighted as critical mechanisms for their upliftment. The establishment of the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST) ensures that these constitutional safeguards are upheld, with the commissions playing a pivotal role in investigating violations, overseeing welfare schemes, and advising the government on policy measures.

The LGBTQ community and their struggles for recognition and equality are significant. The movement for LGBTQ rights started with the colonial-era criminalisation of homosexuality under Section 377 of the Indian Penal Code, and culminating in the 2018 Supreme Court judgement that decriminalised consensual same-sex relationships. The landmark NALSA judgement of 2014, which recognised the rights of transgender individuals to self-identify their gender, paving the way for the Transgender Persons (Protection of Rights) Act, 2019, is also significant. This legislation, while a significant step forward, has been critiqued for its bureaucratic hurdles and the absence of reservations for transgender individuals in education and employment.

Assignment Questions

1. Discuss the complexity of defining minorities and the challenges faced in creating a universally accepted definition. How do sociological, legal, and political perspectives contribute to the definition of minority groups?

2. Discuss the key functions of the Commission for SC & ST in India.

3. Trace the global evolution of LGBTQ rights in India.

Suggested Reading

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5. Beitz, Charles R., *The Idea of Human Rights*, Penguin Books, New Delhi, 2009.

6. Brij Kishore Sharma, *Universal Declaration of Human Rights and Indian Law*, PHI, 2010

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1. Kabir, Humayun. 1968, *Minorities in a Democracy,* Firma KLM.

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3. National Commission for Minorities, Constitutional Provisions. https://ncm.nic.in/home/pdf/about%20ncm/constitutional_provisions.pdf

Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

Persons With Disabilities

Learning Outcomes

After the completion of the unit, the learner will be able to:

♦ understand the rights and constitutional provisions for persons with disabilities
♦ study the role of international organisations in developing the rights of persons with disabilities
♦ understand policies for increased international cooperation with regard to disability rights

Background

Persons with disabilities have historically faced significant social, economic and institutional barriers that have limited their full participation in society. The concept of disability has evolved from a narrow medical model, which views it as a personal health issue, to a broader social model that recognises the role of societal barriers in creating disability. Over time, global awareness of the rights and needs of people with disabilities has grown, leading to a more inclusive understanding of disability as a part of human diversity.

Internationally, the rights of persons with disabilities have been addressed through key frameworks such as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), adopted in 2006. This convention marked a significant shift by emphasising that persons with disabilities should enjoy the same rights and freedoms as others, including the right to education, employment and accessibility. It mandates state parties to ensure that persons with disabilities are not subject to discrimination and to promote their dignity, autonomy and active participation in society.

In India, the rights of persons with disabilities have gained legal recognition through the Rights of Persons with Disabilities (RPwD) Act, 2016, which replaced the earlier Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act, 1995. The 2016 Act expanded the definition of disability to include 21 categories and introduced provisions for reservations in education and employment, accessibility standards and protection from discrimination

Discussion

3.3.1 The Rights and Challenges of Persons with Disabilities

Persons with disabilities are a part of society, yet they face numerous challenges that hinder their full participation and inclusion. Despite their capabilities and contributions, they often encounter discrimination, marginalisation and exclusion from various aspects of life. This essay will explore the human rights violations faced by persons with disabilities, the international and national legal frameworks that protect their rights and the challenges and strategies for inclusion.

♦ *Barriers include education, employment, and healthcare*

One of the primary challenges faced by persons with disabilities is social stigma. Negative attitudes and stereotypes lead to exclusion and marginalisation, preventing them from fully participating in society. Inaccessible infrastructure, lack of accessible education, employment barriers, healthcare disparities and political underrepresentation further exacerbate these challenges.

The international community has recognised the rights of persons with disabilities through the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The CRPD ensures equal access to public spaces, transportation, and services and recognises the legal capacity of persons with disabilities. In India, the Rights of Persons with Disabilities Act, 2016, protects the rights of persons with disabilities and ensures equal opportunities and participation. However, despite these legal frameworks, persons with disabilities continue to face numerous challenges. Accessible infrastructure, inclusive education, employment initiatives, accessible healthcare and empowerment and participation are essential strategies for inclusion. Technology also plays a crucial role in promoting inclusion, with assistive technologies, accessible digital content and inclusive digital design enhancing independence and accessibility.

♦ *Technology aids in promoting inclusion*

By recognising and addressing these issues, we can work towards a more inclusive and accessible society for all. The international and

national legal frameworks provide a foundation for protecting the rights of persons with disabilities and strategies for inclusion can promote equal opportunities and participation. It is essential that we prioritise the rights and inclusion of persons with disabilities to create a society that values diversity and promotes equal opportunities for all.

3.3.2 International Standards for Persons with Disabilities: Promoting Inclusion and Accessibility

The international community has recognised the need to protect the rights and promote the inclusion of persons with disabilities who face numerous challenges in their daily lives. To address these issues, various international standards have been established, providing guidelines and frameworks for creating a more inclusive and accessible society. This essay will explore the key international standards for persons with disabilities, their significance and their impact on promoting inclusion and accessibility.

3.3.3 The United Nations Convention on the Rights of Persons with Disabilities (CRPD)

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) is a landmark treaty that protects the rights of persons with disabilities and promotes their inclusion in all aspects of society. Adopted in 2006, the CRPD emphasises the importance of accessibility, equal opportunities, and participation for persons with disabilities. The treaty sets out a framework for implementing these principles, covering areas such as education, employment, healthcare and transportation.

Another crucial international standard is the World Health Organization's (WHO) International Classification of Functioning, Disability and Health (ICF). The ICF provides a comprehensive framework for understanding and classifying disability, emphasising the social and environmental factors that affect functioning. This framework helps to shift the focus from the individual's impairment to the environmental barriers that prevent full participation.

The United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities provide guidelines for implementing the CRPD and promoting equal opportunities for persons with disabilities. These rules cover areas such as accessibility, education, employment and healthcare, providing practical guidance for governments and organisations.

♦ *Focus on equal opportunities for all*

♦ *International standards for disability inclusion*

♦ *CRPD promotes inclusion and equal opportunities*

♦ *ICF shifts focus to enviornmental barriers*

♦ *Standard Rules guode CRPD implementation*

In addition to these standards, the ISO 21542:2011 - Accessibility and Usability of the Built Environment provides guidelines for designing accessible buildings and public spaces. This international standard ensures that physical environments are usable by all, promoting inclusivity and accessibility.

The Web Content Accessibility Guidelines (WCAG 2.1) are another essential standard, providing guidelines for creating accessible digital content and ensuring equal access to information and communication technologies. These guidelines are crucial in today's digital age, where access to information and services is increasingly online.

These international standards aim to promote equal opportunities and participation, ensure accessibility and inclusivity, protect the rights of persons with disabilities, encourage disability-inclusive policies and practices and foster a culture of inclusion and respect for diversity. By adopting and implementing these standards, countries can create a more inclusive and accessible environment for persons with disabilities. The impact of these international standards is significant. They provide a framework for governments, organisations and individuals to work towards creating a more inclusive society. By promoting accessibility and inclusivity, these standards can help to:

- Increase participation and inclusion of persons with disabilities in all aspects of society
- Improve access to education, employment, healthcare, and transportation
- Enhance the quality of life for persons with disabilities
- Foster a culture of inclusion and respect for diversity
- Encourage disability-inclusive policies and practices

However, despite these international standards, persons with disabilities continue to face numerous challenges. Implementation and enforcement of these standards remain inconsistent, and many countries still lack the necessary resources and infrastructure to support inclusion and accessibility. International standards for persons with disabilities play a crucial role in promoting inclusion and accessibility. The CRPD, ICF, UN Standard Rules, ISO 21542, and WCAG 2.1 provide a comprehensive framework for creating a more inclusive and accessible society. While challenges remain, these standards offer a foundation for governments, organisations, and individuals to work towards a more inclusive future. By adopting and implementing these standards, we can create a society that values diversity and promotes equal opportunities for all.

♦ *Covers accessibility in key areas*

♦ *Aim of International standards*

♦ *Encourage accessibility and inclusivity efforts*

♦ *Challenges in implementation and enforcement*

3.3.3.1 International Standards for Persons with Disabilities

In addition to the standards mentioned earlier, several other international standards promote the inclusion and accessibility of persons with disabilities. These include:

♦ Supports persons with disabilities

- United Nations Guidelines on the Right to Education for Persons with Disabilities: These guidelines provide a framework for ensuring inclusive education for persons with disabilities.

- World Health Organisation's Guidelines on Disability-Inclusive Healthcare: These guidelines provide a framework for ensuring accessible and inclusive healthcare services for persons with disabilities.

- International Labour Organisation's Guidelines on Disability-Inclusive Employment: These guidelines provide a framework for promoting inclusive employment practices and equal opportunities for persons with disabilities.

- United Nations Habitat's Guidelines on Accessible Urban Development: These guidelines provide a framework for designing accessible and inclusive urban environments.

- International Organisation for Standardisation's Standards on Assistive Technology: These standards provide a framework for developing and promoting assistive technologies that support persons with disabilities.

Principles of International Standards

International standards for persons with disabilities are guided by several key principles, including:

♦ Principles of International standards

- Equality and Non-Discrimination: Ensuring equal opportunities and non-discrimination for persons with disabilities.

- Accessibility: Ensuring physical and digital environments are accessible and usable by all.

- Participation and Inclusion: Promoting participation and inclusion of persons with disabilities in all aspects of society.

- Respect for Diversity: Recognising and respecting the diversity of persons with disabilities.

- Human Rights-Based Approach: Ensuring that the rights of persons with disabilities are respected and protected.

Benefits of International Standards

International standards for persons with disabilities offer several benefits, including:

- Improved Accessibility: Ensuring that physical and digital environments are accessible and usable by all.

- Increased Participation: Promoting participation and inclusion of persons with disabilities in all aspects of society.

- Enhanced Quality of Life: Improving the quality of life for persons with disabilities.

- Economic Benefits: Promoting inclusive economic practices and equal opportunities for persons with disabilities.

- Social Benefits: Promoting social inclusion and respect for diversity.

3.3.4 The Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) is a groundbreaking international treaty that has revolutionised the way we approach disability rights. Adopted in 2006, the CRPD is the first human rights treaty of the 21st century and has been ratified by over 180 countries. This essay will explore the key principles, articles and impact of the CRPD, highlighting its significance in promoting inclusion and equality for persons with disabilities.

Principles

The CRPD is built on eight key principles that underpin its approach to disability rights. These principles are:

1. Respect for dignity, autonomy, and independence: Recognising the inherent dignity and worth of persons with disabilities.

2. Non-discrimination: Prohibiting discrimination on the basis of disability.

3. Full and effective participation and inclusion: Ensuring equal opportunities for participation in all aspects of society.

4. Respect for difference and acceptance of persons with disabilities: Challenging stigma and promoting acceptance.

5. Equality of opportunity: Ensuring equal access to education, employment, and healthcare.

6. Accessibility: Ensuring physical and digital environments are accessible and usable by all.

7. Equality between men and women: Promoting gender equality and addressing the specific needs of women with disabilities.

8. Respect for the evolving capacities of children with disabilities: Recognising the unique needs of children with disabilities.

Articles

The CRPD consists of 50 articles that outline the rights and obligations of States Parties. Some key articles include:

♦ Article 1: Purpose: To promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities.

♦ Article 2: Definitions: Defines key terms, including "communication," "language," and "discrimination on the basis of disability."

♦ Article 3: General Principles: Outlines the general principles of the Convention, including respect for dignity and autonomy.

♦ Article 4: General Obligations: States Parties must ensure that persons with disabilities enjoy all human rights and fundamental freedoms.

♦ Article 5: Equality and Non-Discrimination: States Parties must prohibit discrimination on the basis of disability.

Implementation and Monitoring

The CRPD establishes a robust monitoring mechanism to ensure implementation by States Parties. The Committee on the Rights of Persons with Disabilities monitors implementation and provides recommendations to States Parties. States Parties must submit regular reports to the Committee, outlining their progress in implementing the CRPD.

Impact

The CRPD has had a significant impact on promoting inclusion and equality for persons with disabilities. Some key achievements include:

♦ **Promoting equal opportunities and participation**: The CRPD has challenged traditional approaches to disability, promoting equal opportunities and participation in education, employment and healthcare.

◆ *Empowers persons with disabilities*

◆ *CRPD promotes inclusive eduative and equality*

◆ *Challenging Stigma and Promoting Acceptance*

◆ *Promoting Inclusive Education*

◆ *Promoting Accessible Infrastructure*

◆ *Empowering Persons with Disabilities*

♦ **Protecting human rights and fundamental freedoms:** The CRPD has protected the human rights and fundamental freedoms of persons with disabilities, prohibiting discrimination and promoting equality.

♦ **Raising awareness and challenging stigma:** The CRPD has raised awareness about disability rights, challenging stigma and promoting acceptance.

♦ **Influencing national laws and policies:** The CRPD has influenced national laws and policies, promoting disability-inclusive legislation and policies.

♦ **Empowering persons with disabilities to claim their rights:** The CRPD has empowered persons with disabilities to claim their rights, promoting self-advocacy and self-determination.

♦ **The Convention on the Rights of Persons with Disabilities (CRPD)** has been a catalyst for change, promoting a paradigm shift in the way we approach disability rights. By recognising the inherent dignity and worth of persons with disabilities, the CRPD has challenged traditional approaches to disability, promoting equal opportunities and participation.

The CRPD has challenged stigma and promoted acceptance, recognizing that persons with disabilities are not objects of pity or charity but rather individuals with rights and dignity. By promoting awareness and understanding, the CRPD has helped to break down barriers and challenge negative stereotypes.

The CRPD has promoted inclusive education, recognising that education is a fundamental right and a key factor in promoting equal opportunities. By promoting inclusive education, the CRPD has helped to ensure that persons with disabilities have access to quality education, enabling them to reach their full potential.

The CRPD has promoted accessible infrastructure, recognising that accessibility is a fundamental right. By promoting accessible infrastructure, the CRPD has helped to ensure that persons with disabilities have equal access to public spaces, transportation and services.

The CRPD has empowered persons with disabilities, promoting self-advocacy and self-determination. By recognising the importance of participation and inclusion, the CRPD has helped to ensure that persons with disabilities have a voice and are able to participate fully in society.

In addition to the mentioned points, the Convention on the Rights of Persons with Disabilities (CRPD) has had a significant impact in several other areas, including:

Promoting Disability-Inclusive Healthcare

♦ The CRPD has promoted disability-inclusive healthcare, recognising that persons with disabilities have the right to access quality healthcare services. This includes ensuring that healthcare facilities and services are accessible and that healthcare professionals are trained to meet the needs of persons with disabilities.

Protecting the Rights of Persons with Disabilities in Situations of Risk

♦ The CRPD has protected the rights of persons with disabilities in situations of risk, such as natural disasters, conflicts, and humanitarian emergencies. This includes ensuring that persons with disabilities are included in emergency planning and response efforts.

Promoting Disability-Inclusive Development

♦ The CRPD has promoted disability-inclusive development, recognising that persons with disabilities have a critical role to play in achieving sustainable development. This includes ensuring that development programs and policies are inclusive of persons with disabilities.

Strengthening National Laws and Policies

♦ The CRPD has strengthened national laws and policies, providing a framework for countries to develop and implement disability-inclusive laws and policies.

Increasing International Cooperation

♦ The CRPD has increased international cooperation, providing a platform for countries to share best practices and work together to promote disability rights.

Empowering Organisations of Persons with Disabilities

♦ The CRPD has empowered organisations for persons with disabilities, recognising their critical role in promoting disability rights and inclusion.

Promoting Disability-Inclusive Technology

♦ The CRPD has promoted disability-inclusive technology, recognising the importance of accessible and usable technology in promoting inclusion and equality.

Protecting the Rights of Persons with Disabilities in the Workplace

- The CRPD has protected the rights of persons with disabilities in the workplace, promoting equal opportunities and non-discrimination in employment.

- These additional impacts demonstrate the far-reaching influence of the CRPD in promoting disability rights and inclusion.

3.3.5. The Persons with Disabilities Act:

A Comprehensive Framework for Inclusion and Protection. The Persons with Disabilities Act, 2016, marks a significant milestone in India's journey towards becoming an inclusive society. This comprehensive legislation replaces the outdated Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It brings Indian laws in line with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The Persons with Disabilities Act is a landmark legislation that aims to protect the rights and promote the inclusion of persons with disabilities. Enacted to ensure equal opportunities and non-discrimination, this Act provides a comprehensive framework for addressing the diverse needs of persons with disabilities. This essay will explore the key provisions, implementation, and impact of the Persons with Disabilities Act, highlighting its significance in promoting inclusion and protecting the rights of persons with disabilities.

Features:

- **Expanded Definition of Disability:** The Act recognizes 21 disabilities, including mental illness, autism, and multiple disabilities, and provides a broader definition of disability.

- **Rights-Based Approach:** The Act adopts a rights-based approach, emphasising the rights and dignity of persons with disabilities.

- **Inclusive Education:** The Act promotes inclusive education, ensuring that children with disabilities have access to quality education.

- **Employment Opportunities:** The Act provides for reservation in employment, promoting equal opportunities for persons with disabilities.

- **Accessible Infrastructure:** The Act ensures that public infrastructure, transportation, and services are accessible and barrier-free.

- ◆ **Social Security:** The Act provides for social security schemes, including pensions, scholarships, and assistance for persons with disabilities.

- ◆ **National Fund:** The Act establishes a national fund to support initiatives and programs promoting disability inclusion.

Provisions

The Persons with Disabilities Act defines disability as a long-term physical, mental, intellectual, or sensory impairment that hinders a person's ability to participate fully in society. This definition encompasses a broad range of disabilities, ensuring that all individuals with disabilities are protected under the Act. The Act prohibits discrimination against persons with disabilities in all areas of life, including education, employment, healthcare and transportation.

♦ The Act prohibits discrimination

1. **Definition of Disability:** The Act defines disability as a long-term physical, mental, intellectual or sensory impairment that hinders a person's ability to participate fully in society.

2. **Non-Discrimination:** The Act prohibits discrimination against persons with disabilities in all areas of life, including education, employment, healthcare and transportation.

3. **Accessibility:** The Act requires that public buildings, transportation, and services be accessible to persons with disabilities.

4. **Reasonable Accommodation:** The Act requires employers and service providers to make reasonable accommodations to ensure that persons with disabilities have equal access to opportunities.

5. **Support Services:** The Act provides for support services, such as assistive devices, personal assistance and rehabilitation services, to enable persons with disabilities to participate in society fully.

♦ Disability definition covers all impairments

6. **Education:** The Act requires that educational institutions provide inclusive education to students with disabilities.

7. **Employment:** The Act requires employers to provide equal opportunities and reasonable accommodations to employees with disabilities.

8. **Healthcare:** The Act requires healthcare providers to provide accessible and inclusive healthcare services to persons with disabilities.

