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HUMAN RIGHTS

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HUMAN RIGHTS

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1.1 HUMAN RIGHTS: CONCEPT AND EVOLUTION

- V. Nagendra Rao

STRUCTURE

1.1.0 OBJECTIVES

In this lesson you will understand about the basic concept of human rights and how it evolved over a period of time and acquired the current status. After going through this lesson, you will be able to:

- understand the evolution and growth of the concept of Human Rights;

- appreciate various philosophical contributions in the development of the concept; and
- acknowledge the ever increasing scope of Human Rights in contemporary world.

1.1.1 INTRODUCTION

The idea of human rights connotes fundamental and inalienable rights which are so essential to life as human beings. Human rights are referred to fundamental in the absence of which one cannot live as human being. Human Rights define relationships between individuals and power structures, especially the State. Human rights delimit State power and, at the same time, require States to take positive measures ensuring an environment that enables all people to enjoy their human rights. History in the last 250 years has been shaped by the struggle to create such an environment. Starting with the French and American revolutions in the late eighteenth century, the idea of human rights has driven many a revolutionary movement for empowerment and for control over the wielders of power, governments in particular.

Governments and other duty bearers are under an obligation to respect, protect and fulfil human rights, which form the basis for legal entitlements and remedies in case of non-fulfilment. In fact, the possibility to press claims and demand redress differentiates human rights from the precepts of ethical or religious value systems. Human rights cover all aspects of life. Their exercise enables women and men to shape and determine their own lives in liberty, equality and respect for human dignity. Human rights comprise civil and political rights, social, economic and cultural rights and the collective rights of peoples to self-determination, equality, development, peace and a clean environment.

1.1.2 DEFINITION OF HUMAN RIGHTS

The concept of human rights is susceptible of variety of interpretations, as such, the issue of definition has become the most controversial. Different philosophers and thinkers define the concept in their own perceptions. For example, Joel Feiberg considers human rights as 'moral claims based on primary human needs'. Tiber Macham defines human rights as 'universal, irrevocable elements in the administration of justice'. J.E.S. Fawatt describes human rights as 'fundamental, basic, natural or common rights'.

However, from a legal standpoint, human rights can be defined as 'the sum of individual and collective rights recognized by sovereign States and enshrined in their constitutions and in international law'. In addition to this stand point let us look at two

other definitions, one that is given by bible of modern Human rights the Universal Declaration of Human Rights (UDHR), 1948, itself and the other one represents the view point of legal scholars in India.

The Universal Declaration of Human Rights defines human rights as "rights derived from the inherent dignity of the human person." Human rights when they are guaranteed by a written constitution are known as "Fundamental Rights" because a written constitution is the fundamental law of the state.

Durga Das Basu defines "Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a member of human family irrespective of any consideration".

Coming specifically to the Indian context, the Protection of Human Rights Act 1993 defines Human Rights 'as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India'. So far as Indian Constitution concerned, only rights enumerated in the Part III of the Constitution are enforceable.

1.1.3 PRINCIPLES OR CHARACTERISTICS OF HUMAN RIGHTS

Human rights are commonly understood as being those rights which are inherent to the human being. The concept of human rights acknowledges that every single human being is entitled to enjoy his or her human rights without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Human rights are legally guaranteed by human rights law, protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity. They are expressed in treaties, customary international law, bodies of principles and other sources of law. Human rights law places an obligation on States to act in a particular way and prohibits States from engaging in specified activities. However, the law does not establish human rights. Human rights are inherent entitlements which come to every person as a consequence of being human. Treaties and other sources of law generally serve to protect formally the rights of individuals and groups against actions or abandonment of actions by Governments which interfere with the enjoyment of their human rights.

In the following sections, you will study some of the most important principles of human rights.

1.1.3.1 Human Rights are Universal and Inalienable

Human Rights are universal because they are based on every human being's dignity, irrespective of race, colour, sex, ethnic or social origin, religion, language, nationality, age, sexual orientation, disability or any other distinguishing characteristics. Since they are accepted by all States and peoples, they apply equally and indiscriminately to every person and are the same for everyone everywhere. The universality of human rights has sometimes been challenged on the grounds that they are a Western notion, part of a neocolonial attitude that is propagated worldwide. A study published by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1968 clearly showed that the profound aspirations underlying human rights correspond to concepts — the concepts of justice, an individual's integrity and dignity, freedom from oppression and persecution, and individual participation in collective endeavours that are encountered in all civilizations and periods. Today, the universality of human rights is borne out by the fact that the majority of nations, covering the full spectrum of cultural, religious and political traditions, have adopted and ratified the main international human rights instruments. No one can have his or her human rights taken away other than in specific situations, for example, the right to liberty can be restricted if a person is found guilty of a crime by a court of law.

1.1.3.2 Human Rights are Indivisible, Interrelated and Interdependent:

Human Rights are indivisible and interdependent. Because each human right entails and depends on other human rights, violating one such right affects the exercise of other human rights. For example, the right to life presupposes respect for the right to food and to an adequate standard of living. The right to be elected to public office implies access to basic education. The defence of economic and social rights presupposes freedom of expression, of assembly and of association. Accordingly, civil and political rights and economic, social and cultural rights are complementary and equally essential to the dignity and integrity of every person. Respect for all rights is a prerequisite to sustainable peace and development. The international community affirmed the holistic concept of human rights at the World Conference on Human Rights, held in Vienna in 1993.

> *"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.

As you have just read a part of it, the Vienna declaration also mentions about fair and equal treatment and it gives rise to the principle of Non- Discrimination.

1.1.3.3 The Principle of Non-Discrimination

Some of the worst Human Rights violations have resulted from discrimination against specific groups. The right to equality and the principle of non-discrimination, explicitly set out in international and regional human rights treaties, are therefore central to human rights. The right to equality obliges States to ensure observance of human rights without discrimination on any grounds, including sex, race, colour, language, religion, political or other opinion, national, ethnic or social origin, membership of a national minority, property, birth, age, disability, sexual orientation and social or other status. More often than not, the discriminatory criteria used by States and non-State actors to prevent specific groups from fully enjoying all or some human rights are based on such characteristics.

At the same time it may be understood that not every differentiation constitutes discrimination. Factual or legal distinctions based on reasonable and objective criteria may be justifiable. The burden of proof falls on Governments: they must show that any distinctions that are applied are actually reasonable and objective.

The principles of equality, universality and non-discrimination do not preclude recognizing that specific groups whose members need particular protection should enjoy special rights. This accounts for the numerous human rights instruments specifically designed to protect the rights of groups with special needs, such as women, aliens, stateless persons, refugees, displaced persons, minorities, indigenous peoples, and children, persons with disabilities, migrant workers and detainees. Group-specific human rights, however, are compatible with the principle of universality only if they are justified by special (objective) reasons, such as the group's vulnerability or a history of discrimination against it. Otherwise, special rights could amount to privileges equivalent to discrimination against other groups. Further to redress the long-term effects of past discrimination, temporary special measures like preferential treatment; targeted recruitment, quotas may be considered necessary.

1.1.3.4 Participation and Inclusion

All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based

approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.

1.1.3.5 Human Rights Entails both Rights and Obligations

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others.

1.1.4 EVOLUTION OF THE CONCEPT

The concept of human rights is the result of the long evolution of philosophical, political, legal and social reflection, inseparably connected to the social-democratic traditions. Alighting from antiquity, the concept of human rights has covered a hard and stiff way. Asserting as political platform of the bourgeois revolutions, this conception gained a new dimension during the contemporary period, when the problem of existence, maintenance and perpetuation of human species on earth, the mutual cooperation and the assertion of human ideas and general values arose with hardness in front of mankind.

The concepts and ideas of profound thinkers of time, such as Aristotle, Cicero, Grotius, Locke, Kant, Montesquieu and prestigious jurists found their reflections in many documents with institutional character which emphasized a well deliberate conception of human rights and liberties and much later the Universal Declaration of Human Rights adopted on December 10th 1948 by the General Assembly of the United Nations Organization ascertained for the first time in the history of mankind the fundamental human rights and liberties in a political-legal document with universal character. Granting and respecting the human rights become an indissoluble condition of performing the state of law, of its admission as a democratic state on international level and the same will be discussed under the following paragraphs.

As a social phenomenon, human rights have their origin in antiquity. As a legal phenomenon, human rights have origins in the natural law doctrine, starting from the idea that humans, by their own nature, anywhere and anytime have rights that are previous and primary to the ones assigned by the society and admitted by the natural law. Natural law, which has played a dominant role in Western political theory for centuries, is that standard of higher-order morality against which all other

laws are adjudged. The basis of the doctrine of natural law is the belief in the existence of a natural moral code based upon the identification of certain fundamental and objectively verifiable human goods. To contest the injustice of human-made law, one was to appeal to the greater authority of God or natural law. However, the references to this natural law can be found from the Ancient Ages.

Aristotle was the first one in asserting the idea of natural law, in his work "Politics". He says: "a person becomes slave or free only by law, human beings do not differ at all by the nature of mankind." The Christian philosophers of Middle Ages also tried to develop ideas about the condition of human equality starting from the Decalogue with the 10 commands, announcing in this way the fundamental individual rights characteristic for any human being. According to the theory of Thomas Aquinas the individual is in the centre of a right social and legal order but the divine law has supereminence over the worldly law. In his writings he makes a mention that the Christian Church even established a hierarchy of various law sources, giving priority to the divine law, and providing second place to the natural law and positive law only comes in the third and it is nothing but derived from the primary (divine) and the secondary (natural), being nothing else than common rules of the relationships in society.

In Modern times, the 17th century exponents of the school of natural law, especially Hugo Grotius, the father of natural law science, showed that man is a sociable being by his nature, who wishes to live peacefully with his fellows, able to determine by himself on what is useful or harmful for society. Eventually this concept of natural law evolved into natural rights; this change reflected a shift in emphasis from society to the individual. While the natural law provided a basis for curbing excessive state power over society, natural rights gave individuals the ability to press claims against the government. This modern conception of rights can be traced back to Enlightenment political philosophy and the movement, primarily in England, France, and the United States, to establish limited forms of representative government that would respect the freedom of individual citizens.

The quintessential exponent of this position was the 17th Century philosopher John Locke, in his *Second Treatise on Government* (1690), described a "state of nature" prior to the creation of society in which individuals fended for themselves and looked after their own interests. In this state, each person possessed a set of *natural rights*, including the rights to life, liberty and property. According to Locke, when individuals came together in social groups, the main purpose of their union was to secure these rights more effectively. Consequently, they ceded to the governments they established "only the right to enforce these natural rights and not the rights themselves".

Locke's philosophy, known as *classical liberalism*, helped foster a new way

of thinking about individuals, governments, and the rights that link the two. Further, the 18th century German philosopher Immanuel Kant too provides such an account. Many of the central themes first expressed within Kant's moral philosophy remain highly prominent in contemporary philosophical justifications of human rights. Foremost amongst these are the ideals of equality and the moral autonomy of rational human beings. Kant bestows upon contemporary human rights' theory the ideal of a potentially universal community of rational individuals autonomously determining the moral principles for securing the conditions for equality and autonomy. Kant provides a means for justifying human rights as the basis for self-determination grounded within the authority of human reason. Kant's moral philosophy is based upon an appeal to the formal principles of ethics, rather than, for example, an appeal to a concept of substantive human goods. For Kant, the determination of any such goods can only proceed from a correct determination of the formal properties of human reason and thus do not provide the ultimate means for determining the correct ends, or object, of human reason.

The philosophical ideas defended by the likes of Locke and Kant have come to be associated with the general Enlightenment project initiated during the 17th and 18th Centuries, the effects of which were to extend across the globe and over ensuing centuries. Ideals such as natural rights, moral autonomy, human dignity and equality provided normative bedrock for attempts at re-constituting political systems, for overthrowing formerly despotic regimes and seeking to replace them with forms of political authority capable of protecting and promoting these new emancipatory ideals. These ideals effected significant, certain political upheavals throughout the 18th Century and also got enshrined in such documents as the United States' Declaration of Independence and the French National Assembly's Declaration of the Rights of Man and Citizen.

The Human Rights problems were also approached by many thinkers in the 18th century, a significant contribution having J.J. Rouseau and Ch.L. de Montesquieu. Even from the very beginning of its work: *About the spirit of laws*, Montesquieu formulates a definition of law in a scientist manner meaning: “Laws, in the most ample sense, are necessary reports derived from the nature of things and in this sense, all the works have their own laws".

While the problem of fundamental human rights and liberties is still a constant preoccupation of the great philosophers in the following decades, however beginning with the end of the 18th century, the problem of human rights passes to a new phase of development – devotion of rights, even later, in international documents and became what we all admit today – the contemporary system of international law of human fundamental rights and liberties.

1.1.5 EVOLUTION OF THE LEGAL INSTRUMENTS FOR HUMAN RIGHTS PROTECTION

The first text known in history is ***Magna Carta Libertatum*** proclaimed in England by king John of England in 1215. This document says that "No free man could be arrested, imprisoned or dispossessed of his goods, declared against the law, exiled or injured in any matter and we will not be against him or send anyone against him without a loyal judgment of his equals or in conformity with the law of the country."

The first legal instruments of transposition in legal provisions of this fundamental rights and liberties appeared in the European culture of the 17th-19th centuries. In England there came out some important documents regarding human rights entitled: ***The Petition of Rights*** on the 13th of February 1628, ***Habeas Corpus Act*** on the 26th of May 1679, ***Bill of Rights*** on February 13th, 1689, "by which the parliamentary system of Great Britain, the right to free elections, the freedom of word, the right of release on bail, the prohibition of cruel punishments, the right to be judged by an independent court" were founded.

In the United States of America, state of Virginia, **The Declaration of Rights from the state of Virginia** was adopted on 12th of June 1776. It provided that "all people are born equal, free and independent; they have inherent rights they cannot be deprived of or dispossessed of by any contract, when having social relations, meaning the right to enjoy life and freedom, with the possibility of purchasing and possessing goods and the right to search and obtain happiness and personal security."

The Declaration of Independence of the United States of America was adopted on 14th June, 1776 in Philadelphia, which settles the basic idea that all governances have been established by people in order to guarantee the appointed rights.

1.1.5.1Universal Declaration of Human Rights (UDHR)

Since the Second World War, the United Nations has played a leading role in defining and advancing human rights, which until then had developed mainly within the nation State. It played a crucial role in the codification of in various international and regional treaties and instruments beginning with the **Universal Declaration of Human Rights (UDHR).** The UDHR was adopted by the UN General Assembly on 10th December 1948 and was explicitly motivated to prevent the future occurrence of any similar atrocities. The Declaration itself goes far beyond any mere attempt to reassert all individuals' possession of the right to life as a fundamental and inalienable human right. The UDHR consists of a Preamble and 30 articles which separately identify such things as the right not to be tortured (article 5), a right to asylum (article 14), a right to own property (article 17), and a right to an adequate

standard of living (article 25) as being fundamental human rights.

From 1948, when the Universal Declaration of Human Rights was adopted and proclaimed, until 1976, when the International Covenant on Civil and Political Rights (ICCPR) and The International Covenant on Economic, Social and Cultural Rights (ICESCR), entered into force the Universal Declaration stood alone as the international standard of achievement for all peoples and all nations. Today, the Universal Declaration, along with these two Covenants make-up the International Bill of Rights. Nearly all international human rights instruments adopted by the United Nations bodies since 1948 elaborate principles set out in the Universal Declaration of Human Rights. The ICCPR states in its preamble "in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his or her economic, social and cultural rights, as well as his or her civil and political rights". The coming into force of the Covenants, by which State parties accepted legal as well as the moral obligation to promote and protect human rights and fundamental freedoms, has not diminished the widespread influence of the Universal Declaration.

The Universal Declaration has established many of the principles for a number of important international conventions and treaties. The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by the General Assembly in 1981, clearly defines the nature and scope of the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief contained in the Universal Declaration and the International Covenants.

The Universal Declaration has informed the constitutions of nation-states and its principles have been included or adopted by the Council of Europe, the Organization of African Unity, and the American Convention on Human Rights, at Costa Rica, in 1969. Judges of the International Court of Justice have invoked principles contained in the International Bill of Human Rights as a basis for their decisions.

In 1968, at the International Conference on Human Rights in Teheran, the Universal Declaration was once again declared "a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community". The Universal Declaration has come to be regarded as an historic document articulating a common definition of human dignity and values. The Declaration is a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards everywhere on earth. At the

1993 World Conference on Human Rights in Vienna, over 150 countries once again re-affirmed their commitment to the Universal Declaration of Human Rights expressed in the Vienna Declaration and Program of Action.

As you have studied so far, while the contemporary doctrine of Human Rights is highly indebted to the concept of natural rights for its origin, it may be remembered that it is not a mere expression of that concept but actually gone much beyond it in some highly significant respects. Scholars like James Nickel identify three specific ways in which the contemporary concept of human rights goes beyond that of natural rights. Firstly, unlike the advocates of natural rights who believed in the refrain of the state from interfering in individual lives, contemporary human rights are far more concerned to view the realization of equality as requiring positive action by the state through the provision of welfare assistance. Secondly, while advocates of natural rights tended to conceive of human beings as mere individuals, veritable 'islands unto themselves', the advocacy of contemporary human rights is far more willing to recognize the importance of family and community in individuals' lives. Thirdly, contemporary concept of human rights is far more 'internationalist' in scope and orientation than it was typically found within arguments in support of natural rights. Essentially owing to this progress the protection and promotion of human rights in the contemporary times is increasingly seen as requiring international action and concern.

1.1.6 THE THREE GENERATIONS OF HUMAN RIGHTS

This evolution of the concept of Human Rights encompassing various rights from time to time since its origin, many writers identify three generations in the development of Human Rights and the same will be discussed in the following section.

1.1.6.1 First Generation Rights

The first generation rights are primarily the rights to security, property, and political participation. These rights began to emerge as a theory during the seventeenth and eighteenth centuries and were based mostly on political concerns. It begun to be recognized that there were certain things that the all-powerful state should not be able to do and that people should have some influence over the policies that affected them. The two central ideas were those of personal liberty, and of protecting the individual against violations by the state. Civil rights provide minimal guarantees of physical and moral integrity and allow individuals their own sphere of conscience and belief: for example, the rights to equality and liberty, freedom to practice religion or to express one's opinion, and the rights not be tortured or killed. Legal rights are

normally also classified as 'civil' rights. They provide procedural protection for people in dealing with the legal and political system: for example protection against arbitrary arrest and detention, the right to be presumed innocent until found guilty in a court of law and the right to appeal. Political rights are necessary in order to participate in the life of the community and society: for example, the right to vote, to join political parties, to assemble freely and attend meetings, to express one's opinion and to have access to information.

1.1.6.2 The Second Generation Human Rights

The Second generation rights are construed as socio-economic rights, rights to welfare, education, and leisure. These rights concern how people live and work together and the basic necessities of life. They are based on the ideas of equality and guaranteed access to essential social and economic goods, services, and opportunities. They became increasingly a subject of international recognition with the effects of early industrialization and the rise of a working class. These led to new demands and new ideas about the meaning of a life of dignity. People realized that human dignity requires more than the minimal lack of interference proposed by the civil and political rights. Social rights are those that are necessary for full participation in the life of society. They include, at least, the right to education and the right to found and maintain a family but also many of the rights often regarded as 'civil' rights: for example, the rights to recreation, health care and privacy and freedom from discrimination. Economic rights are normally thought to include the right to work, to an adequate standard of living, to housing and the right to a pension if you are old or disabled. The economic rights reflect the fact that a certain minimal level of material security is necessary for human dignity, and also the fact that, for example, a lack of meaningful employment or housing can be psychologically demeaning. Cultural Rights refer to a community's cultural "way of life" and are often given less attention than many of the other types of rights. They include the right freely to participate in the cultural life of the community and, possibly, also the right to education. However, many other rights, not officially classed as 'cultural' will be essential for minority communities within a society to preserve their distinctive culture: for example, the right to non-discrimination and equal protection of the laws.

1.1.6.3 The Third Generation Human Rights

The final and third generation of rights are associated with such rights as a right to national self-determination, a clean environment, and the rights of indigenous minorities. This generation of rights took birth only during the last two decades of the 20th Century but represent a significant development within the doctrine of human rights.

The idea at the basis of the third generation of rights is that of solidarity, and

the rights embrace collective rights of society or peoples – such as the right to sustainable development, to peace or to a healthy environment. In much of the world, conditions such as extreme poverty, war, ecological and natural disasters have meant that there has been only very limited progress in respect for human rights. For that reason, many people have felt that the recognition of a new category of human rights is necessary: these rights would ensure the appropriate conditions for societies, particularly in the developing world, to be able to provide the first and second generation rights that have already been recognized.

The specific rights that are most commonly included within the category of third generation rights are the rights to development, to peace, to a healthy environment, to share in the exploitation of the common heritage of mankind, to communication and to humanitarian assistance. There is, however, a debate concerning this new category of rights. Some experts object to the idea that collective rights can be termed 'human' rights. Human rights are, by definition, held by individuals, and define the area of individual interest that is to be given priority over any interests of society or social groups. In contrast, collective rights are held by communities or even whole state.

The debate is not so much over whether these rights exist but whether or not they are to be classed as human rights. The argument is more than merely verbal, because some people fear such a change in terminology could provide a 'justification' for certain repressive regimes to deny (individual) human rights in the name of these collective human rights; for example, severely curtailing civil rights in order to secure 'economic development'. There is another concern which is sometimes expressed: since it is not the state but the international community that is meant to safeguard third generation rights, accountability is impossible to guarantee. Nevertheless, whatever we decide to call them, there is general agreement that these areas require further exploration and further attention from the international community. Some collective rights have already been recognized, in particular under the African Charter on Human and Peoples' Rights. The UDHR itself includes the right to self-determination and a human right to development was codified in a 1986 UN General Assembly Declaration.

Advances in Science and Biotechnology

The recent advances in science and biotechnology add more questions and concerns to the third generation rights. For example the new scientific discoveries have opened up a number of questions relating to human rights, in particular in the fields of genetic engineering and concerning the transplant of organs and tissues. Questions on the very nature of life have had to be addressed as a result of technical advances in each of these fields. The Council of Europe has responded to these challenges with a new international treaty: The Convention for the Protection of Human Rights and

Dignity of the Human Being with regard to the Application of Biology and Medicine. This treaty entered into force in December 1999. It has been signed by 30 member states of the Council of Europe and ratified by ten. It sets out guidelines for some of the problematic issues raised in the previous section. Here are given summary of most relevant articles:

- Any form of discrimination against a person on grounds of their genetic heritage is prohibited.
- Predictive genetic tests can be carried out only for health purposes and not, for example, in order to determine the physical characteristics that a child will develop in later life.
- Intervention which aims to modify the human genome may only be undertaken for preventative, diagnostic or therapeutic purposes.
- Medically assisted procreation is not permitted where this is designed to determine a future child's sex.
- Removal of organs or tissue from a living person for transplantation purposes can be carried out solely for the therapeutic benefit of the recipient.

Genetic engineering is the method of changing the inherited characteristics of an organism in a pre-determined way by altering its genetic material. Progress in this area has led to an intense debate on a number of different ethical and human rights questions; for example, whether the alteration of germ cells should be allowed when this results in a permanent genetic change for the whole organism and for subsequent generations; or whether the reproduction of a clone organism from an individual gene should be allowed in the case of human beings if it is permitted in the case of mice and sheep.

The progress of biomedical technology has also led to the possibility of transplanting adult and foetal organs or tissues from one body to another. Like genetic engineering, this offers huge potential for improving the quality of some people's lives and even for saving lives – but consider some of the problematic issues that are raised by these advances:

If a life can be saved or improved by using an organ from a dead body, should this always be attempted? Or do dead bodies also deserve respect? How can we ensure that everyone in need has an equal chance of receiving a transplant if there is a limited supply of organs? Should there be laws concerning the conservation of organs and tissues? If medical intervention affects an individual's genome and this results in a threat to the individual's life or quality of life, is compensation appropriate? Would a murder charge be appropriate if the individual dies?

This way, as the new issues and concerns are rising on a constant basis as a result of the sociological political and scientific developments from time to time the list of third generation right would ever increase calling the attention of international community time and again.

1.1.7 LET US SUM UP

In this introductory lesson of the paper so far we have thrown considerable focus on the concept of Human Rights in terms of various perceptions reflecting in various ways it has been defined and its unique underlying principles. As a part of the evolution of today's concept of Human Rights, we have discussed about the primacy attached to the natural law since ancient times and how the concept of natural rights has grown out of natural law over the period. Then we have discussed how the contemporary concept of human rights goes beyond that of natural rights transforming itself into a much broader concept. And finally we tried to categorize the evolution process as one can notice three different trends in the evolution of the Human Rights. This way this lesson becomes a foundational lesson for understanding various concepts and developments that you will be studying in the subsequent lessons in this Unit and also in the subsequent Units.

1.1.8 EXERCISE

1 Define Human Rights. Discuss various principles of Human Rights.

2 Trace the Evolution of Human Rights in modern times.

3 Discuss briefly on the early legal instruments that came into being beginning with Magna Carta.

4 Highlight the contributions of Locke in the evolution of Human Rights.

5 Narrate how the scope of Human Rights kept increasing by keeping Three Generations of Rights in the backdrop.

6 Write a brief note on the developments in Science and Biotechnology within the Third Generation rights.

7 Briefly discuss the developments that took place in the evolution of Human Right ever since the Universal Declaration of Human Rights (1948) adopted.

1.2 THEORIES OF HUMAN RIGHTS: NATURAL, LEGAL, UTILITARIAN AND MARXIST

- V. Nagendra Rao

STRUCTURE

1.2.0 OBJECTIVES

This lesson explains you some of the theories that attempted to conceptualize Human Rights, that is Natural, Legal, Utilitarian and Marxist. After going through this lesson, you will be able to:

- gain considerable understanding about theories of Human Rights
- know the contributions of the Human Rights theories in shaping the principles of Human Rights;
- critically analyze the limitations of the these Human Rights Theories.

1.2.1 INTRODUCTION

The 20th century was the century of human rights and the notions of rights making human rights a part of the basic vocabulary of the people throughout the world, especially those who have struggled against tyranny and oppression. Today human rights have become a form of ethical yardstick that is used to measure a government's treatment of its people. Actions of a State are judged against these international

instruments prescribing certain benefits and treatment for all humans simply because they are human. Within the nations, political debates range over the denial or abuse of human rights. Legal documents to protect the human rights have proliferated across the countries. Institutional mechanisms at various levels within a country are being established to monitor the human rights situation. Today, the domestic human rights legislation represents the local implementation of internationally-recognized rights that are universal and inalienable. The political consequences of human rights declarations continue to escalate today raising certain questions on these Natural and imprescriptable. Even those who wished to embrace such rights had several questions concerning the underlying philosophy of Human Rights.

Ever since these rights were first advanced they have been dogged by philosophical questioning. One of the initial questions in any philosophic inquiry is what is meant by human rights. The question is not trivial. Particularly in the international sphere, where diverse cultures are involved, where positivist underpinnings are shaky, and where implementation mechanisms are fragile, definition can be crucial. Indeed, some philosophic schools assert that the entire task of philosophy centres on meaning. How one understands the meaning of human rights will influence one's judgment on such issues as which rights are regarded as universal, which should be given priority, which can be overruled by other interests, which call for international pressures, which can demand programs for implementation, and for which one will fight.

What is meant by *human* rights? To speak of *human* rights requires a conception of what rights one possesses by virtue of being human. That does not mean human rights in the self-evident sense that those who have them are human, but rather, the rights that human beings have simply because they are human beings and independent of their varying social circumstances and degrees of merit.

Some scholars identify human rights as those that are “important”, “moral”, and “universal”. It is comforting to adorn human rights with those characteristics; but, such attributes themselves contain ambiguities. For example, when one says a right is “important” enough to be a *human* right, one may be speaking of one or more of the following qualities: (1) intrinsic value; (2) instrumental value; (3) value to a scheme of rights; (4) importance in not being outweighed by other considerations; or (5) importance as structural support for the system of the good life. “Universal” and “moral” are perhaps even more complicated words. What makes certain rights universal, moral, and important, and who decides? From which the notion of rights was derived? The answers to such questions can be found in the philosophy of Human Rights which attempts to examine the underlying basis of the concept and critically looks at its content and justification. Several theoretical approaches have been advanced to explain how and why the concept of human rights developed. In the current lesson you will be studying about such theoretical explanations especially the

Natural Rights, Legal, Utilitarian and the Marxist.

1.2.2 THE NATURAL RIGHTS THEORY

One of the oldest Western philosophies on human rights is that they are a product of a natural law, stemming from different philosophical or religious grounds. Natural law theories base human rights on a "natural", moral, religious or even biological order that is independent of transitory human laws or traditions. The development of this tradition of natural justice into one of natural law is usually attributed to the Stoics and Aristotle is often considered to be the father of natural law, evidences for this are to be found largely in the interpretations of his work by Thomas Aquinas. Although natural law theory has underpinnings in Sophocles and Aristotle, it was first elaborated by the stoics of the Greek Hellenistic period, and later by those of the Roman period. Natural law, they believed, embodied those elementary principles of justice which were right reason, *i.e.*, in accordance with nature, unalterable, and eternal.

Medieval Christian philosophers, such as Thomas Aquinas, put great stress on natural law as conferring certain immutable rights upon individuals as part of the law of God. However, critical limitations in the medieval concepts that recognized slavery and serfdom excluded central ideas of freedom and equality.

As feudalism declined, modern secular theories of natural law arose, particularly as enunciated by Grotius and Pufendorf. Their philosophy detached natural law from religion, laying the groundwork for the secular, rationalistic version of modern natural law. According to Grotius, a natural characteristic of human beings is the social impulse to live peacefully and in harmony with others. Whatever conformed to the nature of men and women as rational, social beings was right and just; whatever opposed it by disturbing the social harmony was wrong and unjust. Grotius defined natural law as a "dictate of right reason". He claimed that an act, according to whether it is or is not in conformity with rational nature, has in it a quality of moral necessity or moral baseness. As you would recollect, Grotius was also the father of modern international law. He saw the law of nations as embodying both laws that have as their source the will of man and laws derived from the principles of the law of nature. This theory, of course, has immense importance for the legitimacy of international law.

This Natural law theory developed over centuries led to natural rights theory--the theory most closely associated with modern human rights. The quintessential exponent of this position was the 17th century philosopher John Locke and, in particular, the argument he outlined in his *Two Treatises of Government* (1688). At the centre of Locke's argument is the claim that individuals possess natural rights, independently of the political recognition granted them by the state. These natural

rights are possessed independently of, and prior to, the formation of any political community. Locke argued that natural rights flowed from natural law. Natural law originated from God. Accurately discerning the will of God provided us with an ultimately authoritative moral code. At root, each of us owes a duty of self-preservation to God. In order to successfully discharge this duty of self-preservation each individual had to be free from threats to life and liberty, whilst also requiring what Locke presented as the basic, positive means for self-preservation: personal property. Our duty of self-preservation to god entailed the necessary existence of basic natural rights to life, liberty, and property. Locke proceeded to argue that the principal purpose of the investiture of political authority in a sovereign state was the provision and protection of individuals' basic natural rights.

For Locke, the protection and promotion of individuals' natural rights was the sole justification for the creation of government. The natural rights to life, liberty, and property set clear limits to the authority and jurisdiction of the State. States were presented as existing to serve the interests, the natural rights, of the people, and not of a Monarch or a ruling cadre. Locke went so far as to argue that individuals are morally justified in taking up arms against their government should it systematically and deliberately fail in its duty to secure individuals' possession of natural rights. Analyses of the historical predecessors of the contemporary theory of human rights typically accord a high degree of importance to Locke's contribution. Certainly, Locke provided the precedent of establishing legitimate political authority upon a rights foundation.

Natural rights theory was the philosophic impetus for the wave of revolt against absolutism during the late eighteenth century. It is visible in the French Declaration of the Rights of Man, in the US Declaration of independence, in the constitutions of numerous states created upon liberation from colonialism, and in the principal UN human rights documents.

This theory makes an important contribution to human rights. It affords an appeal from the realities of naked power to a higher authority that is asserted for the protection of human rights. It identifies with and provides security for human freedom and equality, from which other human rights easily flow. It also provides properties of security and support for a human rights system, both domestically and internationally.

Natural Rights Theory has the merit of providing the basis for a system of law which is allegedly superior to the law of the state and to which appeal may be made if it appears that the latter is unjust, arbitrary or oppressive. It may even be argued that the early revolutionary constitutional documents were natural rights.

From a philosophical viewpoint, the critical problem that natural rights doctrine faced is how to determine the norms that are to be considered as part of the

law of nature and therefore inalienable or at least *prima facie* inalienable. Further several critics pointed out that most of the norm setting of natural rights theories contains *a priori* elements deduced by the norm setter. In short, the principal problem with natural law is that the rights considered to be natural can differ from theorist to theorist, depending upon their conceptions of nature. Because of this and other difficulties, natural rights theory became unpopular with legal scholars and philosophers. The criticism of natural law intensified during the nineteenth and twentieth centuries (in its revised form, natural rights philosophy had a renaissance in the aftermath of World War II, providing basis for the work done in the area beginning from the twentieth century).

The major criticism directed at Natural Rights Theory was that it was not scientifically verifiable. The theory of natural rights was opposed by conservatives because it was too egalitarian and subversive. Some radicals opposed because it endorsed too much inequality of wealth. But, Edmund Burke did not reject the concept of natural rights completely. He recognised the natural rights to life, liberty, freedom of conscience, the fruits of one's labour and property and equal justice under the law. Though Burke subscribed to Natural Law Theory, he opposed the universalisation of the natural rights concept for its failure to take into account the national and cultural diversity. It was David Hume who first raised the dichotomy between naturalist and positivist schools of jurisprudence. However, the most serious attack on natural law came from a doctrine called legal positivism which dominated legal theory during most of the nineteenth century and commands considerable allegiance in the twentieth. Hence in the following section we look at what the profounders of legal theory of human rights had to offer.

1.2.3 LEGAL THEORY OF HUAMN RIGHTS

Legal positivism is a philosophy of law that emphasizes the conventional nature of law—that it is socially constructed. It is largely developed by eighteenth and nineteenth-century legal thinkers such as Jeremy Bentham and John Austin.

According to legal positivism, law is synonymous with positive norms, that is, norms made by the legislator or considered as common law or case law. Formal criteria of law's origin, law enforcement and legal effectiveness are all sufficient for social norms to be considered law. Legal positivism does not base law on divine commandments, reason, or human rights. As an historical matter, positivism arose in opposition to classical natural law theory, according to which there are necessary moral constraints on the content of law.

Classical positivist philosophers deny an a priori source of rights and assume that all authority stems from what the state and officials have prescribed. This approach rejects any attempt to discern and articulate an idea of law transcending the

empirical realities of existing legal systems. Under positivist theory, the source of human rights is found only in the enactments of a system of law with sanctions attached to it. Views on what the law "ought" to be have no place in law and are cognitively worthless. The theme that haunts positivist exponents is the need to distinguish with maximum clarity law as it is from law as it ought to be, and they condemned natural law thinkers because they had blurred this vital distinction. In its essence, positivism negates the moral philosophic basis of human rights.

By divorcing a legal system from the ethical and moral foundations of society, positive law encourages the belief that the law must be obeyed, no matter how immoral it may be, or however it disregards the world of the individual. The anti-Semitic edicts of the Nazis, although abhorrent to moral law, were obeyed as positive law. The same is true of the immoral apartheid practices that prevailed in South Africa for many years. The fact that positivist philosophy has been used to justify obedience to iniquitous laws has been a central focus for much of the modern criticism of that doctrine. Critics of positivism maintain that unjust laws not only lack a capacity to demand fidelity, but also do not deserve the name of law because they lack internal morality.

Even granting the validity of the criticism, the positivist contribution can still be significant. If the state's processes can be brought to bear in the protection of human rights, it becomes easier to focus upon the specific implementation that is necessary for the protection of particular rights. Indeed, positivist thinkers such as Jeremy Bentham and John Austin were often in the vanguard of those who sought to bring about reform in the law. Always under human control, a positivist system also offers flexibility to meet changing needs.

The methodology of the positivist jurists in the technical building of legal conceptions is also pragmatically useful in developing a system of rights in international law. For example, the UN human rights treaties, being rules developed by the sovereign states themselves and then made part of a system of international law reflect a positive set of rights. While many states may differ on the theoretical basis of these rules, the rules provide a legal grounding for human rights protection. On the other hand, in theory, positivism tends to undermine an international basis for human rights because of the emphasis positivists place on the supremacy of *national* sovereignty without accepting the restraining influence of an inherent right above the state. Under this view, rules of international law are not law but merely rules of positive morality set or imposed by opinion. Furthermore, by emphasizing the role of the nation state as the source of law, the positivist approach produces the view that the individual has no status in international law.

1.2.4 UTILITARIAN THEORY OF HUMAN RIGHTS

Utilitarianism is a *maximizing* and *collectivizing* principle that requires governments to maximize the total net sum of the happiness of all their subjects. This principle is in contrast to natural rights theory, which is a *distributive* and *individualizing* principle that assigns priority to specific basic interests of each individual subject.

Classic utilitarianism, the most explored branch of this school, is a moral theory that judges the rightness of actions affecting outcomes in terms of securing the greatest happiness to all concerned. Utilitarian theory played a commanding role in the philosophy and political theory of the nineteenth century and continues with some vigour in the twentieth.

Jeremy Bentham, who expounded classical utilitarianism, believed that every human decision was motivated by some calculation of pleasure and pain. He thought that every political decision should be made on the same calculation, that is, to maximize the net produce of pleasure over pain. Hence, both governments and the limits of governments were to be judged not by reference to abstract individual rights, but in terms of what tends to promote the greatest happiness of the greatest number. Because all count equally at the primary level, anyone may have to accept sacrifices if the benefits they yield to others are large enough to outweigh such sacrifices.

Bentham's happiness principle enjoyed enormous popularity and influence during the first half of the nineteenth century when most reformers spoke the language of utilitarianism. Nonetheless, Bentham's principle met with no shortage of criticism. His “felicific calculus”, that is, adding and subtracting the pleasure and pain units of different persons to determine what would produce the greatest net balance of happiness, has come to be viewed as a practical, if not a theoretic, impossibility.

Later utilitarian thinkers have restated the doctrine in terms of “revealed preferences”. Here, the utilitarian guide for governmental conduct would not be pleasure or happiness, but an economically focused value of general welfare, reflecting the maximum satisfaction and minimum frustration of wants and preferences. Such restatements of utilitarian theory have an obvious appeal in the sphere of economic decision making. Even then, conceptual and practical problems plague utilitarian value theory: the ambiguities of the welfare concept, the nature of the person who is the subject of welfare, the uncertain basis of individual preference of one whose satisfaction is at issue, and other problems inherent in the process of identifying the consequences of an act and in estimating the value of the consequences.

The approach to the problem of rights through theories of values has an

obvious attraction. Utilitarian theories have a teleological structure, that is, they seek to define notions of right solely in terms of tendencies to promote certain specified ends. An ontological commitment may not be necessary here (at least, it is not so evident) because values (equality, happiness, liberty, dignity, respect, etc.) concern behaviour and are not known in a metaphysical sense but rather are accepted and acted upon.

The essential criticism of utilitarianism is that it fails to recognize individual autonomy; it fails to take rights seriously. Utilitarianism, however refined, retains the central principle of maximizing the aggregate desires or general welfare as the ultimate criterion of value. While utilitarianism treats persons as equals, it does so only in the sense of including them in the mathematical equation, but not in the sense of attributing worth to each individual. Under the utilitarian equation, one individual's desires or welfare may be sacrificed as long as aggregate satisfaction or welfare is increased. Utilitarianism thus fails to treat persons as equals, in that it literally dissolves moral personality into utilitarian aggregates. Moreover, the mere increase in aggregate happiness or welfare, if abstracted from questions of distribution and worth of the individual, is not a real value or true moral goal.

Hence, despite the egalitarian pretensions of utilitarian doctrine, it has a sinister side in which the well-being of the individual may be sacrificed for what are claimed to be aggregate interests, and justice and right have no secure place. Utilitarian philosophy thus leaves liberty and rights vulnerable to contingencies, and therefore at risk. In an era characterized by inhumanity, the dark side of utilitarianism made the philosophy too suspect to be accepted as a prevailing philosophy. Indeed, most modern moral theorists seem to have reached an anti-utilitarian consensus, at least in recognizing certain basic individual rights as constraints on any maximizing aggregative principle. In Ronald Dworkin's felicitous phrase, rights must be "trumps" over countervailing utilitarian calculations.

1.2.5 MARXIST THEORY OF HUMAN RIGHTS

Marxist theory, like natural law, is also concerned with the nature of human beings. However, in Marxism, the view of men and women is not one of autonomous individuals with rights developed from either a divine or inherent nature, but of men and women as"specie beings". According to a note from the young Marx in the Manuscripts of 1844, the term is derived from Ludwig Feuerbach's philosophy, in which it refers both to the nature of each human and of humanity as a whole. However, in the *Sixth Thesis on Feuerbach* (1845), Marx criticizes the traditional conception of "human nature" as "species" which incarnates itself in each individual, on behalf of a conception of human nature as formed by the totality of "social relations". Thus, the whole of human nature is not understood, as in classical idealist philosophy, as permanent and universal: the species-being is always determinated in

a specific social and historical formation, while some aspects being of course biological.

Marx regarded the law of nature approach to human rights as idealistic and ahistorical. He saw nothing natural or inalienable about human rights. In a society in which capitalists monopolize the means of production, Marx regarded the notion of individual rights as a bourgeois illusion. Concepts such as law, justice, morality, democracy, freedom, etc., were considered historical categories, whose content was determined by the material conditions and the social circumstances of a people. As the conditions of life change so the content of notions and ideas may change.

Marxism sees a person's essence as the potential to use one's abilities to the fullest and to satisfy one's needs. In capitalist society, production is controlled by a few. Consequently, such a society cannot satisfy those individual needs. An actualization of potential is contingent on the return of men and women to themselves as social beings, which occurs in a communist society devoid of class conflict. However, until that stage is reached, the state is a social collectivity and is the vehicle for the transformation of society. Such a conceptualization of the nature of society precludes the existence of individual rights rooted in the state of nature that are prior to the state. The only rights are those granted by the state, and their exercise is contingent on the fulfilment of obligations to society and to the state.

The Marxist system of rights has often been referred to as “parental”, with the authoritarian political body providing the sole guidance in value choice. The creation of such a “specie being” is a type of paternalism that not only ignores transcendental reason, but negates individuality. In practice, pursuit of the prior claims of society as reflected in the interests of the Communist state has resulted in systematic suppression of individual civil and political rights.

On an international level, Marxist theory proved incompatible with a functioning universal system of human rights. The prior claims of a communist society do not recognize overruling by international norms. While communist governments admitted a theoretical recognition of the competence of the international community to establish transnational norms, the application of those norms was held to be a matter of exclusive domestic jurisdiction. Communist states repeatedly asserted in international fora that their alleged abuse of human rights was a matter of exclusive domestic jurisdiction, not just as a matter of protecting sovereignty or avoiding the embarrassment of international examination, but the assertions reflected communist theory of the unlimited role of the state to decide what is good for the specie beings.

1.2.6 LET US SUM UP

How one understands the meaning of human rights will influence one's judgment on

such issues as which rights are regarded as universal, which should be given priority, which can be overruled by other interests, which call for international pressures, which can demand programmes for implementation, and for which one will fight. In this lesson we tried to understand questions like what makes Human Rights universal, moral, and important, and who decides? From which the notion of rights was derived? To answers such questions several theoretical approaches have been advanced to explain how and why the concept of human rights developed in the past and also in the contemporary times. Confining to the requirement of the lesson we have discussed about theoretical explanations of the Natural Rights, and the Legal, Utilitarian and the Marxist. With this theoretical understanding in the subsequent lessons you will be studying how the natural rights theory found its revival and expression in various international instruments that were adopted in the 20th century and after in the furtherance of Human Rights.

1.2.7 EXERCISES

1. Discuss briefly the importance of philosophical understanding about the Human Rights.
2. Discuss the main contributions of Natural Rights theory to the growth of Human Rights.
3. Briefly discuss the importance of Locke's contributions to Natural Rights Theory.
4. Deal with the Criticism against the Natural Rights Theory.
5. Discuss the main argument of Legal Theory.
6. Outline the Key arguments of Utilitarian Theory of Human Rights.
7. Give a detail of the main arguments of the Marxist Theory of Human Rights.
8. Compare and contrast the four theories of Human Rights discussed in the Lesson.
9. Gaining the basic understanding about the theories, try to identify the reasons behind the revival of Natural Rights Theory in the 20th Century.

1.3 UNITED NATIONS CHARTER AND UNIVERSAL DECLARATION OF HUMAN RIGHTS

- V. Nagendra Rao

STRUCTURE

1.3.0 OBJECTIVES

In this lesson, you will understand the importance of Universal Declaration of Human Rights (UDHR) in advancing civil liberties and freedom to humanity. After going through this lesson, you will be able to:

- develop an understanding about the significance of the UN Declaration of Human Rights (1948) in the Human Rights history;
- know the UDHR Charter provisions, and various organizations established to under the Charter for the promotion of Human Rights;
- how the declarative and normative UDHR has been made somewhat binding with the incorporation of some important protocols.

1.3.1 INTRODUCTION

One of the great achievements of the United Nations is the creation of a comprehensive body of human rights law — a universal and internationally protected code to which all nations can subscribe and to which all people can aspire. The Organization has defined a broad range of internationally accepted rights, including economic, social and cultural rights and political and civil rights. It has also established mechanisms to promote and protect these rights and to assist governments in carrying out their responsibilities.

The foundations of this body of law are the United Nations Charter and the Universal Declaration of Human Rights (UDHR), adopted by the General Assembly in 1945 and 1948, respectively. The United Nations Declaration of Human Rights is considered as possibly the single most important document created in the twentieth century which has been accepted as world standard for human rights. The UDHR draws life-preserving messages from the past, and is seen as an essential foundation for building a world in which all human beings can, in the centuries to come, look forward to living in dignity and peace. Since the adoption of UDHR, the United Nations has gradually expanded human rights law to encompass specific standards for women, children, persons with disabilities, minorities, migrant workers and other vulnerable groups, who now possess rights that protect them from discriminatory practices that had long been common in many societies.

1.3.2 BACKGROUND TO THE PROVISIONS IN THE CHARTER AND UN DECLARATION

The Declaration of UNO signed in January, 1942, at Washington was the first document which used the term Human Rights. The signatories to the Declaration pledged to protect the Human Rights in their own and in others land. However, the Dumbarton Oaks Conference, where the preliminary working draft of the UN Charter was prepared, paid relatively little attention to the question of human rights and fundamental freedoms. While this Conference gave more importance to the question of relations between the large and small states and the rules to govern their representation and voting in the various governing bodies, a kind of avoidance of the problem of human rights prevailed. The main reasons for this avoidance include a feeling that injecting human rights into the Charter would cause the Soviet Union to fear intervention in its domestic affairs and also the British would fear that reference to fundamental freedom would somehow have serious complications for their colonial relationships. However, as the arguments in favour of its mention grew across various groups, a brief reference in the Charter to the responsibility of the United Nations to promote respect for human rights and fundamental freedoms has been incorporated establishing the commitment of Big Powers towards the

protection and promotion of Human Rights

However, a number of religious and other public groups, however, were deeply disappointed that they had not accomplished more at Dumbarton Oaks. Some of them wished to see an International Bill of Rights made an integral part of the Charter. It soon became evident, however, to these groups that this was not within the realm of practical accomplishment. They decided to concentrate their efforts, therefore, on securing in the Charter a more definite commitment to promote the observance of human rights as a basic obligation of the Charter. As a result, the provision of Charter calling for the setting up of a commission to promote human rights has been realized.

Subsequently, the United Nations Human Rights Commission was constituted during the first session of the General Assembly. It took the Human Rights Commission over two years to elaborate a Declaration of Human Rights which was submitted to the General Assembly. Consequently, the General Assembly constituted a committee to work over this Declaration for months and made many amendments. The Assembly then accepted the Declaration as amended without a dissenting vote, and only eight members abstained. To this end they proposed the establishment of a Commission on Human Rights and Fundamental Freedoms whose first task should be to prepare an international definition and declaration of human rights.

It is significant that there was so much of impelling appeal in the Declaration to the peoples of all countries that not a single country ventured to register a negative vote. The Declaration is not a treaty. It is not legally binding upon the members of the United Nations. But it is what it is stated to be a universal Declaration of Rights proclaimed by the General Assembly to be a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, may strive by teaching and education to promote respect for these rights and freedoms, and by progressive measures, national and international, to secure their universal and effective recognition and observance both among the peoples of member states themselves and among the peoples of territories under their jurisdiction. Against this background, the following sections deal with the Human Rights as mentioned in the UN Charter and the Universal Declaration of Human Rights.

1.3.3 HUMAN RIGHTS AND THE UN CHARTER

The provisions concerning Human Rights run throughout the UN Charter and occupy a significant chapter in the story of U.N. The preamble of the Charter while reaffirming its faith in the fundamental Human Rights, in the dignity and worth of

human person and also in the equal rights of men and women provides for various provisions relating to the protection and promotion of Human Rights in various articles of the Charter. This reference to human rights, was followed up by six references throughout the UN Charter's operative provisions to human rights and fundamental freedoms. In addition, Article 68 was included. It required the Economic and Social Council to set up commissions in the human rights and economic and social fields. The outcome was the establishment of a Commission on Human Rights. Thus the Commission is one of the very few bodies to draw its authority directly from the Charter of the United Nations.

1.3.3.1 The Main Provisions

i) Art.1 of the UN Charter provides that it is one of the purposes of the UN to achieve international cooperation in solving international problems of an economic, cultural, social or human character and in promoting and encouraging respect for Human Rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

ii) Under Art.13B General Assembly takes up the responsibility of initiating the studies to realize promotion of respect for Human Rights and fundamental freedoms to all without any discrimination.

iii) Under Article 68 of the charter the Economic and Social Council was entrusted with the responsibility of setting up of the commissions for the promotion of Human Rights.

iv) Art. 76C of the Charter to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world, the basic system of Trusteeship (no more in existence as all the territories attained statehood) shall be incorporated.

1.3.3.2 The Bodies

The work of the United Nations in Human Rights is carried out by a number of bodies. However, when researching human rights issues, a distinction must be made between Charter-based and treaty-based human rights bodies and under the present lesson, it is important to discuss about the Charter based Bodies.

Charter-based Bodies

The charter based bodies are those bodies which derive their establishment from provisions contained in the Charter of the United Nations. These bodies hold broad human rights mandates, address unlimited audience and take their actions based on

majority voting.

The Human Rights Council and its predecessor, the Commission on Human Rights, are called "Charter-based" as they were established by resolutions of principal organs of the UN whose authority flows from the UN Charter. Before discussing about the Human Rights Council, it is imminent to discuss briefly about the Commission on Human Rights that existed from 1946 till 2006.

Commission on Human Rights (1946-2006)

The UNCHR was established in 1946 by ECOSOC, and was one of the first two Functional Commissions set up within the early UN structure (the other being the Commission on the Status of Women). It was a body created under the terms of the United Nations Charter (specifically, under Article 68) to which all UN member states are signatories. At the time it was extinguished, the Commission consisted of representatives drawn from 53 member states, elected by the members of ECOSOC. There were no permanent members; each year (usually in May) approximately a third of the seats of the Commission would come up for election, and the representatives were appointed for a three-year term.

Mandate:

The commission was intended to examine, monitor and publicly on human rights situations in specific countries or as well as on major phenomena of human rights violations worldwide. The Human Rights division of the UN is also expected to uphold and protect the Universal Declaration of Human Rights.

Working:

The body went through two distinct phases. From 1947 to 1967, it followed the policy of absenteeism, which meant that the Commission would concentrate on promoting human rights and helping states elaborate treaties, but not on investigating or condemning violators. It was a period of strict observance of the sovereignty principle.

In 1967, the Commission adopted interventionism as its policy. The context of the decade was of decolonization of Africa and Asia, and many countries of the continent pressed for a more active UN policy on human rights issues, especially in light of massive violations in apartheid South Africa. The new policy meant that the Commission would also investigate and produce reports on violations.

To allow better fulfilment of this new policy, other changes took place. In the 1970s, the possibility of geographically-oriented workgroups was created. These groups would specialize their activities on the investigation of violations on a given

region or even a single country, as was the case with Chile. With the 1980s came the creation of theme-oriented workgroups, which would specialize in specific types of abuses.

None of these measures, however, were able to make the Commission as effective as desired, mainly because of the presence of human rights violators and the politicization of the body. During the following years until its extinction, the UNCHR became increasingly discredited among activists and governments alike. The Commission held its final meeting in Geneva on March 27, 2006 and was replaced by the United Nations Human Rights Council in the same year.

Human Rights Commission to Human Rights Council

The United Nations Human Rights Commission has been at the centre of UN Reform debates. The US and others did all they could to discredit the Commission. It was criticized for being bureaucratic, excessively political and ineffectual. The Commission came under most fire for allowing membership of states with bad human rights records, such as Zimbabwe, Sudan and Saudi Arabia, who used the organization as a shield against scrutiny and condemnation. In its December 2004 report on UN reform, the 'High Level Panel on Threats, Challenges and Change' recommended that the Commission adopt universal membership and prepare an annual report on the state of human rights worldwide. Kofi Annan's report of March 2005 “In Larger Freedom” went much further by calling for the Commission's abolition and the establishment of a smaller Human Rights Council which would meet year-round and have its membership restricted to countries that will abide by the highest human rights standards. Following lengthy negotiations and several draft resolutions, the General Assembly overwhelmingly voted in favour of creating a new Council. The Council remains large at 47 members, distributed by region, with states elected by an absolute majority of the General Assembly. The resolution calls upon states to take into account a candidates human rights record. Although the new resolution did not go as far as some member states and human rights organizations hoped, the majority supported its adoption. The US was one of only four member states that voted against the adoption of the text. Human rights organizations welcomed reform of the Human Rights Commission and supported the creation of the new Council.

The Human Rights Council

Currently the Human Rights Council is the principal United Nations intergovernmental body responsible for human rights. Instead of creating a new principal organ, the Council was created as a subsidiary organ of the General Assembly under Art.22 of the U.N Charter. It is composed of 47 Member States,

which meets in at least three sessions per year in Geneva, Switzerland. The Office of the UN High Commissioner for Human Rights (OHCHR) is the secretariat for the Human Rights Council.

Mandate

The Human Rights Council (HRC) replaces the Commission for Human Rights while assuming all of its mandates, mechanisms, functions and responsibilities. As per the mandate given, HRC shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner. Besides, it is entrusted with the task of addressing the situations of violations of human rights, including gross and systematic violations and make recommendations thereon. It should also promote the effective coordination and mainstreaming of human rights within the UN system. In addition, it was entrusted with the task of undertaking a Universal Periodic Review, make recommendations and regard to the promotion and protection of human rights and submit an annual report to the General Assembly.

1.3.4 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

Following the mandate of the UN Charter, on 10 December 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Following this act, the Assembly called upon all member countries to publicize the text of the Declaration and to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories. The text of the final authorized version is as follows.

1.3.4.1 Preamble of the Declaration

The preamble of the Declaration, while insisting that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world, underlines that the disregard and contempt for Human rights have resulted in barbarous acts which have outraged the conscience of mankind. It also states that the world in which human beings will enjoy freedom from fear and freedom of speech and belief is possible when human rights are protected by the rule of law and also through the promotion of friendly relations between nations. As a part of pledging to achieve such a world and to promote universal respect for and observance of human rights and fundamental freedoms, the UN members also pledge to work in co-operation with the United Nations.

1.3.4.2 Various Articles of the Declaration

The Universal Declaration of Human Rights becomes the first international expression of human rights to which all human beings are entitled and described as the "International Magna Carta". It becomes a common standard of achievement for all peoples and nations. The declaration consists of 30 articles which can be divided into four parts. These are explained below.

The first two articles contain the basic principles underlying all human rights.

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Art 3 to 21 consist of civil and political rights. They are as under:

Article 3: Everyone has the right to life, liberty and security of person.

Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6: Everyone has the right to recognition everywhere as a person before the law.

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Article 10: Everyone is entitled in full equality to a fair and public hearing by an

independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11: (1) Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. (2) No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation everyone has the right to the protection of the law against such interference or attacks.

Article 13: (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14: (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15: (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16: (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17: (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.

Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and

impart information and ideas through any media and regardless of frontiers.

Article 20: (1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.

Article 21: (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Art 22 to 27 consist economic, social and cultural rights

Article 22: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23: (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25: (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26: (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms It shall promote

understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27: (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

The last three articles specify the context within which all the human rights are to be enjoyed. The are:

Article 28: Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29: (1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30: Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

1.3.4.3 Importance and Significance of the Articles

The very name emphasizes the UDHR was to set a standard of rights for all people everywhere – whether male or female, black or white, communist or capitalist, victor or vanquished, rich or poor, for members of a majority or a minority in the community. In the words of the first preamble to the UDHR, it reflects the "recognition of the inherent dignity and ... equal and inalienable rights of all members of the human family" and through that recognition provide "the foundation of freedom, justice and peace in the world".

Articles 3 and 27 are probably the core of the substantive provisions in the Declaration. They give every human being the rights to life, to liberty, to security of person (Art 3) and to an adequate standard of living (Art 27). The first three are core civil and political rights, the last an economic and social right. The right to an adequate standard of living is interesting in that it specifies as part of it the right to health and well-being not only of a person but of his or her family, and also the right to

necessary food, clothing, housing and medical care, and the right to social security (also covered in Art 22).

Overarching all the particular rights are Articles 28 and 29, they are explosive in their significance. Article 28 emphasizes the responsibility of the whole international community for seeking and putting into place arrangements of both a civil and political and an economic and social kind that allow for the full realization of human rights. Article 30 is also of high importance, because it underlines the responsibility all towards the other.

Perhaps, looking back at the UDHR after close to 70 years, the only significant lack could be found in the area of the environment. It can however be implied from rights such as the right to life and to an adequate standard of living.

Significance

Just ahead of the advent of the Cold War and the consequent slowing down of many constructive developments, the Universal Declaration managed to emerge successfully from the complex and politically hazardous processes of the United Nations to become its human rights flagship. The Declaration had not managed at that time to achieve full recognition from the communist and certain Middle Eastern countries, but at least they had not voted against it.

Notwithstanding the initial difficulties and resistance, the Declaration has probably achieved a stature in the world that even the most optimistic of its founders in 1948 would not have expected. First, it has become accepted (often rather reluctantly, it is true) as an influential statement of standards, even by countries that are doubtful about the whole human rights enterprise. When countries such as Burma, Argentina, China and the former Yugoslavia feel bound to defend themselves when they are accused of being in breach of the UDHR, then it can be said to have achieved an important political and moral status.

Equally important, the UDHR has become almost an extension of the UN Charter. Although, the Charter has only a few articles that refer to human rights and fundamental freedoms, it is now usual to refer to the UDHR as setting out the content of those rights and freedoms. So it has become a part of the fabric of the UN itself, and is often referred to in resolutions of the UN General Assembly, and in its debates, for example in relation to the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960. At the human rights conference in Teheran in 1978, to mark the 30th anniversary of the UDHR, the representatives of 84 nations unanimously declared that the UDHR states a common understanding of the inalienable rights of all people and constitutes an obligation for the members of the international community.

Third, most, if not all, the provisions of the UDHR have almost certainly become a part of international customary law. The view is steadily growing among international lawyers that practice (always an important source of international law) includes not only acts such as observing rules about navigation at sea but also acts such as voting for resolutions at United Nations and other international gatherings. The very large and increasing number of ratifications of the two human rights Covenants, and the fact that the rights stated in the UDHR are commonly recognised as well founded in moral and good practice terms, means that there are now virtually unchallengeable grounds for asserting that the UDHR rights have become part of international customary law. That means, unlike treaties, which only bind a country once it has accepted the treaty obligations, all countries in the world are bound, whatever their particular view may be. A country cannot repudiate international customary law, as it can a treaty obligation.

Today, the Declaration is a living document that has been accepted as a contract between a government and its people throughout the world. According to the Guinness Book of World Records, it is the most translated document in the world .Over the time Universal declaration of Human Rights was bifurcated into two separate covenants, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social and Cultural Rights. Human Rights mentioned under the declaration were further developed under these two Covenants. These covenants were adopted by General Assembly in1966 and came into force in 1976.

1.3.5 LET US SUM UP

As it has been learned in the previous sections, Human rights are universal and every person around the world deserves to be treated with dignity and equality. Such basic rights include freedom of speech, privacy, health, life, liberty and security, as well as an adequate standard of living. While governments have the duty to protect individuals against human rights abuses by third parties, business houses need to recognize their legal, moral and commercial need to get involved. In guiding the nations and the organizations across the world the provisions mentioned under the UN Charter and the adoption of Universal Declaration remain to be the guiding instruments. While several organizations, commissions sub committees are created within the UN system to implement the provisions spelt out in the Charter, the Universal Declaration remains to be a source for various covenants, treaties and compacts that have been signed in the past 60 years the guiding post for various initiatives taken by the states in the promotion of basic human rights to its people.

1.3.6 EXERCISE

1. Discuss on the background to the provisions of UNDHR.
2. Discuss the importance of Charter based Organizations.
3. Discuss the significance of the Universal Declaration of Human Rights.
4. Write a brief not on the Human Rights and the Charter.
5. Write a note on Human Rights Commission. Give reasons for its replacement with Human Rights Council.
6. How the Human Rights Council was different from its predecessor?
7. Briefly consolidate the significant articles of the Declaration.

1.4 INTERNATIONAL COVENANTS: CIVIL AND POLITICAL RIGHTS-1966, ECONOMIC, SOCIAL AND CULTURAL RIGHTS 1966; OPTIONAL PROTOCOLS-1976 AND 1989, WORLD CONFERENCE ON HUMAN RIGHTS: TEHRAN 1968 AND VIENNA 1993

- V. Nagendra Rao

STRUCTURE

1.4.0 OBJECTIVES

This lesson makes you understand how international community strengthened the human rights by adding various covenants to the Universal Declaration of Human Rights (UDHR) and how these covenants brought some sort of obligation in the place of mere voluntarism. After going through this lesson, you will be able to:

- understand the legal texts adopted to provide legal validity to the provisions adopted under Universal Declaration of Human Rights (1948);
- know the basic nature of International Conventions and additional protocols;
- familiarize the International Conventions that provide basis to the enjoyment of various rights at the national level along with the permissible restrictions; and
- appreciate the accomplishments of the world conferences on Human Rights.

1.4.1 INTRODUCTION

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 by General Assembly resolution 217 A (III) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected. Since then, December 10 is celebrated as Human Rights day to mark the Universal Declaration and the Fundamental Freedoms of human beings, which were recognized universally without any discrimination as to race, religion, sex, language and culture.

However, since the declaration has no legal validity and binding nature on the states under International Law, the UN asked the International Law Commission to take further steps to convert it into two separate legal texts. Further, the Declaration being a mixture of both Civil and Political Rights, Economic, Social and Cultural rights in one single text, it would be difficult for the states to implement them. Upon the suggestion of the General Assembly, the International Law Commission and its various committees worked laboriously to prepare the final blue print of both the texts. In 1966, two separate treaties, covering almost entirely all the rights enshrined in the Universal Declaration of Human Rights, were adopted after approximately 20 years of negotiations: one for civil and political rights – the International Covenant on Civil and Political Rights (ICCPR) – and one for economic, social and cultural rights – the International Covenant on Economic, Social and Cultural Rights

(ICESCR) . These two covenants have come into force in1976.

The First covenant has been ratified by 168 states, and 164 states ratified the second one. Later both the covenants have been added with additional protocols. The Civil and Political Rights are referred to as justifiable rights, which are equivalent to the Fundamental Rights of the Constitution of India. The Economic, Social and Cultural rights are referred to as Non-Justiciable rights, and are only directives to the states which need to be promoted and implemented depending upon various factors (these are comparable to the Directive Principles of State Policy as framed by the Indian Constitution which are directives to the State). The UDHR, together with the International Covenant on Civil and Political Rights and its two Optional Protocols (on the complaints procedure and on the death penalty) and the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, form the so-called International Bill of Human Right has become, what popularly known, the 'Bill of Rights'.

In the subsequent sections we will first discuss about each Covenant along with its optional protocol/s and then proceed towards the two important UN conferences the Tehran Conference of 1968 and Vienna Conference of 1993 along with their outcomes in the history of Human Rights.

As you would be dealing with the protocols in the next section it would be appropriate for you to understand what is meant by a 'protocol'. Very often, human rights treaties are followed by “Optional Protocols” which may either provide for procedures with regard to the treaty or address a substantive area related to the treaty. Optional Protocols to human rights treaties are treaties in their own right, and are open to signature, accession or ratification by countries who are party to the main treaty.

1.4.2 THE ICCPR, 1966, AND ITS PROTOCOLS

The International Covenant on Civil and Political Rights (ICCPR), and the Optional Protocol recognizing “the competence of the Committee to receive and consider communications from individuals” were both adopted by the General Assembly in 1966 and entered into force on 23 March 1976. The Covenant established an expert body, the Human Rights Committee, which has authority: (1) to review reports from the States parties; (2) to adopt General Comments on the meaning of the provisions of the Covenant; (3) under certain conditions to deal with inter-State communications; and lastly (4), to receive individual communications under the Optional Protocol. In 1989, the General Assembly adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. This Protocol entered into force on 11 July 1991 and as

on today it has 73 States parties. A separate section will be dedicated to analyse the above two protocols a little later.

1.4.2.1 The Undertakings of the States Parties

Under article 2 of the International Covenant on Civil and Political Rights, each State party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. As emphasized by the Human Rights Committee in its General Comment No. 3, the Covenant, the States are not simply confined to the respect of human rights, but have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction, an undertaking that in principle relates to all rights set forth in the Covenant.

The legal duty to ensure their enjoyment implies an obligation to take positive steps to see to it that domestic laws are modified when necessary in order to comply with the State's international legal obligations; and that these laws are indeed effectively implemented in practice by all public organs and officials, such as the courts (including administrative tribunals), prosecutors, police officers, prison officials, schools, the military, hospitals and the like.

1.4.2.2 The Rights Recognized under the Covenant

Being a treaty of a legislative nature, the International Covenant on Civil and Political Rights (ICCPR) guarantees a long list of rights and freedoms, as it is not possible to mention all of them here, we will discuss about them in brief.

The following is a list of the extensive rights guaranteed by the International Covenant on Civil and Political Rights:

- **Right to physical integrity**, in the form of the right to life and freedom from torture and slavery (Articles 6, 7, and 8);
- **Liberty and security of the person**, in the form of freedom from arbitrary arrest and detention and the right to habeas corpus (Articles 9 – 11);
- **Procedural fairness in law**, in the form of rights to due process, a fair and impartial trial, the presumption of innocence, and recognition as a person before the law (Articles 14, 15, and 6);
- **Individual liberty**, in the form of the freedoms of movement, thought, conscience and religion, speech, association and assembly, family rights, the right to a nationality, and the right to privacy (Articles 12, 13, 17 – 24);

- **Prohibition of any propaganda for war** as well as advocacy of national or religious hatred that constitutes incitement to discrimination, hostility or violence by law (Article 20);
- **Political participation**, including the right to join a political party and the right to vote (Article 25);
- **Non-discrimination**, **minority rights and equality before the law (**Articles 26 and 27).

1.4.2.3 Permissible Limitations on the Exercise of Rights

Some of the rights listed above, such as the right to freedom of movement (Art. 12(3)), the right to manifest one's religion or beliefs (Art. 18(3)), the exercise of the rights to freedom of expression (Art. 19(3)), to peaceful assembly (Art. 21), and to freedom of association (Art. 22(2)), can be limited for certain specifically defined objectives, such as national security, public order, public health and morals, or respect for the fundamental rights of others.

However, the limitations can only be lawfully imposed if they are provided or prescribed by law and are also necessary in a democratic society for one or more of the legitimate purposes defined in the provisions concerned.

These limitation provisions reflect carefully weighed individual and general interests which have also to be balanced against each other when the limitations are applied in a specific case. This means not only that the laws per se that provide for the possibility of limitations on the exercise of rights must be proportionate to the stated legitimate aim, but also that the criterion of proportionality must be respected when applied to a specific individual.

The subsidiary of the international system for the protection of human rights means, however, that it falls in the first instance to the domestic authorities to assess both the legitimate need for any restrictions on the exercise of human rights and also their necessity/proportionality. The additional international supervision of the measures taken comes into play only in connection with the examination of the States parties' reports or individual communications submitted under the First Optional Protocol.

1.4.2.4 Permissible Derogations (Exceptions) from legal obligations:

Under article 4 of the Covenant, there are certain strict conditions that govern the right of the States parties to resort to derogations or exemptions from their legal obligations:

The condition of a public emergency which threatens the life of the nation: The

state can resort to exceptions in a situation of exceptional threat that jeopardizes the nation's life. However, it excludes minor or even more serious disturbances that do not affect the functioning of the State's democratic institutions or people's lives in general.

The condition of the proclamation of public emergency*:* At the same time the existence of public emergency which threatens the life of the nation must be officially proclaimed. Thus the purpose behind this condition of Proclamation is to prevent States from resorting to derogations arbitrarily from their obligations under the Covenant when such action was not warranted by the events.

The condition of non-derogability of certain obligations: Notwithstanding the above conditions article 4(2) of the Covenant enumerates some rights from which no derogation can ever be made even in the direst of situations. These rights are: the right to life (art. 6), the right to freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 7), the right to freedom from slavery, the slave-trade and servitude (art. 8(1) and (2)), the right not to be imprisoned merely on the ground of inability to fulfil a contractual obligation (art. 11), the prohibition of *ex post facto* laws (art. 15), the right to legal personality (art. 16) and, lastly, the right to freedom of thought, conscience and religion (art. 18). However, it follows from the work of the Human Rights Committee that it is not possible to conclude *a contrario* that, because a specific right is not listed in article 4(2), it can necessarily be derogated from. Consequently, some rights may not be derogated from because they are considered to be "inherent to the Covenant as a whole"; one such example is the right to judicial remedies in connection with arrests and detentions as set out in article 9(3) and (4); others may also be non-derogable because they are indispensable to the effective enjoyment of the rights that are explicitly listed in article 4(2), such as the right to a fair trial for persons threatened with the death penalty. The Committee has further held under the Optional Protocol that "the right to be tried by an independent and impartial tribunal is an ***absolute right that may suffer no exception***";

The condition of strict necessity: It means that the State party can only take measures derogating from its obligations under the Covenant to the extent strictly required by the exigencies of the situation.

The condition of consistency with other international legal obligations: On the basis of this condition, the Human Rights Committee is, in principle, authorized to examine whether measures of derogation might be unlawful as being inconsistent with other international treaties, such as, for instance, other treaties for the protection of the individual or even international humanitarian law or customary international law.

The condition of non-discrimination: The measures of derogation may not involve discrimination solely on the ground of race, colour, sex, language, religion or social

origin. This is an important condition since it is particularly in emergency situations that there is a risk of imposing discriminatory measures which have no objective and reasonable justification;

The condition of international notification: in order to avail itself of the right of derogation, a State party must also fulfil the conditions set out in article 4(3) of the Covenant, by immediately submitting a notification of derogation to the other States parties through the Secretary-General. In this notification it must describe "the provisions from which it has derogated and ... the reasons by which it was actuated". A second notification must be submitted "on the date on which it terminates such derogation".

The Implementation Mechanisms

The implementation of the Covenant is monitored by the **Human Rights Committee**, which consists of eighteen members serving in their individual capacity (art. 28). The monitoring takes three forms, namely, the submission of periodic reports, inter-State communications, and individual communications.

The reporting procedure

According to article 40 of the Covenant, the States parties "undertake to submit reports on the measures they have adopted which give effect to the rights" recognized therein and "on the progress made in the enjoyment of those rights", first within one year of the entry into force of the Covenant for the States parties concerned, and thereafter, whenever the Committee so requests, that is to say, every five years. The reports "shall indicate the factors and difficulties, if any, affecting the implementation of the ... Covenant", and the Committee has developed careful guidelines aimed both at facilitating the task of the States parties and rendering the reports more efficient. In July 1999 the Committee adopted consolidated guidelines for the submission of the reports of the States parties;

Inter-State Communications

States parties to the Covenant may at any time declare under article 41 that they recognize "the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant"; in other words, the possibility of bringing inter-State communications is only valid as between States parties having made this kind of declaration. During the initial stage of the proceedings, the communication is only brought to the attention of one State party by another, and it is only if the matter is not settled to the satisfaction of both States parties within a period of six months that either State party has the right to bring the matter before the Committee itself (art. 41(1)(a) and (b)). The Committee has to follow a procedure

prescribed in article 41(1)(c)-(h), but, since it was never used during the first 25 years of the Committee's existence, it will not be dealt with further here;

Individual Communications

Under article 1 of the Optional Protocol, a State Party there to "recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant". However, according to article 2 of the Optional Protocol, individuals claiming violations of their rights must first exhaust all remedies available to them at the domestic level; further, the Committee shall consider inadmissible any communication which is anonymous, or which it considers to amount to an abuse of the right of submission of communications or to be incompatible with the provisions of the Covenant (art. 3). If the communication raises a serious issue under the Covenant, the Committee submits it to the State party concerned, which has the possibility to submit its written explanations within a period of six months. The procedure before the Committee is therefore exclusively written and the discussions in the Committee on the communications take place behind closed doors (arts. 4-5). At the end of its consideration of a communication, the Committee adopts its "Views" thereon, which are sent both to the State party and to the individual concerned (art. 5(4)).

1.4.2.5 First Optional Protocol to the ICCPR (1966)

As it has been mentioned in the earlier section**,** the First Optional Protocol is a supplementary treaty to the International Covenant on Civil and Political Rights (ICCPR). It is procedural and provides a mechanism for the Human Rights Committee, set up by the ICCPR, to receive and consider individual complaints against alleged breaches of the Covenant by a state party. The Covenant entered into force on 23rd March 1976 and it had 35 signatories and 115 parties to it till date. India has not signed the protocol yet.

Through this protocol, individuals who claim that their rights and freedoms have been violated, may call the State in question to account for its actions, provided it is a party to the Optional Protocol to the ICCPR. Under Article 1 of the Optional Protocol, a State party to the Covenant that becomes a party to the Protocol "recognizes the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant." Individuals who make such a claim, and who have exhausted all available domestic remedies, are entitled to submit a written communication to the Committee for its consideration (Article 2).

In addition to Article 2, Articles 3 and 5 (2) lay down conditions for admissibility of complaints / communications by individuals. Complaints admitted by the Committee are then brought to the attention of the State party alleged to have violated a provision of the Covenant. The concerned State is required to submit to the Committee within six months, written explanations or statements clarifying the matter and indicating the remedy, if any, that it may have applied (Article 4). Subsequently, the Human Rights Committee considers these individual complaints in the light of all the information made available to it by the individual and the State party concerned. It then forwards its views to the concerned State party and individual(s) (Article 5).

As its name makes clear, the Protocol is not compulsory, but once a State party to the Covenant becomes a party to the Protocol, any person subject to the jurisdiction of the State party may lodge a written complaint with the Human Rights Committee (subject to permissible reservations).

Article 6 of the protocol requires the Human Rights Committee to report annually to the General Assembly on its activities concerning complaints, while Articles 7 through 14 largely contain technical provisions on the mechanics of states becoming party to the Protocol, entry into force, notification, amendment, denunciation and the like. Further Article 10, like the parent Covenant, provides that the Protocol extends without exception to all parts of federal States. Article 12 provides for a State party to denounce the Optional Protocol.

1.4.2.6 Second Optional Protocol to the ICCPR (1989)

The purpose of the Second Optional Protocol is revealed by its full title, "aiming at the abolition of the death penalty". It was adopted by the General Assembly by its resolution 44/128 of 15 December 1989 and it entered into force on 11th July, 1991. So far it has 73 parties and 35 signatories to it and India is not a signatory to this.

The Preamble to the Second Optional Protocol reinforces the view that abolition of the death penalty is a desirable and progressive human rights measure that enhances human dignity and enjoyment of the right to life.

This Protocol creates an unqualified human right of an individual not to be executed and prohibits the execution of anyone under the domestic law of a ratifying state. Its single substantive provision, Article 1, states that no person within a State party's jurisdiction shall be executed, and that each State party shall take all necessary measures to abolish the death penalty. However, it is subject to any reservations made by a state party under Article 2 of the Protocol.

Article 2 permits, subject to certain procedural requirements, only one reservation, namely reserving the death penalty in times of war, pursuant to a

conviction for the most serious crimes of a military nature committed during wartime. This is the only exception to the rule of abolition of the death penalty under the Protocol. A State Party can only make a reservation at the time of ratifying the Protocol; otherwise it is bound to total abolition with no exceptions. Articles 2.2 & 2.3 set out the procedure for a State Party to make a reservation and to notify the UN of its exercise of the reservation.

Article 3 of the Optional Protocol places reporting obligations on the state parties (in accordance with Article 40 of the ICCPR), to inform the Human Rights Committee on the measures adopted to give effect to the Second Optional Protocol.

Article 4 provides for a State Party to make a complaint to the UN Human Rights Committee against another State Party which it believes is violating the Protocol. Article 5 provides for individuals to make complaints to the Human Rights Committee against a State Party. However, it only applies to nations that have ratified the First Optional Protocol to the ICCPR. At the time of signing the Protocol, a State Party can opt-out of this complaints procedure.

Article 6.2 provides that the right of the individual not to be executed cannot be revoked/suspended in case of a "public emergency which threatens the life of the nation", as outlined in Article 4 of the ICCPR. An exception can only be made in case a State Party has made a reservation under Article 2 of the Second Optional Protocol at the time of ratifying the Optional Protocol.

Articles 7 and 8 contain provisions regarding the Protocol's entry into force, ratification, amendment and so on. Article 9 places a positive obligation upon the State Party to ensure that the death penalty is abolished across all its constituent states and territories. Thus, federal governments are responsible to ensure that the provisions of the Optional Protocol are applied by their constituent States. Article 10 outlines the duties of the Secretary-General of the United Nations in relation to the State Parties to the Protocol, while Article 11 provides for the Protocol to be translated into the six official languages of the UN and sent to the government of every UN member state.

This Protocol serves two main purposes: firstly, to constitute an international engagement by States parties to abolish the death penalty; and, secondly, to act as a "pole of attraction" to encourage States that have not yet made such a commitment to do so. There have been some examples of accession to the Protocol taking place prior to domestic abolition.

Moreover, at the national level, when a State ratifies the Second Optional Protocol, it accepts that no one within the jurisdiction of a State party to the Protocol may be executed, with the possible exception of serious military crimes committed during wartime. Not only is this a way for the State to establish its abolitionist stance

through international law, but the Protocol implicitly prohibits reintroduction of the death penalty and, since it does not include a mechanism for withdrawal, it provides a very strong guarantee against reinstatement of the death penalty at the national level.

However, the significance of the Second Optional Protocol goes far beyond the national dimension. At an international level, the Protocol will ultimately outlaw executions and establish unequivocally the principle that the death penalty is a violation of human rights, in particular of the right to life. However, in order to do so, support for the Protocol, in terms of the number of States parties, must reach a 'critical mass'. In other words, the higher the number of countries ratifying the Second Optional Protocol the closer will the Protocol come to establishing the principle that the death penalty is a violation of human rights and elevating it to a customary norm of international law.

1.4.3 THE ICESCR 1966 AND ITS OPTIONAL PROTOCOL

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly in 1966, and entered into force on 3 January 1976. Today there are 164 signatories to the covenant. The Covenant establishes a reporting procedure on the measures the States parties have adopted and the progress made in achieving the observance of the rights contained in the Covenant (art. 16). The United Nations Economic and Social Council is formally entrusted under the Covenant with the task of monitoring compliance by the States parties with their legal obligations incurred under the Covenant; but since 1987 this task has been carried out by the Committee on Economic, Social and Cultural Rights, which consequently is not, strictly speaking, a treaty organ like the Human Rights Committee.