Implementation and Enforcement

Effective implementation and enforcement are crucial to the success of the Persons with Disabilities Act. The Act establishes a National Disability Authority to oversee implementation and enforcement, ensuring that the rights of persons with disabilities are protected. A Disability Rights Commission has also been established to investigate complaints and promote disability rights. Regular monitoring and evaluation are essential to ensure the implementation and effectiveness of the Act. This includes assessing the accessibility of public spaces and services, as well as the provision of support services, such as assistive devices and personal assistance.

♦ The National Disability Authority oversees enforcement

Impact

The Persons with Disabilities Act has a significant impact on promoting inclusion and protecting the rights of persons with disabilities. By prohibiting discrimination and ensuring accessibility, the Act enables persons with disabilities to participate in society fully. The Act also supports independent living and autonomy, empowering individuals with disabilities to make choices and decisions about their lives. In education, the Act requires inclusive education, ensuring that students with disabilities have equal access to quality education. In employment, the Act promotes equal opportunities and reasonable accommodations, enabling individuals with disabilities to contribute to the workforce.

♦ Supports inclusive education and equal employment opportunities

Challenges and Limitations

Despite its comprehensive framework, the Persons with Disabilities Act faces challenges and limitations in implementation. Lack of awareness and understanding of disability rights, inadequate resources, and insufficient infrastructure hinder the effective implementation of the Act.

♦ Awareness, resources, and infrastructure are key factors

Summarised Overview

It is important to have a comprehensive understanding of the rights, challenges, and international standards that shape the lives of individuals with disabilities. Central to this discussion is the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), adopted in 2006, which marks a significant advancement in recognising disability as a human rights issue rather than a medical concern. The UNCRPD emphasises the importance of inclusion, accessibility, and the empowerment of persons with disabilities, ensuring their full participation in society. It sets out a framework for countries to develop legislation and policies that uphold the dignity, autonomy, and equality of individuals with disabilities, addressing issues such as accessibility, education, employment, and health care.

In India, the Rights of Persons with Disabilities (RPwD) Act, 2016 serves as a crucial legislative measure aimed at promoting and protecting the rights of persons with disabilities. This act expands the definition of disability to encompass 21 categories and outlines specific provisions for the inclusion of persons with disabilities in various sectors, including education and employment. It mandates reasonable accommodations, accessibility standards, and the establishment of grievance redressal mechanisms to address violations of rights. The act also emphasises the importance of community-based rehabilitation and social security for persons with disabilities. Despite these frameworks, challenges remain, including societal stigma, inadequate infrastructure and insufficient awareness of rights and entitlements among persons with disabilities.

Assignments

1. Examine the effectiveness of the Rights of Persons with Disabilities (RPwD) Act, 2016, in promoting inclusion in Indian education and employment sectors.

2. Compare the legal frameworks and protections for persons with disabilities in India and any other country.

3. Design a community awareness campaign aimed at reducing stigma and promoting the rights of persons with disabilities. What can be included in this to create awareness of the international and Indian provisions for persons with disabilities?

Suggested Reading

1. Raj, Remanan R.P., *Human Rights Concept and Concerns*, Kottayam, 2014.

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3. Remanan R.P., *Human Rights Concept and Concerns*, Kottayam, 2014.

4. National Policy on Senior Citizens, 2011.

5. *The History of Human Rights*, Mangalam Publications, Delhi, 2011.

6. *Universal Declaration of Human Rights and Indian Law*, PHI Learning Private Limited, New Delhi, 2010

Reference

1. Guide, T. , The Convention on the Rights of Persons with Disabilities, 2010.

2. Hendriks, A., UN Convention on the Rights of Persons with Disabilities, *European Journal of Health Law*, *14*(3), 273-298, 2007.

Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

Issues and Challenges to Human Rights

UNIT 1

N.G.O and Human Rights Movements

Background

The Second World War marked a significant turning point in the global recognition of human rights and the role of non-governmental organisations (NGOs) in shaping international policy and advocating for rights awareness.

During the world wars, humanitarian organisations such as the Red Cross played a critical role in providing relief and medical aid to war casualties. The Red Cross also worked to facilitate the exchange of information between prisoners of war and their families and its humanitarian efforts during this period solidified the organisation's reputation as a vital player in international crises.

Post-World War II, as the world grappled with the moral and physical aftermath of conflict, the emergence of new NGOs focused on human rights became increasingly prominent. The Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, set the stage for a global commitment to the protection of individual rights and the recognition of human dignity. It also encouraged the proliferation of NGOs dedicated to ensuring that these rights were upheld.

Organisations such as Amnesty International, founded in 1961, were instrumental in advocating for human rights. Amnesty International initially focused on prisoners of conscience-individuals imprisoned solely for their beliefs- and quickly expanded its mandate to address broader human rights violations, including torture, unfair trials and extrajudicial killings. NGOs not only played a crucial role in raising awareness about human rights violations but also in policy formulation and implementation. They engaged with international bodies such as the United Nations, contributing to the drafting of

treaties and conventions aimed at protecting human rights. Many NGOs work alongside intergovernmental organisations to implement international treaties and ensure that governments adhere to their human rights obligations.

This unit will examine the pivotal role of NGOs in shaping policy formation, implementation and awareness in the context of human rights post-World War II. It will explore how these organisations have influenced international treaties, pressured governments to uphold human rights and mobilised civil society to demand justice and accountability for violations. Through this examination, we will gain a deeper understanding of the transformative impact of NGOs on global human rights norms and their ongoing contributions to building a more just and equitable world.

Keywords

Human rights, Rights literacy and awareness, N.G.O, Amnesty International, People's Union for Civil Liberties, UN Charter of Human rights

Discussion

4.1.1 NGOs and Human Rights

♦ *Shift from Promoting to Protecting rights*

A key change in the human rights system is the shift from just promoting rights to actively protecting them. Many treaties now include specific committees to monitor compliance, like the Committee on Torture. New players, including national governments and non-governmental organisations (NGOs) like Amnesty International and Human Rights Watch, are now involved in highlighting abuses and advocating for better protection of human rights.

♦ *From promoting to protection of human rights*

However, granting rights to individuals has challenged the idea that states can do whatever they want within their borders. Even actions by a government against its own people are now seen as global concerns. Experts like ex -Secretary-General of United Nations, Kofi Annan argue that a state's legitimacy is based on how well it treats its citizens, and governments can no longer claim absolute sovereignty to justify abuses.

How the perception of human rights has changed throughout the times can be cited from the example of the International Labour Organisation. An interesting example of change in human rights is seen in the International Labour Organisation (ILO) Conventions on indigenous peoples' rights. The first convention in 1957 aimed

to integrate Indigenous peoples into the larger society, while the second in 1989 emphasised protecting their rights and respecting their cultures. This shift highlights ongoing conflicts between different generations of rights – those focusing on assimilation and those on cultural preservation.

4.1.2 Role of NGOs in Human Rights Literacy and Awareness

Human rights literacy involves informing individuals and communities about their basic rights, as defined by international and national standards, and providing tools to understand and protect these rights. NGOs contribute to this by conducting workshops, distributing educational materials and organising community programs on civil, political, social, economic and cultural rights. For instance, organisations like Amnesty International and Human Rights Watch produce materials that cover a range of issues, including freedom of expression, gender equality, and migrant rights, making complex human rights concepts accessible to the general public. In India, the People's Union for Civil Liberties (PUCL) provides training and awareness sessions on civil liberties and the legal rights of marginalised communities.

1. Policy Advocacy and Legal Reform

NGOs also advocate for policy changes that protect and enhance human rights, often collaborating with national governments and international bodies like the United Nations. Through this advocacy, NGOs push for the creation and improvement of laws protecting vulnerable populations, working to bridge gaps in existing legislation. By presenting *shadow reports* to bodies such as the UN Human Rights Council, NGOs bring attention to violations and hold governments accountable. For example, the Human Rights Law Network (HRLN) in India has been instrumental in filing Public Interest Litigations (PILs) on behalf of marginalised groups to challenge discriminatory laws and practices.

2. Legal Aid and Access to Justice

Providing legal aid is another critical function of NGOs in the human rights arena. NGOs like Lawyers Collective and HRLN in India offer pro bono legal services to individuals who cannot afford representation, particularly those facing discrimination, violence, or other forms of injustice. This aid helps victims of human rights violations navigate complex legal processes, which are often inaccessible to the disadvantaged. Legal aid programmes also include counselling, case representation and guidance on filing complaints or accessing redress mechanisms.

3. Monitoring and Documentation of Rights Violations

NGOs play a watchdog role by systematically documenting human rights abuses, producing evidence that is crucial for both legal recourse and international awareness. Monitoring activities involve gathering data through field investigations, interviews and collaborations with local partners. NGOs such as Human Rights Watch and Amnesty International publish detailed reports on abuses, which often contribute to international pressure on governments to address these issues. For example, in India, PUCL has documented police brutality, custodial deaths and other civil rights violations, highlighting the need for systemic changes within law enforcement.

♦ *Reports prompt international and legal pressure*

4. Awareness Campaigns and Public Engagement

To foster a rights-aware society, NGOs engage in extensive awareness campaigns that utilise social media, traditional media and public events to inform citizens about their rights and the importance of upholding them. Campaigns may address specific issues like gender-based violence, caste discrimination, child rights, or freedom of speech, aiming to shift public opinion and generate support for human rights causes. Awareness activities involve educational resources, events, rallies and partnerships with media outlets to keep human rights in the public discourse. For instance, Child Rights and You (CRY) works on raising awareness about child labour and child marriage through community engagement and media outreach, advocating for stronger child protection laws.

♦ *NGOs raise awareness through media outreach*

5. Empowerment and Capacity-Building Initiatives

Beyond advocacy and education, NGOs work to empower marginalised communities through capacity-building programmes that enhance individuals' ability to understand and assert their rights. Empowerment programs focus on training community leaders and local human rights defenders in advocacy, legal literacy and rights education. NGOs like PRIA (Society for Participatory Research in Asia) emphasise participatory approaches, working with communities to address issues like caste discrimination, women's rights, and access to education. Such programmes promote self-sufficiency, enabling communities to advocate for their rights effectively.

♦ *PRIA fosters community-driven empowerment*

4.1.2.1 Challenges

NGOs, particularly those focused on human rights, face numerous challenges globally. These obstacles are often complex and rooted in political, financial and social barriers, which

can restrict their ability to operate effectively and pursue their objectives. Here are some of the most significant challenges faced by NGOs, with particular reference to human rights organisations.

1. Political Restrictions and Government Regulations

One of the most significant challenges for NGOs is operating in politically restrictive environments where governments view their work as a threat or interference. In many countries, restrictive laws limit NGO activities, funding sources and even registration. These measures are often justified by governments in the name of "national security" or "public order" but are primarily designed to suppress dissent and control civil society.

2. The Foreign Contribution Regulation Act (FCRA) in India, for example, requires NGOs to register and comply with stringent guidelines to receive foreign funding. Many organisations have been denied renewal under this law, severely impacting their operations.

Similarly, in countries with authoritarian regimes like China, Russia and several Middle Eastern nations, NGOs face laws that limit freedom of association and foreign funding, often leading to forced closures.

2. Funding Constraints

Funding constraints pose a major challenge, as NGOs often rely heavily on donations, grants and sponsorships, which may be inconsistent or limited in scope. Governments sometimes restrict foreign funding, which can reduce the resources available for projects and create dependency on a limited number of sources. Many international grants are tied to specific projects, limiting the flexibility NGOs need to respond to emerging issues or crises.

♦ Dependence on **project-based funding** can result in financial instability, as grants may only cover particular initiatives and restrict administrative costs, making it difficult to maintain a sustainable operation.

♦ NGOs that work on politically sensitive issues, such as human rights advocacy, LGBTQ+ rights or electoral reform, may also find it difficult to secure local funding due to societal resistance or government restrictions.

3. Security and Personal Risks

Human rights defenders, activists, and NGO workers often face significant security risks, including threats, harassment and even

violence, particularly in countries with weak rule of law. Those working on sensitive topics—such as government corruption, human rights violations or advocacy for minority groups—may be at risk of targeting by state or non-state actors.

- **Personal safety concerns**: In countries like the Philippines, Brazil, and Mexico, activists face violence from both state authorities and non-state actors. In 2019 alone, 304 human rights defenders were killed globally.
- NGO workers in conflict zones are also at risk from terrorist groups, insurgents and militias, who may view them as threats to their control or as collaborators with foreign governments.

4. Public and Cultural Resistance

In many regions, NGOs advocating for human rights, gender equality, LGBTQ+ rights, or caste reform encounter cultural resistance. Traditional norms and social structures may conflict with the objectives of NGOs, leading to resistance from local communities or backlash from conservative groups.

- In societies where cultural norms are deeply ingrained, promoting women's rights, LGBTQ+ rights or anti-caste discrimination can be controversial. NGOs often encounter resistance from religious or community leaders who view these efforts as undermining traditional values.
- Educational campaigns may be met with scepticism or hostility, making it challenging for NGOs to gain the trust of the communities they aim to serve.

5. Operational Challenges in Conflict Zones

In conflict areas, NGOs face logistical and operational difficulties, including restricted access, lack of infrastructure and disruptions due to ongoing violence. These challenges can hinder the delivery of aid and services to vulnerable populations, limiting the impact of humanitarian efforts.

- **Access restrictions**: Many conflict zones have military imposed restrictions that limit the ability of NGOs to reach affected populations. The Syrian Civil War, for instance, has severely restricted humanitarian access, leading to difficulties in delivering essential services to civilians.

- **Communication and coordination issues**: NGOs operating in volatile regions often struggle to coordinate with other organisations or authorities, which can lead to duplication of efforts or inefficiencies in aid delivery.

6. Administrative and Bureaucratic Barriers

Bureaucratic hurdles, including complex registration processes, reporting requirements, and frequent audits, create significant administrative burdens for NGOs. Governments may impose these hurdles intentionally to slow down or obstruct the functioning of NGOs, particularly those engaged in advocacy or critical of state policies.

♦ *Foreign funding regulations add burdens*

- In many cases, regulatory requirements for foreign funding and annual audits add an administrative burden, diverting time and resources away from the NGO's primary mission.
- NGOs are often required to submit reports and financial disclosures, and non-compliance can lead to penalties or deregistration, limiting their ability to function.

7. Media and Public Perception

NGOs frequently face negative portrayals in the media, especially when their work challenges governmental policies or entrenched social norms. Governments may use state-controlled media to discredit NGOs, labelling them as foreign agents or disruptors, which can erode public trust and deter funding.

♦ *Authoritarian regimes spread negative narratives*

- **Negative narratives** about NGOs working on human rights or transparency issues are common, especially in authoritarian regimes, leading to a loss of public confidence.
- NGOs are sometimes seen as "foreign-influenced" or "Western-funded" entities, which can undermine their credibility and acceptance within local communities.

10. Digital and Cybersecurity Threats

With the increasing reliance on digital tools for advocacy, NGOs face cybersecurity threats, including hacking, surveillance and data breaches. Many NGOs lack the resources for robust cybersecurity, making them vulnerable to attacks that can compromise sensitive information, endanger staff or disrupt operations.

♦ *Surveillance restricts NGO activities*

- **Digital surveillance**: In countries with advanced surveillance capabilities, governments monitor NGO activities, communications, and funding sources, which restricts the freedom of human rights advocates to organise.
- **Cyber-attacks**: NGOs are often targets of cyber-attacks, including hacking and data breaches, which can jeopardise the safety of beneficiaries, staff and critical operational information.

4.1.3 Impact of NGOs on Society and Human Rights

NGOs have significantly advanced human rights awareness, contributing to the development of a more rights-conscious society. They have played a vital role in shaping policies, challenging discriminatory practices and increasing accessibility to justice. In India, NGOs like PUCL, HRLN, and CRY have not only increased public understanding of rights but also influenced legislation and social attitudes. Through their advocacy, documentation and legal interventions, these organisations have helped build a society where human rights are actively defended, setting a foundation for social and political progress.

4.1.3.1 The People's Union for Civil Liberties (PUCL)

The People's Union for Civil Liberties (PUCL) was founded by Jayaprakash Narayan. It was originally named the People's Union for Civil Liberties and Democratic Rights (PUCLDR) in 1976, following the internal Emergency imposed by then Prime Minister Indira Gandhi on the night of June 25-26, 1975. This Emergency aimed to dismantle the country's democratic structure and concentrate power in her hands. Fundamental rights, such as the right to life, liberty and freedom of speech, were suspended. Over a hundred thousand people, including prominent leaders like Jayaprakash Narayan, Morarji Desai, Atal Behari Vajpayee, L.K. Advani and Madhu Dandavate, were detained without trial under the harsh Maintenance of Internal Security Act (MISA). Newspapers faced strict censorship and even the right to life was unenforceable in courts. The country faced virtual dictatorship, and democratic institutions were severely threatened.

Eminent lawyers, including Chief Justice M.C. Chagla, Chief Justice C.J. Shah, Justice V.M. Tarkunde, and Ram Jethmalani, led a relentless fight against the Emergency and the suspension of fundamental rights. Jayaprakash Narayan had earlier formed the Citizens For Democracy (CFD) in response to the political and economic crisis caused by Indira Gandhi's attempt to undermine the judiciary's independence. The CFD was established on April 13, 1974, with Jayaprakash Narayan as its President and V.M. Tarkunde as the General Secretary. Narayan called for a movement against tyranny and the subversion of democracy, mobilising mass protests and public support.

When the Emergency was imposed, a national seminar was held in New Delhi on October 17, 1976, to discuss defending civil liberties. Acharya J.B. Kripalani inaugurated the seminar,

leading to the formation of PUCLDR, , which is intended to be free from political ideologies and unite individuals concerned about civil liberties and human rights. PUCLDR was initially a loosely organised group working with Jayaprakash Narayan. Justice V.M. Tarkunde was elected President and Krishna Kant as General Secretary.

After Jayaprakash Narayan's death on October 8, 1979, and Indira Gandhi's return to power in 1980, her government continued to attack people's rights. Efforts were renewed to revitalise PUCLDR, aiming for cooperation among various civil liberties groups. Learning from past experiences, it was decided to establish a more stable organisation. A conference in November 1980 led to the drafting and adoption of the PUCL's constitution, transforming it into a membership-based organisation with branches nationwide. To maintain independence, PUCL decided not to accept funds from governments, foreign countries or corporations, relying solely on membership fees and donations from friendly donors. Political party members can join PUCL but cannot hold office at the state or national level, ensuring the organisation remains free from political influence.

PUCL upholds the rule of law and does not support violence for any cause. The founding conference elected Justice V.M. Tarkunde as President and Arun Shourie as General Secretary, later replaced by Dr. Y.P. Chhibbar as Executive Secretary. Subsequent Presidents included V.M. Tarkunde (1982-1984), Prof. Rajni Kothari (1984-1986), Justice Rajindar Sachar (1986-1995), and K.G. Kannabiran (1995-2009). General Secretaries included Arun Shourie (1982-1986), Prof. Rajni Kothari (1982-1984), Dr. Y.P. Chhibbar (1984-2008) and Prof. Dalip S. Swami (1986-1990). Justice V.M. Tarkunde remained an advisor until his death on March 22, 2004.