These rights normally, can't be challenged in a court of law for their non-implementation. However, in the recent past, at least more than two decades, the Supreme Court of India in no uncertain terms made it clear through a number of judgments; if the non-justiciable rights have a substantive bearing on the enjoyment of fundamental rights, their non-implementation can be challenged).

The Covenant on Economic, Social, and Cultural Rights has an optional Protocol adopted in 2008 and entered into force in 2013, the details which will be discussed in the following sections.

1.4.3.1 The Undertakings of the States Parties

Each State party to the International Covenant on Economic, Social and Cultural Rights “undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its

available resources, with a view to achieving progressively the full realization of the rights recognized in the ... Covenant by all appropriate means, including particularly the adoption of legislative measures" (art. 2(1)). Although the Covenant thus "provides for progressive realization and acknowledges the constraints due to limits of available resources", the Committee emphasized in General Comment No. 3 that "it also imposes various obligations which are of immediate effect". In the view of the Committee, two of these are of particular importance, namely: first, the undertaking in article 2(2) "to guarantee that the rights enunciated in the ... Covenant will be exercised without discrimination" on certain specific grounds; and second, the undertaking in article 2(1) "'to take steps', which in itself, is not qualified or limited by other considerations". In other words, "while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant".

1.4.3.2 The Rights Recognized

The following rights are recognized in the International Covenant on Economic, Social and Cultural Rights:

- Work, under "just and favourable conditions", with the right to form and join trade unions (Articles 6, 7, and 8);
- Social security, including social insurance (Article 9);
- Family life, including paid parental leave and the protection of children (Article 10);
- An adequate standard of living, including adequate food, clothing and housing, and the "continuous improvement of living conditions" (Article 11);
- Health, specifically "the highest attainable standard of physical and mental health" (Article 12);
- Education, including free universal primary education, generally available secondary education and equally accessible higher education. This should be directed to "the full development of the human personality and the sense of its dignity", and enable all persons to participate effectively in society (Articles 13 and 14);
- Participation in cultural life (Article 15).

1.4.3.3 Permissible Limitations on Rights

The International Covenant on Economic, Social and Cultural Rights contains a general limitation in article 4, whereby the State may subject the enjoyment of the rights guaranteed by the Covenant "only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society". Furthermore, limitations relating to the exercise of specific rights are also contained in article 8(1)(a) and (c), where the exercise of the right to form and join trade unions, as well as the right of trade unions to function freely, may be subjected to no restrictions other than "those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others". From the *travaux préparatoires* relating to article 4 it is clear that it was considered important to include the condition that limitations had to be compatible with a democratic society, that is to say, "a society based on respect for the rights and freedoms of others"; otherwise, it was suggested, the text might instead "very well serve the ends of dictatorship".

Unlike the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights does not contain any provision permitting derogations from the legal obligations. It is therefore logical that none of the rights contained in this Covenant has been made specifically non-derogable. However, as noted by a member of the Committee on Economic, Social and Cultural Rights, "the specific requirements that must be met in order to justify the imposition of limitations in accordance with article 4 will be difficult to satisfy in most cases". In particular, for a limitation to be compatible with article 4, it would have to be "determined by law", "compatible with the nature of these rights", and solely designed to promote "the general welfare in a democratic society".

1.4.3.4 The Implementation Mechanism

Under article 16 of the Covenant, the States parties undertake to submit "reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized" therein, and it is the United Nations Economic and Social Council that is formally entrusted with monitoring compliance with the terms thereof (art. 16(2)(a)). However, since the early arrangements for examining the periodic reports were not satisfactory, the Council created, in 1985, the Committee on Economic, Social and Cultural Rights as an organ of independent experts parallel to the Human Rights Committee set up under the International Covenant on Civil and Political Rights. The Committee consists of eighteen members who serve in their individual capacity.

As is the case with the Human Rights Committee, the reports submitted by

the States parties are considered in public meetings and in the presence of representatives of the State party concerned. The discussion "is designed to achieve a constructive and mutually rewarding dialogue" so that the Committee members can get a fuller picture of the situation prevailing in the country concerned, thereby enabling them to make "the comments they believe most appropriate for the most effective implementation of the obligations contained in the Covenant". Following an invitation by the Economic and Social Council, the Committee on Economic, Social and Cultural Rights began adopting General Comments "with a view to assisting the States parties in fulfilling their reporting obligations". The General Comments are based on the experience gained by the Committee through the reporting procedure, and draw the attention of the States parties to insufficiencies revealed, and also suggest improvements to that procedure. Lastly, the General Comments are aimed at stimulating the activities of the States parties as well as of the international organizations and specialized agencies concerned to achieve "progressively and effectively the full realization of the rights recognized in the Covenant".

1.4.3.5 Optional Protocol to ICESCR

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted in December 2008, and came into force on 5th May, 2013. So far it has 45 signatories and 21 parties. India is not a signatory to it yet. This protocol is an international treaty establishing complaint and inquiry mechanisms for the International Covenant on Economic, Social and Cultural Rights. It enables victims to complain about violations of the rights enshrined in the Covenant at the international level.

It reiterates the equal importance of economic, social and cultural rights with civil and political rights. It is designed to enable victims to seek justice for violations of their economic, social and cultural rights at the international level through the submission of communications before the Committee on Economic, Social and Cultural Rights, which is the Treaty Body that governs the implementation of the Covenant by State Parties.

The Optional Protocol provides for a "communications procedure" (that is, a complaints mechanism), in the same way that the Optional Protocols to the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of discrimination against Women do. The communications procedure allows victims of violations of their economic, social, and cultural rights to present complaints before the Committee, which can in turn, review individual complaints in a way similar to that of traditional human rights courts. The procedure provides for the possibility of a friendly settlement and of so-called 'interim measures' which the State may be requested to take to avoid possible irreparable

damage to the victims of the alleged violations.

The Optional Protocol also provides for an "inquiry procedure," allowing the Committee to initiate an investigation if it receives reliable information indicating grave or systematic violations of the ICESCR by a State Party. The inquiry procedure only comes into operation if States make a specific declaration to be bound by it ('opt in' clause).

Any individual or group of individuals (including communities, NGOs, trade unions, etc.) can lodge a complaint alleging a violation of all or any ESCR, provided their government has ratified the OPICESCR. Authors of the communication (usually victims, or those acting on their behalf) must first exhaust all available domestic remedies, present the communication within a year of that exhaustion, and ensure that the same case has not been presented before a similar international mechanism.

Violations of economic, social, cultural rights can occur when States interfere unduly with their enjoyment; fail to adopt steps towards their full realization; when they provide for or deny rights in a discriminatory manner; when they fail to comply with the minimum core obligations set out by the Convention; or adopt deliberately retrogressive measures without a proper justification.

1.4.4 LANDMARK HUMAN RIGHTS CONFERENCES

Declarations and proclamations adopted during world conferences on human rights are also a significant contribution to international human rights standards. Instruments adopted by such conferences are drafted with the participation of international agencies and non-governmental organizations, reflecting common agreement within the international community and are adopted by State consensus.

The Teheran and Vienna World Conferences on human rights were particularly significant for strengthening human rights standards. Both involved an unprecedented number of participants from States, agencies and nongovernmental organizations who contributed to the adoption of the Proclamation of Teheran and the Vienna Declaration and Programme of Action respectively.

1.4.4.2 Teheran World Conference on Human Rights (1968)

The International Conference on Human Rights held in Teheran from April 22 to May 13, 1968 was the first world meeting on human rights to review the progress made in the twenty years that had elapsed since the adoption of the UDHR. Significantly, the Conference reaffirmed world commitment to the rights and fundamental freedoms enshrined in the UDHR and urged members of the international community to fulfil their solemn obligations to promote and encourage

respect for those rights.

The Conference adopted the Proclamation of Teheran which, inter alia, encouraged respect for human rights and fundamental freedoms for all without distinctions of any kind; reaffirmed that the UDHR is a common standard of achievement for all people and that it constitutes an obligation for the members of the international community; invited States to conform to new standards and obligations set up in international instruments; condemned *apartheid* and racial discrimination; invited States to take measures to implement the Declaration on the Granting of Independence to Colonial Countries; invited the international community to co-operate in eradicating massive denials of human rights; invited States to make an effort to bridge the gap between the economically developed and developing countries; recognized the indivisibility of civil, political, economic, social and cultural rights; invited States to increase efforts to eradicate illiteracy, to eliminate discrimination against women, and to protect and guarantee children's rights.

By reaffirming the principles set out in the International Bill of Human Rights, the Proclamation of Teheran paved the way for the creation of a number of international human rights instruments.

1.4.4.2 Vienna World Conference on Human Rights 1993

On 14 June 1993, representatives of the international community gathered in unprecedented numbers for two weeks in Vienna to discuss human rights. The World Conference reviewed the development of human rights standards, the structure of human rights frameworks and examined ways to further advance respect for human rights. Members from 171 States, with the participation of some 7,000 delegates including academics, treaty bodies, national institutions and representatives of more than 800 non-governmental organizations, adopted by consensus the Vienna Declaration and Programme of Action. In light of the high degree of support for and consensus from the Conference, the Vienna Declaration and Programme of Action can be perceived as a forceful common plan for strengthening human rights work throughout the world.

1.4.4.3 The Contents of the Declaration

The Vienna Declaration and Programme of Action marked the culmination of a long process of review of and debate on the status of the human rights machinery worldwide. It also marked the beginning of a renewed effort to strengthen and further implement the body of human rights instruments that had been painstakingly constructed on the foundation of the Universal Declaration of Human Rights since 1948. Significantly, the Vienna Declaration and Programme of Action:

- reaffirmed the human rights principles that had evolved over the past 45

years and called for the further strengthening of the foundation for ensuring continued progress in the area of human rights;

- reaffirmed the universality of human rights and the international commitment to the implementation of human rights;
- proclaimed that democracy, development and respect for human rights and fundamental freedoms as interdependent and mutually reinforcing.

The Conference agenda also included examination of the link between development, democracy and economic, social, cultural, civil and political rights, and an evaluation of the effectiveness of United Nations methods and mechanisms for protecting human rights as a means of recommending actions likely to ensure adequate financial and other resources for United Nations human rights activities.

Similarly, the Conference took historic new steps to promote and protect the rights of women, children and indigenous peoples by, respectively, supporting the creation of a new mechanism, a Special Rapporteur on Violence against Women, subsequently appointed in 1994; recommending the proclamation by the General Assembly of an international decade of the world's indigenous peoples , which led to the proclamation of two decades (1995-2004 and 2005-2014); and calling for the universal ratification of the Convention on the Rights of the Child by the year 1995. As of today, all countries, except for Somalia and the United States of America, have ratified the Convention.

The Vienna Declaration also makes concrete recommendations for strengthening and harmonizing the monitoring capacity of the United Nations system. In this regard, it called for the establishment of a High Commissioner for Human Rights by the General Assembly, which subsequently created the post on 20 December 1993 (resolution 48/141). The Vienna Declaration also emphasized on the need for speedy ratification of other human rights instruments. The final document agreed to in Vienna was endorsed by the forty-eighth session of the General Assembly (resolution 48/121, of 1993).

Five-Year Review of the Vienna Declaration and Programme of Action

The 1993 World Conference on Human Rights requested through its final document, the Vienna Declaration and Programme of Action (VDPA), that the Secretary-General of the United Nations invite on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights all States, all organs and agencies of the United Nations system related to human rights, to report to him on the progress made in the implementation of the present Declaration and to submit a report to the General Assembly at its fifty-third session, through the Commission on Human rights and the Economic and Social Council. (VDPA, Part II, paragraph 100). Regional bodies,

national human rights institutions, as well as non-governmental organizations, were also invited to present their views to the Secretary-General on the progress made in the implementation of the VDPA five years later.

In 1998, the General Assembly concluded the review process which had begun in the Commission on Human Rights and the Economic and Social Council earlier in the year. A number of positive developments in the five years since the World Conference were noted, such as progress achieved in human rights on national and international agendas; human rights-oriented changes in national legislation; enhancement of national human rights capacities, including the establishment or strengthening of national human rights institutions and special protection extended to women, children, and vulnerable groups among others and further strengthening of the human rights movement worldwide.

The General Assembly reiterated its commitment to the fulfilment of the VDPA and reaffirmed its value as a guide for national and international human rights efforts and its central role as an international policy document in the field of human rights.

1.4.5 LET US SUM UP

The increasing realization about the need felt for the protection of Human Rights and establishing necessary internationally guiding, monitoring and complaining mechanisms have resulted in the adoption of the two covenants that we discussed in the chapter, and to address the additional requirements optional protocols too were adopted from time to time for both the Covenants. Further we have discussed about the two landmark world conferences that took place in the history of human rights and their declarations resulting in the set up of some institutional mechanisms like High Commissioner for Human Rights and the speed ups in the ratification process of important conventions and protocols pertaining to a variety of Human Rights.

1.4.6 EXERCISE

1. Highlight the significance of ICCPR along with its monitoring mechanism.
2. Discuss the Significance of ICESCR along with its institutional mechanism.
3. Compare and Contrast ICCPR and ICESCR in terms of the difference between the rights and the derogations and the implementing mechanism.
4. Why there was requirement for the adoption of optional protocols for the ICCPR? Discuss the important provisions covered under the First and Second protocols.
5. Provide a detail of the two landmark World Conferences on Human Rights

along with their Accomplishments.

6. How do you understand Permissible Limitations on the exercise of rights under ICCPR?
7. Discuss on the Permissible Derogations (Exceptions) from the legal obligations under ICCPR.
8. Write a note on the condition of non-derogations under ICCPR.
9. Provide a brief statement on the optional protocol for ICESCR.
10. Briefly discuss the importance of Tehran Conference1968.
11. Write a note on the Declaration of Vienna Conference, 1993.

2.1 PUBLIC INTERNATIONAL LAW AND HUMAN RIGHTS

- V. Nagendra Rao

STRUCTURE

2.1.0 OBJECTIVES

In this lesson, you will understand how the human rights have acquired a status of international law and various efforts that went into the creation of Human Rights Law in the form of treaties and conventions over period of time. After going through this lesson, you will be able to:

- know how the basic and inalienable rights of the Human Beings are protected under International Law.
- understand the core of treaties and agreements that constitute International Human Rights Law.
- Comprehend how the International Human Rights Law will have its impact at national and local levels.

2.1.1 INTRODUCTION

Human rights are commonly understood as being those rights which are inherent to the human being. International human rights law refers to the body of international law designed to promote and protect human rights at the international, regional and domestic levels. It is essentially a set of rules governing State behaviour vis-a-vis individuals and, at its most basic, requires States to ensure that people can enjoy their fundamental freedoms. Like national constitutions, which are covenants between governments and their citizens, international human rights treaties are covenants between States and the international community, whereby States agree to guarantee certain rights within their own territories.

When States ratify human rights treaties, they agree to both refrain from violating specific rights and to guarantee enjoyment of those rights by individuals and groups within their jurisdictions. Regional and international oversight bodies contribute to State compliance and provide opportunities for redress and accountability that may be non-existent or ineffective at the national level. However, becoming party to a treaty or agreeing to oversight by a supranational body generally remains voluntary. The level of participation in the international human rights framework varies among States.

Thus the driving idea behind International Human Rights Law is that since States are in a position to violate individuals' freedoms, respect for those freedoms may be hard to come without international consensus and oversight. Thus the Treaties and other instruments of law that result from international consensus generally serve to protect formally the rights of individuals and groups against actions or abandonment of actions by Governments which interfere with the enjoyment of their human rights.

2.1.2 ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW

The concept of human rights and human rights principles can be traced to antiquity, in the Ten Commandments, the Code of Hammurabi and the Rights of Athenian Citizens. Although this lesson will not deal with the origins of human rights concepts, it is important to understand and recognize that the roots of international human rights law go deep into history. In early religious and secular writings, there are many examples of what we now know as international law. There are, for example, the detailed peace treaties and alliances concluded between the Jews and the Romans, Syrians and Spartans. The Romans knew of a *jus gentium*, a law of nations, which Gaius in the second century described as law common to all men that could be applied by Roman courts to foreigners when the specific law of their own nation was unknown and when Roman law was inapposite. Later, in the seventeenth century, the Dutch jurist Hugo Grotius (1583-1645) argued that the law of nations also established legal rules that bound the sovereign states of Europe, then just emerging from medieval society, in their relations with one another.

However, the protection of individual rights and freedoms at the international level began in the nineteenth century mainly to outlaw the Slavery and to improve the situation of the sick and wounded in the times of war. At the end of the First World War too several treaties were concluded with the allied or newly created States for the purpose of providing special protection for minorities. At about the same time, in 1919, the International Labour Organization (ILO) was founded for the purpose of improving the conditions of workers. Although the initial motivation of the ILO was humanitarian, there were also, inter alia, political reasons for its creation, it being feared that, unless the conditions of the ever-increasing number of workers were improved, the workers would create social unrest, even revolution, thereby also disturb the peace and harmony of the world.

Following the atrocities committed during the Second World War, the acute need to maintain peace and justice for humankind precipitated a search for ways of strengthening international cooperation, including cooperation aimed both at protecting the human person against the arbitrary exercise of State power and at improving standards of living. The foundations of a new international legal order based on certain fundamental purposes and principles were thus laid in San Francisco on 26 June 1945 with the adoption of the Charter of the United Nations.

The Preamble to the Charter reaffirms the faith “in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. It also expresses the determination “to promote social progress and better standards of life in larger freedom”. Further, according to Article 1(3) of the Charter, one of the four purposes of the United Nations is, “To achieve international co-operation in solving international problems

of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".

Other Charter provisions containing references to human rights include: Articles 13(1)(b), 55(c), 62(2), 68, and 76(c). It is of particular significance to point out that, according to Articles 56 and 55(c) read in conjunction, United Nations Member States have a legal obligation "to take joint and separate action in co-operation with the Organization for the achievement of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". This important legal duty conditions Member States' participation throughout the United Nations human rights programme.

With the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights on 10 December 1948, the rather brief references to "human rights and fundamental freedoms" in the Charter acquired an authoritative interpretation. The Universal Declaration recognizes civil, cultural, economic, political and social rights, and, although it is not a legally binding document as such, since it was adopted by a resolution of the General Assembly, the principles contained in it are now considered to be legally binding on States either as customary international law, general principles of law, or as fundamental principles of humanity. Today, The Universal Declaration of Human Rights is generally agreed to be the foundation of international human rights law. Ever since its adoption, UDHR has inspired a rich body of legally binding international human rights treaties. It continues to be an inspiration to the efforts in addressing injustices, in times of conflicts, in societies suffering repression, and in the efforts towards achieving universal enjoyment of human rights.

2.1.3 SOURCES OF INTERNATIONAL LAW OF HUMAN RIGHTS

Like any other international law the sources of International Law of Human Rights primarily consist of treaties and customary international law.

2.1.3.1 Treaties

Treaties are written agreements between two or more States, whether embodied in a single instrument, or in two or more related instruments. Every treaty in force is binding upon the signatories and as such must be executed in a manner consistent with the treaty. After a treaty is signed, it does not go into effect immediately if it requires ratification by the legislative branch of a State's government. Additionally, States are permitted to make declarations, understandings, or reservations that limit the application of a particular treaty and may also indicate that they accept the treaty

with reservations regarding certain provisions.

A treaty may be either self-executing or non-self-executing, depending upon whether domestic legislation must be enacted in order for the treaty to be judicially enforceable. Self-executing treaties are effective immediately without the need for ancillary legislation. Non-self-executing treaties are also effective immediately as a matter of internal law, but require implementing legislation to be enforceable by a private party in court.

Treaties go by a variety of names, including convention, protocol, covenant and accord. The various designations generally indicate a difference in procedure, or a greater or a lesser degree of formality. You should keep in mind that all of these documents, regardless of their formal designation, are considered treaties that are binding under international law.

2.1.3.2 International Customs

Certain International Human Rights have acquired the status of customary International Law by their widespread practice by states and they are, therefore, binding on all the states, whether they have expressed consent or not. The 1987 Restatement (Third) of the Foreign Relations Law of the United States takes the position that Customary International Law protects at least certain basic Human Rights. Section 702 of the Restatement provides, "A State violates International Law if, as a matter of state policy, it practices, encourages, or condones (a) genocides (b) slavery or slave trade (c) the murder or causing the disappearance of individuals (d) torture or other cruel, inhuman or degrading treatment or punishment (e) prolonged arbitrary detention (f) systematic racial discrimination or (g) a consistent pattern of gross violation of International recognized Human Rights

Other International Instruments

Other International Instruments like International declarations, resolutions and recommendations relating to Human Rights have been adopted under the auspices of UN which have established the broadly recognized standards in connection with the human rights issues, despite the fact that they are not legally binding on the states e.g. UNDHR (1948) Declaration of the Tehran Conference (1968) and Vienna Conference (1993).

Judicial Decisions: Decisions of the various judicial bodies like International Court of Justice, European Court of Human Rights, Inter-American Court of Human Rights, are relevant in the determination of rules on the issues of Human Rights. In addition to the judicial decisions, the opinions of the arbitral bodies function is to mediate on the complaints on Human Rights violations, under the various treaties which also assist in the determination of these rights, relevant to International Human Rights.

Official Documentations: Official Documents of UN and its subsidiary bodies have produced a vast amount of documentation relating to human rights matter. Human Rights Law Journal, Human Rights Review and European Law Review are of considerable value in this regard.

2.1.4 CORE OF INTERNATIONAL HUMAN RIGHTS LAW

The adoption of the Universal Declaration of Human Rights (Universal Declaration), in 1948, was the first step towards the progressive codification of international human rights. In the 68 years that have elapsed since then, the extraordinary visions enshrined in the principles of the Declaration have proved timeless and enduring. The principles have inspired more than 100 human rights instruments which, taken together, constitute international human rights standards. Outlined below are some significant instruments of International Humanitarian Law.

While the creation of the United Nations provided an ideal forum for the development and adoption of international human rights instrument, other treaties and instruments have been adopted at regional levels reflecting the particular human rights concerns of the region. When a State becomes a party to an international human rights treaty, it assumes obligations and duties under international law to respect and protect human rights and to refrain from certain acts.

2.1.4.1 The International Bill of Human Rights

Three of the most important international instruments pertaining to human rights are collectively known as the International Bill of Human Rights:

- The Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)

As you have separate lessons on the above mentioned three instruments, mention of these instruments will be made in brief. For elaborate discussion, you may refer to the respective lessons.

The Universal Declaration of Human Rights:

The Universal Declaration of Human Rights consists of a Preamble and 30 articles, setting out the human rights and fundamental freedoms to which all men and women are entitled, without distinction of any kind. The Universal Declaration recognizes that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world. It recognizes fundamental rights which are

the inherent rights of every human being including, inter alia, the right to life, liberty and security of person; the right to an adequate standard of living; the right to seek and enjoy asylum from persecution in other countries; the right to freedom of opinion and expression; the right to education, freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment. These inherent rights are to be enjoyed by every man, woman and child throughout the world, as well as by all groups in society. Today, the Universal Declaration of Human Rights is widely regarded as forming part of customary international law.

The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights addresses the State's traditional responsibilities for administering justice and maintaining the rule of law. Many of the provisions in the Covenant address the relationship between the individual and the State. In discharging these responsibilities, States must ensure that human rights are respected, not only those of the victim but also those of the accused.

The civil and political rights defined in the Covenant include: the right to self-determination; the right to life, liberty and security; freedom of movement, including freedom to choose a place of residence and the right to leave the country; freedom of thought, conscience, religion, peaceful assembly and association; freedom from torture and other cruel and degrading treatment or punishment; freedom from slavery, forced labour, and arbitrary arrest or detention; the right to a fair and prompt trial; and the right to privacy.

There are also other provisions which protect members of ethnic, religious or linguistic minorities. Under Article 2, all States Parties undertake to respect and take the necessary steps to ensure the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Covenant has two Optional Protocols. The first establishes the procedure for dealing with communications (or complaints) from individuals claiming to be victims of violations of any of the rights set out in the Covenant.

The second envisages the abolition of the death penalty. Unlike the Universal Declaration and the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights authorizes a State to derogate from, or in other words restrict, the enjoyment of certain rights in times of an official public emergency which threatens the life of a nation. Such limitations are permitted only to the extent strictly required under the circumstances and must be reported to the United Nations. Even so, some provisions such as the right to life and freedom from torture and slavery may never be suspended.

The Covenant also provides for the establishment of a Human Rights Committee to monitor implementation of the Covenant's provisions by States parties.

The International Covenant on Economic, Social and Cultural Rights

As a culmination of 20 year long drafting debates, the ICESCR was adopted by the General Assembly in 1966 and entered into force in January 1976. In many respects, greater international attention has been given to the promotion and protection of civil and political rights rather than to social, economic and cultural rights, leading to the erroneous presumption that violations of economic, social and cultural rights were not subject to the same degree of legal scrutiny and measures of redress. This view neglected the underlying principles of human rights that rights are indivisible and interdependent and therefore the violation of one right may well lead to the violation of another.

Economic, social and cultural rights are fully recognized by the international community and in international law and are progressively gaining attention. These rights are designed to ensure the protection of people, based on the expectation that people can enjoy rights, freedoms and social justice simultaneously. The Covenant embodies some of the most significant international legal provisions establishing economic, social and cultural rights, including, inter alia, rights relating to work in just and favourable conditions; to social protection; to an adequate standard of living including clothing, food and housing; to the highest attainable standards of physical and mental health; to education and to the enjoyment of the benefits of cultural freedom and scientific progress.

Significantly, article 2 outlines the legal obligations which are incumbent upon States parties under the Covenant. States are required to take positive steps to implement these rights, to the maximum of their resources, in order to achieve the progressive realization of the rights recognized in the Covenant, particularly through the adoption of domestic legislation. Monitoring the implementation of the Covenant by States parties was the responsibility of the Economic and Social Council, which delegated this responsibility to a committee of independent experts established for this purpose, namely the Committee on Economic, Social and Cultural Rights.

This way beginning from the first step of adopting the Universal Declaration of Human Rights (Universal Declaration), in 1948, and its subsequent covenants namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted in 1966, together constitute international human rights standards. These conventions set down a

number of general rights which apply equally to all human beings.

Other UN Treaties Pertaining to Human Rights:

In addition to the above mentioned two general agreements there exist an increasing number of specialized agreements either directed to the protection of particular rights or particular categories of individual. From such agreements we discuss the most important under this section.

2.1.4.2 Convention on the Prevention of Genocide

The Convention on Genocide was among the first United Nations conventions addressing humanitarian issues. It was adopted in 1948 in response to the atrocities committed during World War II and followed G.A. Res. 180(II) of 21 December 1947 in which the UN recognized that "genocide is an international crime, which entails the national and international responsibility of individual persons and states". Genocide is defined in the Convention as any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group: killing members of the group causing serious bodily or mental harm to members of the group deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part imposing measures intended to prevent births within the group forcibly transferring children of the group to another group.

The Convention has since then been widely accepted by the international community and ratified by the overwhelmingly majority of States. The jurisprudence of the International Court of Justice considers the prohibition of genocide as peremptory norms of international law. The International court while stating that the crime of genocide may even be committed in times of peace recognizes the underlying principles the Convention. It further states that they are the principles recognized by civilized nations should become binding on States, even without any conventional obligation.

2.1.4.3 Convention on the Elimination of All Forms of Racial Discrimination

The phenomenon of racial discrimination was one of the concerns behind the establishment of the United Nations and has therefore been one of its major areas of attention. The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the General Assembly in 1965 and entered into force in 1969.

Article 1 of the Convention defines the terms racial discrimination as: "any distinction, exclusion, restriction or preference based on race, colour, descent,

national or ethnic origin with the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights in any field of public life, including political, economic, social or cultural life."

The definition covers not only intentional discrimination, but also laws, norms and practices which appear neutral, but result in discrimination in their impact. Parties to the Convention agree to eliminate discrimination in the enjoyment of civil, political, economic, social and cultural rights and to provide effective remedies against any acts of racial discrimination through national tribunals and State institutions. States parties undertake not to engage in acts or practices of racial discrimination against individuals, groups of persons or institutions and to ensure that public authorities and institutions do likewise; not to sponsor, defend or support racial discrimination by persons or organizations; to review government, national and local policies and to amend or repeal laws and regulations which create or perpetuate racial discrimination; to prohibit and put a stop to racial discrimination by persons, groups and organizations; and to encourage integration or multiracial organizations, movements and other means of eliminating barriers between races, as well as to discourage anything which tends to strengthen racial divisiveness.

The Committee on the Elimination of Racial Discrimination was established by the Convention to ensure that States parties fulfil their obligations. As at March 2000, 155 States were parties to the Convention.

2.1.4.4 Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979 and entered into force in 1981. Despite the existence of international instruments which affirm the rights of women within the framework of all human rights, a separate treaty was considered necessary to combat the continuing evident discrimination against women in all parts of the world. In addition to addressing the major issues, the convention also identifies a number of specific areas where discrimination against women has been flagrant, specifically with regard to participation in public life, marriage, family life and sexual exploitation.

The objective of the Convention is to advance the status of women by utilizing a dual approach. It requires States parties to grant freedoms and rights to women on the same basis as men, no longer imposing on women the traditional restrictive roles. It calls upon States parties to remove social and cultural patterns, primarily through education, which perpetuate gender-role stereotypes in homes, schools and places of work. It is based on the premise that States must take active steps to promote the advancement of women as a means of ensuring the full

enjoyment of human rights. It encourages States parties to make use of positive measures, including preferential treatment, to advance the status of women and their ability to participate in decision making in all spheres of national life.

States parties to the Convention agree, inter alia, to integrate the principle of the equality of men and women into national legislation; to adopt legislative and other measures, including sanctions where appropriate, prohibiting discrimination again women; to ensure through national tribunals and other public institutions the effective protection of women against discrimination; and to refrain from engaging in any discriminatory act or practice against women in the private sphere.

Article 17 of the Convention establishes the Committee on the Elimination of Discrimination against Women to oversee the implementation of its provisions.

2.1.4.5 Convention against Torture

Over the years, the United Nations has developed universally applicable standards against torture which were ultimately embodied in international declarations and conventions. The adoption, on 10 December 1984 by the General Assembly, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was the culmination of the codification process to combat the practice of torture. The Convention entered into force on 26 June 1987.

Article 1 of the convention defines torture as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

The overall objectives of the Convention are to prevent acts of torture and other acts prohibited under the Convention and to ensure that effective remedies are available to victims when such acts occur. More specifically, the Convention requires States parties to take preventive action against torture such as the criminalization of acts of torture and the establishment of laws and regulations to promote respect for human rights among its public servants for both the alleged victim and the accused.

Despite these measures, there may be incidents where individuals are, or claim to have been, tortured. The Governments that are committed to eliminating torture must also be committed to providing an effective remedy to alleged victims. This can be seen from the manner in which Governments address complaints of

torture. The Convention also requires that complaints of torture be promptly and impartially investigated wherever there are reasonable grounds to believe that an act of torture may have been committed. In many cases, the most important evidence is physical marks on the body, which can fade or disappear, often within days. The existence of a functional system for the administration of justice is thus critically important for victims of torture.

The implementation of the Convention established a monitoring body, the Committee against Torture.

2.1.4.6 Convention on the Rights of the Child

Both the League of Nations and the United Nations had previously adopted declarations on the rights of the child and specific provisions concerning children were incorporated into a number of human rights and humanitarian treaties. In recent years, reports of the grave afflictions suffered by children such as infant mortality, deficient health care and limited opportunities for basic education, as well as alarming accounts of child exploitation, prostitution, child labour and victims of armed conflict, led many worldwide to call on the United Nations to codify children's rights in a comprehensive and binding treaty. The Convention entered into force on 2 September 1990 within a year of its unanimous adoption by the General Assembly.

The Convention embodies four general principles for guiding the implementation of the rights of the child: non-discrimination ensuring equality of opportunity; when the authorities of a State take decisions which affect children they must give prime consideration to the best interests of the child; the right to life, survival and development which includes physical, mental, emotional, cognitive, social and cultural development; and children should be free to express their opinions, and such views should be given due weight taking the age and maturity of the child into consideration.

Among other provisions of the Convention, States parties agree that children's rights include: free and compulsory primary education; protection from economic exploitation, sexual abuse and protection from physical and mental harm and neglect; the right of the disabled child to special treatment and education; protection of children affected by armed conflict; child prostitution; and child pornography.

Under article 43 of the Convention, the Committee on the Rights of the Child was established to monitor the implementation of the Convention by States parties.

2.1.4.7 Convention on the Protection of the Rights of all Migrant Workers

Throughout history, people have moved across borders for a variety of reasons,

including armed conflict, persecution or poverty. Regardless of their motivation, millions of people are living as migrant workers, as strangers in the States in which they reside. Unfortunately, as aliens, they may be targets of suspicion or hostility and this inability to integrate into society often places them among the most disadvantaged groups in the host State. A vast number of migrant workers are uninformed and ill-prepared to cope with life and work in a foreign country.

Concern for the rights and welfare of migrant workers led to the adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Convention was adopted by the General Assembly on 18 December 1990 and entered into force on 1 July, 2003.

The Convention stipulates that persons who are considered as migrant workers under its provisions are entitled to enjoy their human rights throughout the migration process, including preparation for migration, transit, stay and return to their State of origin or habitual residence. With regard to working conditions, migrant workers are entitled to conditions equivalent to those extended to nationals of the host States, including the right to join trade unions, the right to social security and the right to emergency health care. State parties are obliged to establish policies on migration, exchange information with employers and provide assistance to migrant workers and their families.

Similarly, the Convention stipulates that migrant workers and their families are obliged to comply with the law of the host State. The Convention distinguishes between legal and illegal migrant workers. It does not require that equal treatment be extended to illegal workers but rather aims to eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation.

2.1.4.8 Monitoring and Reporting

A number of mechanisms have been introduced in an attempt to monitor compliance with each human rights treaty. As it has been mentioned under each treaty, the main international human rights treaties have established special committees which have been specifically entrusted with the task of supervising the way countries abide by their treaty obligations. These treaty bodies, of which there are currently nine, have been created pursuant to the relevant UN human rights treaties, as follows:

- the Human Rights Committee (HRC), created under the ICCPR
- the Committee on Economic, Social and Cultural Rights (CESCR), created under the ICESCR
- the Committee on the Elimination of Racial Discrimination (CERD), created under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

- the Committee on the Elimination of Discrimination against Women (CEDAW), created under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- the Committee Against Torture (CAT), created under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), created under the Optional Protocol to the Convention against Torture (OPCAT)
- the Committee on the Rights of the Child (CRC), created under the Convention on the Rights of the Child (CRC)
- the Committee on Migrant Workers (CMW), created under the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW)

2.1.4.9 Reporting Obligations

Upon becoming a party to a treaty, a state undertakes certain legal obligations and is legally bound to implement the rights set out in that treaty and all UN human rights treaties impose the obligation of periodic reporting upon states parties. This normally means that on becoming a party to a convention, a state must submit an initial report (normally a year after joining the treaty). Following this initial report, a state is obliged to submit periodic reports – how often varies according to the treaty. In these reports states are required to elaborate on 'the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights' (Art. 40 of the ICCPR).

Thus, each state party must show: a) what it has done to implement the rights envisaged by the treaty – this can be demonstrated by legislative initiatives, amendments to existing legislation, administrative and social policies, educational campaigns and so on; b) the progress that has been made towards achieving the full enjoyment of the rights protected by the treaty.

The system of reporting recognizes that realization of the rights may be progressive. To this end, the state's previous report serves as a good benchmark for gauging what has been achieved subsequently. This allows the treaty body to engage in a continuous dialogue with a state, aimed at helping the state to achieve full implementation of its obligations under the treaty.

One of the most important aspects of the reporting system is the so called 'alternative' or 'shadow' reports. The treaty bodies may receive information from

other bodies, such as other UN agencies, international and local non-governmental organizations (NGOs), academic institutions and so on. This information may be presented in the form of reports – that is, alternative reports to those submitted by the states pursuant to their reporting obligations. The advantage of such reports is that they may contain information different from that submitted by the state and thus allow the treaty body to obtain a more balanced view of what is going on in the state and determine whether there are any omissions in the state's report.

The treaty body may then present the state with a number of issues and questions based on the report submitted. It is at this stage that shadow reports are of paramount importance as they may provide the treaty body with information different from that contained in the state report. It is also quite common for questions asked of the state to be communicated to those organizations that have submitted shadow reports, thus providing them with an additional avenue of access to the treaty body. Upon receipt of the state's responses, the treaty body engages in a process called 'constructive dialogue' which effectively involves a thorough examination system.

2.1.5 REGIONAL TREATIES

As it has been already mentioned the International Human Rights Law also contains various regional treaties and agreements. The most important of such regional treaties are given below.

2.1.5.1 European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

The first regional agreement pertaining to the protection of human rights was the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR), which was signed by the member states of the Council of Europe at Rome on 4 November, 1950 and which entered into force in 1953. ECHR went far beyond UDHR in that it imposed binding obligations on the parties to provide effective domestic remedies in regard to a number of rights, and it refined the definition of such rights. It also established the European Commission of Human Rights to investigate and report on violations of human rights at the instigation of State Parties, or, with the express prior consent of individual states, upon petition of any person, NGO, or groups of individuals within that state's jurisdiction. The Convention also provides for a European Court of Human Rights with compulsory jurisdiction. This was set up in 1959 after eight states had accepted its compulsory jurisdiction.

ECHR was followed later by the European Social Charter 1961, which entered into force in 1965. The Social Charter deals with the social, economic and

cultural rights, including the right to work, the right to fair remuneration, the right to bargain collectively and the right to social security. The Social Charter puts claims rather than restrictions on States, and the enforcement machinery is very different from that created under ECHR. More recently the member states of the Council of Europe adopted the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987, which entered into force in 1989. The convention establishes a European Committee for the Prevention of Torture which is charged with monitoring the treatment of those deprived of their liberty and envisages a system of inspections of prisons and other places of detention. The convention aims to encourage observance of its provisions rather than to provide formal enforcement mechanisms. Torture and other forms of degrading or inhuman treatment are already prohibited under Article 3 of the ECHR.

2.1.5.2 Other regional Treaties

A number of other regional organizations have also adopted conventions relating to human rights they include:

a)The American Declaration of the Rights and Duties of Man of 1948, which was closely modelled on UDHR, was followed by the Protocol to the Charter of the Organization of American States 1967, which established the Inter-American Commission on Human Rights as a principal organ of the OAS with the function of promoting respect for human rights. Two years later the Inter-American Convention on Human Rights 1969 was adopted, which details the rights to be observed and provides for an Inter-American Court of Human Rights.

b)The Organization of African Unity has adopted the African Charter on Human and Peoples' Rights 1981. State parties are placed under an obligation to adopt measures to give effect to the rights contained in the charter rather than a strict obligation to observe the rights contained. The substantive provisions of this charter differ from other general human rights treaties in that far greater emphasis is placed on peoples' rights. The charter establishes an African Commission on Human and Peoples' Rights which is given responsibility for the promotion of such rights.

Discussions have also taken place with a view to establishing other regional agreements; for example, among the members of the Arab League and within the region of south Asia. It is also worth noting here certain provisions of the Helsinki Declaration 1975, adopted by the Conference on Security and Co-operation in Europe. Although, as has previously been stated, this declaration was expressed not to be legally binding, Part VII of the declaration pledged respect for fundamental freedoms and human rights. Certain human rights are also dealt within other more

general treaties, for example, the Treaty of Rome 1957.

To conclude the discussion, the International human rights law essentially lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

Through the ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. The domestic legal system, therefore, provides the principal legal protection of human rights guaranteed under international law. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual and group complaints are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.

2.1.6 LET US SUM UP

In the current lesson, we firstly tried to understand the origin, meaning and the essentially nature of International Human Rights Law. Then we also tried to understand the sources and the core that constitutes the present International Human Rights Law. By entering into various regional and international level treaties, the states obligate themselves to protect the Human Rights and undertake necessary domestic measures and legislation compatible with their treaty obligations and duties. This basic understanding about the protection of Human Rights under the International Law would help you to better understand the national and local level initiatives taken within our country or any other country for the protection of Human Rights as well as the much needed work to be done in the future.

2.1.7 EXERCISES

1 Briefly discuss on protection of Human Rights under International Law and the State Obligation.

2 Trace the Origins of International Law pertaining to Human Rights.

3 Write a short note on the Sources of IHRL.

4 What is International Bill of Human Rights and why is it important?

5 Discuss the core that constitutes International Human Rights Law.

6 Explain how the International Bill of Human Rights Law influenced the adoption of other UN treaties. Briefly discuss about each of such treaties.

7 Throw some light on the important Regional Treaties that constitute a part of International Human Rights Law.

8 Discuss the Monitoring and Reporting System of UN Treaties.

2.2 MODELS OF HUMAN RIGHTS: COSMOPOLITAN AND STATIST

- V. Nagendra Rao

STRUCTURE

2.2.0 OBJECTIVES

This lesson will explain you two broad models of Human Rights, that is Statist and Cosmopolitan. After going through this lesson, you will be able to:

- understand the governance of Human Rights system;
- comprehend on the status of the State and Individual in International Law;
- familiarize yourself with the main arguments of the Statist and Cosmopolitan Models.

2.2.1 INTRODUCTION

The Human Rights Law with its ever pushing boundary is acquiring an increasing centrality at the international forum and in the foreign policies of states. While human rights began as a legal defence of the lives and physical integrity of political dissidents and religious or ethnic minorities from the malfeasance of dictatorships, its mandate has expanded in claims, subjects, and mechanisms. Especially Since the

1990's, the claims and subjects of human rights have been expanded to previously unrecognized groups such as children and indigenous peoples and by the twenty-first century, international human rights enforcement mechanisms had been strengthened significantly—but only in the core domain of massive and systematic violations of life and liberty by government action of pariah states.

Today, looking at the bulk of the Human Rights Law and increasing compliance mechanisms towards it, some scholars even observe that in the past 67 years a gradual reduction of state sovereignty has been occurring and it has links with the rise of human rights awareness and the need to protect people from abuse by the state. Thus, giving rise to the question whether the nature of international law has shifted from dealing with "order" (which is State-centric) to dealing with "justice" (cosmopolitan). It ultimately means that having solely dealt with the relationship between states and their will in the past, it is now attempting to introduce a system of global governance. In the following section we will have a brief discussion about such system.

2.2.2 THE GOVERNANCE OF HUMAN RIGHTS SYSTEM

The International Human Rights system, which primarily addresses the State, has been increasingly evolving and developing to standardize, recognize and protect rights which are essential for every human being. The strong foundations to this new international legal system are laid down in the fundamental purposes and principles of the Charter of the United Nations. Further, the attention gained by human rights during the Cold War grew in parallel with institutional and legislative instruments such as the 1948 Universal Declaration of Human Rights and the numerous international HR Conventions. Consequently, there emerged a body of legal norms and mechanisms as well as political instruments, ranging from human rights diplomacy to humanitarian intervention and international war crimes tribunals, which regulate government's treatment of their citizens. When States ratify human rights treaties, they agree to both refrain from violating specific rights and to guarantee enjoyment of those rights by individuals and groups within their jurisdictions. Though very fragile, these treaties and instruments offer a ground to submit the domestic conduct of governments to some sort of scrutiny by individuals, domestic and international non-governmental organizations, other states and International Organizations and it is important to pay some attention towards such Monitoring and Scrutiny.

Today, in addition to the Human Rights Council that considers country situations, each of the major treaties generates a member-state reporting regime, such as the ICCPR's Human Rights Committee. Issue-specific U.N. rapporteurs conduct field visits and issue reports on abuses such as forced disappearance, that can be influential in international or bilateral sanctions, or even secure the release of

prisoners highlighted by the reports. At the regional level, the European Union, Organization of American States, and African Union also host Human Rights Commissions, which vary correspondingly from highest to lowest level of activity, accessibility to individual vs. state complaints, and mandated impact on member states' domestic policies.

Transnational legal processes too run the gamut from global to regional to bilateral exercise of universal jurisdiction. The International Criminal Court (ICC), following the U.N.'s post-war tribunals on Rwanda and the Former Yugoslavia, remains to be the only permanent universal body with jurisdiction over war crimes, genocide, and crimes against humanity. Its combination of an autonomous Prosecutor and Security Council referral, with the standard safeguard that it can act only when domestic remedies are exhausted, has secured the participation of over one hundred member states—but not the U.S. The ICC has been used mainly for war crimes in Africa since its 2002 activation. The EU and OAS also have human rights courts with contentious jurisdiction and the ability to levy sanctions against member states. Since treaties such as the Convention against Torture and domestic mechanisms like the US Torture Victims' Protection Act grant willing states universal jurisdiction to prosecute foreign nationals in their own domestic courts for crimes against humanity committed abroad, several states have also secured national level criminal or civil judgments against fallen dictators and war criminals.

Some countries invited Global Economic Sanctions for their gross violation of Human Rights and the foreign aid and assistance too are tied with and directed by the issue of Human Rights. The Nordic countries, Netherlands, and Canada have vital and effective programmes of human rights foreign aid, training, and civil society promotion. The suspension of such aid occasionally secured investigations, accountability, and even a reduction in violations by client states. The ultimate enforcement of human rights is armed intervention against the violating authority, since the U.N. Security Council can authorize intervention in response to massive crimes against humanity.

As a result of the emergence of such international processes and enforcement mechanisms, in today's globalized world, the role of State is not only being assessed from domestic angle, but it is also under the scrutiny of the international actors and the world opinion, as far as human rights are concerned. In other words, it can be stated that the process of internationalization of human rights has been emerging for the past few decades and the issue of human rights has been moving from the domestic to the international level. As a result Human Rights entered the sphere of International Relations along with its numerous questions.

In this regard the most important question remains to be the question of whether human rights should be placed in the context of the main IR theories. The answer varies to a great extent depending on who are considered to be the central

actors of the international system? Indeed, when reading human rights in international relations, traditionally the main focus remained to be on the centrality attached to states and international institutions. In fact if we look at classical International Relations theories like realism, neo realism and idealism, liberalism, individuals and other state actors play a marginal role.

However, the International Human Rights Law with its paradoxical nature, while recognizing state sovereignty also questions the moral omnipotence of the State by treating Human Rights as personal legal entitlements and liberties that include prohibitions against certain types of conduct directed against persons by States and Governments. Thus the States are either seen as the main actor of the game as the principal protector of Human Rights, or as the main culprits of Human Rights abuses and this element characterizes most of the debate about human rights and international relations.

This debate necessitates us to look at the status of State and the Individual traditionally ascribed in the theory of International Relations.

2.2.3 STATE AND HUMAN RIGHTS IN INTERNATIONAL RELATIONS

The modern international system dates back to 1648, when the Treaty of Westphalia ended the "Thirty Years War". However, the prime issue of human rights was absent from modern international relations for its first three centuries. That was the direct result of a system of world order based on the sovereignty of territorial states. Thus modern international relations are structured around the legal notion that states have exclusive jurisdiction over their territory, its occupants and resources, and the events that take place there. Most of today's basic international norms, rules, and practices rest on the premise of state sovereignty. Non-intervention is considered to be the duty correlative to the right of sovereignty and a state's actions are a legitimate concern of other states only if those actions intrude their sovereignty.

In addition to international law, the states have established other means, such as the rules and procedures of diplomacy and the recognition of spheres of influence, to regulate their interactions. This body of formal and informal restrictions on the original sovereignty of states creates an international social order. Although there is no international government, but there is a social order, governed by a substantial body of international human rights law. States have also become increasingly vocal in expressing, and sometimes even acting on, their international human rights concerns. Today, human rights provide a standard of moral legitimacy that has been incorporated into the rules of the international society of states. Since human rights principally regulate the ways in which, states treat their own citizens within their own territory, international human rights policies would seem to involve unjustifiable

intervention in domestic matters.

While such interventions are supported heavily on the basis of the universal nature of human rights, the argument follows that individuals are also the subjects of international law and a state is nothing but a representative of its people. Every individual has moral interest or value that has to be respected. Every person has a right not to be murdered; raped or imprisoned without a trail .These are universal moral rights that every person possesses. And as such these moral rights have to be respected as well as protected.

Such arguments are equally opposed by the counter argument that every state is a summation of individuals which necessarily means a state is analogous to a person. And just as an individual person's independence is respected, so should be a state's. Nations are bound to each other, similarly to individuals and therefore, every nation has to allow another nation its right. The most important right for everyone is freedom which manifests into sovereignty. A right of one nation imposes a duty on the other nation to respect and not violate its rights.

As Donnelly in her book *International Human Rights* suggests, essentially there are three models regarding the State position vis-à-vis of human rights in international relations, each with its own conception of the international community and its role in international human rights: they are the ***Statist, Cosmopolitan*** and the ***Internationalist.***

2.2.4 STATISM AND THE STATIST MODEL

Statism is one of the most conservative models and originates in Machiavelli's state model that describes the state as the most important actors in international relations. While the term “statism” has been in use since the 1850s, it gained significant usage in American political discourse throughout the 1930s and 1940s. Ayn Rand made frequent use of it in a series of articles in 1962. State Sovereignty is the paramount principle in this model granting the state the freedom to decide to what extent individuals residing its territory enjoy individual rights in this absolute state centric tradition violations of the sovereignty principle emerge only as a form of power politics and not as a form of humanitarian concern. States are capable of moral responsibility and they are the only bearers of rights and duties of international society which together they form. Individuals and groups other than states have access to this society only through the agency of their states; they are objects not subjects of international law. Non-intervention is the fundamental principle of international law, is designed to prevent individuals and groups getting in the way of the relations of States. That is to say, that any infringement of state sovereignty occurs as a result of a state's ambition to extend its influence and power. Thus, the right to intervene into the domestic affairs of another state is perceived as deriving

from the mere ability to do so, i.e. weaker states are naturally exposed to the will of the stronger.

This Statist Model emphasizes that every state is a summation of individuals which necessarily means a state is analogous to a person. And just as an individual person's independence is respected, so should be a state's. Nations are bound to each other, similarly to individuals and therefore, every nation has to allow another nation its right. The most important right for everyone is freedom which manifests into sovereignty. A right of one nation imposes a duty on the other nation to respect and not violate its rights.

Thus the statist model sees human rights principally as a national matter. States are the primary actors entitled to deal with the issue. An international community with a subjectivity of its own does not exist according to this model. In particular, there is no international body with the right to act on behalf of human rights.

Having rooted in the realist/neorealist tradition this model sees the international system as a place characterized by anarchy where survival is the objective to be achieved by maximising power and by furthering national interests. It considers permitting humanitarian interventions will enable other interventions a back door entry and thereby destroy international order. Furthermore, small frivolous reasons shall be used to justify this under the pretext of humanitarian intervention. In all likelihood individual scores will be settled and selfish gains will be fulfilled under humanitarian intervention. This is due to the fact that humanitarian intervention is so wide a concept all encompassing and can accommodate all kinds of claims.

The supporters of this model also question the efficacy of humanitarian intervention as the external agencies have insufficient knowledge about another state and its population to make fruitful decisions. They argue that the UN intervention in Somalia and Cambodia explains the cases where the human intervention was afflicted by poor information. They also argue that states seldom act out of altruism and they usually intervene for the furtherance of their national interests rather than the rights of the people abroad. Even if external agencies are well informed and motivated by altruism, intervention flounders due to resistance from members of the country itself that is subject to intervention. UN Operations in Somalia, for example, encountered resistance from Somalis once when Admiral Jonathan Howe began to hunt down General Aidid.

The advocacy of Statist Model, however, is often criticized by the supporters of Cosmopolitanism. They do not buy the claim that “states like individuals are equally free”. For them it is an empirical question to be settled by the observation of the world, hence, one should not presume the morality of state but investigate it.

They often advocate "states not to be loved seldom to be trusted." While supporting humanitarian interventions, they maintain that responsibility and accessibility is also an important attribute of state Sovereignty. States have value only when they respect peoples' moral interests. They possess no right to rule regardless of the Citizen's Welfare. The moment they do not act in accordance to their responsibility, they lose their moral ground for sovereignty and are to be held accountable.

Moreover, the contemporary Globalized world with an increasing complex network of economic interactions and interdependency invalidates the claims of State Sovereignty and this has been aptly observed by Vincent J in his book *Human Rights in International Relations* that "the existence of this network invalidates any claim on behalf of the society of states that it marks the boundaries of social cooperation". He further adds "So if we are to work out principles of social justice for the world as a whole, there is no good reason to begin (and end) with the morality or the supremacy of states which is founded on a doctrine of state autonomy that is no longer in touch with the facts of international life.

2.2.5 COSMOPOLITAN MODEL OF HUMAN RIGHTS

Cosmopolitanism is the ideology that considers all human beings belonging to a single community, based on a shared morality. A person who adheres to the idea of cosmopolitanism in any of its forms is called a cosmopolitan or cosmopolite. While cosmopolitan thinking takes many forms, Carol Gould's distinction between moral and political cosmopolitanism is a useful one. Moral cosmopolitanism refers to accounts that retain a commitment to treating all human beings with equal concern within a global frame. This is most cogently expressed in the idea of universal human rights, which underpin human freedom (variously defined) and are independent of legal or political status. Kant was the principal originator of cosmopolitanism in modern political thought. In *Perpetual Peace*, he advanced cosmopolitanism to promote peace among nations and foster mutual respect among individuals by virtue of their common humanity. Cosmopolitanism advocates that all persons are equal, moral, reasoning and autonomous beings. Consequently, everyone is entitled to be treated with equal concern and not as means to ends and, equally, everyone has a duty to treat others in the same way.

Political cosmopolitanism is built on Moral Cosmopolitanism and its advocates see the state as an obstacle in the political calculus and conceptual analysis of human rights. This model stresses the significance of the 'individual' rather than the state. Cosmopolitans focus on challenges to the state and its powers both from below, by individuals and NGOs, and from above, by a truly global community, not merely international organizations and other groupings of states. It sees the state being assailed and sandwiched from below by influential individuals and powerful nongovernmental organizations and from the top by the global community. The state,

having been squashed in this model, becomes weak and therefore less confrontational toward external challenges on issues relating to human rights. Thus, this model considers the role of individuals as important players who, together with NGOs, constitute a challenge to states which nonetheless, remain the actors in governing world politics.

Here it is important to grasp that Cosmopolitanism considers that human rights are not territorial but universal. They are vested in individuals as members of human race and not in their status as citizens of particular states. For them it is hard to see why a territorial understanding of human rights norms should be essential to the very concept of human rights. On the other hand, limiting the obligations of states to respect the human rights of those persons within their jurisdiction runs counter to the principle of universal respect for the human rights of all persons, to which all signatories of the UN Charter are bound.

They argue that wherever the state has failed or collapsed, the social contract binding the subjects to the sovereign ceases to operate. In such circumstances, the privilege of sovereignty is no longer relevant and external intervention, therefore, does not derogate from state sovereignty for none exists and Humanitarian intervention seems to be inevitable.

Cosmopolitans often argue that international law and organizations are already primary loci for cosmopolitan governance, while acknowledging the need to build democratic legitimacy and deepen democratic practice at the global level in particular, they point to international Human Rights Law and the international Criminal Court as important ingredients in formulating global governance that is more accountable. Further, the evolution of human rights law, environmental law and rules of warfare are examples of a shift from state-centred law to law above states. While the notion of international law assumes a system of autonomous states, the concept of cosmopolitan law rests on the realization that there exists a moral order and rights and duties that transcend state boundaries.

2.2.6 A BRIEF NOTE ON INTERNATIONALIST MODEL

While the Statist and the Cosmopolitan models represent two extremities, Jack Donnelly sees the Internationalist Modal as a model of consensus as it stresses upon the evolving a consensus, among states and non-state actors alike, on international human rights norms. Without denying the continued centrality of states, internationalists focus attention on the international society of states, which imposes only limited restrictions on states. The "international community," in an internationalist model, is essentially the society of states, supplemented by NGOs and individuals. International human rights activity is permissible only to the extent authorized by the formal or informal norms of the international society of states.

To sum up, the present lesson analysed two contrasting models of Human Rights, i.e. Statist and Cosmopolitan. Each model discussed in the lesson can be viewed as resting on descriptive claims about the place that human rights do have in contemporary international relations or prescriptive claims about the place they ought to have. Statist might argue that human rights are in fact peripheral in international relations. The cosmopolitan model, however, revolves around the issue of human rights. The statist model, although it was accurate until World War II, is at best a crude and somewhat misleading first approximation today. Internationalist model provides the most accurate description of the place of human rights in the contemporary international relations.

These models apart, it is important for us to understand that in the *realpolitik*, the focus of the states activities is not the human rights but the power and the security. And, in this sort of *realpolitik*, the issue of human rights or 'Cultural Relativism' is exploited by the concerned states. On the basis of the principle of Cultural Relativism, various non-Western states or group of states like ASEAN, African and Latin American Nations have adopted different conventions of Human Rights on the basis of their local conditions and traditional value setups. But this theory of Cultural Relativism is refuted by the West as it is being used by the countries to escape the genuine scrutiny by the world and it is termed as "the last refuge of repression".

These nations also refuse to accept the "hegemonic model" of West regarding rights which dictate terms to them to safeguard the interests of Western Capital Forces. The inclusion of "social clauses" in the GATT agreement to impose restrictions on the free flow of trade to such countries where, either the labour standards fell short of prescribed international norms or products and processes, were not environment friendly. This is viewed in context of the growing competition in the International Market where the West wants to hold its dominating position and by restricting the non-Western competitors in the name of Human Rights. This kind of situation makes scholars like Rajni Kothari to observe that the Human Rights have become the great legitimiser of the new corporate philosophy of globalization and the Western powers also exploit this issue for bulling and making interference into these nations.

2.2.7 LET US SUM UP

In this lesson, we tried to understand the current international human rights system and the ever widening scope of the paradoxical Human Rights law that often raises the debates on the issue of State Sovereignty and the status of Individual. As a part of it we have tried to understand the main premises of Statism and the arguments of the statist model as well as the Cosmopolitanism and its main arguments. Further we also tried to understand whether the claims of the state can be justified or need to be justified in the current world Order and the realpolitic of Human Rights. This

understanding will help you to better understand the politics of Human Rights at the National and International level, which is the focus of your next lesson.

2.2.8 EXERCISES

1. Write a brief note on the International Human Rights System.
2. Discuss about State and Human Rights in International Relations.
3. Critically analyze the two dominant models of Human Rights Debate.
4. What is Cosmopolitanism? What are its main premises relating to Human Rights?
5. What is Internationalist model of Human Rights?
6. Discuss the current state of International Human Rights System and show how the Statist Model can be supported or not supported.
7. Write a brief note on all three models. Which model do you think to be more appropriate of current Human Rights System?

2.3 POLITICS OF HUMAN RIGHTS: NATIONAL AND INTERNATIONAL LEVEL

- V. Nagendra Rao

STRUCTURE

2.3.0 OBJECTIVES

While the Human Rights are the Ideals to achieve, the Human Rights Law is essentially soft and customary, often lacking universal acceptance on the basic definitions and goals this often gives rise to politics and after going through the lesson you will be able to:

- discuss how the drafting of UDHR itself has given birth to the International Politics around Human Rights.

- understand the National Level Politics played by the Humanitarian NGOs.
- how the measures taken for the protection of Human Rights often result in their violation.

2.3.1 INTRODUCTION

The Second World War was the watershed in the change of the status of individuals in International Law. The Nazi atrocities resulted in the punishment of war criminals at Nuremberg and Tokyo. The interrelated desire to prevent the recurrence of such crimes against humanity resulted in the development of new standards for the protection of Human Rights. The UN Charter embraces the natural law notion of rights to which all human beings have been entitled since time immemorial and to which they will continue to be entitled as long humanity survives. These natural rights are inalienable, permanent and universal. They are part of the UN Charter's equality goal.

The international political arena came to recognize human rights in 1948 when countries agreed to the Universal Declaration of Human Rights (UDHR), which states that every human being is born free and none should be held in servitude. Since the signing of the UN Charter in 1945, the states have concluded several international agreements that provide comprehensive protections for individuals against various forms of injustice, regardless of whether the abuse or injustice was committed by a foreign sovereign or the individuals own state of nationality.

Ever since the Declaration of Human Rights, no doubt there is much to celebrate. Over the last 67 years several legal norms and aspirational declarations have been pronounced. A complex institutional practice has grown up as a result of the conventions that aim at the promotion and protection of Human Rights. The Human Rights movement across the world freed countless people from life threats and raised the standards by which governments are judged. It exposed the deplorable conditions in prisons around the world. Today Human Rights have become a practice of governance. Governments have human rights departments, ombudsmen, special rapporteurs and investigative divisions. We are witnessing Human rights networks and courts, international institutions, private foundations and other civil society. Today the international Human Rights law entered into the protection of the third generation of rights which are often solidarity rights in Nature.

Despite the tremendous growth achieved in Human Rights Law making and establishing the human rights protection mechanisms, the basic debates and disagreements continue to remain especially on the questions like a) whether the human rights provisions of the UN Charter create binding legal obligations on a

member states to respect the human rights of persons located within its borders, be they nationals or non-nationals. States have reached different conclusions with respect to the nature of the Charter's human rights obligations. Some view the obligation as binding. Others have concluded that they are not binding. b) Is the Human Rights Law Universal in reality? c) Why the Civil and Political Rights are given Primacy over the economic, social and cultural rights? d) What is the legitimacy of Humanitarian Interventions? e) Can Human Rights be placed over State Security? This kind of questions and lack of universal agreements on the basic definition of important issues giving rise to Human Rights politics at National and International levels. The kind of indifference some of the States show not only defeat the philosophy of Human Rights but also make them tools in the hands of the powerful. In the following section we look at the way the cause of human rights politicised.

2.3.2 HUMAN RIGHTS POLITICS AT INTERNATIONAL LEVEL

The international politics around Human Rights is often considered to have begun with the war time politics and the basic ideological differences between the First and the other worlds. The heavy influence of western philosophy on Human Rights found a place even in the drafting of Human Rights Declaration itself. The following discussion on Legalization, Ignoring Social Differences and heavy bent on Western Values inform us how human rights have been politicised at international level due to power politics played by major powers.

2.3.2.1 Politics around the Legalization of UDHR

The principles enshrined in the UDHR always remained to be the inspiration of the constitutions and national legislation of many newly independent states, which often seek to embody the spirit of democracy, which is promoted by the Declaration. The incorporation of the principles of the UDHR into domestic legislation is one argument used to show that the declaration has now become part of the body of customary law. However, this important milestone had one characteristic that was, ironically, essential to its acceptance that it is not legally binding in its nature. Even in the aftermath of World War-II, as Human rights scholar Simmon's points, the world's initial commitment to international human rights was in the form of a nonbinding declaration, not a legally binding treaty. Along with France, US opposed much of the declaration's language and it was essentially to keep the US at comfort the declaration was drafted to be a non-binding one in its nature. This non-binding nature of the Declaration could be seen as a reason behind the absence of USSR when the Declaration was adopted. As Simmons mentions, the US secretary of State John Foster Dulles later explained to a very wary and hostile American Bar Association

that the Declaration of Human Rights, for all that it was, was not a legal document. Rather it was more like America's 'Sermon on the Mount' in the 'great ideological struggle between the United States and the Soviet Union.'

2.3.2.2 UHDR Ignored Social Differences

Although there are tall claims there was broad-based international support for the Declaration when it was adopted, the UDHR has been accused of omitting the voice and values of states, cultures and peoples. Several scholars assert that "the Western political philosophy upon which the Charter and the Declaration are based provides only one particular interpretation of human rights." The question of whether the UDHR ignores the social differences of the 191 United Nations member states today and the 58 which existed when the UDHR was drafted is therefore a pertinent one.

AS you have studied in detail about the Declaration and the subsequent Conventions in your previous lessons, when one considers the scope of the document, it is easy to see why the accusations on the declaration continue to this day.

In this regard at least five key areas have been identified in which the UDHR can be accused of ignoring social difference:

- the values it expresses are predominantly Western with a specifically capitalist view of how society operates;
- prominence is given to civil and political (CP) rights, rather than economic cultural and social (ESC) rights;
- the declaration does not acknowledge that significant economic inequalities between states will impair the ability of some to implement the recommendations;
- there is no mention of the rights of peoples or minorities, other than in the general terminology of non-discrimination;
- various aspects of the UDHR are unhelpful in the protection of women's rights.

2.3.2.3 UDHR mainly Represents Western Values

That the UDHR espouses primarily Western values is the core accusation levelled at the declaration even including the text of the UDHR.

There were 58 UN member states at that time of drafting the UDHR this membership was composed as follows:

- North and South America: 21 countries

- Europe: 16 countries
- Asia: 14 countries
- Africa: 4 countries
- South Sea Islands: 3 countries

As for the composition of the 58 states at drafting, Africa and Asia were vastly under represented, illustrated by the fact that Africa gave rise to over 30 independent states in the decade 1958 to 1968. This under-representation was compounded by and resulted from the fact that at the time of drafting, many Asian and African countries were colonized by nations such as France and Britain who were involved in the drafting process. The drafting committee was composed of eight people, from Australia, Chile, China, France, Lebanon, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America.

It is therefore the views of the colonizing, and not the colonized, which were represented. Further, the UDHR did not apply directly to the colonial areas and was subjected to intense manoeuvring by Britain at the drafting stage to prevent its application to its colonies despite soviet pressure.

The issue of Western domination of the drafting process was raised directly by UN member states during the two year drafting process. For example, the Saudi Arabian delegation in discussion on article 16 relating to marriage, commented that the UDHR represented the standards recognised by Western civilisation and had ignored more ancient civilization. It is interesting to note that the delegations which abstained from voting in favour of the UDHR were 'non-Western' namely Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, Ukrainian SSR, Union of South Africa, USSR, and Yugoslavia. However, underlining the complexity of the process of bringing the declaration into force, it can be noted that these abstentions did not necessarily boil down to objections over Western dominance.

The USSR and its partners, for example, abstained from voting because the declaration did not provide an outright condemnation of Fascism and Nazism. Likewise, it is believed that South Africa abstained knowing that the declaration would be used to condemn its discriminatory practices.

This rooting of the UDHR in Western Philosophy often gives rise to the questions on Universal Application of Human Rights. Instead of Universal, some conceive that rights are culturally contingent.

2.3.3 THE POLITICS AROUND THE PRIMACY OF CIVIL AND POLITICAL RIGHTS

The Universal Declaration was unanimously adopted as comprehensive document

dealing not only with political and civil rights but also with economic, social and cultural rights. This unanimity was possible as the Declaration was legally non-binding. However, when the covenant on economic and social rights was prepared, problems resulted from interrogations by so called developed states as to whether social, economic and cultural rights—already articulated in the Declaration were relevant to, or appropriate as, human rights. Such states maintained that social, economic and cultural goals were aspirational goals – the attainment of which was dependent on economic resources and economic theory and ideology. Consequently, Western states held that economic right were inappropriate for framing as binding legal obligations. On the other hand, then Second and Third world states held that economic rights were the most important. The different viewpoints resulted in the drafting of two international documents—the ICCPR and the ICESR to be submitted simultaneously for consideration by the General Assembly. One document was to contain civil and political rights and the other social, economic and cultural rights. As you have studied under the covenants section, the basic differenced held by the opposing groups ultimately resulted in giving primacy to the Civil and Political Rights over the Economic, Social and Cultural Rights. Thus, the Civil and Political Rights are referred to as justifiable rights, which are equivalent to the Fundamental Rights of the Constitution of India. The Economic, Social and Cultural rights are referred to as Non-Justiciable rights, and are only directives to the states which need to be promoted and implemented depending upon various factors, these are comparable to the Directive Principles of State Policy as framed by the Constitution which are directives to the State. This primacy given to the Civil and Political Rights over the Economic and Social Rights in a way gave birth to politics around Human Rights Violations and Interventions in the name of Humanitarian Grounds in the history of Human Rights.

This makes Scholars like Robert Meister, looking at the mainstream Human Rights to become critical of a politics of human rights that prioritizes the protection of political rights that minimize people's exposure to violence against the body at the expense of economic, social, and redistributive rights rooted in a revolutionary sense of social justice and economic equity. He remarks in his book *After Evil: A Politics of Human Rights,* that "here we reach the crux of the twenty-first century conception of human rights, namely, that there is nothing worse than cruelty and that cruelty toward physical (animal) bodies is the worst of all". Scholars like Meister vehemently argue that contemporary human rights discourse inappropriately downplays the importance of economic rights and social justice, and the post-World War II human rights discourse ultimately rationalizes the hegemony of a system of global capitalism that actively serves to undermine the attainment of human rights broadly defined. Thus Contemporary Human Rights discourse is grounded on the premise that politically-motivated physical violence against innocent persons is always wrong. Yet, global norms calling for humanitarian intervention and a "responsibility

to protect" on the part of an ill-defined international community suggest that prohibitions against the use of politically-motivated physical violence are over-ridden when such violence is committed by "the international community" in the name of global human rights. The so-called agents of change like governments, international human rights organizations and non-governmental Organizations who intervene to protect the victims of political violence, regardless of the underlying cause of such violence, many times silent on issues of poverty and economic exploitation. They give primacy to political rights and civil liberties. This conception of Human rights however, goes against the historical conception of human rights encompassing radical ruptures with unjust economic, social, and political systems.

The primacy attached to the importance of Civil and Political Rights has led to increased interventions in the name of protecting the victims of political violence giving rise to the Politics of Humanitarian Interventions.

2.3.4 POLITICS AND ETHICS OF HUMANITARIAN INTERVENTIONS

The United Nations (UN) is increasingly playing a stronger role in maintaining standards of human security and justice. Yet, dealing with the humanitarian intervention issues have been a challenge for the UN. There are several references in the UN charter that justify the view that extreme violations of human rights provide the basis for justifying humanitarian intervention. The major pronouncements of the UN General Assembly on humanitarian assistance referred to the primary responsibility of the states for dealing with the complex crises within their frontiers. On the other hand, as a transnational organization, UN represents a common good that transcends the sum of individual state interests. The transnational face is represented by UN specialized agencies, NGO, bureaucracies, the office of the Secretary General. Over the past decades, UN's missions and services have expanded far beyond their original conception to include humanitarian, and protection of human rights.

At a fundamental level, the assumption is that humanitarian intervention by the "international community" rises above politics and reflects a presumptively *ethical* use of violence. Of course, humanitarian intervention by the international community, a "community" whose interests and actions are determined primarily by the preferences and policies of major powers, is no less political than military actions carried out by local actors. Additionally using the provision many times even during the problems of minor magnitude, selective interventions have been carried out under the name of Humanitarian. This way some of the interventions were found to serve the imperialistic motives of some of the intervening states.

Interventions no doubt result in short term desired results but cannot ensure

sustainable outcomes. The consequences of intervention may well be a weak and fragile government and a population who has been gifted the freedom from tyranny. Such interventions also give rise to apprehensions about the foreign politicians and the native soldiers are likely to misread the situation or underestimate the forces required to change it.

Precisely this is the reason why scholars like Meister challenge the proponents of human rights to consider why military actions initiated at the global level by an "international community" dominated by major powers should be considered, by definition, ethical even when "collateral damage" occurs whereas as militarist movements in specific localities are always deemed to violate human rights when innocent civilians are victims, even if these movements are motivated by an underlying concern with human rights and justice. Moreover, Meister's analysis raises questions about the extent to which beneficiaries of injustice, even if they are not direct perpetrators of violence, should be considered innocent. This way the self-serving motives on the part of some countries defeat the purpose of Human Rights and give rise to critical questions about the legitimacy of the use of violence towards protecting human rights. This discussion on legitimacy of Humanitarian interventions takes us to the global protectors of Human Rights and their increasing role especially after the end of cold war and one among such protectors is USA.

2.3.5 THE UNITED STATES AS A GLOBAL PROTECTOR OF HUMAN RIGHTS

The nature of terrorism as a deliberate attack on civilians has led to terrorism being perceived as the ultimate human rights violation: it is the essence of anti-human rights. The word 'terrorist' is actively constructed to mean those *not like us*; those at war with human rights. By contrast, US identity is produced in terms of freedom, democracy, human rights and peace. The effect of this rhetorical and binary exercise is to define the US 'as a stalwart of liberty in opposition to 'evil doers', 'terrorists' and 'rogue states' which constitute an 'axis of evil, arming to threaten the peace of the world'. This enabled policy makers to appeal to the image which asserts US identity in terms of freedom and human rights in order to explain and legitimise foreign policy decisions. Hence, for Washington, dehumanising the terrorists was essential to the success of the War on Terror. Examination of relevant speeches and statements indicate that it was considered essential to establish the West and the US in particular, as the protectors of human rights on a global scale. During the invasion of Iraq, the U.K too joined the bandwagon and stood by it in the Afghan Intervention.

Thus, defending human rights around the world is presented as a task or mission for the US, and this was used to legitimate the War on Terror. Thus, fighting the war against terrorism was presented as the unfortunate responsibility of the

Western powers to save civilians from human rights abuses and the world from freedom-hating terrorists. The ethical framework for the war in Iraq and Afghanistan in particular was presented in terms of liberty, freedom and human rights. This discussion on global protectors of Human Rights should lead us to increasing role of such protectors and their relationship with the Humanitarian NGOs and their effect at National Level.

2.3.6 HUMAN RIGHTS POLITICS AT NATIONAL LEVEL

As David Chandler in his book ***Rethinking Human Rights*** observes**,** the end of the Cold War can be seen as a dramatic shift in the relationship between humanitarian and political action and bringing changes the way humanitarian organizations operated at national level.

2.3.6.1 Humanitarian NGOs and National Level Effects

The end of the Cold War also marked an important change in the way NGOs operate in humanitarian emergencies. During the Cold War, strong authoritarian states exerted strict controls over NGOs, dictating the limits of international humanitarianism. The collapse and weakening of many national governments, particularly those in the South and those formerly within the Soviet Bloc, has given NGOs unprecedented freedom to operate within these nation-states. One particular consequence of the weakening of the nation-state in the Third World is that, increasingly donor governments are deliberately circumventing local governments and channelling any money for emergency relief through their own NGOs. This is a major change. In the past, the role of international NGOs was to fill the gaps in the official relief programmes run by the national government of the affected country. Since the 1980s, however, NGOs are expected to be the primary response mechanism in any disaster. Within hours of the news of any major disaster, the media will announce the arrival of agencies like Oxfam and Medecins sans Frontieres (MSF). During Hurricane Mitch in 1998, the media criticized international NGOs for not being operational on the ground quickly enough. The question of the Nicaraguan and Honduran governments running the relief operation was not even considered. All these factors have contributed to the massive growth in the power of international humanitarian organizations.

From the mid-1980s, relief and humanitarian expenditure witnessed an unprecedented six fold increase. Agencies like the International Committee of the Red Cross (ICRC), UNICEF and UNHCR are billion dollar global operations, commanding significantly more power and resources than the poor countries in which they operate. Many aid agencies acknowledge that NGOs are filling the political vacuum in many of these nations. Thus the growth of humanitarian NGOs is

itself part of broader socio-political developments in the post-Cold War world. Scholars consider this enhanced ability of agencies to respond to need itself is part of a wider and complex process of globalisation and demise of political alternatives. On the political level too, there have been developments that add to the relative power of international relief agencies. Human rights groups and aid agencies welcome the willingness of Western powers to reject national sovereignty as an obstacle to humanitarian interventions. The language of human rights and poverty, once the preserve of aid agencies and radical campaigners, now trips off the tongues of the leaders of the most powerful nations of the world. This new human rights culture has challenged the notion of sovereignty as a barrier to international intervention. Although, so far at least, the implications of this shift have only been felt in the Third World or in marginalized East European countries, the forcible intervention into a state's territory in pursuit of humanitarian aims is now common and acceptable while permeating the national and international levels of division through their operations.

2.3.6.2 Humanitarian NGOs and Local Problems

Bernard Kouchner, founder of MSF and former minister in the French government, has welcomed the fact that 'the age of strict national sovereignty is over and a new era of intervention has begun'. In November 1999, when MSF won the Nobel Peace Prize, several commentators remarked that the agency was ahead of its time in terms of condemning human rights abuses and challenging national sovereignty. In an editorial, the *Guardian* praised the agency for giving a lead to the Western governments: 'MSF's assertion of the right to enter sovereign states – in order to alleviate human suffering – was a bold precursor of an argument which is now embraced, however spasmodically, by governments.

Today at National level, quite often aid workers are seen as key actors in politically sensitive areas in which nation-states and civil society have all but collapsed. Far from just delivering aid, they have become major players in their own right, wielding significant political influence and commanding massive resources. As the first people on the spot, they also play a major role in internationalizing conflicts and emergencies. The role of aid agency press officers is to draw media attention to humanitarian crises in remote areas of the world and use that spotlight to galvanize the international community into action. The humanitarian agencies' perception, rather than that of the local government or warring faction, is likely to be the one listened to by the world's political leaders. This internationalizing of relief aid has reinforced the weakness of Third World governments and has undermined the whole concept of local solutions.

It is now commonplace to hear humanitarian aid accused of prolonging wars, feeding killers, legitimizing corrupt regimes, strengthening perpetrators of genocide and creating new war economies. In short, for many, humanitarians have gone from

being angels of mercy who can do no wrong to being part of the problem. During the 1998 famine in Sudan, delivering relief rather than pushing for a political solution could only prolong the war. The level of criticism has persuaded many humanitarian agencies that there is an urgent need for change.

In addition the states too play their politics of Human Rights and the best example can be found in the counter terrorism laws made by near about 140 countries resulting in massive Human Rights abuse.

2.3.7 COUNTERTERRORISM LAWS AND HUMAN RIGHTS POLITICS:

All States have a duty and an obligation to protect individuals within their jurisdiction from terrorists under the International Covenant on Civil and Political Rights (ICCPR), stemming from the right to life. While counter-terrorist measures are essential for States to maintain national security and ensure safety for all individuals, these measures must not circumvent international law or violate human rights. The lack of a universally accepted definition of terrorism increased the possibility of human rights violations and negatively impacted the ability of the international community to fight terrorism. Especially after the September 11th attack on USA and its declaration of war on terrorism, Human rights concerns have arisen through the creation of counter-terrorism measures which States claim to be outside the realm of international law.

These post-September 11 laws, when viewed as a whole, represent a broad expansion of government powers to investigate arrest, detain, and prosecute individuals at the expense of due process, judicial oversight, and public transparency. Human Rights advocates argue that such laws merit close attention, not only because many of them restrict or violate the rights of suspects, but also because they can be and have been used to stifle peaceful political dissent or to target particular religious, ethnic, or social groups.

Of particular concern is the tendency of these laws to cover a wide range of conduct far beyond what is generally understood as terrorist. More often than not, the laws define terrorism using broad and open-ended language. While governments have publicly defended the exceptional powers available to police and other state authorities under these laws by referencing the threat of terrorism, some of the conduct they cover may have little connection to such potential attacks.

Many of the counterterrorism laws were also found to contain changes to procedural rules—which are designed to ensure that the justice system provides due process—that jeopardize basic human rights and fair trial guarantees. Some changes enhance the ability of law enforcement officials to act without the authorization of a

judge or any other external authority. Others grant authorizing power to prosecutors, or other members of the executive branch, who may have a particular stake in the outcome of police investigations. These procedural changes not only increase the likelihood of rights violations, including torture and ill-treatment, but also decrease the likelihood that those responsible will be discovered and punished.