Over 35 years, PUCL has established itself as the largest civil liberties organisation in India, filing various Public Interest Litigations (PILs) and launching movements against oppressive laws like MISA, POTA, AFSPA, and UAPA. It has advocated for free and compulsory education, the right to information, the right to food and judicial, police, prison and electoral reforms. PUCL has also raised issues of accountability for public servants, including politicians and the judiciary and fought against communalism and societal human rights violations against Dalits. The organisation includes former judges, lawyers, academics, intellectuals and human rights activists, with a nationwide network of state branches.

PUCL started publishing the 'PUCL Bulletin' in 1980, featuring fact-finding reports on custodial deaths, fake encounters, atrocities

on Scheduled Castes/Tribes, communal violence and other human rights violations. Notable reports include investigations into the 1984 anti-Sikh riots, the anti-Sikh violence in Bidar, the 1987 communal riots in Hashimpura, Meerut, and the situation in Kashmir. PUCL also reported on the demolition of Babri Masjid in 1992, the Gujarat riots in 2002, and the anti-Christian riots in Kandhamal, Odisha. The Bulletin includes press statements on human rights violations and articles by prominent writers and human rights leaders. It serves as a valuable resource for research scholars and provides insights into various human rights and democratic governance issues.

PUCL instituted an annual 'Human Rights Journalist Award of the Year' for journalists promoting civil liberties and human rights, which included a citation and a cash award. Although discontinued due to lack of funds, the annual JP Memorial Lecture on March 23rd and the Justice V.M. Tarkunde Memorial Lecture, in collaboration with The Tarkunde Memorial Foundation, continues as regular events. The lectures are published in the PUCL Bulletin. Many law students from across the country intern at PUCL, gaining research experience and some of their best papers have been published in the Bulletin. In July 1994, PUCL received the first M.A. Thomas Human Rights Award from the Vigil India Movement for its extraordinary work in promoting and protecting civil liberties and human rights.

4.1.3.2 PUCL and the Role of the Radical Humanists

The People's Union for Civil Liberties (PUCL) has been led by radical humanists since its inception. These leaders were followers of M.N. Roy, a revolutionary freedom fighter and intellectual who championed democratic freedoms and grassroots democracy. PUCL emerged as a key defender of civil liberties during the Emergency regime of Indira Gandhi, aligning naturally with radical humanists. This alignment is why Jayaprakash Narayan appointed Justice V.M. Tarkunde, a prominent radical humanist, to head the PUCLDR in 1976. Tarkunde became the first President of the PUCL when it was formed in 1980. Numerous radical humanists joined the PUCL and played significant roles in the organisation. For instance, C.R. Dalvi was active in Mumbai, and M.A. Rane filed many Habeas Corpus petitions for those detained during the Emergency. Rane also served as the secretary of the Mumbai branch of the PUCL until his death in 2008. He was president of the Mumbai branch of the Indian Radical Humanist Association. N.D. Pancholi, another founding member, has participated in many important fact-finding

Marginal notes:
♦ *The role of the PUCL bulletin as a resource*

♦ *M.A. Thomas Human Rights Award*

♦ *PUCL and the role of radical humanists in taking up various issues*

inquiries and held various leadership positions in the Delhi PUCL. Dr. R.M. Pal, a close associate of M.N. Roy, edited the PUCL Bulletin for many years and led movements for fundamental rights like free and compulsory education. Among the younger generation, Gautam Thaker, the General Secretary of the Gujarat PUCL, has been a leader in the civil liberties movement and the Radical Humanist Association. Mahi Pal Singh, the President of the Delhi Branch of the IRHA, has served in multiple roles in the PUCL, including National Secretary and Editor of the PUCL Bulletin.

4.1.4 Armed Forces (Special Powers) Act, 1958

♦ *AFSPA grants excessive power to armed forces*

The Armed Forces (Special Powers) Act (AFSPA), in effect since 1958, contravenes the Constitution and has created an undeclared Emergency in the Northeastern states. AFSPA has caused extensive suffering, including death, rape, torture and the denial of civil and political rights in Nagaland, Manipur, and Assam. Extra-judicial killings are rampant, and civilians are denied their rights as armed forces have excessive power in "disturbed areas." Section 4(a) of AFSPA allows armed personnel to shoot to kill based on their judgement, violating the constitutional right to life. This law is neither fair, just, nor reasonable, as it permits excessive use of force without adequate justification or oversight.

The UN Human Rights Commission has criticised AFSPA for its broad definitions, such as "assembly" and "weapon," leading to disproportionate and irrational use of force. The Act's enforcement exceeds the limits prescribed by the Constitution and the Cr.P.C., lacking specific clauses for minimum force and proper training for armed forces. Unlike Sections 130 and 131 of the Cr.P.C., which provide safeguards for using military force, AFSPA grants wider powers to even noncommissioned officers without requiring superior authorisation or accountability. Section 197 of the Cr.P.C. requires government sanction to prosecute armed forces personnel, a requirement echoed in Section 7 of AFSPA, effectively barring prosecution for human rights violations.

♦ *AFSPA and cases happened in Manipur and Kashmir*

Despite numerous government inquiries finding security forces guilty of severe abuses, prosecutions are rare. Incidents like the 1995 killings in Kohima and the 2004 gang rape and murder of Thangjam Manorama by Assam Rifles personnel illustrate the severe human rights violations under AFSPA. While the Manipur High Court permitted action on a judicial inquiry report in 2010, most cases remain unreported and unpunished. In light of the recent violence in Kashmir, even the state's Chief Minister has called for amendments or partial withdrawal of AFSPA to address these ongoing issues.

Securing an atmosphere conducive to human rights involves a broad and detailed approach, encompassing legal reforms, strengthening institutions, protecting human rights defenders, encouraging grassroots participation and fostering international cooperation. Here's an expanded and simplified explanation of these strategies:

4.1.4.1 Legal Reforms and Policy Changes

1.Repeal of Draconian Laws

Certain laws, like the Armed Forces (Special Powers) Act (AFSPA), have led to numerous human rights abuses, including arbitrary detentions and extrajudicial killings. These laws need to be repealed or significantly amended to prevent misuse and align with international human rights standards. Ensuring that laws protect citizens rather than oppress them is fundamental to human rights.

Abolition of the Death Penalty

The death penalty is increasingly seen as a violation of the right to life and a form of cruel punishment. Abolishing it would demonstrate a commitment to humane and progressive justice. Historical figures like Mahatma Gandhi and Dr. B.R. Ambedkar, along with numerous international treaties, advocated for the abolition of the death penalty. Replacing it with life imprisonment can also serve justice without resorting to irreversible actions.

Ensuring the Right to Food

The right to food is essential for survival and dignity. Recognising it as a fundamental right can combat hunger and malnutrition. Effective implementation of the Public Distribution System (PDS) is crucial to ensure that food reaches those in need. Policies should focus on making food available and affordable for everyone, ensuring that no one goes hungry.

2. Strengthening Institutions

Empowering Human Rights Commissions

National and state human rights commissions should be given more power and independence to address human rights violations effectively. Their recommendations should be mandatory, and they should have the authority to enforce compliance by government authorities. This ensures that these institutions can act decisively and impartially.

Judicial Reforms

♦ *Judges should address systemic human rights issues*

The judiciary plays a critical role in protecting human rights. It should provide swift and fair justice, reduce case backlogs and maintain its independence. Judges must be proactive in addressing systemic issues that affect human rights. This includes ensuring that all individuals have access to justice and that the legal system works efficiently and fairly.

3. Protecting Human Rights Defenders

Human rights defenders (HRDs) often face threats, harassment, and violence because of their work. Protecting them is crucial for maintaining a robust human rights environment.

Dedicated Support Mechanisms

♦ *Provide HRDs with a platform for assistance*

Creating dedicated focal points within human rights institutions to address the challenges faced by HRDs can provide them with the necessary support. These focal points can offer a platform for HRDs to report abuses and seek assistance.

Legal and Social Support

♦ *Legal and psychological support ensures HRD safety*

Providing legal aid, psychological support, and security to HRDs ensures that they can continue their work without fear. This support network is vital for their safety and effectiveness.

4. Grassroots Participation and Empowerment

Community Involvement

♦ *Community involvement leads to relevant policies*

Empowering local communities through participatory democracy ensures that governance is more responsive to people's needs. This can be achieved by establishing local councils, promoting community policing and encouraging grassroots activism. When communities are involved in decision-making, policies are more likely to reflect their real needs and priorities.

Awareness and Education

♦ *Civil society and media spread awareness*

Educating citizens about their rights and the importance of human rights fosters a culture of respect and accountability. Civil society organisations, media and educational institutions play a key role in spreading awareness and encouraging people to stand up for their rights.

5. International Cooperation and Compliance

Adhering to International Treaties

Aligning national laws with international human rights treaties

and conventions strengthens the country's commitment to upholding human rights. Regular reporting and compliance with international human rights bodies ensure that the country remains accountable for its human rights record.

Collaborating with Global Human Rights Organizations

Partnerships with international human rights organisations provide technical assistance, capacity building and support in addressing human rights challenges. These collaborations can offer new perspectives and resources to strengthen human rights practices.

Creating an environment that supports human rights requires comprehensive efforts across various fronts. Legal reforms are necessary to ensure laws protect rather than oppress. Strengthening institutions like human rights commissions and the judiciary ensures that violations are addressed promptly and effectively. Protecting human rights defenders is vital for a vibrant civil society. Encouraging grassroots participation empowers communities and fosters a culture of respect for human rights. Lastly, international cooperation ensures that national practices align with global standards.

Organisations like the People's Union for Civil Liberties (PUCL) play a critical role in advocating for these changes. They hold the state accountable and ensure that the rights of every individual are protected and respected. By implementing these strategies, we can move towards a society where human rights are upheld and valued, creating a just, equitable and humane environment for all.

4.1.5 Amnesty International

Amnesty International worked hard to persuade the UN and its member states to create a High Commissioner for Human Rights and gathered over a million signatures for this cause. AI was also involved in the creation of the International Criminal Court (ICC). However, AI was not the only group pushing for these changes; other human rights NGOs and several governments were also active in these efforts. AI and Human Rights Watch (HRW) tried to influence the U.S. government's position and had influential human rights advocates within the U.S. delegation.

Amnesty International exemplifies what Margaret Keck and Kathryn Sikkink call a "transnational advocacy network", or what some refer to as a "social movement organisation." Keck and Sikkink describe networks as organisations characterised by voluntary, reciprocal, and horizontal communication and

exchange. They argue that these networks are unique because they promote causes, principles and norms, often involving individuals advocating for policy changes beyond their own interests. Human rights organisations like AI advocate for victims and potential victims of human rights violations, motivated by a sense of international social solidarity.

In recent years, AI has been seen by some as losing its status as a leader in the human rights movement, taking on more of a follower role. While Amnesty was a leading organisation through the 1970s and 1980s, especially with its work in Argentina, its role was gradually overshadowed by other groups like Human Rights Watch. AI also struggled with issues like apartheid in South Africa, where it hesitated to condemn the system and stayed neutral on sanctions and divestment, which put it at odds with the broader anti-apartheid movement.

In the 1990s, AI missed significant opportunities like the International Campaign to Ban Landmines. Initially, AI did not join the campaign because it did not see landmines as a core issue. It wasn't until 1997 that AI changed its policies to oppose indiscriminate weapons, including landmines after the campaign had already won a Nobel Prize.

4.1.5.1 Core Functions and Areas of Focus

Amnesty International's work encompasses a range of human rights issues, from protecting freedom of expression to addressing economic and social injustices. Its core activities include:

1. **Research and Documentation**: Amnesty International conducts in-depth investigations into human rights violations. The organisation employs a network of researchers, local correspondents, and partner organisations to collect and verify information in conflict zones, oppressive regimes and other critical areas. These findings are compiled into reports, which are widely regarded for their accuracy and impartiality.

2. **Advocacy and Campaigns**: Amnesty uses advocacy to bring global attention to human rights abuses and to influence policy changes at national and international levels. Through campaigns on issues such as freedom from torture, the death penalty and freedom of expression, Amnesty rallies public support and engages in policy dialogue with governments, intergovernmental bodies, and the United Nations.

3. **Mobilisation of Global Public Opinion**: Amnesty

relies on its large network of supporters, which exceeds 10 million members globally, to mobilise public opinion. The organization orchestrates letter-writing campaigns, petitions, and public demonstrations to demand accountability from governments and institutions responsible for human rights abuses.

4. **Legal and Practical Support for Victims**: Amnesty often works directly with victims of human rights violations by offering legal aid, supporting asylum-seekers, and providing resources to families affected by government oppression.

4.1.5.2 Key Campaigns and Focus Areas

Amnesty International has expanded its focus over the years to address a wide range of human rights issues, including:

Political Prisoners and Fair Trials: Since its founding, Amnesty's primary focus has been the release of individuals imprisoned solely for their political, religious or ideological beliefs. This work remains central to Amnesty's activities, and the organisation regularly advocates for fair trials, protection from torture, and the release of individuals wrongfully imprisoned.

Ending Torture and the Death Penalty: Amnesty International has consistently campaigned against the death penalty and all forms of torture, viewing these practices as violations of the UDHR and human dignity. Amnesty's "Campaign to Abolish the Death Penalty" has garnered global attention and has led to shifts in national policies on capital punishment.

Refugee and Migrant Rights: Amnesty works to protect the rights of refugees, asylum-seekers and migrants, advocating for safe migration pathways, fair asylum processes, and the humane treatment of displaced persons. Its reports and campaigns on the global refugee crisis, particularly concerning situations in Syria, Rohingya refugees, and migrants crossing the Mediterranean, have been instrumental in raising awareness.

Gender Equality and Women's Rights: Amnesty campaigns extensively on issues such as gender-based violence, reproductive rights, and discrimination against women. It addresses violence against women both in conflict zones and in domestic settings, seeking to end impunity for gender-based violence.

Environmental Rights: Recognising the intersection of human rights and environmental justice, Amnesty has taken a stand on climate change, focusing on how environmental

♦ Advocating for environmental rights and justice

♦ Defending digital rights and online freedom

♦ Campaign against torture and capital punishment

♦ Influencing legal reforms globally

♦ Independent from government or corporate funding

degradation disproportionately impacts marginalised communities. The organisation works to hold corporations accountable for environmental harm that infringes on community rights to health, safety, and a sustainable environment.

Digital and Online Rights: In the digital age, Amnesty has increasingly advocated for data privacy, freedom of online expression and digital security. The organisation monitors cases of digital surveillance, cyber harassment and censorship, particularly where such actions target activists and journalists.

4.1.5.3 Achievements and Impact

Amnesty International's work has led to numerous tangible achievements. For instance, its campaign against torture and capital punishment has contributed to the abolition or reduction of these practices in several countries. Amnesty's research reports and campaigns have brought global attention to critical issues like apartheid in South Africa, disappearances during Latin American dictatorships, and abuses in conflict zones such as Myanmar and Syria. By putting pressure on governments, Amnesty has influenced legal reforms, and its advocacy efforts have led to the release of countless political prisoners worldwide.

In addition, Amnesty played a vital role in the establishment of the **International Criminal Court (ICC)** in 2002, which prosecutes individuals for genocide, war crimes and crimes against humanity. The organisation's advocacy also contributed to the adoption of the **United Nations Convention Against Torture** in 1984.

Amnesty International operates independently of any government, political ideology or economic interest. To maintain this independence, it relies primarily on donations from individuals rather than funding from governments or corporations. Headquartered in **London, United Kingdom**, Amnesty operates through a decentralised network of country-specific sections and chapters worldwide, each working on regionally relevant human rights issues while coordinating with the global movement on international concerns.

4.1.5.4 Criticism and Challenges

1. Accusations of Political Bias

Allegations of Selective Criticism: Amnesty International has been accused by some governments and analysts of selectively targeting certain countries or political regimes, particularly those opposed by Western powers, while allegedly being less vocal about rights abuses in Western countries or allied states. For instance,

critics argue that Amnesty's reports on countries like the United States or the United Kingdom tend to emphasise certain human rights issues, whereas violations in countries with less political and economic influence receive comparatively more attention.

Accusations of Anti-Israel Bias: Amnesty has been criticised by some pro-Israel advocates for its reports on Israel's actions in Palestinian territories. Some argue that Amnesty's reports use language and framing that may appear more critical of Israel compared to similar reports on other regions in conflict, leading to accusations of bias. Amnesty, however, maintains that it adheres strictly to impartiality, documenting rights abuses wherever they occur.

2. Operational and Data-Gathering Limitations

Restricted Access in Conflict Zones: Amnesty International's work relies on on-the-ground data collection, which is often challenging in authoritarian regimes, conflict zones, and regions under heavy surveillance. Restricted access to certain areas limits Amnesty's ability to gather firsthand information, forcing the organisation to rely on secondary data, local sources or digital methods. This can lead to delays in reporting or gaps in information, which critics argue impacts the reliability of reports.

Reliance on Local Partners: In regions where Amnesty lacks direct access, it often collaborates with local NGOs or independent reporters. However, local partners may have their own biases or face restrictions, which can sometimes affect the accuracy or completeness of reports. Amnesty has worked to standardise its data verification methods but remains challenged by the complexity of accurately reporting on highly volatile areas.

3. Financial and Resource Constraints

Funding Challenges: As an NGO that rejects government funding to maintain its independence, Amnesty relies heavily on donations from individuals and private organisations. Limited funding restricts Amnesty's ability to expand its operations, hire experts, and carry out fieldwork, especially in regions where data collection is logistically challenging. Additionally, funding constraints can impact Amnesty's ability to respond swiftly to emerging crises, leading to accusations of delayed action.

Competition for Donor Support: Amnesty competes with other international NGOs for donations, which can impact its resource base. Donor preferences may sometimes influence which campaigns or issues receive more visibility, although Amnesty

Sidebar margin notes:

♦ *Criticism of selective targeting by Amnesty*

♦ *Criticism of Amnesty's stance on Israel*

♦ *Limited access to conflict zones*

♦ *Collaboration with local partners for data*

♦ *Reliance on donations for funding*

♦ *Competition for funding with other NGOs*

asserts its commitment to impartiality in decision-making.

4. Internal Management and Organisational Culture

Allegations of Toxic Work Culture: In recent years, Amnesty International has faced criticism over its internal work environment. A 2019 internal review commissioned by the organisation revealed a high-stress, unsupportive work culture that included claims of bullying, discrimination and high turnover. This internal environment reportedly affected staff morale, retention and overall productivity, which could potentially impact the quality and consistency of Amnesty's human rights work.

♦ *Criticism of high-stress work environment*

Resource Allocation Concerns: Some critics argue that Amnesty has expanded its scope to cover a broad range of issues- ranging from traditional civil and political rights to economic, social and environmental rights- without proportionate resources. This broad agenda has led to concerns about resource allocation, as some argue that Amnesty may risk spreading itself too thin, potentially diluting its effectiveness on specific core issues.

♦ *Concerns about resource allocation*

5. Accusations of Cultural Bias and Western-Centric Pers-pectives

Western-Normative Framework: Amnesty's human rights framework is often criticised for reflecting Western-centric ideals that may not align with local cultural norms or socio-political contexts in non-Western regions. Critics argue that Amnesty's advocacy may unintentionally impose Western values on diverse cultural settings, leading to resistance or claims of neo-colonialism. For example, certain traditional societies view family and community rights as inseparable from individual rights, which may differ from the predominantly individual-focused rights perspective Amnesty promotes.

♦ *Cultural resistance to Western frameworks*

Perception of Neo-Colonialism: The fact that Amnesty International is headquartered in London and often has more influence in Western political circles has led to allegations of neo-colonialism, particularly when it intervenes in the internal affairs of non-Western nations. Some governments accuse Amnesty of using human rights to influence local politics in a way that aligns with Western interests, though Amnesty defends its approach as impartial and globally relevant.

♦ *Allegations of neo-colonialism*

6. Legal Challenges and Governmental Backlash

Intimidation and Legal Restrictions: Amnesty has faced significant governmental pushback in several countries, including

♦ *Legal restrictions in multiple countries*

India, Russia and Turkey, where authorities have imposed legal restrictions, frozen assets, or forced local chapters to shut down. For example, in 2020, Amnesty's India office had to cease operations after its bank accounts were frozen by the government, which cited alleged violations of foreign funding laws. Such legal restrictions hamper Amnesty's ability to function in certain regions, limiting its global impact.

♦ *Workers face harassment in repressive states*

Reprisals against Amnesty Workers: Amnesty employees and local collaborators often face harassment, intimidation and sometimes violent reprisals in repressive states. This poses a direct challenge to Amnesty's mission and hinders the organisation's ability to attract skilled researchers and advocates in high-risk regions.

Summarised Overview

After the Second World War, the importance of human rights and their protection became more inevitable as the nations agreed to safeguard them. As a part of it, the United Nations pursued a Universal Declaration on Human Rights, which became the guideline for NGOs in the later phase. Also, the new political realities after the Second World War altered the goals of NGOs, from the promotion of rights to the protection of rights and the realisation that states themselves can violate the rights of their own citizens. Hence, it is important to act as a pressure group to put a restraint on the state to exact terrors on its own subjects. The advent of globalisation after the Cold War, helped human rights NGOs to use new technology and facilities to be more vigilant on the rights violations and propagate this incident to other interested parties.

It is in this context that we have to evaluate the role of Amnesty International and the People's Union for Civil Liberties in the protection and promotion of human rights in India and the world. Amnesty International began as a movement to protect the rights of political prisoners and went on to win a Nobel Prize for peace. Amnesty believed in documenting the violation of the political rights of people across the world and acted as a pressure group on governments to stop such violations. They had done commendable work by publishing their reports and even conducting concerts to raise awareness about human rights across the world. However, a conflict which Amnesty had to face was regarding the stand on political ideology matters.

For instance, Amnesty terribly failed to regret the apartheid regime of South Africa as they viewed it as a matter of political ideology rather than a human rights violation, which invited the ire of other actors in the field. Similarly, Amnesty's inability to understand the needs of the second and third generation of rights led to the emergence of many new organisations that are committed to achieving these goals in societies outside Europe and the US.

People's Union for Civil Liberties is one such organisation that traces its origin back to the times of independence, when radical humanists were part of its inception in the beginning. PUCL, which began as PUCDR during the times of Emergency in India, had pioneer leaders like Jayprakash Narayanan as its head. PUCL played a key role during the time of Emergency in filing cases in courts to protect the constitutional rights of its citizens. They also published reports on human rights violations in their bulletin which made the population aware of such instances. They have published reports about the 1984 anti-Sikh riots, 2002 Godhra riots and the riots of Kandhamal. And also filed many Public Interest Litigations, such as the right to food security and the right to education as part of their work.

PUCL was an apt example of how the purview of human rights can be expanded from civil and political rights (which Western countries emphasise) to economic, social and cultural rights. PUCL has worked extensively to promote civil, political, economic and social rights of citizens in India and protect them. Their stand on AFSPA and opposition to it is noteworthy and as is their fight against death penalty, and the need to protect the defenders of human rights

Assignments

1. Analyse the role of Amnesty International in controlling human rights violations.

2. Analyse the influence of NGO's in setting a foundatins for social and political progres

Suggested Reading

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4. Asha Kiran, *The History of Human Rights*, Mangalam Publications, Delhi, 2011.

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1. Keck, Margaret E., and Kathryn Sikkink. *Activists beyond borders: Advocacy networks in international politics*. Cornell University Press, 1998.

2. Korey, William. *NGO's and the Universal Declaration of Human Rights: A curious grapevine*. Springer, 2001.

3. Welch, Claude Emerson, ed. *NGOs and human rights: Promise and performance*. University of Pennsylvania Press, 2001.

4. Winston, Morton E. "Assessing the Effectiveness of International Human Rights NGO's: Amnesty International, *CE Welch Jr.(Ed.) NGOs and Human Rights: Promise and Performance.*" (2000).

5. Zakaria, Fareed. "Illiberal democracy." *Foreign Affairs 76.6* (1997).

Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

Practice of Human Rights

Learning Outcomes

After the completion of this unit, the learner will be able to:

- ♦ understand the relations between Human Rights and Development
- ♦ identify role of human rights in ensuring sustainable and social development
- ♦ aware of the environment, human rights, and their relation
- ♦ understand the practice of human rights and challenges to it

Background

This unit examines the practice of human rights across both global and Indian contexts, shedding light on the complex challenges each faces. In the global context, human rights are grounded in universal principles intended to transcend borders, cultural differences, and governance systems. Yet, perceptions of these rights vary significantly across regions due to historical, cultural and political factors. The discussion of different groups of rights- civil, political, economic, social and cultural rights, among others- reflects how rights have been classified to address distinct aspects of human dignity and well-being. These groups of rights emerged progressively, often in response to historical events. The first generation, focused on civil and political rights, arose from Enlightenment ideals and gained prominence in the Western world, emphasising individual freedoms and democratic values.

The evolution of rights continued with the emergence of second-generation rights- economic, social, and cultural rights- influenced by socialist principles advocating for state obligations to ensure basic welfare. This development expanded the concept of human rights beyond individual freedoms to include rights essential for equality and social security, particularly in post-industrial Europe. The addition of third-generation rights or collective rights, like the right to development and environmental rights, reflects growing global concerns about collective well-being and the preservation of common resources, further altering traditional European perspectives on rights as individual entitlements. These rights underscore the interdependence of societies and address issues like environmental sustainability, peace and the rights of future generations.

In India, human rights practice is uniquely contextualised within the country's diverse

socio-cultural landscape and post-colonial state structure. Indian interpretations of human rights often emphasise collective welfare, reflecting traditional community-oriented values alongside constitutional guarantees of individual freedoms. However, the implementation of these rights encounters challenges such as caste discrimination, gender inequality and economic disparities, which hinder universal access to human rights.

In exploring these themes, this unit aims to provide a nuanced understanding of how the evolution of human rights has shaped perspectives and practices globally and in India, highlighting ongoing efforts and obstacles. This historical progression and the varied adoption of rights underscore the need for a broad yet culturally sensitive approach to achieving human rights for all.

Keywords

Human Rights, Caste Social Justice, Sustainable Development Human Rights

Discussion

4.2.1 Human Rights and Development

4.2.1.1 Relationship Between Human Rights and Development

The relationship between human rights and development is rooted in their mutual aim of promoting human well-being, dignity, and equality. Development involves creating conditions where people can live fulfilling lives, while human rights ensure that this process respects individual freedoms and guarantees equitable opportunities. The interdependence of the two has been increasingly recognised in global discourses, with human rights viewed as both a means and an end to sustainable development.

♦ *Development and human rights reinforce each other, ensuring dignity and equity*

Human rights principles, such as equality, non-discrimination, and participation, provide a foundation for inclusive development that seeks to reduce inequalities and empower marginalised groups. Conversely, development that fails to respect human rights risks perpetuating disparities and injustices, undermining its goals. For example, economic growth without social equity can exacerbate poverty and social exclusion. Hence, integrating human rights into development ensures that progress is inclusive, sustainable and just.

4.2.1.2 Rights-Based Approach to Development

A rights-based approach to development integrates human rights principles into the planning, implementation and evaluation of development programs. This approach shifts the focus from charity to empowerment, emphasising that individuals are rights-holders entitled to basic necessities and opportunities. It also identifies states and institutions as duty-bearers obligated to uphold these rights.

The rights-based approach emphasises:

1. **Equity:** Ensuring that development benefits marginal-ised and vulnerable groups, addressing systemic barriers to equality.

2. **Participation:** Involving communities in decision-making processes to ensure that development aligns with their needs and aspirations.

♦ *Rights-based development focuses on equity, participation, and accountability*

3. **Accountability:** Holding governments and institutions responsible for meeting their human rights commitments through transparent policies and legal mechanisms.

For instance, in development projects, a rights-based approach ensures that women's voices are heard, minorities' rights are respected and benefits are distributed equitably. This approach is increasingly integrated into international frameworks, including those of the United Nations.

4.2.1.2 Global Perspectives on Human Rights and Development

Globally, the concept of integrating human rights and development has evolved significantly over the last few decades, with international frameworks, organisations and initiatives focusing on the mutual reinforcement of both. This section explores the various global efforts and strategies that emphasise the relationship between human rights and development.

♦ *Global integration of human rights and development has evolved*

1. The United Nations (UN) Framework:

The **United Nations** has played a pivotal role in shaping the relationship between human rights and development. Key global frameworks, conventions and initiatives highlight how human rights are integral to development goals.

♦ **Universal Declaration of Human Rights (UDHR), 1948:** The UDHR, adopted by the United Nations General Assembly in 1948, established the foundational principle that human rights are essential to human dignity and de-

velopment. Articles such as the right to work, education, health and an adequate standard of living directly connect to development efforts. The UDHR marked the beginning of a global recognition that development is not just about economic growth but about improving the quality of life and ensuring equal access to rights.

- **The International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966:** The ICESCR, alongside the International Covenant on Civil and Political Rights (ICCPR), forms the **International Bill of Human Rights**. The ICESCR focuses on promoting economic, social, and cultural rights, including the right to education, health, and an adequate standard of living. These rights are vital to human development and are legally binding on states. The covenant reinforces the principle that economic development must be aligned with human rights standards to achieve sustainable and inclusive growth.

- **Human Rights Council (HRC):** The UN Human Rights Council, through various resolutions and recommendations, advocates for the integration of human rights into development policies. The HRC emphasises the need for inclusive development that reduces inequalities, particularly with regard to gender, race, disability, and other forms of discrimination. The HRC's mandate also includes promoting and protecting human rights in the context of development, such as addressing issues like access to clean water, sanitation, and housing.

2. **The Millennium Development Goals (MDGs) and the Sustainable Development Goals (SDGs):**

- **Millennium Development Goals (MDGs), 2000-2015:** The **MDGs**, established by the UN in 2000, set out eight international development goals to be achieved by 2015, many of which directly correspond to human rights. Goals such as **Goal 1 (Eradicate Extreme Poverty and Hunger)**, **Goal 2 (Achieve Universal Primary Education)**, and **Goal 3 (Promote Gender Equality and Empower Women)** align with key human rights principles. The MDGs helped to highlight the necessity of addressing human rights issues, such as poverty, education and gender equality, within the development agenda.

- **Sustainable Development Goals (SDGs), 2015-2030:** The **SDGs**, adopted in 2015, expand the human rights framework in development by making it more inclusive,

Margin notes:
- *UDHR links dignity and Development*
- *ICESCR aligns rights with Development*
- *HRC promotes inclusive, right based growth*
- *MIDG's align development with human rights*

ensuring that no one is left behind. The SDGs are explicitly linked to human rights, with **Goal 16 (Peace, Justice, and Strong Institutions)** and **Goal 10 (Reduced Inequality)** directly addressing human rights issues. The SDGs emphasise **leaving no one behind** and ensuring equal opportunities for all, regardless of social, economic, or political status. The SDGs cover a broad range of issues, including poverty, education, health, gender equality, water and sanitation, and economic growth- all critical to human rights and development.

♦ SDGs promote inclusive, human rights based development

3. World Bank and International Monetary Fund (IMF):

♦ World Bank integrates equality into development Projects

- **World Bank:** The World Bank has increasingly acknowledged the role of human rights in development. Although traditionally focused on economic growth and infrastructure, it now incorporates **social inclusion, equity, and accountability** into its development projects. The World Bank's **Safeguard Policies** address human rights concerns in areas such as involuntary resettlement, environmental protection, and Indigenous peoples' rights. The Bank is also working to ensure that its funding does not contribute to human rights abuses, promoting development programs that consider the social, cultural, and political rights of local communities.

♦ IMF balances growth with human rights protection

- **International Monetary Fund (IMF):** While the IMF's focus is primarily on economic stabilisation, it also recognizes that long-term development goals cannot be achieved without respecting human rights. The IMF has been involved in shaping development programs that balance economic growth with the need to protect human rights, particularly in post-conflict or crisis situations.

4. Global Human Rights Organisations and Networks:

Numerous international organisations and networks have emerged to integrate human rights into global development practices.

♦ Amnesty and HRW monitor development impact

- **Amnesty International** and **Human Rights Watch** are two of the leading organizations that advocate for the inclusion of human rights in development policies. These organizations monitor the impact of development projects on human rights, pushing for policies that ensure justice, accountability, and equality for all people, particularly vulnerable populations.

- **The Global Fund for Women** and **Oxfam** focuses on

gender equality, poverty alleviation and community empowerment, advocating for human rights in development programs, especially in marginalised communities.

5. Regional Efforts:

Various regional frameworks also emphasise human rights as critical to development:

♦ **European Union (EU):** The EU has been a global leader in promoting human rights in development. Its development policies are grounded in human rights principles, particularly social justice, democracy and human dignity. The EU's **European Consensus on Development** outlines human rights as a central pillar of its development assistance, guiding projects and partnerships with third countries.

♦ **African Union (AU):** The AU, through its **Agenda 2063**, integrates human rights and development by focusing on inclusive growth, governance, and human security. The **African Charter on Human and Peoples' Rights** provides a regional framework for protecting human rights, which is linked to development efforts across the continent.

6. The Role of the International Labour Organization (ILO):

The **ILO** has long recognised the connection between human rights and development, particularly through its work on labor rights. Its fundamental conventions emphasise the right to fair wages, safe working conditions, freedom of association and non-discrimination in the workplace. The ILO's **Decent Work Agenda** underscores the importance of human rights in achieving sustainable development by ensuring workers' rights are upheld.

4.2.2 Human Rights and Development in India

India has been at the forefront of integrating human rights into its development policies. Several landmark initiatives reflect how human rights-based approaches have been adopted to address social and economic disparities, ensuring that vulnerable groups are included in the development process. Below are detailed case studies from India that highlight the relationship between human rights and development.

1. Right to Education (RTE) Act, 2009

The **Right of Children to Free and Compulsory Education Act (RTE)**, passed in 2009, is a significant step in ensuring the right to education as a fundamental human right. The Act mandates free and

compulsory education for all children between the ages of 6 and 14, focusing on providing quality education to marginalised children, including those from Dalit, tribal and disabled backgrounds. By emphasising inclusion, the Act works to reduce discrimination in the education system, with provisions ensuring that no child is excluded based on social status. It also promotes community participation in the implementation and monitoring of education policies. While the RTE Act has improved school enrollment and access to education, challenges like inadequate infrastructure, teacher absenteeism and the quality of education persist, requiring further efforts to meet its goals.

2. National Food Security Act (NFSA), 2013

The **National Food Security Act (NFSA)**, 2013, guarantees food security as a basic human right to two-thirds of India's population, ensuring access to subsidised food grains. The Act provides special focus on vulnerable groups such as pregnant women, children and the elderly, addressing malnutrition and hunger. Through the Public Distribution System (PDS), the NFSA seeks to promote equity and inclusion by targeting marginalised sections of society. The law mandates transparency in food distribution and ensures that beneficiaries are accurately identified and given their due share. Despite its successes in reducing food insecurity, challenges such as corruption, identification errors in targeting beneficiaries and inefficiencies in the PDS system still hinder its full implementation.

3. Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005

Launched in 2005, the **Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)** seeks to provide rural households with at least 100 days of guaranteed wage employment each year, addressing livelihood insecurity and poverty. The Act guarantees the right to work, particularly for marginalised groups, including women, Dalits and tribals, ensuring that they have access to employment opportunities. MGNREGA promotes equity by providing equal employment opportunities regardless of gender or caste and encourages participation by involving local communities in planning and implementation. The Act also stresses transparency in the allocation of funds and payments. While it has played a vital role in reducing rural poverty and empowering women, MGNREGA faces challenges related to delayed payments, corruption and poor implementation in some regions.

4. *Swachh Bharat Abhiyan* (Clean India Mission), 2014

The *Swachh Bharat Abhiyan* (Clean India Mission), launched in 2014, focuses on improving sanitation across India by eliminating open defecation, improving waste management, and promoting hygiene. The initiative aims to ensure access to clean and safe sanitation for all citizens, particularly women and children, who are disproportionately affected by poor sanitation. The mission works on the human rights principle of providing a right to a healthy and clean environment, contributing to better public health. It targets rural and underserved urban areas, addressing regional disparities in sanitation infrastructure. While the campaign has achieved significant progress, challenges remain in ensuring the sustainability of sanitation facilities, proper maintenance and promoting behavioral changes among communities.

♦ *Swachh Bharat Abhiyan promotes sanitation and hygiene*

5. Pradhan Mantri Jan Dhan Yojana (PMJDY), 2014

The **Pradhan Mantri Jan Dhan Yojana (PMJDY)**, launched in 2014, is a national financial inclusion scheme aimed at providing access to banking services for all, particularly the unbanked and underserved populations in rural areas. The scheme ensures that individuals, including marginalised groups such as women, have access to financial services, which is crucial for economic empowerment and development. By offering financial products such as savings accounts, insurance, and credit, PMJDY promotes economic participation and inclusion. The program also integrates technology to ensure transparency in the distribution of benefits, using the Aadhaar biometric system for identification. Although PMJDY has expanded access to banking services, challenges like low financial literacy, irregular bank usage, and connectivity issues in remote areas still hinder its full potential.

♦ *PMJDY promotes financial inclusion for marginalized groups*

6. Atal Mission for Rejuvenation and Urban Transformation (AMRUT), 2015

The **Atal Mission for Rejuvenation and Urban Transformation (AMRUT)** was launched in 2015 to improve urban infrastructure, focusing on providing water supply, sewerage systems and green spaces in cities. The mission aims to address the human rights principle of the right to clean water and sanitation, ensuring that all urban citizens, including those in underserved areas, have access to essential services. The program me prioritises equity by targeting areas with large populations of economically disadvantaged groups. Additionally, it promotes sustainable urban development practices, such as the recycling of water and the creation of green spaces. AMRUT has significantly improved urban infrastructure, particularly in underserved areas, but it continues to face challenges

♦ *AMRUT improves urban infrastructure, focusing on water and sanitation*

related to inter-governmental coordination, governance and maintaining infrastructure.