At least 51 countries had counterterrorism laws prior to the September 11 attacks. In the subsequent 11 years, Human Rights Watch has found, more than 140 countries enacted or revised one or more counterterrorism laws. *In the Name of Security* the report produced by Human rights watch offers a detailed breakdown of eight elements common to most post–September 11 counterterrorism laws that raise human rights concerns, as well as a discussion of where such laws diverge. The eight elements are:

1. definitions of terrorism and terrorist acts;
2. designations of terrorist organizations and banning membership in them;
3. restrictions on funding and other material support to terrorism and terrorist organizations;
4. limitations on expression or assembly that ostensibly encourage, incite, justify, or lend support to terrorism;
5. expansions of police powers that undermine basic rights, including powers to conduct warrantless arrests, searches, surveillance, and property seizures, and to detain suspects incommunicado and without charge; as well as restrictions on challenging wrongful detention or seeking accountability for police abuses;
6. creation of special courts and modifications of trial procedures (including evidentiary rules) to favour the prosecution by limiting defendants' due process rights;
7. imposition of the death penalty for terrorism-related offenses; and
8. Creation of administrative detention and “control order” mechanisms.

This way the counter terrorism laws are double edged. While the States claim to use these mechanisms to safeguard its national security and the protection of its innocent people, however the Human rights advocates often argue that such kind of law not only violate the International Human Rights Law but also amount to the Human Rights violation of all those who are considered to be terrorists by the State. They remark, in the name of countering terrorism these mechanisms allow the state also to commit human rights violations against terrorism suspects--such as torture, ill-treatment, and enforced disappearance—without making any effort to legitimize them through law.

State counter-terrorist measures implicate numerous fundamental human rights, including the right to life through targeted killings, the prohibition against torture, liberty interests through arbitrary detention, racial and ethnic profiling, the right to due process, freedom of speech and association, the right to privacy, and many other social, economic, and cultural rights. They include: (A) the prohibition against torture and cruel, inhumane and degrading treatment; (B) arbitrary detention resulting from extensive surveillance and intelligence measures; (C) the right to privacy; and finally (D) racial discrimination and ethnic profiling.

2.3.8 STATE, ECONOMIC DEVELOPMENT AND HUMAN RIGHTS

Ever since neoliberalism and globalization have become guiding principles for economic growth and states are competing for global capital and investment, the domestic policies have shrewdly gone against poor and working class people. The state has not only withdrawn from the welfare activities but also in the name of creating good business environment drastically altering the conditions of human rights. The forcible acquisition of land and common resources, stringent labour laws, privatisation of services, withdrawing all the subsidies, etc. have severe impact on ordinary people. This is obviously leading to the protest movements and sometimes a violent backlash as well. In some countries this is leading to insurgencies and civil wars as groups resorted to violence. There is growing tendencies on the part of the states to portray these movements as anti-state and develop stringent laws to deal with them. Turing the protest movements as anti-state, suppressing voice of dissent, resorting to state violence, etc. are undermining the human rights conditions of citizens in many countries, especially in the developing countries.

Many human right watchers are urging the states to be more sensitive to the human rights of ordinary citizens, instead of business interests. They are petitioning to the states to provide laws that protect the ordinary from the exploitation. States could make far greater use of legal tools to ensure business respects human rights in general and implement due diligence for human rights in particular.

To sum up, the above discussed are some of main political issues surrounding Human Rights in general. This way beginning from the drafting of the Universal Declaration of Human Right the politics around Human Rights kept surfacing both at International and National Levels. These politics are essentially a result of ideological differences between the major powers, disagreements over what constitute Human Rights. The Humanitarian assistance came handy to the political action resulting in new ways of intervention and erosion of national sovereignty. Similarly, many laws to deal with resurgence and counter terrorism have their own negative impact on human rights.

2.3.9 LET US SUM UP

In the present lesson so far we tried to understand the politics surrounding the legislation, protection and promotion of Human Rights. While these politics have their origins in the drafting of the UDHR itself, the way it was drafted, the kind of primacy given to the civil and political rights over the economic and social rights often gave birth to several other politics surrounding the concept of Human Rights.

2.3.10 EXERCISE

1. Discuss how the UDHR has given birth to the International Politics around Human Rights.
2. Write a short note on the main differences emerged at the time of drafting the UDHR and how the way out was found?
3. Throw considerable light on Human Rights Politics at International Level.
4. Deal with the Politics and Ethics of Humanitarian Intervention.
5. Discuss the National Level Politics played by the Humanitarian NGOs.
6. Discuss how the counter terrorism laws grown in number after the September11 incident and how such laws implicate Human Rights.

2.4 HUMANITARIAN LAW: CONVENTIONS AND PROTOCOLS

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STRUCTURE

2.4.0 OBJECTIVES

This lesson will explains you the evolution and growth of Humanitarian Law to strengthen the human rights universally. After going through this lesson, you will be able to:

- understand how the Humanitarian principle operates and the need for protecting the rights of various categories of people under the war or armed conflict;
- trace the growth and development of Humanitarian law protect the people in situations of war and armed conflict;

- comprehend the codification of the range of aspects covered under the law whether it is an armed personnel, a civilian or a prisoner of war.

2.4.1 INTRODUCTION

International humanitarian law is a set of rules which seek, for humanitarian reasons, *to limit the effects of armed conflict*. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict. International humanitarian law is part of international law, which is the body of rules governing relations between States. International law is contained in agreements between States – treaties or conventions – in customary rules, which consist of State practise considered by them as legally binding, and in general principles. International humanitarian law applies to armed conflicts. It does not regulate whether a State may actually use force; this is governed by an important, but distinct, part of international law set out in the United Nations Charter.

International humanitarian law is rooted in the rules of ancient civilization and religions – warfare has always been subject to certain principles and customs. Universal codification of international humanitarian law began in the nineteenth century. Since then, States have agreed to a series of practical rules, based on the bitter experience of modern warfare. These rules strike a careful balance between humanitarian concerns and the military requirements of States. As the international community has grown, an increasing number of States have contributed to the development of those rules. International humanitarian law forms today a universal body of law.

2.4.2 INTERNATIONAL HUMANITARIAN LAW AND ARMED CONFLICTS

International humanitarian law (IHL) is the branch of international law that encompasses both humanitarian principles and international treaties that seek to save lives and alleviate suffering of both combatants and non-combatants during armed conflicts. It is also known as the Law of Armed Conflict or the Law of War (*ius in bello*). It applies only to international and non-international armed conflicts International humanitarian law applies to all types of armed conflicts, whether lawful or not, and must be respected by all parties to the conflict.

Precisely saying, International humanitarian law covers two areas: a) the **protection** of those who are not, or no longer, taking part in fighting; b) r**estrictions** on the means of warfare – in particular weapons – and the methods of warfare, such as military tactics. A further explanation is required on "Protection" and "Restriction".

a) Protection

International humanitarian law protects those who do not take part in the fighting, such as civilians and medical and religious military personnel. It also protects those who have ceased to take part, such as wounded, shipwrecked and sick combatants, and prisoners of war. These categories of person are entitled to respect for their lives and for their physical and mental integrity. They also enjoy legal guarantees. They must be protected and treated humanely in all circumstances, with no adverse distinction. More specifically: it is forbidden to kill or wound an enemy who surrenders or is unable to fight; the sick and wounded must be collected and cared for by the party in whose power they find themselves. Medical personnel, supplies, hospitals and ambulances must all be protected.

There are also detailed rules governing the conditions of detention for prisoners of war and the way in which civilians are to be treated when under the authority of an enemy power. This includes the provision of food, shelter and medical care, and the right to exchange messages with their families. The law sets out a number of clearly recognizable symbols which can be used to identify protected people, places and objects. The main emblems are the Red Cross, the Red Crescent and the symbols identifying cultural property and civil defence facilities.

b) Restrictions on Weapons and Tactics

International humanitarian law prohibits all means and methods of warfare which: a) fail to discriminate between those taking part in the fighting and those, such as civilians, who are not, the purpose being to protect the civilian population, individual civilians and civilian property; b) cause superfluous injury or unnecessary suffering; cause severe or long-term damage to the environment.

Humanitarian law has therefore banned the use of many weapons, including exploding bullets, chemical and biological weapons, blinding laser weapons and anti-personnel mines. With this basic understanding about the meaning and its applicability let us look at its early development and the four Geneva Conventions along with their additional protocols that govern today's Humanitarian law in the subsequent sections.

2.4.3 INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW

International Humanitarian Law (IHL) is a set of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts. It protects persons and property that are, or may be, affected by an armed conflict and limits the

rights of the parties to a conflict to use methods and means of warfare of their choice.

International Human Rights Law (IHRL) is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and/or claim certain behaviour or benefits from governments. Numerous non-treaty based principles and guidelines ("soft law") also belong to the body of international human rights standards.

While IHL and IHRL have historically had a separate development, recent treaties include provisions from both bodies of law. Examples are the Convention on the Rights of the Child, its Optional Protocol on the Participation of Children in Armed Conflict, and the Rome Statute of the International Criminal Court.

2.4.4 DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW

International Humanitarian Law is founded on the principles of humanity, impartiality, and neutrality. Its roots extend to such historic concepts of justice as Babylon's Hammurabic Code, the Code of Justinian from the Byzantine Empire, and the Lieber Code used during the United States Civil War.

The development of modern international humanitarian law can be credited to the efforts of a 19th Century Swiss businessman, Henry Dunant. In 1859, he witnessed the aftermath of a bloody battle among French and Austrian armies in Solferino, Italy. The departing armies left a battlefield littered with wounded and dying men. Despite Dunant's valiant efforts to mobilize aid for the soldiers, thousands died. In *A Memory of Solferino*, his book about the experience, Dunant proposed that volunteer relief groups be granted protection during war in order to care for the wounded. A group known as the Committee of Five (later to become the International Committee of the Red Cross) formed in Geneva in 1863 to act on Dunant's suggestions. Several months later, in 1864, at Geneva diplomats from 16 nations, assisted by the representatives of military medical services and humanitarian societies, negotiated a convention (treaty) containing 10 articles specifying that:

- Ambulances, military hospitals, and the personnel serving with them are to be recognized as neutral and protected during conflict.
- Citizens who assist the wounded are to be protected.
- Wounded or sick combatants are to be collected and cared for by either side in a conflict.
- The symbol of a red cross on a white background (the reverse of the

Swiss flag in honour of the origin of this initiative) will serve as a protective emblem to identify medical personnel, equipment, and facilities.

Known as the Geneva Convention, this agreement became the foundation of modern international humanitarian law.

Further, a substantial part of international humanitarian law, notably concerning conduct of hostilities, was elaborated at the international peace conferences of 1899 and 1907 in The Hague ("Hague Law"). The participants adopted a number of declarations and agreements intended to impose limits on the means and methods of warfare, such as the Hague Conventions of 1899 and 1907 concerning the Laws and Customs of War on Land, various 1907 agreements on the conduct of war at sea and the declarations of 1899 banning use of poison gas and "dumdum" bullets.

In 1906, the First Geneva Convention was revised to give greater protection to victims of war on land, and in the following year all its provisions were formally extended to situations of war at sea.

Respect for the Geneva Convention and operations led by the ICRC played a vital role in saving lives and preventing needless suffering in the First World War (1914-1918). However, the disastrous human toll of the conflict convinced the international community that the Convention must be strengthened. In this spirit, a conference in Geneva in 1929 adopted a Convention with better provisions for the treatment of the sick and wounded, and a second Convention on the treatment of prisoners of war.

Four years earlier, a Protocol had been adopted at a League of Nations conference to prohibit the use of asphyxiating and poisonous gases. The Spanish Civil War (1936-1939) and the Second World War (1939-1945) provided compelling evidence of the need to bring international humanitarian law once again into line with the changing character of warfare.

The decision was taken to make a fresh start and new Geneva Conventions were drawn up covering, respectively, the sick and wounded on land (First Convention), wounded, sick and shipwrecked members of the armed forces at sea (Second Convention), prisoners of war (Third Convention), and civilian victims (Fourth Convention). These Conventions were adopted at an international diplomatic conference held in Geneva from April to August, 1949. An important innovation – common to all the Contentions – is that they establish minimum rules to be observed in internal armed conflicts.

The four Geneva Conventions remain in force today. However, over the past four decades, new forms of armed conflict, often sharp and violent but localized and

involving limited numbers of troops and other combatants, have arisen. The changing nature of armed struggle called for further action. Thus, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law, which met in Geneva from 1974 to 1977, adopted two Additional Protocols to the 1949 Conventions and one more protocol was added to the convention in 2005.

Thus, the four Geneva Conventions with their additional Protocols comprise International Humanitarian Law of the day and it applies only to armed conflicts, whether international or non-international, although far more rules apply to international armed conflicts than to non-international armed conflicts. In addition, most of these rules are today part of customary international law, so they apply not only to international armed conflict, for which it was originally developed, but also to non-international armed conflict.

Parties to a conflict must respect international humanitarian law in all circumstances and regardless of the behaviour by the other side. A state party may not evade its own obligations by arguing that the other party is failing to uphold international humanitarian law. States also remain bound by the conventions even if an enemy has not acceded to them. Although international humanitarian law is intended mainly for states and parties to a conflict (*e.g.,* armed groups), individuals must also respect many of its provisions. In the following section we look at such Conventions and Protocols.

2.4.4.1 Basic Principles of International Humanitarian Law

While the IHL treaty documents contain hundreds of articles, the basic principles of IHL can be expressed in just a few paragraphs.

- The Parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare the civilian population and civilian property. Neither the civilian population as a whole nor individual civilians may be the object of an attack. Attacks may be made solely against military objectives, subject to military necessity.

- Neither the parties to the conflict nor members of their armed forces have an unlimited right to choose the means and methods of warfare. It is prohibited to cause unnecessary suffering to combatants; accordingly it is prohibited to use weapons causing them such harm or uselessly aggravating their suffering.

- People who do not or who no longer take part in the hostilities are entitled to respect for their lives and for their physical and mental integrity. Such people must in all circumstances be protected and treated with humanity, without any unfavourable distinction whatever. It is forbidden to kill or wound an

adversary who surrenders or who can no longer take part in the fighting.

- Captured combatants and civilians who find themselves under the authority of the adverse Party are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions. They must be protected against all acts of violence or reprisal. They are entitled to exchange news with their families and to receive aid. They must enjoy basic judicial guarantees.

- The wounded and sick must be collected and cared for by the Party to the conflict that has them in its power. Medical personnel and medical establishments, transports and equipment must be spared. The red cross, crescent or crystal on a white background is the distinctive sign indicating that such persons and objects must be respected.

2.4.5 INTERNATIONAL CONVENTIONS

As it has been discussed, the International Humanitarian Law's principal legal documents are the Geneva Conventions of 1949 – four international treaties signed by almost every nation in the world. These Conventions provide specific rules to safeguard combatants (members of the armed forces) who are wounded, sick, or shipwrecked; prisoners of war; and civilians; as well as medical personnel, military chaplains, and civilian support workers of the military. The two 1977 Additional Protocols, and the third protocol adopted in 2005 supplement the Geneva Conventions, further expand these humanitarian rules.

2.4.5.1 The First Geneva Convention

(The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949)

The First Geneva Convention protects soldiers who are *hors de combat* (out of the battle). The 10 articles of the original 1864 version of the Convention have been expanded in the First Geneva Convention of 1949 to 64 articles that protect—

- Wounded and sick soldiers.

- Medical personnel, facilities, and equipment.

- Wounded and sick civilian support personnel accompanying the armed forces.

- Military chaplains.

- Civilians who spontaneously take up arms to repel an invasion.

Specific Provisions

a) Persons belonging to the aforementioned categories shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria.

b) Attempts upon their lives or any violence to their persons are strictly prohibited, particularly, they shall not be murdered or exterminated, or subjected to any sort of torture or to any biological experiments.

c) They shall not left without medical assistance and medical care wilfully nor does any condition causing or exposing them to contagious diseases or any infection.

d) Women shall be treated with all considerations to their sex.

e) The party to the conflict which is compelled to abandon the wounded and the sick persons to the enemy shall so far as the military considerations permit, leave with them a part of the medical personnel and materials to assist in their care.

f) This Convention, like the others, recognizes the right of the ICRC to assist the wounded and sick. Red Cross and Red Crescent national societies, other authorized impartial relief organizations, and neutral governments may also provide humanitarian service. Local civilians may be asked to care for the wounded and sick.

Obligations of the Parties involved in Conflict

Under Article 15 of the First Convention of 1949 certain obligations are imposed upon the parties involved in the conflict to take certain measures for ensuring protection and care to the wounded and sick, with delay. These measures are:—

(i) to search for and collect the wounded and the sick;

(ii) to protect them against pillage and ill-treatment;

(iii) to ensure their adequate care; and

(iv) to search for the dead and prevent them from being despoiled.

In order to permit removal excl and transport of the wounded left on the battlefield, an armistice or suspension of fire may be arranged if circumstances so permit. Similarly, local arrangements may be made between the parties to the conflict for removal or exchange of the wounded.

Article 17 of the first Convention mandates that bodies of the dead persons shall not be cremated except for imperative reasons of hygiene or for motive based on the religion of the deceased. Circumstances and reasons for their cremation shall be stated in the death certificate or on the authenticated list of the dead. The burial or

cremation should be preceded by a careful examination so far as possible by a medical examination of the bodies with a view to confirm death, identity of the deceased, and to enable to make a report.

So far as circumstances allow, at the end of the hostilities at least, the official Graves Registration Services shall exchange through the Prisoners of War Information Bureau the lists showing the exact location -and markings of the graves together with particulars of the dead entered in them.

2.4.5.2 The Second Geneva Convention:

(The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949)

The Second Geneva Convention is also called as the Maritime Convention. It is an extension of the First Geneva Convention of 1949. It makes the terms of the First Convention to maritime warfare. The same category of persons are protected under this Convention while on board ship or at sea.

Its 63 articles apply to:

- Armed forces members who are wounded, sick, or shipwrecked.
- Hospital ships and medical personnel.
- Civilians who accompany the armed forces.

We can find the explanation for the applicability in Art 12&13 of the Convention. Under Article 12 of the Second Convention, the shipwrecked are protected in addition to the wounded and sick. The members of the Armed Forces and the persons put on the same footing as members of Armed Forces are to be respected and protected in all circumstances where,

(i) they are at sea;

(ii) they are wounded, sick or shipwrecked. The term 'shipwreck' means shipwreck from any cause and includes forced landings at sea by or from aircraft.

Under Article 13, the following persons are on the same footing as the members of Armed Forces

(i) Members of militia or volunteer corps forming part of Armed Forces.

(ii) Members of other militias and volunteer corps, including those of organized

resistance movements, belonging to a Party to the conflict and operating in or

outside their own territory with the applicable clauses..

(iii) Members of regular Armed Forces who profess allegiance to a Government or an Authority which is not recognized by the detaining power.

(iv) Persons accompanying the Armed Forces without actually being members thereof, for instance, civil members, military aircraft crews, war correspondents, supply contractors, members of labour units, or of services responsible for the welfare of the Armed Forces, if they have received authorization from the Armed Forces which they accompany.

(v) Members of crews, including members, pilots, and apprentices of the merchant marine and the crew of civil aircraft of the Parties to the conflict, who did not benefit by more favourable treatment, under any other provisions of the International Law, and

(vi) Inhabitants of a non-captured territory who on the approach of the enemy, spontaneously took up arms to resist the invading Forces without having had time to form themselves into regular Armed Units if they carry arms openly and respect the laws and customs of war.

Special Provisions

The wounded, sick and ship-wrecked persons are to be treated humanely and cared for by the parties to the conflict under whose power they are without any distinction of sex, nationality, religion political opinions or any other similar distinction. They must be protected against any attempt upon their lives, or violence to their persons. .They shall not be murdered, exterminated or subjected to torture or to biological experiments. Besides they must be given adequate medical assistance and care. They should not be left in conditions causing contagious diseases and infection. Women must be given all considerations due to their sex. The wounded, sick and ship-wrecked persons of a belligerent State falling into the enemy hands are entitled to be treated as prisoners of war.

The Parties to the conflict are obliged, and even the neutral powers are so obliged for safeguarding the respect and dignity of such persons.

2.4.5.3 The Third Geneva Convention

(The Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949)

The Third Geneva Convention sets out specific rules for the treatment of prisoners of war (POWs). The Convention's 143 articles require that POWs be treated humanely, adequately housed, and receive sufficient food, clothing, and medical care. Its

provisions also establish guidelines on labour, discipline, recreation, and criminal trial. It has now become the juristic principle of international law of warfare that the prisoners of war are not criminals. They are entitled to be respected and treated humanely while in captivity or control of enemy power.

Prisoners of War

Article 4 of the Third Convention declares that prisoners of war of Armed Forces of a Party to the conflict are the members of the militias or volunteer corps which form part of such Armed Forces. Members of other militias and other volunteer corps including those of organized resistance movements of party to the conflict and operating in or outside their own territory, even if such territory is occupied by adverse militia and operating in or outside their territory, if that is commanded by a person responsible for his subordinates, they have a fixed distinctive sign which can be recognized at a distance, they may carry arms openly, and they conduct their operations in accordance with the laws and customs of war; members of regular Armed Forces who profess allegiance to a government or an authority not recognised by the detaining power. Persons who accompany Armed Forces without actually being members thereof, such as civilian members of military aircraft; members of crews which include masters, pilots and apprentices of the merchant marine and crews of the civil aircraft of the parties to the conflict who are not benefited by more favourable treatment under any other provisions of international law; and the inhabitants of a non-occupied territory who on approach of the enemy voluntarily take up arms for restraining the invading forces, if they carry arms openly and respect the laws if international warfare. Thus, the Prisoners of war include: a) Members of the armed forces, b) Volunteer militia, including resistance movements, c) Civilians accompanying the armed forces.

According to Article 5, the Third Convention is applicable to the above mentioned persons from the time of their falling in the enemy's power until their final release and repatriation.

Special Provisions

Treatment: Part II of the Third Convention containing Articles 12 to 16 deals with the main principles governing the treatment of prisoners of war, that: firstly, the prisoners of war be humanely treated and not to be subjected to physical mutilation or to medical or scientific experiments. Measures of reprisals are strictly prohibited against them; secondly, the prisoners of war are entitled to respect of their person and honour and women are to be treated with full regard to their sex. The prisoners shall have their full status which they enjoyed in civil life; thirdly, the power which detains prisoners of war, shall be obliged to provide free of charge for their maintenance and medical attention and care. And lastly, they shall be treated alike by the detaining

power without any distinction based on caste, nationality, religion, etc.

Part III containing provisions for protections of prisoners of war under captivity of the enemy power as to interrogation of prisoners, their property and their evacuations, their living conditions, in camp or during transfer, the places and methods of internment, in camp or during transfer, food and clothing, hygiene and medical care are dealt with in this Convention. Religious needs of religious personnel retained for the care of prisoners, their intellectual and physical activities, discipline, their tanks, and transfers after arrival in the camp, their labour, their final resources, correspondence and relief shipments and penal and disciplinary procedures also are provided in this Convention.

Transfer of prisoners of war after their arrival in a camp: The Detaining Power when decides to transfer the prisoners of war to some other camp, shall take into account the interest of prisoners such as climatic conditions, to which they are accustomed, and the conditions shall in no case be prejudicial to their health. They shall be supplied with sufficient food and drinking water, necessary clothing, and medical attention during such transfer. However the sick and wounded prisoners shall not be so transferred unless demands imperative to their safety are satisfied. When the prisoners of war are transferred from one camp to another, they shall be informed of their departure and of their new postal address, in order that may pack their luggage and inform their next of kins.

Utilisation of the labour of prisoners of war: Detaining power may utilise the labour of the prisoners of war who are physically fit for the purpose. But their age, sex, rank, and physical aptitude shall be taken into account for the purpose. Non-commissioned officers who are prisoners of war shall be required to do only supervisory work. It may be noted that working conditions must be suitable; they should not be of unhealthy or of dangerous nature and the duration of the daily labour should not be excessive. Their working pay shall be fixed, and their physical and mental fitness for work should be periodically examined, or verified, by medical examination at least once a month.

Correspondence of prisoners of war to be protected: A prisoner of war shall be entitled after capture but not more than a week after arrival at a camp, to write direct to his family and to the Central Prisoners of War Agency card informing his capture, his address and state of health. They shall be allowed to send and receive letters, cards and in certain circumstances telegrams. But the Detaining Power may limit the numbers of letters and cards if it deems it necessary to do so and such limited number shall not be less than two letters and four cards monthly. They shall be allowed to receive by post or any other means individual parcels or collective shipments containing in particular foodstuffs, clothing, medical supplies, etc.

Complaints as to prisons of war and their captivity: Prisoners of war are entitled

to draw attention of the military authorities in whose powers they are captives, or of the Protecting power to make complaints regarding their conditions of captivity and such complaints must be immediately transmitted and no punishment shall be imposed for making such complaints or even if the complaints are established unfounded.

Right to select their representatives: The prisoners of war are entitled to elect by secret ballot every six months, their representatives entrusted with representing them before the military authorities, the protecting powers, the International Committee of Red-Cross and any other organisation which may assist them. In camps for officers, the senior officer among the prisoners Of war shall be recognised as the camp prisoners' representatives.

Penal and disciplinary actions against prisoners of war: The prisoners of war are subject to laws, regulations and orders in force in the Armed Forces of the Detaining Power. However, the following protections should be accorded to them:

(i) No prisoner of war should be punished more than once for the same act or on the same charge.

(ii) They may not be sentenced by the Military Authorities and Courts of the Detaining Power to any penalties except which are provided for relating to members of the Armed Forces of the said Powers, who committed the same acts.

(iii) Prisoners of war who have made good their escape but are recaptured shall not be liable to any punishment relating to their previous escape.

(iv) Prisoners of war attempting to escape, and being recaptured before having made good their escape, shall be liable only to a disciplinary punishment.

(v) Before pronouncing a disciplinary award, the prisoner shall be given precise information relating to offence of which he is accused and given an opportunity of explaining his conduct and if defending himself. He shall be particularly permitted to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter.

(vi) In case of a judicial proceedings also the same protection shall be afforded to a prisoner.

Repatriation of prisoners of war: Repatriation is of two kinds, first, in Neutral countries during hostilities and second, at the close of hostilities. In the first case, the parties to the conflict shall, throughout the duration of hostilities, make arrangements with cooperation of the Neutral powers for the accommodation of such sick and wounded prisoners, in the Neutral countries.

Right of burial or cremation: Where a prisoner of war dies in captivity, his dead body shall be buried or cremated honourably according to his faith, rites. The graves of such persons shall be respected, suitably maintained and marked, in order to be found or located at any time. They shall be buried in individual graves unless circumstances require the use of collective graves. The bodies of the prisoners of war shall be cremated only for imperative reasons of hygiene or on account of the religion of the deceased, or in accordance with the express wish of the deceased to this effect. However the burial or cremation shall be preceded by a medical examination of the body in order to confirm death and where necessary to establish identity.

2.4.5.4 The Fourth Geneva Convention

(The Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949)

The Fourth Geneva Convention containing 159 articles aimed to ensure that even in the midst of hostilities between the powers in conflict, the dignity of the human person, which has been acknowledged universally as a principle must be protected.

Under Article 4 of this Convention the persons who find themselves in case of conflict or occupation, in the hands of a party to the conflict or occupying power of which such person or persons are not nationals of a State are protected But nationals of a State which is not bound by the Convention are not protected under this Convention The following persons fall under the category of the protected persons:-

(i) Nationals of a neutral State who find themselves in the territory of a belligerent State and nationals of a co-belligerent State;

(ii) Persons protected by the First Geneva Convention of 1949;

(iii) Persons protected by the Second Geneva Convention of 1949; and

(iv) Persons protected by the Third Geneva Convention of 1949.

Specific Provisions of Protection

Part II of the Fourth Convention concerns general protection of populations against certain consequences of war. Populations in this concern include even those persons who are nationals of a party to conflict or of the occupying power by whom they are held. Article 13 of this Convention mandates that the provisions of Part II cover the whole of the populations of the conflicting nations without any distinction as to race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

As to general protection of populations against certain consequences of war, the following rules may be noted:

1. The high contracting parties may establish in their own territory and even in occupied areas, if need so arises, hospitals and safety zones and localities for the protection of the wounded sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven from the effect of war.

2. The parties to the conflict shall establish by agreement in writing, in the region, where fighting is taking place, neutralized zone intended to shelter the following persons:—

(a) wounded and sick combatants and non-combatants;

(b) civilian persons who take no part in hostilities and who, while they reside in zones, perform no work of a military character.

3. The wounded and sick including the infirm and expectant mothers, shall be subject of particular protection and respect

4. The parties to conflict shall endeavour to conclude local agreements for removal from besieged or encircled areas of wounded, sick, infirm and aged persons, children and maternity cases and for the passage of ministers' of all religions, medical personnel and medical equipments on their way to such area.

5. Civilian Hospitals which are organized to give care to the wounded and sick, infirm and maternity cases shall not be attacked in any circumstance. They shall be respected and protected by the parties to the conflict.

6. The hospital vehicles, trains, and vessels on sea conveying the wounded and sick civilians, the infirm and maternity cases shall be respected and protected and they should be marked by emblem of red-cross on a white ground.

7. The aircraft employed exclusively for the removal of the wounded and sick civilians, the infirm and maternity cases, or for transport of medical personnel and equipments, shall not be attacked. They shall be respected while flying at heights, at the time and routes specifically agreed upon between all the parties to the conflict. They should be marked with distinctive emblem of red-cross on white ground.

8. High contracting party shall allow free passage of all consignments of medical, hospital stores and objects essential for religious worship intended only for civilians of other High Contracting party, even when the latter is its adversary. Similarly, it shall permit free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

9. Parties to conflict shall take necessary measures for ensuring that children under fifteen, who are orphaned or separated from their families as a consequence of war, are not left to their own resources, and their maintenance, exercise or practice of their religion and their education are facilitated in all circumstances. They shall facilitate the reception of such children in a neutral country for the duration of conflict with consent of protecting power if any.

10. All persons in territory of a party to conflict, or in a territory occupied by it, shall be enabled, to give news of a strictly personal nature, to members of their families, whenever, they may be and to receive such news from them. Such correspondence shall be forwarded speedily and without undue delay.

11. Each party to conflict shall facilitate inquiries made by members of families dispersed owing to war, with the object of renewing contact with one another and of meeting if possible. It shall encourage in particular the work of organizations engaged on this task provided they are acceptable to them and conform to its security measures.

Status and Treatment of Protected People

PART III of the Fourth Geneva Convention of 1949 deals with status and treatment of protected persons in four fold ways:-

1. Protection Generally: General protection to persons is similar or common in the territories of parties to conflict and to occupied territories. They are entitled in all circumstances to respect of their persons, their honour, their family right, their religious convictions and practices, and their manners and customs. They shall at all times be treated humanely and shall be protected specially against all acts of violence, or threats, insults and public curiosity Women shall be especially protected against any attack on their honour, particularly, against rape, enforced prostitution or any form of indecent insult. All protected persons shall be treated with the same consideration by a party to conflict in whose powers they are without any adverse discrimination based particularly on race, religion or political opinion.

The parties to conflict are prohibited—

(a) to exercise against protected persons physical or moral coercion and particularly from obtaining information from their or from third parties;

(b) from physical suffering or extermination of protected person at the hand of High Contracting Parties; this prohibition is applicable to all measures of brutality by civilian or military agents, besides murder, torture, corporeal punishments, mutilation and medical or scientific experiments not required for medical treatment of a protected person.

(c) from punishment for an offence which a protected person male or female has not personally committed, and from collective penalties and all measures of intimidation of terrorism;

(d) from pillage;

(e) from reprisals, against protected persons and their property; and

(f) from taking of hostages.

As to Aliens:

All aliens protected persons who desire to leave the territory at the outset of or during a conflict, shall be entitled for the same unless their departure is contrary to national interests of the State. Such persons permitted to leave may provide themselves with necessary funds for their journey and take with them a reasonable amount of their effects and articles of personal use.

As to occupied territories:

Occupying Powers are obliged for the welfare of the protected persons living in such territories not to be deprived of the benefits of the Fourth Convention in the following cases:—

(i) when due to occupation of a territory a change takes place in the institutions or government of the occupied territory;

(ii) when a change takes place due to an agreement concluded between the authorities of t he occupied territories and the occupying powers; and

(iii) when a change takes place due to annexation of the whole or part of the occupied territory by the occupying Power.

2.4.5.5 The Additional Protocols to the Geneva Conventions of 1949

In 1977, two Protocols supplementary to the Geneva Conventions were adopted by an international diplomatic conference to give greater protection to victims of both international and internal armed conflicts. Over 100 nations have ratified one or both Protocols, and they are under consideration by many others. Any nation that has ratified the Geneva Conventions but not the Protocols is still bound by all provisions of the Conventions.

Protocol- I: Protocol I applies to international armed conflicts, imposing constraints on the way in which military operations may be conducted. The obligations laid down in this instrument do not impose an intolerable burden on those in charge of military operations since they do not affect the right of each State to defend itself by any legitimate means. This treaty came into being because new methods of combat

had been developed and the rules applicable to the conduct of hostilities had become outdated. Civilians are now entitled to protection from the effects of war.

Protocol I provides a reminder that the right of the parties to conflict to choose **methods and means of warfare** is not unlimited and that it is prohibited to employ weapons, projectiles, material or tactics of a nature to cause superfluous injury or unnecessary suffering. It prohibits indiscriminate attacks and attacks or reprisals directed against: a) the civilian population and individual civilians; civilian objects; objects indispensable to the survival of the civilian population; cultural objects and places of worship; works and installations containing dangerous forces ; the natural environment; b) **extends** the protection accorded under the Geneva Conventions to all medical personnel, units and means of transport, both civilian and military; c) **lays down** an obligation to search for missing persons; d) **strengthens** the provisions concerning relief for the civilian population; e) **protects** the activities of civil defence organizations; f) **specifies** measures that must be taken by the States to facilitate the implementation of humanitarian law.

Protocol II: Protocol II elaborates on protections for victims caught up in high-intensity internal conflicts such as civil wars. It does not apply to such internal disturbances as riots, demonstrations, and isolated acts of violence. Protocol II expands and complements the non-international protections contained in Article 3 common to all four Geneva Conventions of 1949. Although it sets out basic principles for protecting people in wartime, Article 3 is not enough to solve the serious problems of humanitarian concern that arise in internal conflicts.

The purpose of Protocol II was hence adopted to ensure the application to internal conflicts of the main rules of the law of war. It nevertheless in no way restricts the rights of the States or the means available to them to maintain or restore law and order; nor can it be used to justify foreign intervention. Compliance with the provisions of Protocol II does not, therefore, imply recognition of any particular status for armed rebels. Specifically, Protocol II: a) **strengthens** the fundamental guarantees enjoyed by all persons not, or no longer, taking part in the hostilities; b) **lays down** rights for persons deprived of their freedom and provides judicial guarantees for those prosecuted in connection with an armed conflict; c) **prohibits** attacks on the civilian population and individual civilians, objects indispensable to the survival of the civilian population, works and installations containing dangerous forces, cultural objects and places of worship; d) **regulates** the forced movement of civilians; e) **protects** the wounded, sick and shipwrecked; f) **protects** religious personnel and all medical personnel, units and means of transport; g) **limits** the use of the red cross and red crescent emblems to those persons and objects duly authorized to display it.

Additional Protocol III relating to the adoption of the Red Crystal:

Protocol III, adopted in 2005, enshrines an additional emblem – composed of a red frame in the form of a square standing on the peak – commonly known as the red crystal creating an additional emblem alongside the red cross and red crescent. Since the red cross and the red crescent are sometimes perceived in or political connotation, this new emblem responds to the need for an additional option deprived of any type of connotation and usable everywhere in the world. It will appear as a red frame in the shape of a square on a diagonal on a white background, and is free from any religious, political, or other connotation. The authorized users of the red crystal are the same persons and entities allowed to use the emblems of the Geneva Conventions of 1949. These are the medical services of State armed forces, authorized civil hospitals as well as the different components of the International Red Cross and Red Crescent movement – namely, the International Committee of the Red Cross (ICRC), the national societies and their International Federation.

To conclude, the above discussed Conventions inheriting by far existing Humanitarian principles, together with their subsequent improvisations in the form of protocols constitute the present day International law. The general of IHL are actually legal rules, not just moral or philosophical precepts or social custom. The corollary of the legal/normative nature of these rules is, of course, the existence of a detailed regime of rights and obligations imposed upon the different parties to an armed conflict. For those states that have accepted them, the treaties of IHL are of a binding character.

2.4.6 LET US SUM UP

In the present lesson so far we have discussed what humanitarian law is, how it is different from human rights law, its historical development, and the four Geneva conventions and the protocols that constitute today's international law. As a part, we have tried to look at the special provisions and significance of each convention and protocol and how they are binding on the accepting members.

2.4.7 EXERCISE

1. Define International Humanitarian law.
2. Discuss the two areas covered by Humanitarian law.
3. Trace the development of Humanitarian law.
4. Discuss the basic principles of Humanitarian Law.
5. Define International law and deal with the special provisions of the first two conventions.

6. Who are prisoners of War? Discuss various provisions that deal with the treatment of prisoners of War under the Third Convention.
7. Write a brief note on Fourth Convention of Geneva.
8. What was the purpose of the additional protocols? Discuss the significance of the three additional protocols to the Geneva Conventions.

3.1 ROLE OF CIVIL SOCIETY: NATIONAL AND INTERNATIONAL LEVEL

- V. Nagendra Rao

STRUCTURE

3.1.0 OBJECTIVES

Civil Society is a major contributor to the evolution of International Human Rights Law. It creates awareness about Human Rights; it lobbies for new legislations and compliance; it monitors the compliance. This lesson is aimed at providing an insight into the role of Civil Society in furthering human rights both globally in inside each country. After going through the lesson you will be able to:

- understand how the role of Civil Society is increasing in the arena of Human Rights;
- know how Civil Society operates and contributes to the promotion and protection of Human Rights; and
- acknowledge the role of Human Rights NGOs vibrant at both National and International Levels.

3.1.1 INTRODUCTION

Historically, the State has been seen as the main actor dealing with market failures and negative externalities. However, because of the increasing political and administrative constraints, States are often not able to cover the full range of needs of the citizens resulting from these market failures. Civil society is thus been created by its citizens "as a public space between the state, the market and the ordinary household, in which people can debate and take actions that try to do right and struggle to right wrongs non-violently". In this definition, civil society includes charities; neighbourhood self-help schemes; international bodies like the Red Cross; religious-based pressure-groups; human rights and non-governmental organizations that try to improve peoples' welfare, their health, their education and their living-standards. The significant economic and political developments that took place in the last two three decades as a result of the end of Cold War and the onset of Globalization laying their emphasis on democratic governance and economic development, across the countries, especially in the civic and human rights fields. Civil Society Organizations are seen as a natural contributor to democratization and the defence of vulnerable populations. CSOs have thus acquired a major role in the democratization of national societies, in the spread of basic human rights and in the setting of basic labour rights through law or norms. The proliferation of democratic regimes has thus gone hand in hand with the emergence of vibrant civil society movements. Thus the above mentioned developments together with new communication technologies, especially the internet, significantly influenced the Civil Society in becoming more international and Global and to become a new regulating agent both at National (or regional) and International Levels.

3.1.2 CIVIL SOCIETY INITIATIVES AND CHANGE IN THE WORLD

There are at least five specific areas where civil society initiatives have made very important political and social contributions. These are: a) women's rights; b) ecological justice and environment protection; c) human rights of ethnic, religious, race, and sexual minorities; d) movements for citizens' participation and accountable

governance; and e) resistance and protest against unjust economic globalisation and unilateral militarisation

However, over the last 30 years, if women's rights and green politics are at the centre of all political and policy discourse, it is indeed due to the consistent mobilisation and advocacy by thousands of organisations and millions of people across the world. On February 15, 2003, more than 11 million people across the world marched against the war in Iraq and unilateral militarisation. In fact, the unprecedented, coordinated global mobilisation happened on the same day largely due to digital mobilisation and partly due to the rather spontaneous coordination among social movements and civil society actors who met during the World Social Forum in Porto Alegre in January 2003.