4.2.3 Sustainable Development

Sustainable development (SD) is a multi-dimensional concept that aims to meet the needs of the present without compromising the ability of future generations to meet their own needs. The term was popularised by the 1987 Brundtland Report, but its core ideas have been debated and developed over time. SD integrates economic growth, social inclusion, and environmental protection into a cohesive model.

Definition and Principles:

Sustainable development is commonly defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." This definition was first articulated in the Brundtland Report (1987), formally titled *Our Common Future,* published by the World Commission on Environment and Development (WCED), chaired by Gro Harlem Brundtland. This report placed a spotlight on the interconnectedness of social, environmental, and economic aspects of development, urging a shift toward development that accounts for long-term impacts.

Sustainable development is not just about achieving economic growth or addressing environmental concerns; it is about integrating economic development, social inclusion and environmental protection to create a harmonious relationship between human activity and the planet.

4.2.3.1 Core Principles of Sustainable Development:

The Brundtland Report introduced three central pillars of sustainable development, often referred to as the **Triple Bottom Line**:

1. Economic Sustainability:

Economic sustainability focuses on fostering long-term economic growth that is inclusive, equitable and environmentally responsible. Unlike traditional economic growth, which often prioritises short-term profits at the cost of natural resources or social well-being, economic sustainability emphasises:

a. Efficient use of resources to maximise value without depleting natural capital.

♦ *Sustainable development aims for present and future balance*

♦ *Sustainable development balances economy, society, environment*

♦ *Economic sustainability prioritizes long-term growth and equity*

b. Support for long-term economic systems that are resilient to economic shocks and climate change.

c. Innovation in business models and industries that prioritise low-carbon technologies, circular economies and green jobs.

2. Social Sustainability:

Social sustainability refers to ensuring that economic development results in equitable outcomes for all segments of society. It focuses on improving the quality of life for individuals and communities, reducing inequalities and enhancing social justice. Key elements of social sustainability include:

♦ **Equity and Social Inclusion**: Ensuring equal access to opportunities, social services (e.g., healthcare and education) and wealth distribution. This includes addressing gender inequalities, racial discrimination and other forms of exclusion.

♦ **Cultural Diversity and Social Cohesion**: Encouraging vibrant, healthy communities that can thrive amidst cultural and social diversity.

♦ **Human Rights**: Ensuring that every individual's rights are respected, protected and fulfilled, contributing to dignity, participation and empowerment in society.

3. Environmental Sustainability:

Environmental sustainability emphasises the necessity of safeguarding the Earth's ecosystems, ensuring that development activities do not undermine the environment's capacity to regenerate. It includes practices aimed at reducing ecological footprints and preventing environmental degradation. Principles of environmental sustainability include:

♦ **Conservation of Biodiversity**: Protecting ecosystems and species from harm due to human activities.

♦ **Resource Management**: Efficient and responsible use of natural resources, including water, energy and raw materials, so that they remain available for future generations.

♦ **Pollution Reduction**: Implementing practices and technologies to minimise waste and emissions, reduce the carbon footprint and restore ecosystems affected by pollution.

These principles work synergistically, with sustainable development requiring a balance between the economic growth that supports human development, the social equity that ensures fairness and justiceand the environmental stewardship that protects

♦ Social sustainability ensures equity and inclusion

♦ Focus on biodiversity, resource management, and pollution

the planet's natural systems.

4.2.4 Human Rights in Sustainability

Human Rights in Sustainability refers to the integration of human rights principles into the pursuit of sustainable development, ensuring that efforts to promote environmental protection, social equity and economic growth do not undermine the dignity and rights of individuals and communities. The relationship between human rights and sustainability is grounded in the understanding that true sustainability can only be achieved if all people have the opportunity to live with dignity, enjoy basic rights and live in a healthy and sustainable environment.

The concept of Human Rights and Sustainability is particularly relevant in the context of sustainable development goals (SDGs), as these goals aim to promote economic prosperity, social justice and environmental stewardship. However, achieving sustainability requires a holistic approach, where human rights are fully integrated into both the development process and environmental protection policies.

4.2.4.1 Main Concepts of Human Rights in Sustainability

1. Environmental Rights as Human Rights:

The right to a healthy environment is increasingly recognised as a fundamental human right. This concept links environmental sustainability directly to human rights by asserting that a clean, safe and healthy environment is essential for individuals to exercise their rights to life, health, and well-being. i. **Right to Life**, The foundation of many human rights is directly threatened by environmental degradation, including pollution, climate change and resource depletion. ii. **Right to Health**: Human health is deeply interconnected with environmental conditions. Environmental justice movements, such as those addressing air and water pollution, argue that poor environmental quality disproportionately affects marginalised communities, violating their right to health. iii. **Right to Water and Sanitation**: Access to clean water and sanitation is recognised as a basic human right under international law. Sustainable management of water resources and pollution control is essential to ensure that all people have the right to clean, accessible water.

2. Social Justice and Equity in Sustainability

Sustainable development that disregards human rights risks exacerbating inequalities. i. **Social justice** is central to the

♦ Human rights and sustainability go hand-in-hand

♦ SDGs require integrating human rights in development

♦ Right to a healthy environment is fundamental

sustainable development agenda, as it ensures that everyone, particularly vulnerable and marginalised groups, has equal access to resources, opportunities, and decision-making processes. ii. **Reducing Inequality (SDG 10)**: Sustainable development policies must ensure that the benefits of development are equitably shared, addressing disparities in wealth, access to education, healthcare, and participation in the economy. iii. **Gender Equality (SDG 5)**: Empowering women and promoting gender equality are essential for achieving sustainable development. Women, particularly in developing regions, are disproportionately affected by environmental degradation (e.g., climate change, water scarcity) and are essential agents of change for sustainability. iv. **Rights of Indigenous Peoples**: Indigenous communities are often on the front lines of environmental issues, facing the loss of land, culture and livelihoods due to environmental degradation. Their rights, including the right to self-determination, participation in environmental decision-making and protection of ancestral lands, must be safeguarded.

♦ Sustainable development must address inequalities, gender, and indigenous rights

3. Inclusive Participation and Access to Justice:

A key human rights principle in sustainability is participation. Communities must be included in decision-making processes regarding environmental policies and sustainability initiatives. This principle upholds the right to free, prior and informed consent (FPIC), particularly for indigenous communities and marginalised groups. i. **Right to Participate**: The Universal Declaration of Human Rights (UDHR) recognizes the right of individuals to participate in the governance of their country. This includes the right to influence policies that affect their environment, such as energy, land use and climate policies. ii. **Access to Justice**: Individuals should have access to legal remedies when their environmental rights are violated, such as the right to challenge harmful development projects that harm their land, resources, or health. This can involve environmental lawsuits or public interest litigation to ensure accountability for environmental harm.

♦ Participation ensures communities influence environmental policies

4. Linking Human Rights to Climate Change Action

Climate change is one of the most significant challenges in the 21st century and has widespread implications for human rights, particularly those related to life, health, and livelihood. i. **Climate Justice**: Climate change disproportionately affects vulnerable communities, particularly those in low-income countries, indigenous communities and women. Climate justice seeks to ensure that those who are least responsible for climate change are not disproportionately burdened by its effects. It

emphasises ii. **Responsibility and Accountability**, calling for industrialised nations and major polluters to support those most affected by climate change. iii. **Displacement and Migration**: As environmental disasters linked to climate change increase, the right to protection of displaced populations becomes a critical human rights issue. This includes ensuring that those displaced by climate-related disasters or slow-onset phenomena (e.g., rising sea levels, desertification) have access to asylum, resettlement and compensation for losses.

♦ *Displaced populations' rights must be protected*

5. Economic Rights and Sustainability:

Economic sustainability involves promoting inclusive, sustainable economic growth that ensures the right to **decent work**, fair wages, and economic opportunities for all. i. **Right to Work**: Employment is a central human right under the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**. A just transition to a sustainable economy must include the protection of workers' rights and the creation of green jobs in renewable energy, sustainable agriculture and other sustainable industries. ii. **Right to Adequate Standard of Living**: Economic sustainability includes ensuring that all people have access to decent housing, food, healthcare, and education. Economic policies must work toward eliminating poverty and preventing exploitation while considering long-term sustainability.

♦ *Sustainable growth ensures fair wages and jobs*

6. Corporate Responsibility and Human Rights

Businesses and industries play a significant role in driving both sustainable development and human rights. The **United Nations Guiding Principles on Business and Human Rights (2011)** emphasise that businesses should respect human rights, avoid complicity in human rights abuses, and ensure that their operations contribute to sustainable development. i. **Corporate Social Responsibility (CSR)**: Companies are increasingly expected to not only maximize profits but also respect human rights and promote sustainability in their operations. This includes considering the social and environmental impacts of their supply chains, reducing environmental harm and contributing positively to local communities.

♦ *Corporate responsibility includes environmental and social impact*

4.2.3.4 Indian Initiatives for Sustainable Development

1. **National Action Plan on Climate Change (NAPCC)2008** : Launched in 2008, the National Action Plan on Climate Change (NAPCC) is a comprehensive strategy for India's approach to climate change, and it directly

ties sustainability with developmental goals. The NAPCC outlines eight national missions that focus on different aspects of climate action and environmental sustainability. These missions guide India's policies and actions to mitigate and adapt to climate change while also addressing issues like energy security, water resources and sustainable urban development.

2. **Swachh Bharat Abhiyan (Clean India Mission):** Launched by Prime Minister Narendra Modi in 2014, Swachh Bharat Abhiyan focuses on improving sanitation and promoting cleanliness across urban and rural India. The mission's objectives include, Eliminating open defecation and promoting toilet use, particularly in rural areas, Waste management, including the segregation of wet and dry waste, recycling, and creating public awareness about hygiene and cleanlinessand Promoting the construction of toilets in homes and public places to improve sanitation standards and public health. This initiative is linked to Sustainable Development Goal 6 (Clean Water and Sanitation), as improved sanitation is essential for ensuring a healthy environment and promoting public health.

3. **National Biodiversity Action Plan (NBAP)**: India has committed to the conservation of biodiversity and the sustainable use of its natural resources through the National Biodiversity Action Plan (NBAP), which was formulated in 2008 and updated in 2014. The plan aligns with the objectives of the Convention on Biological Diversity (CBD), to which India is a signatory.

 Key elements of the NBAP include:

♦ Protecting ecosystems and species through the creation of protected areas and conservation programs.

♦ Promoting sustainable agriculture, forestry, and fisheries to ensure that biodiversity is maintained without compromising livelihood security.

♦ Enhancing awareness and capacity-building among stakeholders to protect biodiversity and use it sustainably.

4. **Pradhan Mantri Ujjwala Yojana (PMUY)**: The Pradhan Mantri Ujjwala Yojana (PMUY) is an initiative aimed at providing clean cooking fuel to households that are below the poverty line (BPL) in rural and semi-urban areas. By promoting the use of liquefied petroleum gas (LPG) instead of traditional biomass fuels like wood, coal, and

cow dung, the scheme contributes to reducing indoor air pollution, which is a significant health hazard, particularly for women and children.

This initiative directly supports Sustainable Development Goal 7 (Affordable and Clean Energy), aiming to ensure universal access to modern energy services, reduce reliance on polluting fuels, and improve the health and well-being of marginalised communities.

5. **Atal Mission for Rejuvenation and Urban Transformation (AMRUT)**: Launched in 2015, the Atal Mission for Rejuvenation and Urban Transformation (AMRUT) focuses on improving urban infrastructure, including water supply, sewage, stormwater drainage, urban transport and green spaces in 500 cities across India. The goal is to provide basic services to the urban poor and ensure sustainable urbanisation through improved governance and capacity-building. The mission aligns with Sustainable Development Goal 11 (Sustainable Cities and Communities), aiming to make cities inclusive, safe, resilient and sustainable.

6. **Faster Adoption and Manufacturing of Hybrid and Electric Vehicles (FAME)**: India has launched the FAME Scheme to encourage the adoption of electric vehicles (EVs) and hybrid vehicles to reduce pollution and carbon emissions from the transportation sector, which is a significant contributor to greenhouse gas emissions. The scheme provides incentives for the purchase of electric vehicles and the establishment of charging infrastructure across the country. This initiative directly contributes to Sustainable Development Goal 13 (Climate Action) by mitigating climate change through reduced emissions and promoting clean transportation technologies.

7. **National Electric Mobility Mission Plan (NEMMP)**: The National Electric Mobility Mission Plan (NEMMP) aims to promote the use of electric vehicles (EVs) as a part of India's strategy to combat air pollution and reduce dependence on fossil fuels. The government has also incentivized the production of electric vehicles and the establishment of EV infrastructure to create a robust market for electric mobility solutions in India.

8. **Pradhan Mantri Krishi Sinchayee Yojana (PMKSY)**: Launched in 2015, this program focuses on enhancing irrigation infrastructure, water-use efficiency, and agricultural sustainability. By promoting efficient irrigation methods

Marginal notes:

♦ *PMUY provides clean cooking fuel to BPL households*

♦ *AMRUT focuses on urban infrastructure improvement*

♦ *FAME promotes electric and hybrid vehicles adoption*

♦ *NEMMP promotes electric vehicles for cleaner mobility*

like micro-irrigation (drip and sprinkler systems) and water conservation, the scheme aims to increase agricultural productivity while reducing the pressure on water resources. The PMKSY addresses the critical issue of water scarcity in Indian agriculture and aligns with the objectives of Sustainable Development Goal 2 (Zero Hunger), ensuring sustainable food production systems.

9. **State-Level and Regional Initiatives**: Various states in India have introduced their own policies and programmes focused on sustainability:

♦ Kerala has been a leader in promoting sustainable development practices, particularly in the areas of renewable energy, water management and conservation.

♦ Sikkim, which has achieved the status of being the first fully organic state in India, promotes sustainable agriculture, biodiversity conservation and environmental sustainability.

♦ Madhya Pradesh has initiated sustainable forest management practices and the Narmada River conservation project, which focuses on preserving river ecosystems.

4.2.3.5 Challenges and Gaps in Implementation:

India's journey toward achieving sustainable development faces a variety of challenges and gaps in implementation, which hinder the effectiveness and reach of its initiatives. Despite a clear commitment to sustainability through various policies and programmes, the complexities of India's socio-economic, political, and environmental landscape create obstacles to the full realisation of sustainable development goals.

One of the most significant challenges is the issue of **limited resources**. While India has ambitious sustainability goals, especially concerning renewable energy, water conservation and climate change mitigation, financial and technical resources often fall short. The costs of implementing large-scale projects- ranging from renewable energy infrastructure to waste management and irrigation systems- require substantial investments. For example, in the case of the National Action Plan on Climate Change (NAPCC), while the government has committed to transitioning to renewable energy sources, the upfront cost of setting up solar energy plants or ensuring energy efficiency in industries can be prohibitively high, especially for rural and economically disadvantaged areas.

Another challenge is **political will and bureaucratic inefficiencies**. While sustainability is often a priority on paper,

♦ *Supports Sustainable Development Goal 2 (Zero Hunger)*

♦ *Kerala leads in renewable energy and conservation*

♦ *Socio-economic and political factors hinder progress*

♦ *Limited resources hinder effective sustainability implementation*

inconsistent political support across different states or levels of government can impede the successful implementation of policies. Bureaucratic hurdles and delays in decision-making further exacerbate this issue, especially in large-scale projects. The complexity of aligning national goals with state-level and local-level policies also adds layers of administrative difficulty. Sometimes, local politicians or administrators may not fully understand or prioritise environmental sustainability, leading to inefficient execution or misallocation of resources.

♦ *Political will and bureaucratic inefficiency delay projects*

The rapid pace of **population growth and urbanisation** in India presents an additional layer of difficulty. India's population, projected to surpass China's in the near future, creates immense pressure on existing infrastructure, land and resources. Urbanisation, while driving economic growth, also results in increased demand for housing, water and energy, often at the cost of environmental degradation. The expansion of cities, accompanied by unplanned urban sprawl, leads to the loss of green spaces, excessive waste generation and inefficient transportation systems. Despite the government's efforts in programs like AMRUT (Atal Mission for Rejuvenation and Urban Transformation), sustainable urban planning faces significant roadblocks as local authorities struggle to balance development with environmental conservation.

♦ *Urbanization and population growth strain resources*

India's vulnerability to **climate change** compounds these challenges. The country is particularly susceptible to climate-related disasters, such as floods, droughts and heat waves. These events disrupt agricultural productivity, especially in rural areas, and strain water and energy resources. Climate-induced disasters often reverse progress made in sustainable development by destroying infrastructure, displacing communities, and eroding agricultural and economic gains. For instance, the effects of climate change on water resources in states like Maharashtra and Rajasthan have led to severe droughts, undermining the viability of irrigation schemes and threatening food security. While the National Action Plan on Climate Change addresses these risks, the scale of climate adaptation needed often exceeds the capabilities of local and regional governments.

♦ *Climate change worsens sustainability challenges in India*

Additionally, ensuring **inclusive development** remains a persistent challenge. Sustainable development must benefit all sections of society, particularly marginalised groups like the poor, rural populations, women, and indigenous communities. However, many sustainability programs fail to reach these vulnerable groups, either due to the lack of targeted policies or because they are caught in cycles of poverty and exclusion. For example, initiatives like

Swachh Bharat Abhiyan may not adequately address the unique needs of rural or tribal communities, where access to sanitation facilities, clean water and education is still limited. Similarly, while the Pradhan Mantri Ujjwala Yojana aims to provide LPG connections to impoverished households, it often does not ensure that these families have the means to sustain usage or access to refills. Addressing such issues requires not only more inclusive policies but also better on-ground implementation, which takes into account local contexts and specific needs.

♦ *Inclusive development must address marginalised groups*

There is also a gap in **integrated policy frameworks**. While India has various sustainable development initiatives, these policies are often fragmented and do not always work in synergy with one another. For instance, policies aimed at environmental protection might conflict with development agendas focused on economic growth, leading to trade-offs between short-term economic benefits and long-term environmental goals. The lack of coordination among ministries, such as the Ministry of Environment, Forest, and Climate Change, and the Ministry of Rural Development, results in gaps where sustainability goals are not fully integrated into broader development strategies. This often results in policies that are either too narrowly focused or fail to address the interconnectedness of economic, social and environmental dimensions of sustainability.

♦ *Lack of integrated policy frameworks hinders progress*

Public awareness and community involvement are also major obstacles to the successful implementation of sustainable development initiatives. Many sustainability programs are top-down, with limited participation from the communities they aim to benefit. For sustainability to truly take root, local populations need to be informed, engaged and empowered. However, in many rural or disadvantaged regions, people may not fully understand the importance of environmental sustainability or how to engage with government initiatives. Moreover, there is often a lack of technical capacity among local authorities to educate citizens on sustainable practices, which results in lower participation in schemes like waste management, water conservation or energy efficiency programs.