In India too, in the last 25 years, most of the innovative policy framework and legislation happened due to consistent campaigning and advocacy by civil society organisations. It is the people-centred advocacy, campaigning and mobilisation by hundreds of civil society organisations in India that prompted the Indian government to enact the Right to Information (RTI) Act, the National Rural Employment Guarantee Act, Right to Education, the new Act to stop domestic violence, and the one aimed at protecting the land rights of tribal communities. It is due to the efforts of women's rights organisations and civil society initiatives that women's political participation and 33% reservation for women in Parliament are at the centre of political discourse in India.

In many countries of Asia and Africa, civil society activism has become a countervailing political force against authoritarian governments. It has also sought to challenge unjust economic globalisation. This was evident in the citizens' and civil society struggle against monarchy in Nepal and authoritarian regimes in many parts of the world. In many countries of Latin America, civil society became the common ground for diverse interest groups and political formations to act together to challenge authoritarian regimes. In fact, civil society played a key role in shaping the political process in Brazil, where social movements, progressive NGOs, progressive factions of the church, trade unions and public intellectuals came together for political and policy transformation. The World Social Forum process originated in Brazil partly due to these historical and political conditions, and it helped the transformation of state power in Brazil.

With the advent of the Internet, digital mobilisation and relatively cheap air travel, there is an increasing interconnectedness between civil society initiatives and movements across the world. The unprecedented mobilisation and campaigns against the unjust WTO regime and for trade justice and fair trade demonstrated the power of citizens' action and mobilisation beyond the state and market. The diverse range of mobilisation against the World Trade Organisation in Seattle, Cancun, and

Hong Kong influenced the political and policy choices of many countries and the G20 process. The Jubilee campaign for cancelling the unjust debt of poor countries attracted the support of millions of people both in rich and poor countries and in remote villages and megacities. The successful campaign against landmines proved to be another example of civil society mobilisation and action across the world. The World Social Forum emerged as an open space and platform for the exchange of ideas, coordination of action, and collective envisioning beyond narrow ideological and political divides. The emergence of a global justice solidarity movement influenced the political process in many countries in many ways.

3.1.3 CIVIL SOCIETY IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

The second half of the twentieth century was the first time in history that human rights were addressed in a systematic manner by the international community. Following the Second World War, official as well as non-state actors worked together to address a broad range of rights – civil and political, economic and social, rights of non-discrimination – and to finalize many of these in the form of legally binding covenants. This legal binding otherwise means the willingness on the part of the states to impose limitations on their sovereignty. Three historical trends of reasonably long duration have been identified by the scholars, to support the legalization of international human rights: a) the trend toward democratization, b) the elaboration of accountability in international law, and c) the growth in transnational civil society especially the Non Governmental Organizations (NGOs). The United Nations Organization has played a catalyst role for the development of these trends and it is appropriate to begin the role of Civil Society in Human Rights with the United Nation's recognition of Civil Society Organizations.

3.1.3.1 Civil society and United Nations

In the last couple of decades, there has been a resurgence of political consciousness in civil society. A whole range of new associations, citizens' formations, new social movements, knowledge-action networks and policy advocacy groups have emerged at the national and international level.

This was partly due to the shift in international politics in the aftermath of the Cold War and a consequent shift in the aid-architecture, with a stress on local ownership in the development process. The new stress on human rights in the aftermath of the Vienna Human Rights Summit, in 1993, gave new spaces and international legitimacy to new human rights movements, integrating civil, political, economic, social and cultural rights. A series of United Nations conferences, starting with the Rio Summit in 1992, created an enabling global space for civil society

processes and organisations. The Beijing Summit in 1995 on women's rights, the Copenhagen Summit on social development in 1996, and the Durban Summit on racism provided a global platform for civil society movements to advance a new discourse on politics and public policy. The exchange of knowledge, linkages and resources began to create a new synergy between countries and communities in the South as well as in the North. In fact, the United Nations became a key mediating ground between civil society and various governments.

Such a mediating role between civil society and state provided a new legitimacy and role for the United Nations. The new stress on human development, human rights and global poverty created a legitimate space for global action and campaigns for civil society. New technological and financial resources helped international networking and a new trend of globalisation from below. As the new hegemony of power politics driven by unilateral militarism, conservative politics and a neoliberal policy paradigm began to dominate the world, the new social movements and consequent civil society process became the arena for a new politics of protest and resistance against unjust globalisation. Such a new civil society process was driven by communities.

Further, no discussion of the evolving context for international human rights law would be complete without mention of the growing role of international civil society. The role of Civil Society Organizations has developed along with that of the UN. Today there are more than 2 million NGOs worldwide and 1 million in India alone.

In 1948, some Non Governmental Organizations were even recognized by UN and they were being given “consultative status” with the UN Economic and Social Council. In the late 1980s and especially the 1990s, the civil society and in particular the NGOs became important in monitoring human rights and attended UN conferences and commissions dealing with human rights and economic development as non-voting participants.

3.1.3.2 NGOs Role in the U.N. Human Rights Bodies and Legislation

Over the last 60 years an almost explosive growth of NGOs for the promotion and the defence of human rights have taken place. At the time of the drafting of the Universal Declaration of Human Rights, some 15 NGOs with consultative status were involved in this process. In 1993, some 1,500 NGOs participated at the World Conference on Human Rights in Vienna. After the end of the East-West confrontation, the 1990s became the decade of the NGOs; they moved out of the shadows of the Cold War, entered the mainstream of engagement of civil society and have been gained in influence and power. In 1998, Theo van Boven, former Director of the UN Centre for

Human Rights, valued this broad human rights movement as one of the most important and hopeful developments after World War II. The emergence of all these organizations at the international scene and their activities within many nations of all five continents, Africa, Asia, the Americas from North to South, Australia and Europe, is more than symbolic evidence of the universality of the human rights constituency. This development constitutes the backbone of the human rights movement. Without the efforts and the input of this movement the global human rights situation would be bleaker.

These NGOs play an important role in the promotion of international Human Rights in the following ways.

NGO Involvement in States Reports

NGOs play an important role by getting involved in the preparation of a periodic report of a State party. They can

- urge the responsible ministry to submit the report on time;
- ensure that the report is disseminated in the country concerned as well as the minutes of the Committee's debates on the report and the concluding observations;
- submit a parallel ("shadow") report to the report of a State party;
- submit information to the pre-sessional working groups which meet at the end of each session to prepare the following session;
- attend the meetings where the reports of States parties are examined (although no statements can be made, it is possible to consult committee members outside the meeting and to propose questions for them to pursue with the reporting State party).

NGOs Role in Various Human Rights Committees

Today, there are five UN treaty bodies, namely:

- the Human Rights Committee
- the Committee on the Elimination of Racial Discrimination
- the Committee on the Elimination of Discrimination against Women
- the Committee Against Torture
- the Committee on the Rights of Persons with Disabilities

NGOs with consultative status may attend all public meetings of the human rights

committees of the treaty bodies, and working groups. Their main activities include

- lobbying on resolutions including suggested wording to be used;
- convening parallel informal meetings with experts, NGO and government representatives to consider action on specific countries or themes;
- submitting reports to special procedures;
- meeting with Special Rapporteurs on themes and countries.

Further, the NGOs play a key role in the individual complaints. Besides, local and/or international NGOs fulfil an important role in providing the necessary facts to the victims or their relatives and thereby helping with the committees in addressing such issues.

3.1.3.3 NGOs and the Human Rights Council

It is widely recognized that the active participation of NGOs in the former Commission on Human Rights was instrumental in the creation of international instruments, the approval of resolutions, the realization of studies and the creation of special procedures, among other things. Article 71 of the UN Charter authorizes the action of NGOs and makes the Economic and Social Council (ECOSOC) responsible for regulating this participation. In this context, ECOSOC Resolution 1996/31 defines the principles and rights concerning formal participation by NGOs, its principal regulatory instrument being the concession of consultative status for civil society organizations.

In the year 2006, The Human Rights Council replaced the sexagenarian Commission on Human Rights that was grappling at the time with a serious credibility crisis, accused by Non-Governmental Organizations and States of selectivity and excessive politicization in dealing with human rights violations around the world. The HRC is today the principal international body for the promotion and protection of human rights; it is responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in fair and equal manner. In the new Human Rights Council, the participation of NGOs is expressly guaranteed through the Res. 60/251. The NGOs have played an important role in the institution-building process of the HRC. In its first year, 284 NGOs participated in Council sessions, slightly less than in the former Commission.

The role of NGOs in the Council is considered important to bring to its attention the reality in places where human rights violations are occurring and to contribute their own particular expertise. Furthermore, it is vitally important for NGOs to keep track on the positions taken by HRC Member States and observers,

with a view to influencing them whenever necessary.

More participation by NGOs from the Global South is vital not only because most of the major fundamental rights violations occur in these countries, but also because the geographic composition of the HRC gives them numerical superiority. Together, African and Asian nations hold 26 seats on the Council, that is, more than 55% of the total. Adding the 8 countries from Latin America and the Caribbean, this figure rises to 72%. Many of these countries question the legitimacy of the action and the credibility of the information issued by NGOs that are not from their respective countries or regions. However, NGOs from the Global South represent today just 33% of the 3050 NGOs that enjoy consultative status with ECOSOC and can, therefore, participate fully in the Council sessions.

There are countless challenges facing NGOs´ participation, foremost among them: (1) the difficult process of obtaining consultative status for those that do not already have it; (2) the high financial costs and the unavailability of staff to participate in the sessions in Geneva; (3) the lack of familiarity with the workings and procedure in the HRC; (4) the lack of access to information, including language barriers; and (5) the difficulty deriving any tangible benefits from this participation in the day-to-day work in their countries of origin.

Given these challenges, it is important to develop innovative forms of action. For example, the permanent engagement of NGOs from the poor and developing countries with their own governments at home is essential. All major foreign policy issues are decided on a national level, primarily in the Foreign Relations Ministries, including the positions to be taken by each country's diplomatic missions and delegations in the Human Rights Council. It is imperative, then, for NGOs to call on their respective governments for more transparency and formal mechanisms to participate in the preparation and implementation of the guidelines that will govern their actions in the HRC.

It is also crucial for NGOs to coordinate strategies and develop joint initiatives for combined action within the HRC, both in Geneva and at home, to strengthen individual actions, maximize resources and share experiences.

There is no doubt that responsibility for the success of the HRC lies squarely with the countries that comprise the new body. Resolution 60/251 determines that the status of the Council within the hierarchy of the UN will be reviewed from time to time and that it may become one of its principal bodies, on a par with the Security Council and the Economic and Social Council. Such a change in structure would, more than just being symbolic, demonstrate the interdependence between human rights, development and peace. This kind of review will doubtless be a good indicator for evaluating the first five years' work of the Council, which by then must prove itself effective in combating human rights violations, wherever they may occur.

Non-Governmental Organizations will be responsible for monitoring and pressuring States to place the protection of human rights and human dignity above any other interests. It is not too early to assert that NGOs have a lot of work ahead of them and that their engagement with the HRC is now more necessary than ever.

3.1.4 HUMAN RIGHTS NGOs: TYPOLOGY AND FUNCTIONING

Human Rights NGOs range from small pressure groups to the huge international organizations with hundreds or even thousands of branches or members in different parts of the world.

In this section, we look briefly at how these NGO function and play a significant role in the protection of human rights throughout the world to preserve the dignity of individual citizens when this is threatened by the power of the state.

NGOs play a crucial role especially in:

- fighting individual violations of human rights either directly or by supporting particular 'test cases' through relevant courts;
- offering direct assistance to those whose rights have been violated;
- lobbying for changes to national, regional or international law;
- helping to develop the substance of those laws; and
- promoting knowledge of, and respect for, human rights among the population.

The contribution of NGOs is important not only in terms of the results that are achieved, and therefore for the optimism that people may feel about the defence of human rights in the world, but also because NGOs are, in a very direct sense, tools that are available to be used by individuals and groups throughout the world. They are managed and co-ordinated – as many organizations are – by private individuals, but they also draw a large part of their strength from other members of the community offering voluntary support to their cause.

3.1.4.1 Types of human rights NGOs

The 1993 UN World Conference on Human Rights – known as the Vienna Conference – was attended by 841 NGOs from throughout the world, all of which described themselves as working with a human rights mission. Though an impressive figure in itself, this actually represented only a tiny fraction of the total number of human rights NGOs active in the world.

Most self-professed "human rights organisations" tend to be engaged in the protection of civil and political rights. The best known of such organisations, at least on the international stage, include Amnesty International, Human Rights Watch, the International Federation for Human Rights, Human Rights First and Interights. However, as we have seen, civil and political rights are just one category of the many different human rights recognised by the international community and new rights are continuing to emerge, even today. When we take this into account and consider the NGOs active in countering poverty, violence, racism, health problems, homelessness and environmental concerns, to name just a few, the actual number of NGOs engaged in human rights protection, in one form or another, runs into the hundreds of thousands throughout the world.

3.1.4.2 Role of Civil Society in Influencing the Process

NGOs may attempt to engage in the protection of human rights at various different stages or levels, and the strategies they employ will vary according to the nature of their objectives – their specificity or generality; their long-term or short-term nature; their local, national, regional or international scope, and so on.

a. Direct Assistance

It is particularly common for NGOs working on social and economic rights to offer some form of direct service to those who have been victims of human rights violations. Such services may include forms of humanitarian assistance, protection or training to develop new skills. Alternatively, where the right is protected by law, they may include legal advocacy or advice on how to present claims. In many cases, however, direct assistance to the victim of a violation or a human rights defender is either not possible or does not represent the best use of an organization's resources. On such occasions, and this probably represents the majority of cases, NGOs need to take a longer term view and to think of other ways either of rectifying the violation or of preventing similar occurrences from happening in the future.

b. Collecting accurate Information

If there is a fundamental strategy lying at the base of the different forms of NGO activism, it is perhaps the idea of attempting to "show up" the perpetrators of injustice. Governments are very often able to shirk their obligations under the international treaties, or other rights standards, that they have signed up to because the impact of their policies is simply not known to the general public. Collecting such information and using it to promote transparency in the human rights record of governments is essential in holding them to account and is frequently used by NGOs. They attempt to put pressure on people or governments by identifying an issue that will appeal to people's sense of injustice and then making it public. Two of the best

known examples of organisations that are reputed for their accurate monitoring and reporting are Amnesty International and the International Committee of the Red Cross. Both of these organisations possess authority not only among the general public but also at the level of the UN, where their reports are taken into account as part of the official process of monitoring governments that have agreed to be bound by the terms of international treaties.

c. Campaigning and Lobbying

International actors often engage in campaigning and advocacy in order to bring about a policy change. Again, there are numerous forms, and an NGO will try to adopt the most appropriate one, given the objectives it has in mind, the nature of its "target", and of course, its own available resources. Some common practices are outlined below.

- Letter-writing campaigns are a method that has been used to great effect by Amnesty International and other NGOs. People and organisations "bombard" government officials with letters from thousands of its members all over the world.
- Street actions or demonstrations, with the media coverage that these normally attract, may be used when organisations want to enlist the support of the public or to bring something to the public eye in order to 'name and shame' a government.
- The media will frequently play an important part in lobbying practices, and social media and the Internet are now assuming an increasingly significant role.
- Shadow reports are submitted to UN human rights monitoring bodies to give an NGO perspective of the real situation regarding the enjoyment of human rights in a particular country.

In addition to demonstrations of support or public outrage, NGOs may also engage in private meetings or briefings with officials. Sometimes the mere threat of bringing something to the public eye may be enough to change a policy or practice. Whilst this used to be mobilised, at one time, through tapes, posters and faxes, it is now mobilised through email campaigns and petitions, internet sites, blogs and electronic social networks.

In general, the greater the backing from the public or from other influential actors (for example, other governments), the more likely is it that a campaign will achieve its objectives. Even if they do not always use this support directly, NGOs can ensure that their message is heard simply by indicating that a large popular movement could be mobilized against a government or many governments.

d. Human Rights Education and Awareness

Many human rights NGOs also include, at least as part of their activities, some type of public awareness or educational work. Realizing that the essence of their support lies with the general public, NGOs often try to bring greater knowledge of human rights issues to them. A greater knowledge of these issues and of the methods of defending them is likely to engender a greater respect and this, in turn, will increase the likelihood of being able to mobilize support in particular instances of human rights violations. It is that support, or potential support, that lies at the base of the success of the NGO community in improving the human rights environment.

3.1.5 PROMINENT NGOS IN THE PROMOTION OF HUMAN RIGHTS

There are many NGOs in the world operating in all parts of the world to advance the human rights of various segments of the population. Some of these NGOs are dedicated to a single cause and others are working on a plethora of issues. We will have a short discussion on some of the prominent NGOs with international reputation in the following section.

3.1.5.1 Amnesty International

Amnesty International (AI), founded in 1961, is one of the most respected NGOs. It has more than 1.8 million members in 150 countries is funded primarily by the members. In 1977, Amnesty International was awarded the Nobel Peace Prize for its work to assist political prisoners and fight torture. Each year the organization issues an annual report documenting human rights abuses in 155 countries. As soon as Amnesty International learns that an individual is in danger of human rights abuse, it alerts members of the Urgent Action Network in over 70 countries. The Urgent Action Network tells its members how and where someone's human rights are being threatened and provides contact information for government officials who have the power to stop the abuse. Network members immediately send messages to those officials. AI claims that in 2004, more than four in ten Urgent Action Network cases saw positive developments as a result of these messages.

3.1.5.2 International Committee of the Red Cross

The International Committee of the Red Cross includes the International Red Cross and the Red Crescent. Both perform humanitarian work, with Red Crescent focusing on the Muslim world. The International Red Cross was founded in 1863 in Geneva, where it is still headquartered, and "works around the world on a strictly neutral and impartial basis to protect and assist people affected by armed conflicts and internal disturbances. More than 12,000 staff members are located in permanent offices in 60

countries. The ICRC has operations in more than 80 countries and uses thousands of volunteers as well. Canada and the United States are covered from the office in Washington, D.C. The ICRC also has an office in New York for its permanent delegation to the UN. One of the chief functions of the ICRC is to monitor and visit prisoners whose cases may involve human rights violations. The prisoners being held by the U.S. military at Guantanamo Bay, Cuba, receive regular visits. The IRC has also visited Abu Ghraib, the prison in Iraq that was the site of human rights abuses by U.S. military personnel. Elsewhere in the Middle East, the ICRC has monitored both sides of the Israeli–Palestinian conflict since 1967. Similarly, it drew international attention to civil rights abuses in Kosovo that helped lead to NATO intervention in the conflict there. ICRC is still responsible for finding missing persons in Kosovo and in other countries of the former Yugoslavia. Many people know the Red Cross primarily for its work in helping the victims of natural disasters such as hurricanes, floods, and earthquakes. On the international level, however, the ICRC is a major force in protecting individuals and groups at risk during political and genocidal conflicts and wars.

3.1.5.3 Oxfam International

Oxfam was the original abbreviation for the Oxford Committee for Famine Relief, which was started in England during World War II to provide relief to war victims in Europe. Since then, Oxfam organizations have been established in 12 countries located in Europe, North America, and Australia/Oceania to fight poverty and human rights injustice. In 1995, Oxfam International was created to link them together. One of the leading NGOs in the fight for economic equality, Oxfam considers that "poverty and powerlessness are avoidable and can be eliminated by human action and political will." Using its own employees, consultants, partner organizations, and volunteers, Oxfam aims to empower poor people: "In all our actions our goal is to enable people to exercise their rights and manage their own lives."The organization's approach to fighting poverty and increasing human rights is founded on five aims—"a livelihood; services; security; participation; and diversity." Oxfam is usually involved in the most visible human and economic rights campaigns and demonstrations. However, this is only part of a policy of combining the specific with the general. Oxfam's link their work on advocacy and campaigning for changes at global and national level to their work on practical changes at grassroots level.

3.1.5.4 Human Rights Watch

Human Rights Watch (HRW) was founded in 1978 as Helsinki Watch. During the Cold War, its mission was to monitor human rights abuses committed by the Soviet Union and its allies that were contrary to the human rights clauses of the 1975 Helsinki Accords. In the 1980s, it set up Americas Watch to focus on Latin America,

and the organization grew to cover other regions. In 1988 all the "Watch" committees came together under the umbrella Human Rights Watch. Today it is the largest human rights NGO headquartered in the United States. Its base is in New York City, with offices in Los Angeles, San Francisco, and Washington, D.C. Its European offices are located in Brussels, London, and Moscow, while Asia is covered from Hong Kong. HRW conducts research and publishes the results in books and reports, "generating extensive coverage in local and international media. This publicity helps to embarrass abusive governments in the eyes of their citizens and the world." For example, in early 2005, HRW targeted Nepal, where King Gyanendra used the Royal Nepalese Army to dismiss the government and declare a state of emergency while imprisoning opponents. HRW also publishes "Monthly Update," an e-mail newsletter that lists the most recent violations of human rights and in some cases adds a "What You Can Do" section, providing an e-mail and/or postal address and phone number for the highest ranking official associated with the abuse. Supporters are urged to make contact and add to the international public outcry against the human rights violation.

3.1.5.5 Derechos Human Rights

Derechos Human Rights was the first Internet-based human rights NGO. Derechos means rights in Spanish, so the group's name emphasizes its mission: to promote human rights around the world, to educate people about human rights, to investigate violations of human rights, to promote the rule of law in international affairs, and to assist other human rights NGOs and individuals who have been abused. The group's primary work has been in Latin America, but it is active in the United States and Europe, too. Headquartered in California with an affiliate in Argentina and a partner, Equipo Nizkor, active in Europe and Latin America, Derechos Human Rights links all of these countries through Internet communication. Derechos Human Rights maintains a "Human Rights Mailing List" and a "Human Rights Discussion List." The mailing list is divided into sections for human rights NGOs, human rights lawyers, and human rights professionals, and an open forum that anyone can join. The discussion list is open to anyone but is not a forum for attacks on an ethnic group, excuses for human rights abuses, personal attacks, or any kind of advertising. It is also not intended to be the place to publicize human rights violations or issue calls to action for victims. Those things are done through "Human Rights News & Actions," an Internet newsletter that provides current news about human rights abuses and offers archives relating to human rights organized by country and covering most of the world.

To conclude the discussion, many civil society organizations, popularly known as NGOs, are playing significant role both at National and International Levels in the promotion as well as the protection of Human Rights through their

participation in various bodies, lobbying for new international legislations, and reporting and monitoring their implementation. What has made these groups so central in the international human rights arena of the late twentieth and early twenty-first centuries is the drastic reduction in the start-up, organizational, and transactions costs they face to make their positions heard. This, in combination with states' (somewhat grudging) willingness to allow formal and informal access to official international decision-making venues has made Civil Society far more influential than they have been in the past. While the onset of Globalization is resulting in Human Rights violations across the world, the States being tied their hands are looking at the Civil Society Organizations to play an active role towards making the transnational corporations and other business organizations more accountable for the human rights protection and also for enhancing the state control on the activities of such business outfits. Hence, one can expect an increased space and role for the Civil Society in the Human Rights legislation and protection.

3.1.6 LET US SUM UP

In this lesson on Civil Society, National and International we tried to understand, how the Civil Society has become more and more vibrant as a result of significant international changes and their influence at national and local level across the world especially in the developing world. Further we tried to understand how the United Nations System provides for a special place and status to the Civil Society Organizations and the role they play within various bodies of the UNO. Later we proceeded towards learning about the typology and functioning style of Human Rights NGOs and finally we also tried to learn about some key NGOs working for the promotion and protection of Human Rights.

3.1.7 EXERCISES

1 Define Civil Society and discuss briefly about its initiatives.

2 Discuss the role of Civil Society in the promotion and Protection of Human Rights.

3 Explain how the United Nations provides a special status to NGOs and their role in various UN Bodies.

4 Write a note on the Human Rights NGOs contribution to Human Rights Council.

5 Discuss in detail about Human Rights NGOs mentioning their types and functioning.

6 Write a short note on the influence process of Human Rights NGOs.

7 Discuss the role of International Committee of the Red Cross.

8 Looking at the current role of Human Rights NGOs what future do you see for them in the arena of Human Rights.

9 What is the significance of Derechos Human Rights?

10 Write a brief note on Oxfam International.

3.2 SECURITY, TERRORISM AND HUMAN RIGHTS

- V. Nagendra Rao

STRUCTURE

3.2.0 OBJECTIVES

Human Rights Law requires the State to take steps to protect the right to life, which includes measures to prevent terrorism. However, any measures taken to counter terrorism must be proportionate and not undermine democratic values. In particular, laws designed to protect people from the threat of terrorism, and the enforcement of these laws must be compatible with people's rights and freedoms and the risk of terrorism cannot be used by the State as the basis for eroding our human rights and civil liberties. Thus countering terrorism while securing the Human Rights involves great wisdom, tact and the ability to maintain a fine balance on the part of the States. After going through this lesson you will be able to understand:

- how Terrorism has become a threat to the Enjoyment of Human Rights;
- how the State itself is violating the Human Rights in the name of security; and

- what kind of changes and transparency should be brought in the counter terrorism laws so that they do not undermine the Human Rights.

3.2.1 INTRODUCTION

Even though terrorism is not a new phenomenon either in domestic politics or in international Politics, it is emerging to be a problem of global concern in the 21st century. The efforts to address terrorism at the international level can be traced to as early as 1937 when the League of Nations prepared the Convention for the Prevention and Punishment of Terrorism. Since then, the international community has engaged in resolute and swift action in taking measures to condemn terrorism, especially after the terrorist attack on the United States on September 11, 2001.

The U.N. has adopted thirteen resolutions since the 1960s relating to terrorism, eleven of which emerged prior to the September 11, 2001 attacks. With the passage of General Assembly resolution 60/288 in 2006, member States agreed to cooperate in the global effort to eradicate terrorism, while ensuring that measures taken comply with the rule of law and human rights. The Security Council has also committed to this sentiment as demonstrated in resolutions 1373 (2001), 1456 (2003), 1566 (2004), and 1624 (2005). Together, these actions acknowledge that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but rather complementary and mutually reinforcing ones.

All States have a duty and an obligation to protect individuals within their jurisdiction from terrorists under the International Covenant on Civil and Political Rights (ICCPR), stemming from the right to life. While counter-terrorist measures are essential for States to maintain national security and ensure safety for all individuals, these measures must not circumvent international law or violate human rights. The lack of a universally accepted definition of terrorism increases the possibility of human rights violations and negatively impacts the ability of the international community to fight terrorism. Human rights are also implicated due to the lack of transparency and inadequate judicial oversight of counter-terrorism measures. Transparency in counter-terrorism policies is necessary to protect human rights while also ensuring national security.

Human rights concerns have arisen through the creation of counter-terrorism measures which States purport to be outside the realm of international law. This has occurred in the past decade in the United States, specifically in response to September 11th and the Bush Administration's "War on Terror." The counter-terrorist policies adopted to combat terrorism in the U.S. circumvent international conventions and treaties, including the Geneva Conventions and the Convention against Torture.

The United States has claimed that the "War on Terror" is different from any previous armed conflict. One method the U.S. has used to circumvent international law was the designation of terrorists as "enemy-combatants" rather than the internationally accepted terms under the Geneva Convention: lawful and unlawful combatants. By changing the term, U.S. policy indicates that international law applicable during armed conflict does not apply to the detainees accused of terrorism. Led by the United States, the authoritarian as well as the democratic countries across the world are opposing human rights protections and violating Human Rights. These countries are threatening to override human rights guarantees and nullify the gains that the human rights movement has made in recent decades.

This way, the new global security agenda poses significant normative threats to the existing human rights framework. Governments are increasingly taking actions in the name of counter-terrorism that violate basic human rights norms. International bodies such as the United Nations are not only failing to impede such actions, but are in some ways encouraging them. However, human rights law always applies and terrorist conduct does not remove a detainee from the protections of the Geneva Convention. Although terrorism constitutes a unique and complex threat to security, measures taken must also comply with international law and must not violate fundamental human rights. Against this back let us look at the concepts of Terrorism and National Security Concerns are inflicting the basic Human Rights.

3.2.2 DEFINITION AND NATURE OF TERRORISM

Terrorism has different meanings for different people. It is full of political and intellectual ambiguity. Terrorism is often, though not always, defined in terms of four characteristics: (1) the threat or use of violence; (2) a political objective; the desire to change the status quo; (3) the intention to spread fear by committing spectacular public acts; (4) the intentional targeting of civilians. Commonly it involves the use of force, creating terror, using intimidating methods, especially to secure political ends, liquidating opposition, stifling rebellion, guerrilla warfare etc. Thus in a way it may be defined as a systematic use of violence and intimidation to achieve some goals especially political.

This way terrorism is different from all other crimes in its purpose. Its objective is to put the people in a state of terror and keep it there while forcing a government or organization to either act or not act in a given direction. In modern times, it was first used during the French Revolution and the Jacobin Reign of Terror. At first, it was identified with the state action, but later, it was applied to individual or group violence. It covers varied form of violence, ranging from indiscriminate bombing to hijacking, kidnapping, taking of hostage assassination and severe destruction of property. Terrorism is uniquely offensive form of political violence, generally in response to the political importance of the ruler or some political

malaise. One of the most formidable problems faced by the legal control of terrorism is the precise definition of the term terrorism.

3.2.3 CAUSES OF TERRORISM

The causes of terrorism are as numerous as their types are. Many thinkers have tried to analyse the reasons of aggression and anger among human beings but no single theory can boast of fully look into the problem. Robert Ted Gurr has called it as the result of difference between value expectations and value capabilities. Karl Marx viewed it as the outcome of economic exploitation of have-nots by the haves. Fanon see it as the result of wrongs done by the expansionists and colonialists. However, the modern terrorism has taken different form from Marx and Fanon days. Religious fundamentalism emerged as an important element to modern day terrorism.

But still no theory has been able to clearly provide the concrete causes of terrorism especially international terrorism. International terrorism having very vide area of operations and variety of individuals along with their mindsets is a tedious task to be analyzed. But one can broadly categories the causes of terrorism as under:

1. **Colonialism**: - Some of the major terrorist outfits owe their struggle to the colonialism and expansionist activities. The brutal suppression, physical torture and dehumanizing that was unleashed during the years of colonialism has caused many outfits to rise up in arms against colonial powers. The violent freedom movements became the ultimate tactics in the absence of legitimate political participation.
2. **Fundamentalism: -** Religious fundamentalism is one of the major causes of terrorism since long. Most of the terrorist activities in the present world today are some way connected to fundamentalism. Jews fundamentalism in Palestine, Sikhs fundamentalism in Punjab, Islamic fundamentalism in Syria, Pakistan, Afghanistan, Russia, Chechnya, Iraq, Jammu and Kashmir, Xinxiang, etc. are examples of religious fundamentalism. The recent disturbance in Iraq is also due to the fundamentalist outfit ISIS (Islamic State of Iraq and Syria) which proved to be one of the major terrorist and coup activities of the world in present times.
3. **Organised Crime and Drug Trafficking: -** the nexus between terrorist and internationally organised crime and drug-trafficking is also one of the causes of growing terrorism in the world. The distinction between international terrorism and internationally managed crime has become blurred nowadays. Many times to finance the terrorist activities terrorist outfit by themselves generate the money with the help of drugs and human trafficking. Sometimes drug lords finance the terrorist activities against any particular government. Supply of children as child soldiers is also one of the major businesses of the organised

crime outfits. Afghanistan, Pakistan, Chechnya, Columbia, Sri Lanka and some other countries are blamed to have organised crime headquarters which also finance the terrorist activities all over the world.

4. **Advances and Availability of Weapons: -** Easy access and availability of arms and ammunitions has also caused the rise in terrorist activities in the world over. With the advancement in the technology has made the light weapons with heavy impact available to the users. The new research in chemicals, new engineering in weaponry and remote as well as the computer detonating is largely responsible for the easy use and affordability of arms and ammunitions. Weapons like AK-47, AK-56, land mines, plastic explosives, RDX etc have helped the terrorist in terrorizing the world with much ease.

5. **Secessionism: -** The problem of nation building has been witnessed by many of the third world countries, but advanced countries are also not immune to this. Sometimes the dissatisfied group of citizens try to secede from the parent nation and in this process adopt the violent way of terrorism. There are hundreds of examples of this scenario. The Irish republican movement, the movement in Croatians in Yugoslavia, Québec in Canada, Tamil in Sri Lanka, Khalistan in India and Basques in Spain are its prime evidences. The identity crisis and demand for separate homeland are prime movers in this type of terrorist activity.

6. **Modern technology: -** The easy transportation, communication and other types of modern technological marvels have also resulted in the easy terrorist activities. These technological advancements have provided the easy availability of all types of material to any part of the world. The communication technology has been used by the terrorists to remain a step ahead of the security forces. Persons with high education and knowhow of modern technology are master minds of major terrorist outfits. Take example of Osama Bin Laden who was an engineer. Computers, satellite phones, walkie talkies, cell phones are used by terrorist to plan and coordinate their activities.

7. **Abetment by states: -** Under the shadow of collective security open war has become a rare scene. UN and other international agencies are working as the watchdogs in relations among countries. Due to this scrutiny some state have found a way in financing and helping terrorist outfits in enemy state rather than openly coming to war. This secret war against the enemy state is fought with the help of xeno terrorist and by supplying money and weapons to the disgruntled groups in the enemy states. For example, Pakistan for long has been blamed to finance terrorist first in Punjab and then in Kashmir against India. The Taliban government financed the terrorist outfits against the western world. The Saudi Arabia is supplying all sorts of resources to Syrian rebels.

8. **Economic reasons: -** The rising gap between rich and poor in the developing

countries is also major cause of people turning violent. Many ideological terrorist activities and outfits are alive due to the deteriorating conditions of the poor in the developing countries. Dependency theory, Marxian theory etc have proved that whenever there is gap between the rich and poor, the have-nots will resort to violence and terrorist activities. Naxalsim in India is one of the examples for this.

9. **Political Reasons:-** There are many political reasons also behind the rising tide of international terrorism in the world. The fight between developing and developed world is one of the major cause of violence at global level. Developed countries have financed terrorist groups in developing countries to keep them under their control. On the other side developing countries have acted in retaliation and the attacks in developed countries are its examples. USA has waged war against terrorism world over but it is also blamed of supporting many terrorist groups world over to keep check on many nations and their progress.

Understanding various causes and patterns of Terrorism would help the States in addressing such issues collectively or individually. Addressing such issues would automatically promote the human rights in a positive manner. However, the emphasis of State in the past few decades remained to be rather strengthening their legal measures for punishing the Terrorists. In the following section we will discuss how the lack of consensus on universal definition resulted in increased security measures on the part of the state to deal with terrorism in violating the Human Rights of both who wage it and those who fight against (the military and other forces).

3.2.4 PROBLEMS CAUSED BY LACK OF UNIVERSAL DEFINITION

The lack of a universal definition of terrorism represents a serious limitation on States' ability to combat and prevent terrorism. It also prevents the United Nations from exerting its moral authority and from sending an unequivocal message that terrorism is never an acceptable tactic, even for the most defensible of causes. The lack of a definition also results in the creation of State counter-terrorism measures outside the realm of international law. Human rights are implicated in the lack of a universal definition of terrorism. Without a universal definition of terrorism, States may create broad, overreaching definitions and inadvertently criminalize activity outside the realm of terrorism. States may also intentionally create a broad definition and use this broad power to suppress oppositional movements or unpopular groups under the guise of combating terrorism. People may be prosecuted for the legitimate exercise of protected human rights due to vague and unclear domestic definitions of terrorism. Without an internationally agreed upon definition, States are free to create various and unclear definitions with no guidance from the U.N. regarding the proper scope of the definition.

Although there has been work toward an international definition of terrorism, problems remain pervasive. There are fundamental disagreements among States as to a universal definition of terrorism. Some members urge the inclusion of State use of force against civilians in the definition. Other delegations have suggested including forms of "State terrorism" in the definition. However, State force against civilians is already addressed in a number of international instruments, including the Geneva Convention, the U.N. Charter, and the Rome Statute for the International Criminal Court.11 Inclusion of State force against civilians is not necessary in a definition of terrorism.

Other States insist that the definition avoid criminalizing self-determination. These States want to protect "the right of a people to resist foreign occupation." But this argument is irrelevant to defining terrorism since there is "*nothing* in the fact of occupation that justifies the targeting and killing of civilians." One possible compromise to these disagreements is excluding the word "comprehensive" from the definition of terrorism. This compromise may be a necessary first step in creating a flexible definition and acquiring universal agreement.

The disagreement among States presents significant and unnecessary barriers creating a universal definition of terrorism. However, there has been movement toward a definition. The Secretary-General proposed guidelines for a possible definition in a report presented to the General Assembly in 2004. In this report, the definition includes language from Security Council resolution 1566 (2004) and includes acts committed against civilians with both 1) the intention of causing death or serious bodily injury, or the taking of hostages and 2) for the purpose of provoking terror in the general public or in a group of persons or particular persons, intimidating a population or compelling a government or an international organization to do or abstain from doing any act. Through this definition, States can create more effective counter-terrorist policies within specific confines. This narrow definition will protect human rights because States will not be able to justify acts under broad or vague definitions.

However, in the absence of precise definition, terrorism is a generic term comprising of a variety of acts including terror, barbarity or uncommon violence not only by individuals or group of individuals with in a state but also by armed forces of one state against another state. When terrorism is institutionalized in the coercive exercise of the power of a state aimed at gagging even democratic dissent, it becomes state terrorism and in today's world even democratic states are resorting to this terrorism.

The concept of State terrorism is a very dicey to a large extent as states themselves have the power to operationally define it. Unlike non-state groups, states have legislative power to say what terrorism is and establish they consequences of

the definition; they have force at their disposal; and they can lay claim to the legitimate use of violence in many ways that civilians cannot, on a scale that civilians cannot. On the other hand insurgents or terrorists often consider the violence resorted by State in the name of security as terrorism; for example the Palestinian militants call Israel terrorist, Kurdish militants call Turkey terrorist and the Tamil militants call Indonesia terrorist.

3.2.5 SECURITY, HUMAN RIGHTS & COUNTER-TERRORISM LAWS

In the aftermath of September 11 in USA, more than 140 governments have passed counterterrorism legislation. Indeed, many countries have passed multiple counterterrorism laws or revised old legislation, expanding their legal arsenal over time. The impetus for the lawmaking has varied: in some cases it has been major attacks targeting the country; in many others, it has been a response to United Nations Security Council resolutions or pressure from countries such as the United States that suffered or feared attacks.

Mass attacks on the general population have caused immense harm. The September 11 attacks killed close to 3,000 people. In Pakistan alone, more than 10 times that number have been killed in bombings and other attacks on civilians in the decade since. As the UN Security Council noted in its preamble to Resolution 1456 in 2003, "any acts of terrorism are criminal and unjustifiable, regardless of their motivation, whenever and by whomsoever committed and are to be unequivocally condemned, especially when they indiscriminately target or injure civilians." In keeping with their duty to ensure respect for the right to life, states have a responsibility to protect all individuals within their jurisdiction from such attacks.

These post-September 11 laws, when viewed as a whole, represent a broad expansion of government powers to investigate arrest, detain, and prosecute individuals at the expense of due process, judicial oversight, and public transparency. Human Rights advocates argue such laws merit close attention, not only because many of them restrict or violate the rights of suspects, but also because they can be and have been used to stifle peaceful political dissent or to target particular religious, ethnic, or social groups.

Of particular concern is the tendency of these laws to cover a wide range of conduct far beyond what is generally understood as terrorist. More often than not, the laws define terrorism using broad and open-ended language. While governments have publicly defended the exceptional powers available to police and other state authorities under these laws by referencing the threat of terrorism, some of the conduct they cover may have little connection to such potential attacks.

Many of the counterterrorism laws were also found to contain changes to procedural rules—which are designed to ensure that the justice system provides due process—that jeopardize basic human rights and fair trial guarantees. Some changes enhance the ability of law enforcement officials to act without the authorization of a judge or any other external authority. Others grant authorizing power to prosecutors, or other members of the executive branch, who may have a particular stake in the outcome of police investigations. These procedural changes not only increase the likelihood of rights violations, including torture and ill-treatment, but also decrease the likelihood that those responsible will be discovered and punished.

At least 51 countries had counterterrorism laws prior to the September 11 attacks. In the subsequent 11 years, Human Rights Watch has found, more than 140 countries enacted or revised one or more counterterrorism laws. ***In the Name of Security*** the report produced by Human Rights Watch offers a detailed breakdown of eight elements common to most post–September 11 counterterrorism laws that raise human rights concerns, as well as a discussion of where such laws diverge. The eight elements are:

1. definitions of terrorism and terrorist acts;
2. designations of terrorist organizations and banning membership in them;
3. restrictions on funding and other material support to terrorism and terrorist organizations;
4. limitations on expression or assembly that ostensibly encourage, incite, justify, or lend support to terrorism;
5. expansions of police powers that undermine basic rights, including powers to conduct warrantless arrests, searches, surveillance, and property seizures, and to detain suspects incommunicado and without charge; as well as restrictions on challenging wrongful detention or seeking accountability for police abuses;
6. creation of special courts and modifications of trial procedures (including evidentiary rules) to favor the prosecution by limiting defendants' due process rights;
7. imposition of the death penalty for terrorism-related offenses; and
8. Creation of administrative detention and “control order” mechanisms.

As we can see from this, the counter terrorism laws are becoming double edged. While the States claim to use these mechanisms to safeguard its national security and the protection of its innocent people, however the Human rights advocates often argue that such kind of law not only violating the International

Human Rights Law but also amount to the Human Rights violation of all those who are considered to be terrorists by the State. They remark, in the name of countering terrorism these mechanisms allow the state also to commit human rights violations against terrorism suspects – such as torture, ill-treatment, and enforced disappearance – without making any effort to legitimize them through law.

Whether the state resorts to terrorism or the non-state actors resort to terrorism there are some Human Rights that are most commonly implicated and we look at such Human Rights in the following Section.

3.2.5 TERRORISM, COUNTER TERRORISM AND THE IMPLICATED HUMAN RIGHTS

As we kept discussing, terrorism aims at the destruction of human rights through terror and violence employed against civilians, often by non-State actors. Terrorists attack democracy, the rule of law, and respect for humanity. Counter-terrorism measures are crucial, yet may also threaten core human rights. State counter-terrorist measures implicate numerous fundamental human rights, including the right to life through targeted killings, the prohibition against torture, liberty interests through arbitrary detention, racial and ethnic profiling, the right to due process, freedom of speech and association, the right to privacy, and many other social, economic, and cultural rights. They include: (A) the prohibition against torture and cruel, inhumane and degrading treatment; (B) arbitrary detention resulting from extensive surveillance and intelligence measures; (C) the right to privacy; and finally (D) racial discrimination and ethnic profiling.

The importance of protecting human rights in creating effective counter-terrorism measures cannot be minimized. Significantly, failure to comply with international law and human rights norms may actually result in promotion of terrorism as many of the conditions conducive to the spread of terrorism result from discrimination and disenfranchisement. In order to ensure that the counter-terrorist measures would not result in such conditions, transparency and judicial oversight of State measures must be promoted in compliance with international human rights law.

3.2.5.1 Torture and Cruel, Inhumane, and Degrading Treatment

One area of concern is the lack of transparency and judicial oversight for measures that significantly infringe on human rights, like the prohibition against cruel, inhumane, and degrading treatment. This issue is exacerbated due to the fact that many counter-terrorism measures are shrouded in secrecy, creating further difficulties for human rights protection. Torture is forbidden in all circumstances and has reached the level of a *jus cogen* (manditary) norm. It is also strictly prohibited in the Convention against Torture and in the ICCPR. Yet many States are still engaging

in torture of individuals accused of terrorism.

Torture, as well as arbitrary detention and cruel, inhumane, and degrading treatment have occurred all over the world in the fight against terrorism. Torture not only violates human rights norms, but also results in unreliable intelligence tainted through the use of torture. The torture allegations include beatings, suspension in painful positions for long periods, electric shocks including on the genitals, rape and threats to kill the victim or members of the family. This conduct is prohibited under international law and constitutes grave human rights violations, yet continues under the justification of counter-terrorism and under emergency law. Increased judicial oversight and transparency would help to ensure compliance with international law and remind States that counter-terrorist measures must always comply with international law.

A related issue is State complicity in torture and other human rights violations. States were often found to have collaborated with major powers and facilitated detention, torture and ill treatment of terrorist detainees. States must "place serious constraints on policies of cooperation by States, including by their intelligence agencies, with States that are known to violate human rights." The threat of terrorism does not justify States engaging in grave violations of human rights nor cooperation with other States known to engage in such violations.

3.2.5.2 Arbitrary Detention Resulting from Extensive Surveillance

Many States employ intelligence and surveillance measures contrary to international law, justified solely on fight against terrorism. Some have established intelligence agencies that have legally acquired the power to arrest and detain people who are expected to have information about terrorist activities. These agencies are not subject to judicial oversight and this may increase the risk of arbitrary detention and other human rights violations. In some countries, there is no statutory basis for the intelligence agencies created to address terrorism. This has resulted in arrest and detention of persons on grounds which are not clearly established in domestic law. Thus all States must employ counter-terrorism measures within established domestic and international law.

In some countries the military intelligence agencies designated to counter terrorism specialize in detaining and interrogating people who are believed to possess information about the terrorist activities of armed groups acting within Algeria or of international terrorist networks acting abroad. These agencies, however, are operating without any civilian oversight. Political officials are not informed of all the arrests and detentions made by this agency and are unaware of the interrogation methods used on detainees. These circumstances raise concern for the use of torture and arbitrary detention due to the lack of oversight. If judicial oversight

is meaningfully imposed, the international community would be able to monitor counter-terrorist agencies and ensure compliance with human rights. Without oversight, the risk remains for grave human rights violations to occur in secrecy.

3.2.5.3 The Right to Privacy

Another area requiring increased transparency and judicial oversight are procedures infringing on the right to privacy. Article 17 of the ICCPR specifically prohibits arbitrary or unlawful interference with privacy, subject to a few exceptions. Actions taken in the United States under the Patriot Act (2001) have raised concerns due to extensive surveillance techniques employed to combat terrorism. Many of the provisions of the Patriot Act are under scrutiny for failing to provide judicial oversight for intelligence and surveillance procedures that may violate the right to privacy. Although the Patriot Act was recently due to expire, many questionable measures have been renewed despite privacy and civil rights concerns.

In order for States to address possible violations of privacy rights and other human rights, the international community must ensure that counter-terrorist measures comply with domestic and international law. Surveillance techniques adopted to counter terrorism may have a "profound chilling effect on other fundamental rights" including the right to privacy. Therefore, it is essential that surveillance measures be monitored to ensure compliance with human rights and protect the right to privacy. Some States have constitutional safeguards to protect individual privacy rights. Canada protects privacy and maintains a workable balance between important individual rights and law enforcement through the Charter of Rights and Freedoms. More States should adopt policies similar to those in Canada and work to both protect privacy rights and ensure security.

3.2.5.4 Racial Profiling and Discrimination

The searches conducted under the U.K.'s Terrorism Act created problems under the right to privacy, but also implicated the risk of racial and ethnic profiling in violation of the Convention on the Elimination of Racial Discrimination (CERD). In many cases, police in the U.K. were profiling black and Asian people when conducting these arbitrary searches in the name of fighting terrorism. Terrorism should not be connected exclusively with a particular racial, ethnic, cultural, religious, or national group. Not only does this form of targeting violate the CERD, it may tend to promote marginalization of particular groups and increase the risk of terrorism.

Stop and search powers as well as listing procedures in the creation of terrorist suspect lists raise serious concerns for racial profiling. Due to the lack of transparency in the listing procedures, there is a risk of racial and ethnic discrimination. Transparency will ensure fairness in these procedures and protect

other possible human rights violations. The risk of racial profiling occurs in the creation of terrorist watch lists and "no-fly" lists, which is further exacerbated by lack of transparency and judicial oversight.

These lists are usually not available to the public, meaning they are not subject to oversight or appeal for review. The lists are subject to error and false information, but since they are not available to the public, there is no independent oversight to ensure accuracy. Although it may be important to maintain secrecy in the lists, this interest must be balanced with the risk of racial profiling, possible errors, and privacy infringements. Increased transparency may reduce the risk of errors in the watch lists and allow for meaningful appeal of the lists, while also bringing to light prohibited ethnic or racial profiling. The first step toward addressing these concerns is unveiling the secrecy behind these procedures and forcing compliance with international law and human rights.

To summing the discussion, the risk for counter-terrorist measures to violate human rights is significant without proper oversight and transparency of the procedures. States must comply with international law and attempt to minimize the conditions conducive to terrorism. Some of these conditions, such as dehumanization of victims of terrorism, lack of rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization, and lack of good governance may result from intrusive and discriminatory anti-terrorist measures. Counter-terrorist measures related to arbitrary detention and torture, ethnic and racial profiling, and privacy infringement could lead to conditions promoting terrorism. States must recognize this possibility and work toward creating fair and effective counter-terrorism policies. Terrorism can be and must be fought within the rule of law and the human rights framework. Repression and injustice, and the criminalization of non-violent speech and protest, make us less safe. These measures also undermine the very values the State should be fighting to protect the Human Rights.

3.2.6 LET US SUM UP:

In the present lesson we have tried to understand how terrorism became the prime global concern in 21st Century, various causes behind its growth and how it is posing problems infringing upon human rights. On the other hand State, being the prime promoter of security, protector of its people's human rights often resorts to counter terrorism activities and in doing so it also sometimes resorts to human rights violations. Ever since the September 11th incident in USA, how the US and other countries resorted to increased Human Rights in the name of checking Terrorism and promoting National Security. Then we proceeded towards the double edged counter terrorism laws that were adopted by a majority of the States and how such laws

violate the human rights of even suspected people and what kind of transparency needs to be brought in such laws and how the States must not resort to the measures that undermine the very values which they are trying to promote on the other hand.

3.2.7 EXERCISES

1. What is Terrorism and what are its underlying causes?
2. Discuss the problems associated with the Universal Definition of Terrorism and how its lack is resulting in Human Rights Violation?
3. What are Counter Terrorism Laws by the States and why they are criticized?
4. Elaborate on the Concerns of State Security and Human Rights and how such concerns are violating the Human Rights provided under International Human Rights Law.
5. Discuss in detail the main rights implicated by Terrorism of both Types.

3.3 GLOBALIZATION AND ITS IMPACT ON HUMAN RIGHTS

- V. Nagendra Rao

STRUCTURE

3.3.0 OBJECTIVES

As the title of the lesson indicates, in this chapter you will understand how globalization is influencing the condition of human rights and how far the contemporary globalization is furthering or diminishing the cause of human rights. After going through the lesson you will be able to:

- understand the process of Globalization with its various dimensions;

- grasp how Globalization Impacted the State;
- know the positive and negative impact of Globalization on basic Human Rights; and
- comprehend how Globalization can be managed.

3.3.1 INTRODUCTION

Today we are living in a world of 'Globalization' which is economically and otherwise, becoming a place where we all seem to be taking the same ride. Advances in information, transportation, and many other technologies are making distance disappear, and are making next-door neighbours of all of us, whatever our nationality, whatever our costume, whatever the song we sing. The Globalization which we are considering to be the world order of today is however, not a recent phenomenon. It can be traced back to the beginning in the sixteenth century, following European explorations and the emergence of global capitalism. From that period to the present, globalization can be divided into various phases. However, two phases of globalization have been evident since the end of World War II. The first phase, lasting from 1945 to 1989, was the Cold War era and was characterized by US–USSR rivalries and the global competition of communism versus capitalism. The second phase, the present era, commenced in 1989 and witnessed the rise of the United States as the world's sole superpower, the triumph of neoliberal economics, and a communications revolution made possible by Internet-related technologies. The current phase or wave of globalization indeed surpasses previous eras in its breadth, scope, and intensity. International trade, for instance, increased twice as fast as global gross domestic product in the 1990s. While still not a majority of that growth, developing countries' share too rose significantly. The speed and volume of financial flows has also soared in the past two and half decades. This same period has witnessed the creation and implementation of important human rights instruments that have been incorporated into a so-called international human rights regime that connects international organizations and networks to each other, as well as victims and violators to global institutions. As a result of new communications technologies and increasing interdependence, governments are finding it increasingly difficult to violate their citizens' human rights without attracting the attention and ire of interested Individuals, governments, and international organizations around the world.

Indeed, overall human rights practices have improved worldwide in the present generation. However, this improvement has not been universal or linear. The technological advances on the one hand allowing human rights advocates to become more active, on the other they also be used by those who are intent on violating basic human rights. Our purpose in this lesson is to examine to what extent this movement

toward greater global integration and economic liberalization is having its impact on basic human rights in order to provide some understanding about these contrary trends. Beginning with its definition in the following sections you will study about how this process of Globalization leaves it remarkable impact on the enjoyment of Human Rights.

3.3.2 DEFINING GLOBALIZATION

Globalization meant different things to different people. For Gray, globalization is "the linking together throughout the world by distance abolishing technologies of cultural, political and economic events". Robertson views it as "both the compression of the world and the intensification of consciousness of the world as a whole". Most often it is defined as the expansion of economic activities across political boundaries of nation-states. It is often referred to the process of increasing economic openness, growing economic interdependence and deepening economic integration between the countries in the world economy. However, the U.N. General Assembly has called globalization "not merely an economic process but [one that] has social, political, environmental, cultural and legal dimensions which have an impact on the full enjoyment of all human rights." And it is important to have a look at some of the dimensions of Globalization.

3.3.3 VARIOUS DIMENSIONS OF GLOBALIZATION

Looking at the range of definitions offered to Globalization, it is possible to discern following dimensions of globalization.

- Firstly, globalization is characterized by increased interconnectivity of nations and peoples. Whereas individuals and communities at the local level in previous eras had little or no contact with the outside world, today few locales remain isolated from the effects of globalizing processes. Transnational linkages in this respect have been fostered over wider areas by new communications technologies and improvements in transportation modes and costs.
- Secondly, the relations among peoples in different parts of the world have become more intensive. This means that the presence of others and the social forces associated with it beyond the locality can be felt more strongly than in previous eras. For example, the Internet offers cost-efficiencies and technological possibilities unavailable in the age of telegraphs or high-cost telephone communications, making communications among world regions more frequent and more extensive than ever before. The Internet also offers multidimensional communicative options in the form of text, images, and sounds that may be seen as an intensification of global communications.

- Thirdly, the travel, communications, and exchanges of a political, economic, and cultural nature in particular take place today at a speed that is unprecedented in human history. Here you may recollect the examples of an Air Mail that use to take month and then weeks that uses to reach an intended addressee and the current e-mail and other communications systems as well as the international travel time that use to take in earlier times and today. With the speed of global interchanges greater than before, the frequency and intensity of such transnational relations has also been augmented.

- Fourthly, humanity has been drawn closer together by globalization. People throughout the world have a greater awareness of the globe as a whole and humankind's place within it. While the global consciousness earlier was generally limited to the fleeting perceptions in elite circles, today, with globes in the classroom, world weather reports in the news, and global products in the cupboard, transworld dimensions of social life are part of everyday awareness for hundreds of millions of persons across the planet. As a result, there was a rise in transworld solidarities and global sympathies and assistance have been on rise. Bonds of class, gender, religion, and sexual orientation, among others, have also deepened across borders.

- Another dimension of Globalization in the 20th century was its movement towards political integration. Since the founding of the United Nations in 1945, countries have tried to work together for mutual benefit by agreeing on general principles of civilized national behaviour and trying to extend them around the world. Integration of Europe through the **European Union (EU)**, which is currently having 28 members is the best regional example of political globalization, In the Americas, the **North American Free Trade Agreement (NAFTA)**, which encourages free trade between Canada, Mexico, and the United States, is the first attempt at moving beyond the Pan-American Union, a kind of regional UN without much power to influence individual members. Unlike the European Union, NAFTA is primarily an economic free trade zone and is not concerned with political issues among its members or within member countries—unless they affect mutual economic policy. In Asia Pacific the **Association of Southeast Asian Nations (ASEAN)** is a regional attempt to bring this geographically huge area and its enormous population together on behalf of common interests. However, thus far it hasn't succeeded in setting common economic or political policy, one reason being the discrepancy in size and economic development between some of its members, including China, Japan, South Korea, Thailand, and Malaysia, to mention only the most successful nations. As a result, while the positive as well as the negative effects of economic integration are clearly visible almost everywhere in the world, there have been fewer positive effects of political integration.

Inherent to globalization is the contemporary legal and institutional framework within which the regimes of international trade, finance, and investment are being conducted. In general, economic globalization has a focus on economic efficiency, the goal being to improve economic well being through efficient market exchanges. The system is based upon enhancing the economic well being of nations through trade, on the theory that gains are maximized through the unrestricted flow of goods across national boundaries. The system rests upon a view of humans as economic beings that seek to maximize wealth and self-interested satisfaction of personal preferences. In a pure economic model, values outside efficiency are irrelevant, even pernicious because they complicate or hamper the trading system. The legal dimensions of the framework are expressed in international economic law and the institutional structure of the Bretton Woods multilateral lending institutions and the WTO. International trade and finance institutions were created largely to operate on the economic model and generally exclude from consideration of other values of international society, like human rights and environmental protection.

3.3.3.1 Globalization and its Impact on State

The above kind of developments in technology, the information revolution and international trade have limited the ability of governments to control the right to seek, receive, and transmit information within and across boundaries. Ideas and information can circulate more freely, as can individuals free circulation enhances the ability to inform all persons about rights and avenues of redress. It also makes it more difficult for governments to conceal violations and allows activists more easily to mobilize shame in order to induce changes in government behaviour. Information technology and the media also can be used, however, to violate human rights when the government is weak.

Globalization, thus, has created powerful non-state actors that may violate human rights in ways that were not contemplated during the development of the modern human rights movement. This development poses challenges to international human rights law, because, for the most part, that law has been designed to restrain abuses by powerful states and state agents, not to regulate the conduct of non-state actors themselves or to allow intervention in weak states when human rights violations occur.

This shift of powers from state to non-state actors is the result of mainly two new developments in international political and economic order: a strong wave of democratization of governance and economic globalization committed to the ideas of free market and trade liberalization. It is a generally accepted fact that globalization, mainly economic one (political globalization being ineffective) – a new supranational order somehow 'beyond' or 'over' the sovereignty of individual states has dramatically diminished the importance of each single state's jurisdictional

lines for the conceptualization and resolution of problems facing its own citizens and international community in general. As often observed, the main beneficiaries of this process are big economic entities, and mostly transnational corporations. The general decline of the state's powers has opened the door for them to take after those activities which at one point of time were in the exclusive domain of state. This change exposed the individual before a multi- actor system with each of the actors having considerable capacities to directly affect his or her freedom and rights.

3.3.4 IS GLOBALIZATION GOOD FOR HUMAN RIGHTS?

There is considerable debate over the question of whether or not globalization is good for human rights. One view is that globalization enhances human rights, leading to economic benefits and consequent political freedoms. The positive contributions of globalization have even led to the proposal that it be accepted as a new human right. In general, trade theory predicts a significant increase in global welfare stemming from globalization, indirectly enhancing the attainment of economic conditions necessary for economic and social rights. Many thus believe that market mechanisms and liberalized trade will lead to an improvement in the living standards of all people. Some also posit that free trade and economic freedom are necessary conditions of political freedom, or at least contribute to the rule of law that is an essential component of human rights. Certainly, globalization facilitates international exchanges that overcome the confines of a single nation or a civilization, allowing participation in a global community. There is also the possibility that economic power can be utilized to sanction human rights violators more effectively. Ease of movement of people, goods, and services are enhanced. Increased availability and more efficient allocation of resources, more open and competitive production and improved governance could lead to faster growth and more rights.

Opponents of globalization see it as a threat to human rights in several ways. First, local decision-making and democratic participation are undermined when multinational companies, the World Bank, and the IMF set national economic and social policies. Second, unrestricted market forces threaten economic, social, and cultural rights such as the right to health, especially when structural adjustment policies reduce public expenditures for health and education. Third, accumulations of power and wealth in the hands of foreign multinational companies increase unemployment, poverty, and the marginalization of vulnerable groups.

3.3.4.1 Impact of Globalization on Human Rights

No doubt, some of the benefits of globalization contribute to the enhancement of human rights. Increased trade often aids developing countries and contributes to the mitigation of poverty; increased communication permits countries to learn from each

other. In the sphere of human rights, communication via email has permitted human rights advocates throughout the world. However there are less beneficent effects on human rights arising from globalization. The emphasis on competitiveness and economic growth has negative effects on vulnerable groups as migrant workers, indigenous peoples and migrant women. Thus, Globalization has been cited as a contributing factor in violations of the right to life, the right to protection of health, the right to safe and healthy working conditions and freedom of association in many countries.

3.3.4.2 Globalization, a Contributing factor in Human Rights Violations

Globalization has been often criticized for protecting investors. To make conditions better for investors, the World Bank and IMF impose economic "reform" that may lead to human rights violations, including an increase in infant and child mortality rates. In addition, structural reform usually mandates trade liberalization, something industrialized countries have not been similarly pressured to do. States may or may not be weakened, but the weakest within states are further marginalized. Lack of accountability results from the inability to exercise rights of political participation or information about key decisions. Structural adjustment may require cutting public expenditure for health and education, social security, and housing. Labour deregulation, privatization, and export-oriented production increase income disparity and marginalization in many countries. This leaves the main function of the state to be policing and security, which may lead either to increased political repression or to violent protests and political destabilization.

Further it is leading to greater problems of state capacity to comply with human rights obligations, particularly economic, social, and cultural rights, such as trade union freedoms, the right to work, and the right to social security. It also may have a disproportionate effect on minorities. Cooperation internationally and from non-state actors is needed in the face of an undoubted concentration of wealth in the hands of multinational enterprises, greater than the wealth of many countries. It also has been asserted that states feel compelled to ease labour standards, modify tax regulations, and relax other standards to attract foreign investment, seen especially in the export production zones (EPZs) where employment may be plentiful, but working conditions poor. Labour unions claim that EPZs are sometimes designed to undermine union rights, deny or restrict rights to free association, expression, and assembly. There are some twenty-seven million workers employed in such zones worldwide. It is estimated that the number of developing countries with EPZs increased from twenty-four in 1976 to four times more now, with women providing up to 80% of the labour force.

Several practices that came into being as a result of globalization are considered to cause the violation of various rights guaranteed by International

Covenants in particular on the:

- the enjoyment of fundamental aspects of the right to life;
- freedom from cruel, inhuman or degrading treatment;
- freedom from servitude, the right to equality and non-discrimination;
- the right to an adequate standard of living (including the right to adequate food, clothing and housing);
- the right to maintain a high standard of physical and mental health;
- the right to work accompanied by the right to just and fair conditions of labour;
- freedom of association and assembly and the right to collective bargain.

3.3.4.3 Causing Labour Strife

While the international law including the human rights law holds states accountable for the realization of human rights, mainly owing to the Globalization, in the contemporary era it is the private global players that are frequently the most egregious violators of rights. The Transnational Corporations (TNCs) with their huge power are often reported to pose threat to the enjoyment of human rights. Their threat is considerably bigger than one coming from any other actor, including the state itself. It was the lack of adequate, if any, legal constraints on their passionate pursuit of profit that opened a minefield for Human Resource branch. The list below names but does not exhaust the rights TNCs were alleged to have violated: Human rights to life, including the right to enjoy life; freedom from torture and cruel, inhuman, or degrading treatment; freedom from forced or slave labour; freedom from arbitrary detention or deprivation of security of person; freedom to enjoy property; freedom from deprivation of or injury to health; enjoyment of a clean and healthy environment – the latter also implicating interrelated international law recognizing private responsibility for pollution; - and freedom from discrimination. One should also consider private corporate deprivations of rights such as free choice in work; fair wages, a "decent living", and remuneration for work of equal value; safe and healthy working conditions; protection of children from economic exploitation; and protection of mothers. The story of Shell in Nigeria, Freeport in Indonesia, and Unocal in Burma are often cited as examples for the violation of above kind of Human Rights.

As they are accountable to none, their business practices often resulting in strikes and demonstrations further worsening labour conditions, including in communally based societies where individual political action has been rare. Political

authorities often react to this strife by increasing restrictions on civil and political rights and, at times, grossly violating basic rights, such as the right to life, in an effort to control the labour force. Human rights NGOs have extensively documented the increase in labour activism, particularly in such low-wage areas as Malaysia, Indonesia, and even China, and the concomitant increase in state repression. The negative shock of globalization has, it should be noted, affected not only non-Western societies, but those of advanced, industrialized Western Europe, the United States, and Japan. The consequences of globalization for the poor and middle class in the United States are enormous.

3.3.4.4 Effect on Job Security

A major impact observed in many countries is a shift from companies hiring permanent employees with job security and benefits, to the use of contingent or temporary workers lacking health care, retirement, collective bargaining arrangements, and other security available to the permanent work force. As with other negative impacts of globalization, this one also has more severe impacts on women, minorities, and migrant workers. Women comprise the largest segment of migrant labour flows, both internally and internationally. States often do not include migrant workers in their labour standards, leaving women particularly vulnerable. Overall, only some 20% of the world's workers have adequate social protection. In addition, some 3000 people a day die from work-related accidents or disease.

3.3.4.5 Adverse affect on Women Rights

Among the distinct groups of society upon whom globalization's impact has been most telling, women clearly stand out. Investors have demonstrated a preference for women in the “soft” industries such as apparel, shoe- and toy-making, data-processing, and semi-conductor assembling – industries that require unskilled to semi-skilled labour – leading women to bear the disproportionate weight of the constraints introduced by globalization. The process of economic liberalization has also led to growth in the Informal sector and increased female participation therein. Employment in the informal sector generally means that employment benefits and mechanisms of protection are unavailable. Underemployment seems to be as big a problem as open unemployment.

Women in the agricultural sector have also been adversely affected by the promotion of export-oriented economic policies, trade liberalization and Transnational Corporations' activities in agriculture-related industries. Emphasis on export crops has displaced women workers in certain countries from permanent agricultural employment into seasonal employment. Subsistence farming has been severely affected in the new economic environment, leaving women farmers to seek seasonal employment. Besides the tenuous and low economic returns of seasonal

agricultural employment, the Food and Agriculture Organization of the United Nations (FAO) has noted that the destruction of subsistence farming, increased industrial pollution and the loss of land to large commercial ventures, often financed by TNCs, have given rise to grave problems relating to food security and the health of the rural poor.

3.3.4.6 Intensification of Ethnic and Religious Conflicts

In addition to the above mentioned strife, globalization has been conceived to be the reason behind the intensification of ethnic and religious conflict and violence. Globalization with its attendant social change has precipitated fragmentation at the local level. On the one hand, the resurgence of ethnic and religious strife can be understood as an effort to assert identities and to ascribe meaning in the face of global forces over which one has no control. However there is another dimension to ethnic/religious strife that need s to be scrutinized. What is a particular ethnicity's class position both within the state and globally? It may be that ethnic/religious and class categories overlap. It is well known, for example, that in Indonesia, where ethnic strife has erupted, the majority of merchants and retailers are Chinese. In such cases, a critical issue is raised as to whether, analytically, ethnic/religious clashes or class conflict is the decisive factor in increased violence.

3.3.4.7 Affect on Indigenous People's Rights

The violation of the rights of the indigenous has been taking place for centuries, the recent emphasis on economic development and international competitiveness has resulted in new onslaughts on their rights. The link between the rights of indigenous peoples and globalization was demonstrated by coming into effect of North American Free Trade Agreement of 1994, for the uprising by Indians in Chiapas, Mexico, drawing attention to the violation of their economic and social rights. Oil, Uranium, minerals and timber are found throughout the world on indigenous lands, and prospectors and entrepreneurs have been permitted to encroach on them in the name of economic development. Indigenous lands in many parts of the world have been trespassed upon in pursuit of traditional medicines which are then brought in international pharmaceutical markets. Economic development has resulted in serious violations of the right to health, the right to healthy environment, the right to life and the cultural rights of the indigenous peoples.

3.3.4.8 Radical Shift in Societal Values

Human rights violations (whether of individual civil/political, economic/social, or minority rights) as a consequence of destructive social change resulting from globalization might result, at least in some instances, in radical shifts in a society's

cultural values and norms that, in turn, may lead to a reconfiguration of the substance of traditional or historic notions of human rights. The outcome of this search for a revitalized identity and meaning is unpredictable. There may be a reinforcement of an exclusive communalism with little personal autonomy or there may be a loosening of communal ties and an expansion of individual demands based on class. The evidence points in both directions. Clearly globalization has had a harmful effect on the entire complex of human rights, resulting in significant transformations in the behaviour and values of masses of humanity across the globe.

3.3.4.8 Increase in Trans-boundary Crime

Globalization also has produced an important new type of transboundary criminal enterprise. International crimes that involve or impact human rights violations are increasing: illegal drug trade, arms trafficking, money laundering, and traffic in persons are all facilitated illegal drug trade, arms trafficking, money laundering, and traffic in persons are all facilitated by the same technological advances and open markets that assist in human rights. Traffic in women for sexual purposes is estimated to involve more than $7 billion a year, but the sex trade is not the only market for humans. Coercion against agricultural workers, domestic workers, and factory workers also is evident.

To sum up the discussion, it is suffice to say that even though the Globalization era has given rise to significant advancement in various elements such as technological, social, economic, political, cultural, and sociological, it its effect on fundamental Human Rights is essentially negative. This is because the process of globalisation itself is mainly driven and engineered by corporate elites as well as the so-called transnational companies involved in profit-making activities and serving business ends. Having been underpinned by the ideology of neoliberalism and market driven, globalization is therefore devoid of any normative principle of justice and humanity. In aiming for the profit maximization, social and human rights responsibilities have sometimes been abandoned and sidelined. As consequences of this phenomenon, growing threats and violations to human rights have occurred, such as the inequality in economic growth, poverty, violations of fundamental human rights, and attack to states sovereignty.

3.3.5 THE WAY OUT

Considering the negative impacts of globalization, there have been mounting concerns and calls for a mechanism to manage the globalization as it is a process that cannot be stopped. As a part of managing the globalization, firstly, there is an urgent need for thinking towards establishing a regulatory transnational regime which would not impede globalization but would make its players more accountable and

socially responsible. As the International Council on Human Rights Policy points out, voluntary codes rely entirely on business expediency or a company's sense of charity for their effectiveness. By contrast, legal regimes emphasize the principle of accountability and redress, through compensation, restitution and rehabilitation for damage caused. They provide a better basis for consistent and fair judgments (for all parties, including companies). Thus, International legal codes can establish coherent universal standards and can also provide a "level playing field" for all businesses, something cannot be done by an array of codes of conduct.

While the existing international legal framework imposes legal obligations to respect human rights mainly on states and intergovernmental organizations (IGOs), there is no logical reason that TNCs cannot bear human rights-related obligations. The preamble of the UDHR is addressed not only to states but also to "every individual and every organ of society". Therefore, it is not possible for non-sates actors including TNCs whose actions have a strong impact on the enjoyment of human rights by the larger society, to exempt them from the duty to uphold international human rights standards. Towards this, there is a need to strengthen the state and to insist on its responsibility for ensuring that non-state actors do not commit human rights violations. This way, even though states will retain the primary responsibility for ensuring the promotion and protection of human rights, non-state actors will be held accountable when they undermine state efforts to do so or are complicit in violations undertaken by the state. This will require the civil society which has played a pivotal role in developing the law of human rights, now to take a further role as a result of globalization.

3.3.6 LET US SUM UP

In this lesson we have discussed about the process of Globalization and its various dimensions. We have tried to understand how globalisation remains outside the control of the State and its impact on the position of the State. Then we tried to understand whether Globalization is good or bad for Human Rights and then proceeded towards Globalization's impact on Human Rights and how this impact needs to be minimized or managed at the international level, at the state level and on the part of Civil Society.

3.3.7 EXERCISES

1 Define Globalization.

2 Discuss various dimensions of Globalization by providing various examples of your own.

3 Discuss how Globalization Impacted the State.

4 Briefly discuss the positives of Globalization.

5 Critically analyze how Globalization with its impact violates the basic Human Rights.

6 Briefly discuss how Globalization can be managed?

3.4 PEACE AND CONFLICT RESOLUTION FOR PROMOTION OF HUMAN RIGHTS

- V. Nagendra Rao

STRUCTURE

3.4.0 OBJECTIVES

Any sustainable conflict resolution and peace building process would automatically result in the promotion of basic Human Rights enjoyed by the people. After going through the lesson you will be able to understand:

- how resolving conflicts and establishing peace would promote human rights;

- what kind of peace would help resolving conflicts and promoting Human Rights;
- how such peace building demands democratization of the society; and
- what reforms and institutions would promote Human Rights.

3.4.1 INTRODUCTION

Today there is a general consensus among the scholars of both the fields of Peace and Conflict studies and Human Rights that human rights violations are both symptoms and causes of violent conflict. Violent and destructive conflict can lead to gross human rights violations, but can also result from a sustained denial of rights over a period of time. Protection of human rights is nearly impossible without instilling peace in the surroundings in the common knowledge of all of us. Since societal violence is broadly causing for the violation of basic human rights, many efforts were made to build peace and resolve conflict. In this lesson, we will study this interplay or linkage between peace / conflict resolution and enhancing the status of human rights.

3.4.2 HUMAN RIGHTS VIOLATIONS AS SYMPTOMS OF VIOLENT CONFLICT

The symptomatic nature of human rights violations is well known. Today we all witness the assaults on the fundamental right to life. To mention a few, indiscriminate attacks on civilians, executions of prisoners, starvation of entire populations, massacres, and even genocide are taking place in several countries across the world. Torture of people and the restrictions on their freedom of movement has become common in internal conflicts. Women and girls are raped by armed groups and soldiers and forced into prostitution, and children are abducted to serve as soldiers. Tens of thousands of people detained in connection with conflicts and thousands "disappear" each year, usually killed and buried in secret. Thousands of others are arbitrarily imprisoned and never brought to trial or are subject to grossly unfair procedures. It is not only the right to life but even other fundamental rights are denied: the destruction of homes, schools and hospitals; attacks against relief convoys; the destruction of crops; the impossibility to work, travel and have access to food; the destruction of important cultural sites and symbols, etc. Roughly 26 million people have also been forced to leave their homes due to violent conflict, becoming refugees and internally displaced persons (IDPs). This way one can say that armed conflicts clearly illustrate the indivisibility and interdependence of all human rights.

The damage and the destruction caused to infrastructure and civic institutions undermine the range of civil, economic, political and social rights.

3.4.3 HUMAN RIGHTS VIOLATIONS AS CAUSE OF VIOLENT CONFLICT

On the other hand structural violence and denial of human rights also contribute to the emergence of most violent conflicts. Numerous conflicts have been caused by human rights issues such as limited political participation, the quest for self-determination, limited access to resources, exploitation, forced acculturation, and discrimination. It is important to note here that denial of human rights occurs not only as a result of ***active violations*** (which can be defined as explicit, direct and intentional actions by the State and its agents), but also as a result of ***passive violations*** (which can be defined as those violations resulting of the negligence or inability of the State to protect the rights of its citizens, especially in the socio-economic domain; passive violations can contribute to the deepening of societal cleavages and conflicts, and thus can lead to the emergence or escalation of violent conflict).

Several empirical studies conducted also suggest that "violations of civil and political rights appear more obviously associated with conflict than abuses of economic and social rights, but the latter seem to play a facilitating role. Discrimination and violations of social and economic rights function as underlying causes, creating the grievances and group identities that may, under some circumstances, motivate civil violence. Violations of civil and political rights are more clearly identifiable as direct conflict triggers. Another crucial dimension in the nexus between human rights violations and violent conflict is the role played by collective identities, such as ethnicity, race, and religion. A combination of socio-economic inequalities aligning with ethnic stratification and of political elites manipulating ethnic relations for particular ends often leads to instances of lethal violence between ethnic groups, and thus to systematic and massive human rights violations, such as ethnic cleansing and genocide. In an ethnically divided society, symptoms of a potentially violent conflict include the dominance of a particular ethnic group in state institutions (such as the judiciary or the police), as well as radio programmes or other media that encourage ethnic division and hatred.

The above discussion establishes that there is a close linkage between conflict and Human rights violation and any conflict resolution and sustainable peace building process results in the promotion of the basic Human Rights enjoyed by the people. This discussion should automatically lead us to the concept of Peace and how it can be achieved and how it can help in the promotion of Human Rights. Thus in the following section we will try to gain some understanding about the concept of Peace.

3.4.4 CONCEPTUALISING PEACE

The concept of peace can be understood in different ways. Over the time different people have given different interpretations of the concept of peace. The most common understanding is *negative peace*. Negative peace means the absence of war or the absence of direct violence. In international relations this concept is most commonly used. According to negative peace theory, peace is found whenever direct violence is absent. The Norwegian peace researcher Johan Galtung criticizes this way of thinking for having a too narrow view on peace and on what a peaceful society is. According to him, peace is much more than just the absence of direct war and violence. In light of this he has developed the term *positive peace* and states that: *"Positive peace is the best protection against violence"*. In this view peace in a society is found when exploitation is minimized or eliminated and when there is neither direct violence nor structural violence. Galtung has developed the term *structural violence,* meaning that there is more to violence than just the physical pain. Structural violence is a more indirect form of violence that is built into the persons or the structures in society. It can be divided into political, repressive and economic exploitative structures. Structural violence means that people are denied their important rights by society and this is a type of violence. Because of this social oppression that people experiences, people who are originally seen as "non violent", may act in violent ways. This may often be the cause of conflict in a society. The problem with structural violence is that it is more difficult to notice than direct overt violence. It works more slowly and may have more grave results. In a positive peace view, it is important then, that for a society to be peaceful, structural violence needs to be at a minimal or absent. According to Galtung inequality is one of the major forms of structural violence, and is therefore one of the major causes of conflict. Coping and dealing with inequality is thus a major peace component.

3.4.4.1 Negative means of keeping Peace

The most common forms of keeping peace in a negative sense are diplomacy, negotiations and conflict resolution. These ways of making peace have existed for a long time. According to a negative peace view, peace is made through coming up with a mutual agreement between the parties in conflict. The negotiations often take place between the two major leaders in conflict. This way of negotiating was in particular practiced during the Cold War. While some scholars view that this way of dealing with conflict is effective and successful, but often it has proven not to be. During the Cold War, this way of dealing with conflict often made things worse. Another way of settling conflict is to combine diplomacy and military force. Some scholars are of the opinion that diplomacy and military invasion or involvement is connected. In some cases this has proven to be correct. Towards this Barash and Webel show how countries can threaten other countries and use military force on

them in order to stop a conflict. However, some of these military threats and invasions have also failed and made the conflict worse. Another form of diplomacy, one that has proven to be quite successful, is the so-called Track II diplomacy, or unofficial or "encounter group" diplomacy. The representatives of opposing groups meet in informal interactions, often with a third-party facilitator, trying to establish a mutual understanding and interpersonal relationships. This way of solving conflicts has had positive results. Conflict resolution seems to be more effective when a third party is involved, than when the two sides in conflict are trying to solve the conflict alone. Other ways of negative peacekeeping could be through military strength or the balance of powers, disarmament and arms control, and the establishment and strengthening of international organizations and international law.

3.4.4.2 Positive means of Building Peace

We have discussed about several means of achieving negative peace. The thing that unites all these ways is that they all have one intention: to stop the fighting. One might, however, claim that there is more that is necessary to create a peaceful society than just to stop the direct violence. Thus the advocates of positive peace say that it is necessary, but not enough, to prevent and be against war. Additionally one needs to be in favour of something, in favour of peace. In peace studies it is therefore necessary not only to focus on the understanding and prevention of war, but also on the establishment of a desirable and attainable peace. Galtung says that for a society to be peaceful, in a positive way, there needs to be justice. Injustice is a major cause of structural violence, which then again may be a cause to conflict.