♦ *Lack of awareness and technical capacity hinders progress*

4.2.4 Social Justice and Development: The case of Human Rights Education and Practice in India

UN agencies are very supportive of national governments choosing to include comprehensive human rights education (HRE) in their curricula. However, scholars like Cardenas (2005) are sceptical about the state's role in promoting HRE. They believe that while everyone generally agrees on the benefits of HRE, it can be challenging and costly for a state. Effective human rights education

♦ *Debates around the role of the state in promoting human rights education*

is revolutionary and can lead to social opposition and increased demands for justice and accountability, which may not align with the state's interests.

Amnesty International defines HRE as an intentional, participatory process that aims to empower individuals, groups, and communities by promoting knowledge, skills, and attitudes consistent with internationally recognized human rights principles. The goal is to build a culture that respects and actively defends human rights for everyone.

Since the adoption of two covenants from 1966 on first generation and second generation of rights, India as a nation invested more in the latter than the former one. As part of achieving the goals, India promulgated the right to education as a fundamental right on 4th August 2009. The following sections would entail a discussion on the same.

4.2.4.1 Uneven Development

A major hurdle for the HRE and its practice is the difficult social and geographical characteristics of the nation. Access to something like education and awareness has been influenced by many factors, such as class and caste. Thus, the nation, which is not uniform in its nature, needed a diverse and inclusive policy to bring awareness about social justice and rights related to it, such as the right to food and education.

Education in India shows uneven development across various socioeconomic, language, caste, religious and regional groups. Human rights education programs by NGOs usually focus on marginalised youth from low-income backgrounds, Dalits (formerly known as "untouchables"), and Adivasi or indigenous communities (referred to as "tribal" groups in India). In Tamil Nadu, the Adi Dravidar Welfare (ADW) Department, which handles education strategies for Dalit students, has adopted a three-year human rights course from the Institute of Human Rights Education for over 1,000 schools. Similarly, the ministries overseeing "tribal affairs" in Tamil Nadu and Orissa have implemented this course in their schools. These efforts align with global trends to provide human rights education to marginalised groups, such as low-income, minority, or refugee populations, as a way to either rehabilitate or empower them.

4.2.4.2 Dalits in Schools and Society

Dalits, or members of "Scheduled Castes," make up 16 percent of India's population (around 185 million) and face significant

cultural, political and social exclusion. After independence, certain castes considered "untouchables" were given special measures to address discrimination and are now known as "Scheduled Castes." The term "Dalits," meaning "broken people," was reclaimed by social activist Jyotirao Phule and others as a form of self-identity and resistance. Most Dalits live on less than a dollar a day and continue to face discrimination in accessing resources and opportunities. Human Rights Watch reports that entrenched discrimination violates Dalits' rights to education, health, housing, property, freedom of religion, free choice of employment and equal treatment before the law. They also face routine violations of their right to life and security, including state-sponsored violence and torture.

♦ *The situation of Dalits in India*

India's Constitution and laws, like the Prevention of Atrocities Act (1989) make caste discrimination illegal, but it still affects many areas of life. In schools, researchers have found a strong "hidden curriculum of discrimination." This includes incidents where Dalit children are forced to sit or eat separately, denied school materials, and bullied by higher-caste peers. Some students reported being singled out for punishment or made to clean school premises while others attended classes. In one severe case, a teacher threw hot tea at a Dalit child for touching the teacher's cup, believing it caused "pollution." Concepts of "pollution" and "purity" drive many discriminatory practices, such as keeping physical distance, assigning "impure" tasks to Dalits, and residential segregation. These issues are especially prevalent in rural areas and states like Karnataka, Tamil Nadu, and Gujarat. As a result, the dropout rate for Dalit children before class eight is 55.2 percent, compared to the national average of 48.8 percent. While Dalit students often face discrimination from higher-caste students and teachers, Adivasi students who attend remote schools face unique challenges in accessing education and social participation.

♦ *Discrimination of Dalit students in the schools*

4.2.4.2 Debates on Human Rights Education in India

Human Rights Education (HRE) in India is shaped by several debates, each influencing how agencies and organisations approach the reform.

Human Rights as Western: Some sceptics believe that human rights are Western concepts and argue they don't fit well in India. Nobel laureate Amartya Sen challenges this, saying that valuing freedom is not just a Western idea. He points out that those who argue for cultural relativism in human rights often benefit from existing power and social inequalities. Despite this debate, HRE efforts in India incorporate various perspectives to counter the

♦ *The Western bias of Human rights*

notion that human rights are foreign.

Rights vs. Duties Education: Another debate is whether education should focus on rights or duties. In line with the Hindu concept of *dharma*, many prefer teaching "duties" and "values." The definition of these duties and their relationship with human rights varies widely. Some argue against teaching human rights separately, fearing it might make children aware of discrimination and lead to prejudice. However, supporters of using case studies of human rights violations argue that children are already influenced by larger social structures and need to learn about these issues.

Separate or Integrated Subject: A third debate is whether HRE should be a separate subject or integrated into existing curricula. This includes whether human rights knowledge should be tested through exams. Different entities have varied opinions. Proponents of integration believe it fosters a culture of respect for rights, while opponents worry it dilutes the focus on human rights. Many who support teaching human rights as a separate subject also advocate for integrating rights-friendly content into other subjects.

Human Rights and Environment- an Indian Experience: The concept of environmental justice intertwines deeply with human rights, underscoring that a safe, healthy and sustainable environment is fundamental to the realisation of many basic human rights. Environmental degradation, pollution and climate change pose significant threats to the well-being of communities, disproportionately affecting marginalised groups. These challenges highlight the intrinsic link between environmental justice and human rights, particularly in ensuring health, livelihoods and equitable access to resources.

Understanding Environmental Justice as a Human Rights Issue: Environmental justice is rooted in the principle that everyone has the right to live in a clean and healthy environment. It demands the equitable distribution of environmental benefits and burdens, ensuring that marginalised and vulnerable populations do not bear the brunt of environmental degradation. In the context of human rights, environmental justice addresses systemic inequities and advocates for fair treatment and meaningful participation of all individuals in environmental decision-making processes.

Human rights, such as the right to life, health, and a standard of living adequate for well-being, are deeply interconnected with environmental conditions. For instance, the United Nations Human Rights Council has recognised that a healthy environment is indispensable for the full enjoyment of human rights. The

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♦ *How do we approach education, as a duty or as a right?*

♦ *Should human rights be included in the school curriculum or taught separately*

♦ *Environmental justice ensures fair distribution of burdens*

degradation of natural resources, air and water pollution and the impacts of climate change directly threaten these rights, making environmental justice a critical element of human rights advocacy.

Environmental Justice and Health: The environment plays a pivotal role in determining public health outcomes. Air pollution, water contamination and exposure to hazardous substances have severe health implications, particularly for vulnerable populations. In India, air pollution is a leading cause of respiratory and cardiovascular diseases. According to the World Health Organization (WHO), air pollution contributes to over a million deaths annually in India, making it one of the most significant environmental health crises globally.

Contaminated water is another pressing issue. Groundwater in regions like West Bengal and Bihar is heavily polluted with arsenic, leading to chronic health conditions such as cancer and skin diseases. Similarly, fluoride contamination in states like Rajasthan has caused skeletal fluorosis, debilitating thousands. These issues disproportionately affect rural and economically disadvantaged populations who lack access to alternative water sources, violating their right to health.

Environmental degradation also exacerbates vector-borne diseases such as malaria and dengue. Deforestation and stagnant water accumulation create breeding grounds for mosquitoes, increasing disease prevalence. The health impacts of such conditions often remain unaddressed, especially in remote and tribal areas, perpetuating cycles of poverty and vulnerability.

Environmental Justice and Livelihood: Environmental justice is inextricably linked to the livelihoods of millions, particularly in agrarian economies like India. A significant portion of the population depends on natural resources for agriculture, fishing, and forestry. However, environmental degradation threatens these livelihoods, pushing communities into economic instability and poverty.

For example, desertification in regions like Bundelkhand has rendered vast tracts of land infertile, severely affecting agricultural output. Farmers in these areas face declining yields and increasing indebtedness, leading to a rise in farmer suicides. Similarly, overfishing in coastal regions and the destruction of mangroves in areas like the Sundarbans have disrupted the livelihoods of fisherfolk, threatening their economic survival.

Industrial activities also contribute to environmental injustice. Large-scale mining and deforestation projects, such as those in

Odisha's Niyamgiri Hills, displace tribal communities and destroy their primary means of livelihood. These projects often proceed without the consent of affected populations, violating their rights to land and livelihood.

Climate change further intensifies these challenges. Erratic monsoon patterns and rising temperatures reduce crop productivity, particularly for small-scale farmers. Coastal communities face the dual threats of rising sea levels and cyclones, leading to loss of property and income. These environmental changes disproportionately impact marginalised groups, highlighting the urgent need for integrating environmental justice into livelihood protection measures.

Environmental Justice and Access to Resources: Access to natural resources such as water, land, and forests is essential for human survival and development. However, unequal resource distribution and environmental exploitation have created stark disparities, violating the rights of marginalised communities.In India, forest-dependent tribal communities often face displacement due to deforestation and mining activities. The Forest Rights Act, 2006, was enacted to address these issues by recognising the rights of forest-dwelling communities over land and resources. However, implementation remains inconsistent, leaving many vulnerable to exploitation.

Water scarcity is another critical issue. The privatisation of water resources has led to unequal access, with marginalised communities often being denied their share. For instance, in drought-prone regions like Maharashtra, water is diverted for industrial use, depriving local farmers of irrigation facilities. This unequal allocation perpetuates poverty and exacerbates social inequalities.

Energy access is another dimension of environmental justice. While urban areas enjoy uninterrupted electricity, many rural and tribal regions remain without reliable energy sources. Large-scale hydroelectric projects and coal mining, undertaken to meet energy demands, displace communities without adequately compensating them or restoring their access to resources. This dual inequity underscores the need for inclusive policies that prioritise the rights of marginalised populations.

4.2.4.3 Legal Frameworks for Environmental Protection and Human Rights in India

India has a robust legal framework for protecting both the environment and human rights. Several significant laws have been

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♦ *Climate change exacerbates environmental injustice for marginalised groups*

♦ *FRA 2006 recognises rights of forest-dwelling communities, but implementation remains inconsistent*

♦ *In Maharashtra, water diversion harms farmers and exacerbates inequality*

♦ *Rural and tribal areas lack reliable energy access*

enacted to address environmental degradation and uphold the rights of individuals, particularly marginalised communities, who rely heavily on natural resources for their survival. These laws include the Environment Protection Act, 1986, the Wildlife Protection Act, 1972, and the Forest Rights Act, 2006. Each of these acts serves a vital function in safeguarding the environment and ensuring the realisation of human rights.

1. Environment Protection Act, 1986 (EPA)

The **Environment Protection Act (EPA)** was enacted by the Government of India following the Bhopal Gas Tragedy of 1984, which brought the urgent need for a comprehensive environmental protection law into focus. The primary aim of the EPA is to provide a framework for the protection and improvement of the environment. The EPA's provisions align with Article 21 of the Indian Constitution, which guarantees the right to life. The Supreme Court of India, in several rulings, has interpreted the right to life as encompassing the right to a clean and healthy environment, reinforcing the importance of the EPA in safeguarding human rights.

2. Wildlife Protection Act, 1972

The **Wildlife Protection Act, 1972**, was enacted to protect India's rich biodiversity, with a focus on conserving wildlife and their habitats. The Act regulates hunting, poaching, and the trade of wildlife and establishes protected areas such as national parks and sanctuaries. For indigenous and forest-dependent communities, the protection of biodiversity and wildlife is directly tied to their human rights. The rights of these communities to access forest resources for sustenance and traditional practices are recognised within the broader context of environmental conservation.

3. Forest Rights Act, 2006 (FRA)

The **Forest Rights Act (FRA)**, also known as the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, was passed in 2006 to recognise and vest forest rights in forest-dwelling communities, particularly tribal people who have historically been dependent on forest resources. The FRA is a landmark law that aligns with India's commitment to protecting the rights of marginalised communities and providing them with justice, particularly in the face of industrial and infrastructure development that often threatens their traditional lands.

4. Interlinking of Legal Frameworks with Human Rights

These laws collectively address the need for environmental

protection while ensuring that human rights, particularly those of marginalised communities, are upheld. They do not operate in isolation but complement each other to provide a holistic approach to environmental justice. For instance, the FRA ensures that marginalised groups are not displaced by development projects without due compensation or legal recourse, and the EPA ensures that environmental degradation caused by industrial activities does not infringe on the rights of these groups. Furthermore, these laws align with India's international obligations under various human rights treaties and conventions, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises the right to a healthy environment.

Grassroots Movements: Contributions to Environmental and Human Rights Advocacy in India

Grassroots movements in India have played a crucial role in linking environmental justice with human rights advocacy, often focusing on the rights of marginalised communities who are most affected by environmental degradation. These movements have not only raised awareness about the importance of sustainable environmental practices but have also highlighted the critical link between environmental protection and the protection of human rights, particularly the rights of vulnerable populations such as indigenous communities, tribal people, and women. Among the most significant of these grassroots movements are the Chipko Movement and the Narmada Bachao Andolan.

Chipko Movement (1973)

The Chipko Movement, which began in the early 1970s in the hill regions of Uttarakhand (then part of Uttar Pradesh), is one of India's most iconic environmental movements. The movement, led primarily by local women, focused on preventing the indiscriminate cutting of trees in the Himalayas by logging companies. The name "Chipko" translates to "to embrace," and it describes how the protestors hugged trees to prevent them from being felled. The movement was ignited by the state government's decision to grant logging rights to private contractors, which led to the widespread deforestation of the region. Local people, particularly women, recognised the detrimental effects of this environmental destruction on their livelihoods, as the forests provided them with fuelwood, fodder, and medicinal plants. The Chipko activists understood that environmental degradation would not only endanger their survival but would also compromise their fundamental human rights, including the right to livelihood, the right to a healthy environment, and the right to a stable future for their children.

♦ *Environmental laws protect both the environment and human rights*

♦ *Grassroots movements link environmental justice with human rights*

♦ *The Chipko Movement began in the 1970s, led by local women*

The Chipko Movement's central message was that environmental protection is intimately connected to the preservation of human rights, especially for those dependent on natural resources for their survival. Through non-violent protests and civil disobedience, the movement succeeded in raising national and international awareness about the need for sustainable forestry practices. In 1980, the government passed a ban on felling trees in the region, a major victory for the movement. Moreover, the movement's focus on women's participation in the leadership and decision-making process highlighted the gendered dimension of environmental struggles, as women were most affected by the loss of forest resources.

Narmada Bachao Andolan (1985)

The Narmada Bachao Andolan (NBA) emerged in the mid-1980s as a response to the construction of large dams on the Narmada River, particularly the Sardar Sarovar Dam in Gujarat. The movement, led by activist Medha Patkar and other local leaders, was primarily concerned with the displacement of tens of thousands of tribal and rural people whose lands and livelihoods were being submerged by the dam's reservoirs. The NBA argued that the project, which was touted as a means of providing irrigation and electricity, would disproportionately affect the indigenous and lower-caste communities who were dependent on the river and its surrounding lands for their survival.

The movement strongly criticised the government for failing to provide adequate compensation, resettlement options, or meaningful participation in the decision-making process. It highlighted the human rights violations resulting from large-scale development projects, especially the forcible displacement of communities without proper rehabilitation. Over time, the Narmada Bachao Andolan expanded its focus to include issues such as water rights, the rights of displaced persons, and environmental degradation caused by the dam construction. The movement attracted national and international attention, bringing together environmentalists, human rights activists, and academics.

Linking Human Rights with Environmental Advocacy

Both the Chipko Movement and the Narmada Bachao Andolan demonstrate the critical intersection of environmental and human rights advocacy. These movements emphasise that environmental protection is not merely an ecological issue but a deeply political and social one. They advocate for a more holistic understanding of development, one that recognises the rights of all stakeholders, especially marginalised communities, to access resources, live in a

Marginal notes:

♦ *It aimed to prevent deforestation, highlighting human rights linked to the environment*

♦ *NBA emerged to oppose the displacement caused by the Sardar Sarovar Dam*

♦ *The movement focused on human rights, water rights, and environmental degradation*

♦ *Chipko and Narmada movements link environmental issues to human rights*

safe environment and participate in the decisions that affect their lives.

Moreover, these movements stress the importance of community-led solutions to environmental issues. Rather than imposing top-down, one-size-fits-all solutions, they highlight the importance of integrating local knowledge and respecting the cultural and social rights of affected communities. In India, these movements have paved the way for a more inclusive environmental governance framework, encouraging the state to consider the rights of vulnerable populations when designing and implementing development projects. Through their activism, both the Chipko Movement and the Narmada Bachao Andolan have demonstrated the power of collective action, especially when it is focused on environmental justice as a human rights issue. They have shown that when communities come together to protect their environment, they not only safeguard their livelihoods but also assert their fundamental human rights to dignity, equality, and a healthy environment.

♦ *These movements advocate for community-led, inclusive solutions*

Summarised Overview

This unit discusses the idea of human rights and development. How do we perceive development? Is the idea of development completely Western, or does it include the flexibility of Indian realities? The Second World War made the world realise that economic development does not safeguard human rights in any form. The example of Nazi Germany and the horrors the state inflicted upon the Jews were a turning point in this realisation.

It is from these instances the idea of a Universal Declaration of Human Rights has evolved, and the UN decided to adopt the resolution in 1948. However, there was a difference between the American bloc and the Soviet bloc regarding what to be considered human rights. The American bloc considered civil and political rights as the crux of human rights, whereas the Soviet bloc considered economic, social and cultural rights as the core. This led to the adoption of two covenants on human rights in 1966. Post-Cold War, a new generation of rights also emerged such as the right for cultural recognition, which expanded the scope of these rights. This is where emerging nations such as India came up with legislations such as the Right to Education and Right to Food Security, which were incorporated into the ambit of human rights.

The right to education actually brought up the social and cultural inequalities that were present in India from independence onwards. And the measures passed by various state governments to make education accessible to marginal sections of the population and its success. Despite such efforts, social evils like the practice of the caste system continued

in schools, and there was not much headway in the school level in eradicating this evil. This brought up the question of whether human rights should be included as part of the curriculum in the school or not. There were debates on how to impart awareness about human rights to the students and citizens.

Assignments

1. Examine the key policy measures and programmes implemented by the Indian government to achieve Sustainable development.
2. Discuss the global perspectives of Human rights.

Suggested Reading

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Current Issues

Learning Outcomes

After the completion of this unit, the learner will be able to:

♦ understand the definition of terrorism and challenges pertaining to it
♦ comprehend the challenges between human rights and terrorism
♦ identify problems with the war on terrorism and the human rights violations related to it
♦ understand the impact of globalisation on human rights

Background

In recent decades, the landscape of human rights has become increasingly complex, shaped by geopolitical shifts, economic globalisation, and debates on the legitimacy of interventions. The International Commission on Intervention and State Sovereignty (ICISS) seeks to define when armed interventions are justified, especially in severe cases like genocide. While some argue that UN approval is essential, others believe interventions can be justified without it in extreme situations.

This debate underscores ethical dilemmas, such as the risk of harming noncombatants while trying to protect human rights. Historical interventions in Iraq and Haiti illustrate the challenges and potential for international cooperation in such crises. However, the restrictive view that interventions are only justified in extreme emergencies is contested, suggesting that preventing major rights violations may sometimes warrant intervention.

Post-9/11, the definition of terrorism and the global response to it have sparked controversy, with measures like detention without trial and racial profiling raising concerns about civil liberties.

The 1990s introduced new human rights issues like genocide, ethnic cleansing, and economic deprivation, compounded by the rise of "illiberal democracies" and corporate-driven globalisation. Amnesty International (AI) faces challenges adapting to these changes, balancing modern communication tools with the need to address economic, social, and cultural rights. The organisation must also navigate the complexities of a state-

centered approach in a world where nonstate actors and collapsed states play significant roles. AI's ability to remain relevant depends on its adaptation to these evolving human rights challenges.

Keywords

Political Violence, Human Rights, War, Terrorism, Counter-Terrorism, Civil Society, State Human Rights, Encounters, Custodial Violence, Impact Globalisation

Discussion

4.3.1 Political Violence and Human Rights

Political violence refers to the use of force or intimidation by individuals, groups, or state actors to achieve political goals. This can include acts such as terrorism, civil unrest, armed conflict and repression by governments against dissent. Political violence often aims to instill fear, disrupt social order, or exert control over populations. It can occur in various forms, including protests, riots, and military actions, and is frequently driven by ideological, ethnic, or political motivations. The consequences of political violence can be devastating, leading to loss of life, human rights violations, and long-term societal instability. The ICISS (International Commission on Intervention and State Sovereignty) aimed to create principles that state officials could broadly agree on regarding armed intervention. Philosopher Michael Blake notes that there is almost universal support for the idea that governments should intervene only in the most severe cases of human rights abuses. This means intervention is allowed only when abuses are extremely serious.

* The role of ICISS and armed intervention to protect Human Rights

* Why armed intervention is necessary in case of grave violations

Michael Walzer, a prominent supporter of this view, says humanitarian intervention is justified when it responds to acts that "shock the conscience of mankind," such as genocide, enslavement, massacre and massive deportation. If a government is tyrannical but doesn't commit such extreme abuses, armed intervention is not allowed.

* Intervention should be mandated by the UN

Some believe that even in extreme cases, intervention must be approved by the UN Security Council to be morally and legally acceptable. They argue that interventions by single countries or regional groups like NATO can be biased. Michael Walzer

disagrees, supporting interventions without multilateral approval, like Vietnam's intervention to stop the Cambodian genocide under Pol Pot.

The ICISS report acknowledges that legitimate interventions might occur without Security Council approval, especially if the UN fails to act promptly. However, the ICISS is unclear about when regional groups have the authority to intervene and worries that unauthorised interventions could weaken the UN.

Another argument against military interventions is that they inevitably harm innocent civilians. Mirko Bagaric and John Morss highlight the contradiction in using force to protect rights since it often results in killing people, violating their fundamental right to life. However, they argue that if there's no other way to save many more lives, armed intervention might be necessary, but only in extreme cases.

For example, after the Gulf War, allied troops created a safe haven and no-fly zone in northern Iraq to protect the Kurds, involving minimal force. Similarly, in 1994, the US intervened in Haiti to restore the elected government after negotiations and an embargo failed. The intervention faced little resistance and quickly established security.

Post-Cold War events like genocide and ethnic cleansing have renewed interest in humanitarian intervention. While it's agreed that protecting human rights can justify armed intervention, it's debated whether it should only occur in extreme emergencies. Illegitimate states have no right against intervention, which is permissible when the risks are proportional to the rights violations it prevents. However, this standard might not be suitable for international law. Unlike armed intervention, there's little support for assassinating corrupt leaders, though it could be morally justified in some cases. Creating an institution to authorise such actions is risky but worth exploring.

4.3.2 Terrorism and Human Rights

In his address to the U.N. General Assembly on November 10, 2001, President Bush stated: "We unite in opposing all terrorists" (Falk 2003: 120). However, there is no universally accepted definition of a 'terrorist'. Even within the U.S. government, various definitions are used (Kapitan 2003: 48). Different definitions carry distinct ethical and political ramifications. The goal should be to adhere to commonly understood concepts of terrorism while avoiding prevalent misunderstandings. It's essential to pinpoint the key challenges in defining 'terrorism' and to resolve issues through

argument and evidence rather than by mere definition.

The most controversial issue in defining terrorism is whether terrorists are exclusively non-state actors or if states can also be classified as terrorists. Governments typically label those who use violence against the state as terrorists. Some writers argue that the concept of 'state terrorism' is valid (Gearson 2002: 9; Waldron 2004: 18-19). Falk contends that by defining terrorism as anti-state and framing the 'war on terrorism' as a battle of good versus evil, the U.S. has weakened the fight against state terrorism and consequently, the fight for human rights (Falk 2003: 143).

Terrorism is often deemed wrong because it harms individuals who are considered 'innocent' (Boyle 2003: 156; Freedman 2002b: 48; Elshtain 2003: 18-19; Ignatieff 2004: 94-5, 110-11). This makes terrorism wrong by definition rather than by argument. To address this, some definitions describe terrorism as indiscriminate or intended to kill civilians. These definitions don't fully align with common usage; for instance, they would categorise the 9/11 World Trade Center attack as terrorism but not the Pentagon attack. Additionally, some terrorists distinguish between 'legitimate' and 'illegitimate' targets. This blending of definition and ethical judgement might reflect our ethical confusion. Modern warfare blurs the lines between combatants and civilians. There's a risk of defining terrorism in a way that excludes us while labelling our enemies as terrorists. Definitions and ethical judgments should be clear and unbiased, but the current discourse on terrorism often fails in this regard.

Defining terrorism is often a political exercise of power. The Nazis labelled the French Resistance as 'terrorists' and the apartheid regime in South Africa did the same with the African National Congress. Freedman notes that even terrorists call their opponents 'terrorists' (2002b: 46). President Bush's call for the U.N. to unite against 'all' terrorists was therefore ambiguous. Terrorists and freedom fighters are not inherently different; the former use terror for their cause, while the latter fight for freedom. Distinguishing between the two requires a theory of justified political violence, which is unlikely to achieve complete consensus, leaving the definition of 'terrorism' perpetually unclear.

The 'war on terrorism' is often framed as a conflict between liberal democracy and its uncompromising enemies (Ignatieff 2004: 125-6, 131; Berman 2003: 182-3). While Al Qaeda's ideology may be apocalyptic, many supporters have political concerns addressed by pragmatic policies (Ignatieff 2004: 132). Post-9/11, the terrorist threat was 'stratified' and integrated into

the familiar 'war' discourse, conflating terrorism with 'rogue states' and weapons of mass destruction. This led to the contentious Iraq war and the detention of Guantanamo Bay prisoners who lacked due process rights. The conflation of terrorism with inter-state relations has compromised effective policy responses, as evidenced by ongoing instability in Iraq.

The U.S. response to 9/11 has been criticised as 'unilateralist', though it oscillates between unilateralism and multilateralism. The U.S. seeks to control the war on terrorism but also needs the legitimacy provided by multilateralism from entities like the United Nations. The attack on Al Qaeda and the Taliban in Afghanistan was justified as self-defence (Elshtain 2003). However, the sight of the world's most powerful nation bombing one of its poorest was unsettling to many, especially Muslims. The argument that the U.S. should have limited itself to police measures and U.N. cooperation lacked conviction (Falk 2003). Nonetheless, the U.S. and its allies may be criticised for not fully honouring their human rights obligations to Afghans. The war on Al Qaeda and the Taliban misleadingly suggested that the West's Afghan allies were human rights champions, while concern for Afghan women's rights was tentative. Justifications for self-defence intertwined with regime change arguments. Ethical and legal bases for 'humanitarian interventions' have been uncertain since the Kosovo war of 1999. The Iraq war, justified mainly by the alleged possession of weapons of mass destruction, remains controversial due to false assumptions and its link to the war on terrorism is tenuous.

There is a human right to security, necessitating a balance between different human rights sets that are not entirely compatible. Universal freedoms and protections pose risks that might threaten human rights. We must clearly identify which rights are at stake under terrorism threats and which risks are acceptable. This requires understanding the true threat level of terrorism, leaving us vulnerable to government manipulation of information. Even in democracies, governments may need to keep some information secret to protect people's rights. Locke's theory of rights protection allows significant government discretion. The recent handling of intelligence about Iraq's supposed weapons of mass destruction reminds us not to overly trust democratic politicians. Ignatieff stresses the need for legislative and judicial oversight, though this may be insufficient. A robust civil society is crucial to challenge state institutions, even if it might err. The International Council on Human Rights Policy highlights the role of professional human rights organisations in combining humane objectives with responsible analysis. 'Terrorism' is frightening and our fear is

♦ *The failure of the US and its allies to protect human rights in Iraq and Afghanistan despite their call for war on terrorism*

♦ *The need for a robust civil society to challenge the state and its bogus claims of weapons of mass destruction*

not irrational. Our best defence against terrorism and the fear it generates is a healthy distrust of government and a commitment to reasoned, analytical defence of human rights.

4.3.2.1 Impact of 9/11 on Human Rights

Governments in other democracies have also taken repressive actions. Before 9/11, the UK had already implemented extensive measures to counter terrorism, mainly in response to the Irish Republican Army's activities in London. After 9/11, a new anti-terrorism law was passed, including a highly controversial provision. This provision allows the Home Secretary to intern a 'suspected international terrorist' without trial if it's believed that person poses a threat to national security. If the suspect isn't a UK citizen, they can be detained indefinitely without charge or trial, with no appeal to regular courts—only to a government-appointed commission. This led the UK to deviate from the European Convention on Human Rights.

Similarly, India passed legislation post-9/11 that significantly invaded privacy rights and allowed the detention of suspected terrorists without trial for up to ninety days. However, when a new government was elected a few months ago, Parliament repealed the entire enactment. South Africa also proposed legislation after 9/11 that included detention without trial for ninety days. However, protests from politicians who had been detained under Apartheid led to the removal of these provisions by the Parliamentary Committee on Justice.

Since 9/11, racial profiling and the detention of illegal immigrants from Muslim countries have become common in several democracies. This can only be justified if there's a factual basis that makes it effective and proportionate to the perceived threat. Disproportionate invasions of civil liberties, especially in the US, are causing a troubling domino effect worldwide, justifying even more repressive actions.

For instance, President Mugabe of Zimbabwe and former Liberian leader Charles Taylor both used the US classification of 'unlawful combatant' to justify oppressive actions against critical journalists. Indonesian leaders have discussed setting up their own 'Guantanamo Bay'. The United Nations Security Council also delayed efforts to ensure civil liberties were respected in legislation mandated by Resolution 1373. Initially, the Counter-Terrorism Committee didn't consider human rights a concern for the Security Council.

♦ *A new law in the UK to prevent anti-terrorism*

♦ *The Indian law which invaded the privacy of citizens*

♦ *Discriminatory policies pursued by the US*

♦ *The counter-terrorism committee undermined human rights*

4.3.3 Civil Society, State and Human Rights

Civil society refers to the network of non-governmental organisations (NGOs), community groups, associations, social movements and advocacy bodies that operate independently of the state and market. It represents the collective voice of citizens, focusing on issues of public concern, social justice, and human rights. Historically, the concept of civil society originated in ancient Greece, where Aristotle described it as a community bound by shared moral and legal norms. The modern interpretation of civil society emerged during the Enlightenment era, emphasising its role as a space for free association and public participation, distinct from governmental control.

Civil society is integral to human rights because it acts as a bridge between individuals and the state, advocating for the protection and promotion of rights. It monitors the state's adherence to human rights obligations and ensures that marginalised groups, often excluded from mainstream political discourse, have a platform to voice their concerns. This intermediary role is particularly vital in diverse democracies like India, where caste, gender, ethnicity and religion create distinct challenges for human rights realisation.

4.3.3.1 Role of Civil Society in Human Rights:

♦ **Watchdog Function**

Firstly, it acts as a watchdog, exposing human rights violations and holding governments accountable. NGOs such as Human Rights Watch, Amnesty International and India's People's Union for Civil Liberties (PUCL) meticulously document abuses and release reports that highlight state failings or systemic issues. These efforts often lead to international and national pressure on governments to address violations and implement reforms.

♦ **Rights Education and Awareness**

Secondly, civil society engages in rights education and awareness, empowering individuals to understand and claim their rights. This includes organising workshops, publishing educational materials, and conducting grassroots campaigns to inform communities about their legal entitlements. For example, organisations like CRY (Child Rights and You) in India educate communities about child labor laws and the right to education, enabling vulnerable populations to demand justice.

♦ **Policy Advocacy and Legislative Reform**

Civil society also plays a key role in policy advocacy and legislative reform. By presenting evidence-based research, conducting public campaigns and lobbying policymakers, civil

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The sidebar notes:

♦ *The concept originated in ancient Greece and evolved during the Enlightenment*

♦ *Civil society advocates for human rights and monitors the state's obligations*

♦ *NGOs like HRW and PUCL expose abuses and push for reforms*

♦ *Civil society empowers through rights education*

society organisations influence the creation and modification of laws to align with human rights principles. A notable example is the campaign for the Right to Information Act in India, spearheaded by civil society groups such as the Mazdoor Kisan Shakti Sangathan (MKSS). Their efforts resulted in groundbreaking legislation that enhanced government transparency and accountability.

♦ Legal Aid and Assistance

Additionally, civil society contributes to human rights by providing legal aid and assistance to victims of injustice. Many organisations work pro bono to represent marginalised groups in courts, ensuring access to justice for those who cannot afford legal representation. In India, the Human Rights Law Network (HRLN) has been instrumental in filing Public Interest Litigations (PILs) to challenge discriminatory laws and practices, particularly those affecting women, Dalits and tribal communities.

♦ Humanitarian Aid and Protection

In conflict and disaster zones, civil society often steps in to deliver humanitarian aid and protection, advocating for the rights of displaced individuals, refugees and survivors of violence. Organisations like the Red Cross and Médecins Sans Frontières (Doctors Without Borders) provide essential services while documenting human rights violations to hold perpetrators accountable.

♦ Grassroots Mobilisation and Social Movements:

Moreover, civil society serves as a platform for grassroots mobilisation and social movements. Movements advocating for gender equality, LGBTQ+ rights and environmental justice have gained momentum through civil society efforts. For instance, the Chipko movement in India exemplifies how civil society can mobilise communities to protect environmental rights and challenge exploitative policies. In the international sphere, civil society plays a crucial role in shaping global human rights norms. By participating in United Nations forums, submitting shadow reports to treaty bodies, and engaging with mechanisms such as the Universal Periodic Review (UPR), NGOs amplify local human rights issues on a global stage. This international advocacy often strengthens domestic efforts by exerting pressure on governments to adhere to their human rights commitments.

4.3.3.2 The Concept of the State and Its Role in Human Rights

The state is a foundational political entity characterised by its authority over a defined territory and population. It operates through

three key components: the legislative, executive, and judiciary. The legislative branch formulates laws and policies that shape the rights and responsibilities of citizens. The executive branch implements these laws and ensures governance, while the judiciary interprets laws, resolves disputes and safeguards justice. Together, these three components form a cohesive structure that defines the state's functioning and its role in ensuring order, development and the protection of rights.

The State as a Protector of Human Rights

♦ Legal Frameworks and Policies

The state is responsible for creating a legal and institutional framework to ensure the protection of human rights. This includes constitutions, statutory laws, and regulatory mechanisms that enshrine fundamental rights, such as the right to life, equality and freedom of expression. For instance, India's Constitution provides extensive human rights protections through Fundamental Rights (Articles 14–32), safeguarding civil liberties such as equality before the law, freedom of speech and protection from exploitation.

♦ Institutions for Implementation

To implement human rights, the state establishes institutions such as the National Human Rights Commissions, women's commissions and child rights bodies. These institutions address violations, recommend policy changes and monitor the state's adherence to human rights obligations. For example, India's National Human Rights Commission (NHRC) investigates human rights abuses and recommends corrective measures to the government.

♦ Social and Economic Rights

States also promote social and economic rights through welfare programs and affirmative action policies. By addressing issues like poverty, education and healthcare, governments work toward fulfilling the broader objectives of human rights. For instance, schemes like India's Right to Education (RTE) Act and the National Rural Health Mission highlight the state's role in ensuring access to basic human rights for marginalised groups.

♦ International Obligations

As signatories to international human rights treaties, states are bound to adhere to global standards, such as those outlined in the Universal Declaration of Human Rights (UDHR) the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR). Compliance with these treaties reflects the state's commitment to upholding universal human rights norms.

The State as a Violator of Human Rights

♦ Abuse of Authority

States can violate human rights through misuse of power, such as excessive force by police, arbitrary detention or suppression of dissent. In authoritarian regimes, this is often systemic, with government actions deliberately targeting political opponents, activists, or minority groups. Even in democracies, instances of custodial violence, censorship or neglect of vulnerable communities demonstrate how state machinery can become a source of rights violations.

♦ Systemic Discrimination

Structural inequalities embedded in legal and administrative systems can perpetuate discrimination against certain groups. For example, marginalised communities such as Dalits in India or Indigenous populations globally often face systemic exclusion despite constitutional protections.

♦ Conflict and Security

In situations of internal conflict or national emergencies, states may adopt repressive measures, citing national security concerns. These actions, such as curfews, internet shutdowns, or military interventions, often lead to significant human rights violations, disproportionately affecting civilians. For example, during the Emergency in India (1975–1977), civil liberties were curtailed, and dissent was heavily suppressed.

Balancing National Sovereignty with Human Rights Obligations

The state's role in human rights is complicated by the principle of sovereignty, which asserts a nation's authority over its affairs without external interference. While this principle is foundational to international law, it can conflict with universal human rights norms. States may resist international scrutiny of their human rights record, citing sovereignty, even in cases of severe abuses. However, mechanisms such as the Universal Periodic Review (UPR) by the UN Human Rights Council provide a platform for holding states accountable while respecting their sovereignty. Similarly, international interventions, though controversial, have been justified in extreme cases, such as genocides or ethnic cleansing, as seen in Rwanda or the Balkans.

Challenges in the State's Role

♦ Implementation Gaps

Despite robust legal frameworks, the implementation of human rights remains inconsistent. Bureaucratic inefficiency, corruption

and lack of political will often undermine the state's capacity to deliver justice.

♦ Resource Constraints

Developing nations, in particular, struggle with resource limitations that affect their ability to provide universal access to education, healthcare and other basic rights.

♦ Balancing Rights and Security

Striking a balance between individual freedoms and national security is a persistent challenge, especially in the context of terrorism or internal unrest. Policies aimed at ensuring security often result in restrictions on freedom of speech, movement, and privacy.

4.3.3.3 Contemporary Issues and Challenges

In the modern era, civil society faces numerous challenges that significantly impact its ability to advocate for human rights. These challenges include shrinking democratic spaces, the rise of populism, and the dual-edged nature of digital technology. Together, they present complex obstacles for civil society organisations (CSOs) while also shaping the discourse on human rights globally and domestically.

Shrinking Democratic Spaces and Restrictions on Civil Society

The global trend of shrinking democratic spaces has emerged as a significant concern for civil society. Governments in many regions are increasingly imposing restrictions on the operations of CSOs, often using legal and administrative measures to curtail their activities. Laws limiting foreign funding, stringent compliance regulations and restrictions on protests have become common tools for governments to suppress dissent and undermine civil society. In some cases, CSOs face threats of de-registration or criminal charges under vaguely defined provisions, such as those related to "national security" or "public order."

In India, for instance, the Foreign Contribution Regulation Act (FCRA) has been used to restrict funding for CSOs, particularly those advocating for marginalised groups or environmental justice. Globally, countries like Hungary, Russia and China have introduced laws that stifle NGO operations, leading to reduced capacity for addressing human rights abuses. These measures undermine the fundamental role of civil society in holding governments accountable, promoting transparency and fostering democratic participation.

♦ *Civil society struggles with modern challenges*

♦ *Governments restrict CSOs using legal measures*

♦ *Funding laws stifle NGO operations globally*

Rise of Populism and Its Impact on Human Rights

The rise of populist leaders and ideologies worldwide has had a profound impact on human rights discourse. Populism often thrives on the polarisation of societies, framing "the people" against perceived elites or outsiders. This divisive rhetoric has led to policies that undermine minority rights, suppress dissent, and prioritise majoritarian interests over universal human rights principles. In countries such as the United States, Brazil, Hungary and the Philippines, populist regimes have actively discredited civil society organisations, portraying them as obstacles to national sovereignty or progress. Populist narratives frequently dismiss international human rights norms as Western impositions, eroding global efforts to uphold universal rights. In India, populist politics have occasionally exacerbated communal tensions and curtailed freedoms, with civil society often labelled as "anti-national" when criticising government policies. This environment makes it increasingly difficult for CSOs to function without facing hostility or repression.

Digital Technology: A Tool and a Challenge

The advent of digital technology has transformed the landscape for civil society, providing powerful tools for advocacy and mobilisation while also introducing new challenges. On one hand, social media platforms and digital campaigns have amplified the reach of CSOs, enabling them to disseminate information, engage with broader audiences, and coordinate global movements. Digital technology has been instrumental in movements such as the Arab Spring, Black Lives Matter, and the Indian anti-corruption protests, showcasing its potential to unite people for common causes.

However, the same technology poses significant challenges, particularly in terms of surveillance and cyber threats. Governments and non-state actors increasingly use digital tools to monitor and suppress dissent. Surveillance technologies can track activists, intercept communications, and identify participants in protests, leading to intimidation or arrest. Cybercrimes, including hacking and disinformation campaigns, further erode the credibility of civil society by spreading false narratives or compromising sensitive data.

In India, for example, instances of surveillance through tools like Pegasus spyware have raised concerns about privacy violations and the stifling of dissent. Globally, CSOs must navigate the challenges of maintaining cybersecurity while leveraging digital platforms for their work. Additionally, the regulation of digital spaces, such as content moderation and internet shutdowns, disproportionately

Marginal notes (left column):

♦ *Populism polarises societies and undermines rights*

♦ *Digital technology amplifies CSO efforts*

♦ *Digital tools enable surveillance suppression*

♦ *Regulation affects marginalised civil society groups*

affects marginalised groups and limits the ability of civil society to operate freely.

4.3.4 Impact of Globalisation and Human Rights

Globalization has brought new human rights challenges like genocide, ethnic cleansing, and economic deprivation. As Fareed Zakaria noted, the end of the Cold War led to more "illiberal democracies" without an increase in respect for human rights. Economic globalisation is driven by global capital and corporations, not necessarily leading to better human rights adherence. AI must adapt to these realities and respond effectively to opportunities and challenges in a multipolar world.

♦ *End of Cold War and new illiberal democracies*

Electronic media like the Internet and global communications satellites make national borders more permeable to information, allowing human rights news to have a greater impact. AI has embraced modern communications, using websites, email, and other tools to manage its operations more efficiently and mobilise activists quickly. This aspect of information globalisation benefits AI, but economic, financial, legal, and political globalisation also present challenges.

♦ *The impact of globalisation*

Amnesty faces challenges from the increase in small human rights NGOs, the growing influence of transnational corporations, the need to incorporate economic, social, and cultural rights into its mission, debates over the universality of human rights, and responding to massive violations like ethnic cleansing and genocide. Newer NGOs often focus on emerging issues that AI lacks the resources to address fully, leading to talented activists joining other organisations.

♦ *Challenges posed by globalisation to the NGOs*

AI must balance working in coalitions with other NGOs while maintaining its identity. Traditionally viewed as standoffish, AI has often refused to join coalitions due to differing goals and methods. The erosion of nation-state power requires AI to refocus its state-centred approach to human rights enforcement. While AI has begun addressing nonstate actors like armed groups and corporations, the current international human rights law framework is designed for governments, not corporations.

♦ *Shift in focus from a nation-state actors to n non-state players*

Economic globalisation has weakened the state's role as the guarantor of economic rights. Rich nations like the U.S. have moved away from ensuring a standard of living for all citizens, leaving poorer nations vulnerable to economic disruptions. The human rights movement must address these economic rights seriously.

♦ *Challenges of economic globalisation*

The universality of human rights remains a debated issue. At the 1993 Vienna World Conference on Human Rights, some East Asian governments argued for considering human rights in the context of cultural and historical differences, challenging the principle of universality. AI must construct a more cosmopolitan conception of human rights that includes diverse cultural and historical perspectives.

Responding to massive human rights violations remains a challenge. Publicising violations alone is not enough to bring about change. The international community often fails to respond adequately to violations within sovereign states, as seen in Bosnia, Rwanda and Kosovo and recently the failure to stop Israel's genocide of Gaza. Amnesty and many other organisations have a policy of not endorsing economic sanctions or military interventions, preferring moral shaming and adverse publicity. As the community of nations moves towards accepting humanitarian interventions, these organisations must decide whether to follow or lead this movement.

Summarised Overview

The ICISS (International Commission on Intervention and State Sovereignty) focuses on defining when armed interventions are permissible, emphasising that interventions should only occur in extreme cases of human rights abuses, such as genocide or enslavement. However, some argue that UN Security Council authorisation is necessary for moral and legal legitimacy, a view not universally accepted. Proponents like Michael Walzer support interventions even without multilateral approval in certain cases. The ICISS suggests regional interventions could be valid when the UN fails to act but is cautious about potential misuse.

The ethical dilemma of harming noncombatants during interventions is highlighted by critics who argue that using force to protect rights inherently contradicts the fundamental right to life. Yet, in cases of supreme humanitarian emergencies, such interventions might be morally necessary to prevent greater harm.

Examples include the post-Gulf War intervention in Iraq to protect Kurds and the 1994 U.S. intervention in Haiti to restore democracy, which involved minimal force and significant international cooperation. The consensus that armed intervention is only permissible in extreme emergencies is criticised as too restrictive. The argument suggests that illegitimate states have no right against intervention when it can prevent significant rights violations, although this principle might not be suitable for international law due to practical complexities.

The discussion then shifts to defining terrorism, noting that definitions are often politically motivated and inconsistent. Terrorism is commonly associated with harming innocent civilians, but this definition can blur distinctions between terrorists and freedom fighters. The response to terrorism post-9/11, including the U.S.'s unilateral and multilateral approaches, has been controversial, particularly regarding human rights and legal justifications. In the aftermath of 9/11, various democracies enacted repressive measures, such as detention without trial and racial profiling, which often infringed on civil liberties. This trend has led to criticisms and calls for a balanced approach that protects human rights while addressing security concerns.

The 1990s brought new human rights challenges such as genocide, ethnic cleansing, and economic deprivation, while geopolitical complexities increased. Fareed Zakaria highlighted a rise in "illiberal democracies" post-Cold War, without a corresponding respect for civil, political, or economic rights. Economic globalisation, driven by corporate interests, doesn't necessarily lead to improved human rights, posing a significant challenge for Amnesty International (AI). Modern communications provide AI with opportunities for rapid information dissemination and mobilisation, enhancing its global reach. However, AI faces challenges from the rise of small domestic human rights NGOs, influential non-state actors like corporations, and the need to incorporate economic, social, and cultural rights into its mission. The traditional state-centred approach is less effective in conflict zones and collapsed states. AI is also grappling with the universality of human rights amidst cultural and historical differences, needing to adapt to maintain relevance and address emerging human rights issues comprehensively.

Assignments

1. Distinguish between various forms of terrorism with the examples from history.

2. Analyse the new challenges in the battle against terrorism, with respect to human rights.

3. Analyse how globalisation helped awareness of human rights.

Suggested Reading

1. Amnesty International, *Human Rights in India*, Sage, New Delhi, 1994.

2. Capital Crimes: *Deaths in Police Custody, Delhi*, 1980-199, PUDR, Delhi, 1998.

3. *Custodial Rape: A Report on the Aftermath*, PUDR, Delhi, 1994.

4. *Human Rights: A Source Book*, NCERT.

5. *Inside the Family: A Report on Democratic Rights of Women*, PUDR, Delhi, 1987, National Policy on Senior Citizens, 2011.

6. *The History of Human Rights*, Mangalam Publications, Delhi, 2011.

7. Tsang, Steve, ed., *Intelligence and Human Rights in the Era of Global Terrorism*, Praeger Security International, 2007.

8. *Universal Declaration of Human Rights and Indian Law*, PHI Learning Private Limited. New Delhi, 2010.

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1. Michael Blake, "Collateral Benefit," in Justice and Global Politics, ed. Ellen Frankel Paul, Fred Miller Jr., and Jeffrey Paul (Cambridge: Cambridge University Press, 2006).

2. Boyle, J. (2003). 'Just War Doctrine and the Military Response to Terrorism'. *The Journal of Political Philosophy,* 11 (2).

3. Elshtain, B. (2003). J*ust War Against Terror: The Burden of American Power in a Violent World.* New York: Basic Books.

4. Falk, R. *The Great Terror War. Moreton-in-the-Marsh:* Arris Books,2003

5. Freeman, Michael. *Order, rights and threats: Terrorism and global justice.* na, 2005.

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7. Ignatieff, M. (2004). *The Lesser Evil: Political Ethics in an Age of Terror. Princeton*: Princeton University Press.

8. *International Commission on Intervention and State Sovereignty,* The Responsibility to Protect (Ottawa: International Development Research Centre, 2001).

SREENARAYANAGURU OPEN UNIVERSITY

THIRD SEMESTER - MA HISTORY EXAMINATION

MODEL QUESTION PAPER SETS

DISCIPLINE SPECIFIC ELECTIVE COURSE M21HS06DE

SREENARAYANAGURU OPEN UNIVERSITY

QP CODE: ………   Reg. No   : ....

                                                Name   : ……............

THIRD SEMESTER - MA HISTORY EXAMINATION

DISCIPLINE SPECIFIC ELECTIVE COURSE -M21HS06DE - Perspectives of Human Rights

(CBCS - PG)

MODEL QUESTION PAPER- SET- A

2022-23 - Admission Onwards

Time: 3 Hours   Max Marks: 70

SECTION A - Objective Type Questions

Answer any ten of the following. Each question carries one mark

(10X1 = 10 Marks)

1. What was the main focus of first-generation human rights?
2. Name of any one philosopher who significantly contributed to the development of the concept of equality
3. Which historical document, adopted in 1948, marked a milestone in enshrining universal human rights?
4. Who proposed the concept of natural law as linked to human freedom in ancient times?
5. What is the meaning of 'Vasudhaiva Kutumbakam,' referenced in the Vedas?
6. The Arthasastra of Kautilya asserts which key principle?
7. What did the Queen Victoria Proclamation of 1858 promise to Indian citizens?
8. What does the Protection of Human Rights Act, 1993, aim to establish?
9. Who authored "A Vindication of the Rights of Woman" in 1792?
10. Which country was the first to grant women the right to vote in 1893?

11. What was the key outcome of the 1995 Beijing Conference?

12. Which organisation is cited as an example of promoting human rights literacy in India?

13. The International Labour Organisation's shift in Indigenous peoples' rights focus between 1957 and 1989 highlights:

14. What role does the UN Human Rights Council play in development?

15. Which international framework emphasises that development is not just about economic growth but improving the quality of life?

SECTION B - Very Short Questions

Answer any five questions in two or three sentences each. Each question carries two marks.

(5X2 =10 Marks)

16. Justice

17. Freedom of Expression

18. Dharma

19. Chipko movement

20. Writs

21. The National Commission for Women (NCW)

22. LGBTQ

23. The Convention on the Rights of Persons with Disabilities (CRPD)

24. International Monetary Fund (IMF):

25. Right to Education (RTE)

SECTION C - Short Answer Questions

Answer any five questions in a paragraph. Each question carries four marks.

(5X4 = 20 Marks)

26. Discuss the significance of the Universal Declaration of Human Rights.

27. What led to the revival of Natural Rights Theory in the 20th century, and what are the key factors that contributed to its renewed significance?

28. What significant developments have occurred in the evolution of Human Rights since the adoption of the Universal Declaration of Human Rights in 1948?

29. Discuss the significance of Fundamental Rights as enshrined in the Indian Constitution.

30. Evaluate the historical development of women's rights in India.

31. Analyse how globalisation helped awareness of human rights in India.

32. Find the difference between civil-political rights and economic-social-cultural rights.

33. Discuss the role of civil society in promoting and protecting human rights with examples from India and globally.

SECTION D - Long Answer/Essay Questions

Answer any three questions in two pages. Each question carries ten marks.

(3X10 =30 Marks)

34. Explain the concept of Human Rights. What early legal instruments have contributed to the development of Human Rights?

35. Explain the role of national movements in spreading the idea of human rights?

36. Examine the role of the Indian judiciary in interpreting the Directive Principles of State Policy concerning human rights

37. The Constitution of India has several provisions to ensure that women are protected from discrimination and violence. Critically evaluate.

38. Examine the effectiveness of the Rights of Persons with Disabilities (RPwD) Act, 2016, in promoting inclusion in Indian education and employment sectors.

39. Discuss the interrelationship between human rights and development with examples from international frameworks and Indian policies. Highlight how a rights-based approach to development ensures inclusivity, equity, and sustainability.

QP CODE: ………   Reg. No : ....

Name   : …….............

THIRD SEMESTER - MA HISTORY EXAMINATION

DISCIPLINE SPECIFIC ELECTIVE COURSE M21HS06DE -
Perspectives of Human Rights

(CBCS - PG)

MODEL QUESTION PAPER- SET- B

2022-23 - Admission Onwards

Time: 3 Hours   Max Marks: 70

SECTION A - Objective Type Questions

Answer any ten of the following. Each question carries one mark

(10X1 = 10 Marks)

1. What does the Universal Declaration of Human Rights (UDHR) primarily aim to ensure?

2. Which philosopher's ideas on natural law emphasised the hierarchy of divine, natural, and positive law?

3. Which philosopher is most closely associated with the theory of natural rights?

4. What generation of human rights focuses on social, economic, and cultural rights?

5. What is the primary role of the UN Human Rights Council (HRC)?

6. When was the Universal Declaration of Human Rights (UDHR) adopted?

7. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) focuses on which rights?

8. The Millennium Development Goals (MDGs) aimed to achieve which field.

9. Who authored "A Vindication of the Rights of Woman" in 1792?

10. Which constitutional amendment reserves seats for women in local

self-government in India?

11. What was the focus of the second wave of feminism in the 1960s and 1970s?

12. Which foundational documents emphasize the ideals of non-discrimination and equality for minority protection?

13. Which Article of the Constitution provides for the non-discrimination of minorities in India?

14. What is the main purpose of the Forest Rights Act of 2006?

15. Which 1992 UN Declaration focuses on minority rights?

SECTION B - Very Short Questions

Answer any five questions in two or three sentences each. Each question carries two marks.

(5X2 =10 Marks)

16. Locke's natural rights theory

17. Non-discrimination

18. Role of treaty-based human rights bodies

19. UN Commission on Human Rights (UNHCR)

20. Refugee

21. Linguistic minorities in India

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

23. NCW

24. NCPCR

25. CEDAW- 1979

SECTION C - Short Answer Questions

Answer any five questions in a paragraph. Each question carries four marks.

(5X4 = 20 Marks)

26. Outline the main provisions of the Universal Declaration of Human Rights (UDHR)

27. Discuss the main features of Second-Generation Human Rights.

28. Highlight the significance of the Magna Carta in the evolution of human rights.

29. How does the Vienna Declaration affirm the universality of human rights?

30. Discuss the role of the Indian Constitution in ensuring gender equality.

31. Discuss the role of the National Commission for Scheduled Castes and

Scheduled Tribes.

32. Explain the provisions of the Forest Rights Act, 2006, that empower tribal communities.

33. How does the Environmental Protection Act, 1986, address industrial pollution in India?

SECTION D - Long Answer/Essay Questions

Answer any three questions in two pages. Each question carries ten marks.

(3X10 =30 Marks)

34. Critically analyse how the concept of natural rights influenced revolutionary documents like the Declaration of Independence and the French Declaration of the Rights of Man.

35. Examine the significance of the Universal Declaration of Human Rights in shaping international human rights law.

36. Analyse the evolution and effectiveness of the Human Rights Council in addressing global human rights violations.

37. Analyse the impact of citizenship and refugee policies on minority rights in India.

38. Evaluate the impact of the Vishakha Guidelines and the 2013 Act on addressing sexual harassment in the workplace.

39. Examine the historical evolution of women's rights movements in India.

സർവ്വകലാശാലാഗീതം

വിദ്യയാൽ സ്വതന്ത്രരാകണം
വിശ്വപൗരരായി മാറണം
ഗ്രഹപ്രസാദമായ് വിളങ്ങണം
ഗുരുപ്രകാശമേ നയിക്കണേ

കൂരിരുട്ടിൽ നിന്നു ഞങ്ങളെ
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സ്നേഹദീപ്തിയായ് വിളങ്ങണം
നീതിവൈജയന്തി പാറണം

ശാസ്ത്രവ്യാപ്തിയെന്നുമേകണം
ജാതിഭേദമാകെ മാറണം
ബോധരശ്മിയിൽ തിളങ്ങുവാൻ
ജ്ഞാനകേന്ദ്രമേ ജ്വലിക്കണേ

കുരീപ്പുഴ ശ്രീകുമാർ

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Perspectives on Human Rights

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