3.4.5 LINKAGE BETWEEN PEACE, CONFLICT AND HUMAN RIGHTS

In this context it is important to understand the linkages between the peace, violence and conflict as Galtung explains. For Galtung creating peace means reduction and prevention of violence. And similarly, violence means harming or hurting. Life is capable of suffering of physical and mental violence. Besides, it also capable of experiencing pleasure that comes to the body and mind. Violence hurts body, mind and spirit. It is avoidable insults to basic human needs and more generally to life.

3.4.5.1 Categorization of Violence

Depending on how it operates, Johan Galtung provides three categories of violence – direct, structural and cultural – which are given as following:-

- **Direct Violence**: Direct violence is also termed as personal violence. There is a perpetrator who intends the consequences of violence. Absence of personal violence is called "negative peace".

- **Structural Violence**: Structural violence is known as indirect violence. It is also referred to as "social injustice". This comes from the structure of society itself. It can be between humans, between sets of societies and sets of alliances or regions in the world. It is invisible and can be much more destructive. Inside human beings, there is the indirect, non-intended and inner-violence which comes out of the personality structure. Two main forms of outer structural violence in politics and economics are repression and exploitation. Both have significant negative impact on body and mind. Hence, structural violence may be the frozen direct violence of past conquest or repression, like colonialism, slavery or economic exploitation. It can result into revolutionary and counter-revolutionary violence. Absence of structural violence is called "positive peace" which is referred to as "social justice".

- **Cultural Violence**: Cultural violence is symbolic in religion, ideology language, art, science, law, media and education. It is also invisible, but with clear intent to harm, even kills, indirectly, through words or images; in symbolically. This is the violence of priests, intellectuals and professionals. Its simple function is to legitimize the direct and structural violence. In the words of Galtung, "cultural violence makes direct and structural violence look, even feel, right – or at least not wrong".

Thus Galtung views direct violence as an "event", structural violence as a "process with ups and downs", and cultural violence as an "invariant", and "permanence". Structural violence often breeds structural violence and personal violence often breeds personal violence. Cases of cross-breeding between two are also there. To explain the direct-structural and cultural violence triangle, Galtung has applied the concept of power and identified four dimensions of power impacting positive and negative peace. These dimensions are cultural, economic, military and political. Galtung emphasizes that vicious spiral of violence can be broken with the virtuous spiral of peace flowing from cultural peace through structural peace to direct peace. This process would bring about positive peace. And any society to be peaceful, in a positive way, there needs to be justice.

3.4.5.2. Positive Peace, Justice and Human Rights

Thus the respect for human rights is an important contributor to a just society. Human rights are very important in positive peace theory. A country may be peaceful in a negative way in the sense that there is no war or direct fighting, but if human rights are being violated it will not be peaceful in a positive way. Another scholar in the area, Ife, also emphasizes the importance of the connection between peace and human rights. He asserts that both are necessary for one another, and without the one you cannot have the other. They are mutually dependent and if human rights are not protected and realized, peace cannot be achieved, and if peace is absent human rights

cannot be protected. A peace without human rights could be considered a weak peace.

Scholars within human rights thinking have different interpretations of human rights. Some see the rights as individual rights, meaning basic rights that the individuals have. Individual liberty is important here. These rights are called "negative rights" and are rights that need to be protected. On the other hand one find "positive rights", which are rights that needs to be provided. These rights could be right to education, healthcare, social security etc. The positive rights require a stronger role of the state than negative rights. The state needs to provide rather than just protect, and by that needs a stronger and more active role. Very often the emphasis is on negative, civil and political rights rather than on positive rights.

Another way of categorizing human rights may be to divide them into civil-political rights on the one hand and socio-economic rights on the other. The first set of rights involves rights such as freedom from torture, unjust imprisonment and execution, intellectual freedom to speak, to write, political freedoms, freedom to vote, etc. Socio-economic rights on the other hand involve rights such as the right to work, education, medical care, and adequate food. Some associate human rights with the first group while others associate them with the last. In developing countries many people attribute great importance to socio-economic rights whereas in more developed countries like in the West, individual liberty, and civil and political rights are the most important ones. The focus on what rights of those are important often depends on ones' background. This may explain the different emphasis on different human rights in peace building. These two categories of human rights and peace are connected. It is possible to state that the denial of human rights is a denial of real peace. The causes to fully achieve peace may often be deeper than just to end the fighting. When developing human rights it is important that it is done from below. Originally human rights were formulated by an elite group of few people. However, for the rights to be legitimate and to work in a society, it is important that they are implemented in the daily routines of people. One needs to create a culture of human rights. The same can be applied to peace. When creating a peaceful society, it is important to follow the bottom up approach.

A peace from above is only a partial peace, and the same goes for human rights. This shows the connection between human rights and peace. As Ife considers both depend on developing and sustaining strong, inclusive communities, within which human rights and human responsibilities can be constructed. The Nobel Peace Prize laureate of 1977, Mümtaz Soysal from Amnesty International, said the following in his speech: *"Peace is not to be measured by the absence of conventional war, but constructed upon foundations of justice. Where there is injustice, there is seed of conflict. Where human rights are violated, there are threats to peace.* What both Soysal and Ife here demonstrates is the important connection between peace

and human rights. If a society suffers from human rights violations, peace will never truly be achieved. It is crucial that both concepts are well built into the societies. In this sense, peace is more than the absence of war and human rights is one key to positive peace and by promoting and protecting such Human Rights democratic society contributes to positive Peace and democratization of the society is the only way of establishing positive peace and justice Where Human Rights can be promoted.

3.4.6 DEMOCRATIZATION, CONFLICT RESOLUTION AND PROMOTING PEACE AND HUMAN RIGHTS

Various Civil-political and Economic Social and Cultural Rights that constitute Human Rights can be guaranteed only through Democracy and Democratization of Society. Democratization as a concept also plays an important role in building peace in society. It might seem as one cannot talk about peace without talking about democracy. And democracy is often the first step that needs to be taken in order for a country to become peaceful and developed. Democracy and democratization are important factors for peace because it gives room to solve conflict peacefully, Scholars often say that when democratic institutions are established in a society conflicts are more likely to transform into peaceful change rather than violent and societies with democratic political institutions have a less chance of experiencing civil war than the ones without. One might see it as a mutual connection where peace is pursued through democracy, and through democratization human rights are protected. And then again when human rights are protected, a society is more peaceful. The building of democratic structures and institutions in any country is therefore important. If this is not done on time, new conflicts might escalate.

Thus the democratization of society and the creation of democratic institutions would help in ending the cultural, structural and direct types of violence that have been discussed in the previous section and create ways to cultural, structural and direct peace. Thus establishment of Democracy is the first step towards building a more just and peaceful society. By making the country more democratic, and making sure that the people have an opportunity to choose a new government, one might be able to find a solution to the civil conflicts in the country. This can be connected to what Bentham said about how democracy gives people opportunities to execute some sort of control over the government. They then may, through the democratic rights that are guaranteed, choose to elect other representatives for government if they are not happy with the current ones. One basic principle of democracy is that *all* citizens are entitled to participate and the citizens have *equal* democratic rights. This equality that democracy provides is a component against injustice. In the following section let us study in a democratic society how the structural causes of violence can be addressed, what kind of judicial

and legal reforms will promote the Human Rights, how Human Rights need to be protected at the conflict prevention stage while building the peace. As Galtung said, injustice is a major cause of structural violence, Let us begin with how the causes of structural violence can be addressed in the promotion of Human Rights.

3.4.6.1 Addressing the structural causes of violent conflict:

You may recollect that the scope and definition of human rights include such norms as the rights associated with political participation, economic and social rights, freedom of expression, and non-discrimination. The activities and programmes stemming from this broader understanding of human rights will include not only the pursuit of justice and reconciliation, establishing the parameters to balance the demands of victims with concerns regarding socio-political stability, but will also aim to:

- incorporate international human rights standards into all sectors;
- ensure the personal freedom and security of individuals and groups; guarantees for the freedom of media, trade unions and all civil society groups, and against all kind of discrimination (ethnic, religious, gender, etc.);
- prevent the outbreak of future hostilities (including constitutional reforms, restructuring of the government, security forces, and judicial system);
- foster broader social, political, and economic reform (targeting social and economic inequities, redistribution, discrimination, and ensuring legitimacy, accountability, transparency and participation, etc.)

In post-conflict situations, there might be a tendency to focus attention and activities on civil and political rights as they may be perceived as the most urgent and fundamental to be respected if peace is to be achieved. Nonetheless, ignoring economic, social, and cultural rights, even in the immediate post-settlement phase, risks failing to respond to the immediate needs and expectations of those directly affected. The protection of all these rights forms a safeguard against domination and discrimination for all communities. In other words, "the human rights dimension signals a fundamental change in the nature of the state." In the socio-economic realm, a rights-based based approach to development focuses not only on the amelioration of people's economic conditions, but also on their social and political well-being, as well as on the states obligation to guarantee the enjoyment of these rights on an equal basis and without discrimination.

3.4.6.2 Judicial & Legal Reform for the Promotion of Human Rights

Human rights promotion and protection depends on the existence of a well-

functioning justice system and of laws that comply with international human rights standards and norms. The reforms in both sectors are therefore intimately linked. Most post-conflict states lack a functioning and legitimate judicial system. Reforms and efforts to (re)build that system are crucial elements in the process of promoting and protecting human rights. More specifically, the following activities explicitly refer to human rights:

- Law reform: reforming/redrafting laws in accordance with international human rights standards; promulgation of legal codes and statutes including fair trial norms (civil and criminal) in line with the protection of basic human rights;
- Standards for the independence of the judiciary and other justice officials;
- Human rights training and education for judges, prosecutors, and public defenders;
- Guarantee of freedom of lawyers to practice their profession without fear of retribution;
- Protection of human rights defenders who attempt to use the judicial system to redress human rights abuses;
- Removing discriminatory provisions from existing statutes and ensuring that transitional regulations adopted under the authority of the United Nations are compatible with human rights norms.
- Oversight and accountability mechanisms: judges and lawyers must be accountable, if they engage in criminal or unethical conduct, especially corruption. Fair and transparent processes must be established to handle such disciplinary actions and to show the public that things have changed and that no one is above the law. Some law practitioners working in post-conflict settings argue that oversight and accountability may be the single most important factors in the wide range of human rights and justice and rule of law activities, but are also often missed

3.4.6.3 Protecting Human Rights in the Conflict Prevention Phase

Further, in any conflict prevention phase, special emphasis needs to be placed by states on ensuring the protection of minorities, strengthening democratic institutions, realizing the right to development and securing universal respect for human rights. Preventing massive human rights violations from arising, responding to violations before they escalate into conflicts and controlling and resolving conflicts before they escalate further are central concerns of preventive action. A critical element of the conflict prevention phase is institutional reform. In addition to

the fact that reforming historically abusive State institutions can help address the underlying causes of violent conflict and thus prevent future violence, it is an important test of the political will to engage in real change and prevent abuses. If reforms are resisted or not implemented seriously, the risks of serious conflict are increased.

3.4.6.4 Restoring and Protecting Human Rights in the Peace Building Phase

In the aftermath of any conflict, violence and suspicion often persist. Government institutions and the judiciary, which bear the main responsibility for the observation of human rights, are often severely weakened by the conflict or complicit in it. Yet, a general improvement in the human rights situation is essential for the rehabilitation of war-torn societies. Such efforts, in the quest for sustainability need to be prospective in focus, concentrating on the development of systems and institutions capable of delivering long-term future results. They must also, however, address the past, whereby its wounds are treated so that they are at least less likely to infect the future. Indeed, many argue that healing the psychological scars caused by atrocities and reconciliation at the community level cannot take place if the truth about past crimes is not revealed and if human rights are not protected. To preserve political stability, human rights implementation must be managed effectively. Here, some trade-off dilemma may appear between the need to re-establish security, which might require collaborating with perpetrators of earlier human rights violations, and the need for justice. Even more fundamentally, the promotion and protection of human rights must aim at deepening a culture of human rights within a society, and be an ongoing part of nation-building, particularly in a multi-ethnic country.

This way by building democratic societies and institutions, conflicts can be resolved, positive peace can be built by taking into consideration the fabric of the society. Justice prevails when justice is maintained and, in return, the same would lead to the promotion and realization of Human Rights.

3.4.7 LET US SUM UP

In short in the present lesson we tried to understand how human rights violations are both symptoms and causes of violent conflict. We have also studied how important are the linkages between the conflict, human rights and the process of peace building. We also tried to understand the positive and negative connotations of peace and why there is a need for establishing positive peace and end various forms of violence. Violence and conflict have to be eliminated to create a just society and to establish positive peace. Hence, positive peace is all about establishing just societies and Human Rights also aim at establishing justice. Towards the end of the lesson we

have understood how democratization of society addresses all three concerns and what kind of processes and reforms need to be brought to promote such society and what special care needs to be taken relating to Human Rights while peace building process is facilitated.

3.4.8 EXERCISE

1. Discuss Human Rights violations both as symptoms and causes of violent Conflict.
2. Deal with the Concept of Peace while considering both of its connotations.
3. Deal with Violent Conflict with special reference to three types of violence discussed in the lesson.
4. Establish how Peace, Conflict Resolution and the promotion of Human Rights are linked with each other.
5. How the process of democratization can help in resolving the conflicts, building peace and in the promotion of Human Rights.
6. Discuss briefly how the structural causes of violent conflict can be addressed.
7. Deal with the issue of restoring and protecting human rights in the peace building process.

4.1 NATIONAL COMMISSION ON HUMAN RIGHTS: FUNCTIONS, POWERS, ROLE AND LIMITATIONS

- Satnam Singh Deol

STRUCTURE

4.1.0 OBJECTIVES

Human Rights Commissions are relatively new and innovative institutions born out of the initiatives of the United Nations to ensure domestic protection of human rights. The fact that international human rights laws have moved toward national constitutionalisation of human rights has strongly shaped the development of HRCs in numerous jurisdictions. After going through the lesson you will be able to:

- understand the importance and role National Level Human Rights commission in a Country;

- learn about the Nature, Powers and Functions and the structural weakness of the NHRC in India; and
- appreciate the achievements of NRC despite of the Narrow view taken on the definition on Human Rights in the Act through which it was created.

4.1.1 INTRODUCTION

It has been rightly said by H.J. Laski that every state is known by the rights it maintains. India, keeping in line with the obligation of a mature and responsible democracy, is committed to provide and protect all reasonable rights and liberties of the people. India has made sincere efforts for the protection and promotion of human rights. India has established different ways of protecting human rights. A written Constitution incorporating fundamental rights, a pluralist and an accountable parliament, an executive who is ultimately subject to the authority of elected representatives and an independent, impartial judiciary are the features of Indian polity which work to protect and enhance the human rights of people.

In India's post-independence history, there have been continuous complaints of human rights violations. But until 1990s, the Indian government displayed negligible regard for the promotion and protection of human rights. Hence, besides the constitutional provisions, there was lack of any formal and effective institution to safeguard the human rights. The ninth decade of the twentieth century witnessed gross violation of human rights in India. The insurgency and counter-insurgency operations in the states of Punjab, Kashmir and the North-East resulted into lethal violation of human rights. The Indian government was criticized at the domestic as well as the international level for the cases of the violation of human rights. Moreover, since 1991 India adopted the new economic policy of Globalization. The Western world compelled the Indian government to give more sincere attention to the issue of the promotion and protection of human rights. Contemporary to all these circumstances, the World Conference on Human Rights was organized by the United Nations at Vienna in the year 1993. India was also represented in the Vienna Conference. In the Conference, all member states pledged to constitute the national level human rights commissions to assure the promotion and protection of human rights at the domestic level. Therefore, in immediate circumstances, the President of India, under Article 124 of the Indian Constitution, promulgated the 'Protection of Human rights Ordinance on September 28, 1993. Two months later, the bill regarding the Protection of Human Rights Act was submitted to the Parliament. On January 08, 1994, the 'Protection of Human Rights Act (PHRA), 1993 received the assent from the President of India. The PHRA 1993 came into force with retrospective effect from September 28, 1993.

4.1.2 COMPOSITION OF THE NATIONAL HUMAN RIGHTS COMMISSION

As per the Article 3 (2) of the PHRA, 1993, The National Human Rights Commission (NHRC) consists of:

(a) a Chairperson who has been a Chief Justice of the Supreme Court;

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

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

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

Besides, The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission. Additionally there is a Secretary-General who will act as the Chief Executive Officer of the Commission and he/she will exercise all the powers and functions as delegated by the commission.

The headquarters of the Commission is located in Delhi and the commission, with the prior approval of the Central Government can establish offices at other places in India.

The appointment of the Chairperson and other Members and the other provisions relate to the removal of a member of the Commission, the term of office of Members, a member to act as a Chairperson or to discharge his functions in certain circumstances, the terms and conditions of service of members, vacancies, etc., not to invalidate the proceedings of the Commission, the procedure to be regulated by the Commission, the officers and the other staff of the Commission. are elaborately discussed under section 4 to 11 of the Act.

4.1.3 NATURE, POWERS AND FUNCTIONS OF THE COMMISSION

Under section 12 of the Act, the Commission exercises several powers and they include:

a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, into complaint of (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant;

b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;

d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

g) undertake and promote research in the field of human rights;

h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

i) encourage the efforts of nongovernmental organization and institutions working in the field of human rights;

j) such other functions as it may consider necessary for the promotion of human rights.

Thus the commission is an autonomous body created by the Act of Parliament and It is committed to provide independent views on issues within the parlance of the Constitution or in law for the time being enforced for the protection of human rights, thus it takes an independent stand. By the Act it has the powers of a civil court and it has the authority to grant interim relief. It has the authority to recommend payment of compensation or damages. It receives over 70 thousand complaints every year which is a testimony to its credibility and the trust deposed by the people. It also has a unique mechanism with it can monitor the implementation of various recommendations.

However, the responsibility entrusted to the Commission under the Act of 1993 cannot be adequately fulfilled without the development of close ties between the Commission and NGOs. Thus for the Commission, it is not just a matter of statutory obligation under Section 12(i) of the Act. The Commission recognized that the cause of human rights has much to gain both from the practical help and from the constructive criticism that NGOs and the Commission can bring to bear in their mutual interaction and growing relationship.

The Commission further acknowledges that the promotion and protection of human rights requires the courage and commitment that NGOs bring to bear in their endeavours and that it is for this reason that the country has much to gain by encouraging their efforts, whether the NGOs are national or international. Therefore, the Commission from very beginning associated NGOs with the inquiry of complaints. In several places, during visits by the Commission, NGOs have boldly come forward with evidence of wrong-doing in relation to specific complaints addressed to the Commission.

4.1.4 CRITICAL ANALYSIS AND LIMITATIONS FOR NHRC

It has been established as an obvious reality that the Indian Government was not much serious about establishing the Human Rights Commission and it had to establish it under the pressure and criticism by the international community. So, it is not surprising that there are many deficiencies and shortcomings in the 'Protection of Human Rights Act 1993' itself. It takes very narrow view of human rights. It has been provided with a very weak foundation to start with. The PHRA 1993 establishes a variety of confining parameters within which the Commission has to operate.

While analyzing NHRC' functioning and role in the context of custodial deaths, it is useful to have an overview of the NHRC's mandate and composition. An effective National Human Rights Commission must enjoy a clearly defined area of jurisdiction to perform effectively. The NHRC itself and the community it serves should be in no doubt as to the functions it is assigned to perform. A carefully defined mandate also enables it to avoid possible conflicts of jurisdiction with other independent agencies or with the courts. But unfortunately, all these qualities are not present in the NHRC of India.

4.1.4.1 Biased and Blocked Composition

The composition of the NHRC is high-powered as three out of its five members are judges. The Chairpersons of the National Commission for Minorities, the National Commission for the Schedule Castes and Schedule Tribes and the National Commission for Women are deemed (ex-officio) members of the Commission. But as there is no coordination between the NHRC and these other national commissions, the opportunities to look collectively and cooperatively into the complaints of custodial deaths of minorities, SCs, STs and women seem to have been lost.

This composition gives NHRC certain degree of legitimacy, solemnity and credibility as the Act disallows any person other than a former Chief Justice of the Supreme Court to be appointed to be the Chairperson of the Commission, but at the same time it attracts criticism of being 'retired persons' den. Remaining two members are to be men and women 'who have knowledge and practical experience in matters

relating to human rights.' Surprisingly, neither a human rights activist nor a woman has been selected under this category.

The PHRA 1993 makes provisions of the establishment of State Human Rights Commissions also, along with the NHRC. The intention of the PHRA is to establish a culture of a federal human rights system, with a complex web of state human rights commissions. But in the case of NHRC, this 'complex web' of national and several state human rights commissions creates a host of confusion regarding jurisdiction for the common man. This is because the PHRA does not delineate the jurisdiction between national and state commissions clearly and no hierarchical relationship has been mandated. Any matter, which is already being inquired into by the NHRC, or any other commission, the State Human Rights Commission shall not inquire into the said matter. In the same way the NHRC shall not inquire into any matter which is pending before a State Commission or any other commission.

4.1.4.2 Restricted Jurisdiction

The NHRC has limited mandatory powers. As mentioned above, the PHRA 1993, takes a very narrow view of human rights and provides that human rights means "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of India or embodied in the International Covenants on Civil and Political Rights and the International Covenants on Economic, Social and Cultural Rights and enforceable by the courts in India." So, main drawback of this statuary definition seems to be that it curtails the mandate of the Commission by limiting it to the rights enshrined in the two Covenants and the Indian Constitution. India subscribes to the dualistic pattern with regard to the relationship between international treaty law and domestic law. Theoretically, the Commission cannot discharge its responsibility for protecting rights in the Covenants unless the Indian Parliament enacts domestic legislation incorporating these rights. Besides this, India has signed several other international treaties but through this limited definition, the NHRC's mandate is restricted to the two Covenants and the Constitution only. In regard to custodial violence and deaths, the internationally acclaimed 'UN Declaration on the Protection of all persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' and the 'UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' are not mandatory for NHRC to acknowledge.

Besides having a narrow definition of human rights, Indian armed forces are excluded from the jurisdiction of the NHRC. The NHRC cannot inquire into the complaints against them. It has to seek a report from the Central Government and send its recommendations on such report to the government. Due to that limitation, NHRC has not been able to consider the complaints of deaths in the custody of the Para-Military forces, although there are frequent reports of people being died in the

custody of Indian Armed Forces in the terrorism/insurgency prone areas of Kashmir as well as North-East India.

4.1.4.3Unproductive Visits in Jails

The NHRC can visit any jail or any other institution under the control of the state government, where persons are detained or lodged for the purposes of treatment, reformation or protection. But the NHRC can visit these institutes under prior intimation to the concerned state government. The mandatory condition to provide prior information to the authorities for visiting any jail or any other institution under the control of the state government, totally defeats the purpose of the prison reforms. Secondly the NHRC seldom visits the Jails of the all States from time to time. In regard to custodial deaths, the NHRC cannot practically observe and reform several inefficiencies occurring as life staking in the prisons such as unhygienic food, unhealthy water and sanitation facilities, filthy kitchens, wards, toilets, lack of proper medical facilities etc.

4.1.4.4Non-Registration of Complaints

NHRC does not inquire into any matter after the expiry of one year from the date on which the act of the violation of human rights had allegedly been committed. On the basis of this provision, the NHRC has denied to provide justice to several complaints of custodial deaths. In majority of the cases the victimized people, due to the threat or pressure by the accused, are not in secure position to complain immediately against the death of their kin or relative in the custody, especially when the culprit is the powerful and influential police personnel. But it does not mean that their complaints lose the legitimacy to get justice after the period of one year. However, at NHRC, the complaints of human rights violations (including custodial deaths) are o more legitimate and justifiable and deemed to be expired after the period of one year.

4.1.4.5 Only a Recommendatory Status

The PHRA 1993 gives the NHRC the investigative powers of a civil court, limiting its enforcement powers. Under Section 18 of PHRA, the NHRC can only make recommendations. Thus the ultimate enforcement of the recommendations rests with the government of the concerned States whether to implement the recommendations of the NHRC or not. The NHRC has itself often criticized the Central government as well as the State governments for needlessly delaying or failing to implement its recommendations.

4.1.4.6 Hypocritical Approach towards Deaths in Judicial Custody

Statistical data disclosed by the NHRC in its annual reports divulges that the number

of complaints registered by the NHRC regarding deaths in judicial custody is more than 6 times in comparison with the total number of complaints regarding deaths in police custody. It asserts that 86 per cent of the total complaints of custodial deaths received by the NHRC are deaths in judicial custody. But interestingly the NHRC claims deaths in judicial custody comparatively rare and thus in 2003, has relaxed the requirement of videography of the post-mortem examination in the cases of deaths in judicial custody. It exposes the hypocrisy behind NHRC's commitment to curtail and counter custodial deaths.

4.1.5 NHRC'S ROLE AND ACHEIVEMENTS

Despite of the narrow view taken by the act regarding Human Rights, The Commission undoubtedly has some achievements to its credit. Since its formation, the NHRC has widely dealt with issues relating to application of human rights. NHRC has established its reputation for independence and integrity.

Some of the famous interventions of NHRC include campaigns against discrimination of HIV patients. It also has asked all State Governments to report the cases of custodial deaths or rapes within 24 hours of occurrence failing which it would be assumed that there was an attempt to suppress the incident. An important intervention of the Commission was related to Nithari Village in Noida, UP, where children were sexually abused and murdered. Recently, NHRC helped bring out in open a multi crore pension scam in Haryana. It also is looking up the sterilization tragedy of Chattisgarh.

NHRC has succeeded in persuading the Central Government to sign the United Nations Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment or Treatment. It has brought into sharp focus the problem of custodial deaths and taken steps to see that these are not suppressed by the state agencies and that the guilty persons are made to account for their sins of commission and omission.

NHRC has also helped in designing specialised training modules on human rights for introduction in the educational and training institutions. As a part of the promotion of Human Rights Education, the Commission had suggested to the University Grants Commission (UGC) to set up a Curriculum development committee for human rights education in various universities. In light of this suggestion, the UGC constituted the curriculum development Committee on Human Rights and duties education, headed by Honourable Justice V.S. Malimath, that issued the Model Curricula for Human Rights and Duties in 2001 and was subsequently introduced in the universities and colleges across the country. And the current paper on Human Rights is also a part of it.

In spite of its many achievements, the NHRC has been marred with

controversies. For instance, the Batla House encounter case in the recent past. The Commission's report giving clean chit to the Delhi Police came under fire from various quarters. It was said that the Commission had failed to conduct a proper inquiry as its officials never visited the site and filed a report on the basis on the police version.

4.1.6 LET'S SUM UP

As you have studied through the lesson it is an obvious fact that the NHRC is a watchdog without many powers. In papers, it seems a giant standing tall to promote and protect human rights. But a thorough analysis confirms it as a giant made up of paper, which in fact lacks the required and expected firm powers. Undoubtedly, NHRC's role in curbing the incidents of custodial deaths is fairly acceptable as it is due to the efforts of NHRC that proper reporting and enquiry into all cases of custodial deaths has been made possible. The NHRC's guidelines regarding reforms in police functioning, loc-ups, detention cells and prisons have helped curbing the problem. The complainants, especially the kin/relatives of the deceased in cases of custodial deaths, are able to get reasonable relief as monetary compensations are recommended in almost every case. But the international humanitarian law as well as the Indian civil society expect from a NHRC to contribute a lot more than mere reporting, inquiring, and passing nonobligatory recommendations into the incidents of custodial deaths. The NHRC emerges as one of the most vigilant and vigorous State agency to counter human rights violations in India including the constantly increasing incidents of custodial deaths. However, the narrow vision, biased and blocked composition and lackadaisical functioning have proved the NHRC as an insufficient governmental organization to prevent custodial deaths in India. The NHRC is expected to adopt a broader conception of human rights which includes all major international conventions relating custodial torture/deaths including UN Convention against Torture. It should be re-composed with a noticeable representation of actual human rights activists and members of civil society in its composition. Moreover, it should not function as an agent of Indian State to bury down the complaints of custodial deaths and silence the kin/relatives of the deceased by paying them only the monetary relief. Instead it should adopt a clinical approach to eradicate the problem of custodial deaths by examining its root-causes, preventing further occurrence and delivering suitable justice to the victims.

4.1.7 EXERCISE

1. Describe the composition of the National Human Rights Commission.
2. Discuss Nature, Powers and Functions of the NHRC.

3. Write a brief note on how NHRC works in coordination with NGOs.
4. Critically Analyse the Structural Weaknesses in NHRC as Provided by the Parliament Act 1993.
5. Despite of the Narrow view taken on the definition on Human Rights in the Act, NHRC has some achievements to its credit. Discuss such achievements.

4.2 RIGHTS OF MINORITIES, WOMEN AND CHILDREN

- Satnam Singh Deol

STRUCTURE

4.2.0 OBJECTIVES

States are often known by the rights they guarantee to their Citizens, especially the vulnerable whose rights often get violated. Against this back ground in the current lesson you will study about the various rights and legal protections provided to the Minorities, Women and Children in India. After going through the lesson you will be able to:

- understand why it is important to provide special provisions and rights to the vulnerable sections like minorities, women and children;

- how such provisions will help these sections to fully enjoy their status to be a an equal part of the mainstream; and
- realize the importance of incorporating the provisions of positive discriminations and establishing implementing mechanisms.

4.2.1 INTRODUCTION

Despite the importance of viewing human rights within a universal context and not simply as something for the disadvantaged, instances arise when particular groups often require more attention to ensure human rights of those groups. This does not mean that these groups are being elevated above others. The term *vulnerable* refers to the harsh reality that these groups are more likely to encounter discrimination or other human rights violations than others. Thus the aim of human rights instruments is the protection of those vulnerable to violations of their fundamental human rights. There are particular groups who, for various reasons, are weak and vulnerable or have traditionally been victims of violations and consequently require special protection for the equal and effective enjoyment of their human rights. Often human rights instruments set out additional guarantees for persons belonging to these groups; the Committee on Economic, Social and Cultural Rights, for example, has repeatedly stressed that the ICESCR is a vehicle for the protection of vulnerable groups within society, requiring states to extend special protective measures to them and ensure some degree of priority consideration, even in the face of severe resource constraints. Among such 13 vulnerable groups who are either structurally discriminated or that have difficulties defending themselves include Minorities, Women and Children. Therefore they need special protection.

Ethnic, religious or linguistic minorities exist in nearly every country. UNICEF has estimated that there are some 5,000 minority groups in the world, and more than 200 countries and territories have significant ethnic, religious or linguistic minority groups. About 900 million people belong to groups that experience disadvantage as a result of their identity, with 359 million facing restrictions on their right to practice their religion. Minorities are among the most marginalized communities in many societies. Though the Constitution of India does not define the word 'Minority' and only refers to 'Minorities' and speaks of those 'based on religion or language', the rights of the minorities have been spelt out in the Constitution in detail.

In societies around the world, female status generally is viewed as inferior and subordinate to male status. Societies have modelled their gender-role expectations on these assumptions of the “natural order” of humankind. Historic social structures reflect a subordination of females to males. When one group appears disadvantaged or discriminated against in respect to other groups, human

rights principles suggest that assistance be provided to the vulnerable group. To simply say that women enjoy the same human rights as men does not make it so. Consequently, the human rights of women receive additional consideration within a human rights context and Indian constitution thus incorporates certain special provisions providing additional safeguards for women.

Perhaps even more than women, children occupy a special role within human rights protections. Children are readily susceptible to abuse and neglect and often do not have means to defend themselves against these wrongs The manifestations of such wrongs are various, ranging from child labour, child trafficking, to commercial sexual exploitation and many other forms of violence and abuse. India has the largest number of child labourers under the age of 14 in the world. Among children, there are some groups like street children and children of sex workers who face additional forms of discrimination. A large number of children are reportedly trafficked to the neighbouring countries. Trafficking of children also continues to be a serious problem in India. While systematic data and information on child protection issues are still not always available, evidence suggests that children in need of special protection belong to communities suffering disadvantage and social exclusion such as scheduled casts and tribes, and the poor (UNICEF, India). Thus, the Indian constitution spells out the rights of the children and prohibits certain practices that violate child rights.

In the following sections we discuss about the rights of Minorities, Women and Children as provided by the Constitution of India.

4.2.2 MINORITIES AND MINORITY RIGHTS IN INDIA

The Constitution of India uses the word 'minority' or its plural form in some Articles – 29 to 30 and 350A to 350B – but does not define it anywhere. Article 29 has the word "minorities" in its marginal heading but speaks of "any sections of citizens... having a distinct language, script or culture". This may be a whole community generally seen as a minority or a group within a majority community. Article 30 speaks specifically of two categories of minorities – religious and linguistic. The remaining two Articles – 350A and 350B – relate to linguistic minorities only. In common parlance, the expression "minority" means a group comprising less than half of the population and differing from others, especially the predominant section, in race, religion, traditions and culture, language, etc.

The Oxford Dictionary defines 'Minority' as a smaller number or part; a number or part representing less than half of the whole; a relatively small group of people, differing from others in race, religion, language or political persuasion". A special Sub- committee on the Protection of Minority Rights appointed by the United Nations Human Rights Commission in 1946 defined the 'minority' as those "non-

dominant groups in a population which possess a wish to preserve stable ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of the population."

4.2.2.1 Types of Minorities in India

There are only two specific Articles, Article 29 and 30, in the entire constitution of India, that explicitly stand guarantee to the protection of the interests of minorities in India. Article 29 states; Any section of the citizens residing the territory of India or any part thereof, having a distinct language, script or culture of its own, shall have the right to conserve the same. Article 30 states; the right of the minorities based on religion or language, to establish and administer educational institutions of their choice. Thus reference has been made in these articles to three different kinds of minorities, namely, Linguistic, Religious and Cultural. Difference on the grounds of language or religion is understandable, but it is difficult to define the word culture. Number of definitions stress the idea that culture is a collective name for the material, social, religious and artistic achievements of human groups, including traditions, customs and behaviour patterns, all of which are unified by common beliefs and values. Values provide the essential part of a culture and give it its distinctive quality and tone. There is so much cultural variety that it is difficult to determine culturally who is in minority and who is in majority. Each community or religious group also had a culture of its own and adhered to a different religion-centric manner of life. So the very concept of all India culture is controversial. But language and religion are two such things as to go a long way in determining the cultural entity of a community. So to be more precise and scientific it is appropriate to comment that Indian constitution recognizes only two types of minorities based on language, and religion and also those based on both in combination.

4.2.2.2 Religious Minorities

As regards religious minorities at the national level in India, all those who profess a religion other than Hindu are considered minorities, since over 80 per cent [of the] population of the country professes the Hindu religion. At the national level, Muslims are the largest minority. Other minorities are much smaller in size. Next to the Muslims are the Christians (2.34 per cent) and Sikhs (1.9 per cent); while all the other religious groups are still smaller. As regards linguistic minorities, there is no majority at the national level and the minority status is to be essentially decided at the state/union territory level. At the state/union territory level – which is quite important in a federal structure like ours-the Muslims are the majority in the state of Jammu and Kashmir and the union territory of Lakshadweep. In the states of Meghalaya, Mizoram and Nagaland, Christians constitute the majority. Sikhs are the majority community in the state of Punjab. No other religious community among the minorities is a majority in any other state/UT.

4.2.2.3 Linguistic Minorities

The Constitution of India recognizes 18 official regional languages, as given in its Eighth Schedule, and Hindi as the National/Official language. In most of the States in India the regional languages are used for the purposes of administration. For example, Malayalam is used in Kerala, Tamil in Tamil- Nadu, Telugu in Andhra Pradesh, Kannada in Karnataka, Marathi in Maharashtra, Gujarati in Gujarat, Oriya in Orissa, Bengali in West Bengal, Assamese in Assam, Punjabi in Punjab, Hindi in Rajasthan, Haryana, Utter Pradesh, Bihar, Madhya Pradesh and Himachal Pradesh and Urdu in Jammu and Kashmir. Since most of these languages have been recognized as State languages, it has created linguistic minorities in each State. To explain the term 'Linguistic Minorities', 'Linguistic Minorities are minorities, residing in the territory of India, or any part thereof, having a distinct language or script of their own. The languages of the minority group need not be one of the 18 languages mentioned in the Eighth schedule to the constitution. In other words, a 'Linguistic Minority' at the state level means any group of people whose mother-tongue is different from the principal language of the state, and at the district and taluk levels, different from the principal language of the district or the taluk. From this enunciation it appears that the meaning and scope of the term 'Linguistic Minorities' is wide and comprehensive

4.2.2.4 Rights of Minorities

The Universal Declaration of Human Rights 1948 and its two International Covenants of 1966 declare that "all human beings are equal in dignity and rights" and prohibits all kinds of discrimination – racial, religious, etc. The UN Declaration against All Forms of Religious Discrimination and Intolerance 1981 outlaws all kinds of religion-based discrimination. The UN Declaration on the Rights of Minorities 1992 enjoins the states to protect the existence and identity of minorities within their respective territories and encourage conditions for promotion of that identity; ensure that persons belonging to minorities fully and effectively exercise human rights and fundamental freedoms with full equality and without any discrimination; create favourable conditions to enable minorities to express their characteristics and develop their culture, language, religion, traditions and customs; plan and implement national policy and programmes with due regard to the legitimate interests of minorities; etc.

In India, Articles 15 and 16 of the Constitution prohibit the state from making any discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them either generally i.e. every kind of state action in relation to citizens (Article 15) or in matters relating to employment or appointment to any office under the state (Article 16). However, the provisions of these two articles do take adequate cognisance of the fact that there had been a wide disparity in

the social and educational status of different sections of a largely caste-based, tradition bound society with large-scale poverty and illiteracy.

Obviously, an absolute equality among all sections of the people regardless of specific handicaps would have resulted in perpetuation of those handicaps. There can be equality only among equals. Equality means relative equality and not absolute equality. Therefore the Constitution permits positive discrimination in favour of the weak, the disadvantaged and the backward. It admits discrimination with reasons but prohibits discrimination without reason. Discrimination with reasons entails rational classification having nexus with constitutionally permissible objects. Article 15 permits the state to make "any special provisions" for women, children, "any socially and educationally backward class of citizens" and scheduled castes and scheduled tribes. Article 15 has recently been amended by the Constitution (93rd Amendment) Act 2005 to empower the state to make special provisions by law, for admission of socially and educationally backward classes of citizens or scheduled castes/tribes to educational institutions, including private educational institutions, whether aided or unaided by the state, other than minority educational institutions. Article 16 too has an enabling pro vision that permits the state for making provisions for the reservation in appointments of posts in favour of "any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state". Notably, while Article 15 speaks of "any socially and educationally backward class of citizens" and the scheduled castes and scheduled tribes without qualifying backwardness with social and educational attributes and without a special reference to scheduled castes/scheduled tribes, Article16 speaks of "any backward class of citizens". While Articles 15 and 16 empower the state to make special provisions for backward "classes", they prohibit discrimination only on the ground of 'caste' or 'religion.'

4.2.2.5 Significant Constitutional Rights and Safeguards

The other measures of protection and safeguard provided by the Constitution in Part III or elsewhere having a bearing on the status and rights of minorities are:

(i) Freedom of conscience and free profession, practice and propagation of religion (Article 25);

(ii) Freedom to manage religious affairs (Article 26);

(iii) Freedom as to payment of taxes for promotion of any particular religion (Article 27);

(iv) Freedom as to attendance at religious instruction or religious worship in certain educational institutions (Article 28);

(v) Special provision relating to language spoken by a section of the population of a state (Article 347);

(vi) Language to be used in representations for redress of grievances (Article 350);

(vii) Facilities for instruction in mother tongue at primary stage (Article 350A);

(viii) Special officer for linguistic minorities (Article350B).

Articles 29 and 30 of the Constitution have been grouped together under a common head, namely "Cultural and Educational Rights". Together they confer four distinct rights on minorities. These include the right of:

(a) any section of citizens to conserve its own language, script or culture;

(b) all religious and linguistic minorities to establish and administer educational institutions of their choice;

(c) an educational institution against discrimination by state in the matter of state aid (on the ground that it is under the management of a religious or linguistic minority); and

(d) the citizen against denial of admission to any state-maintained or state-aided educational institution.

A detail of those two articles is provided below.

Article 29 provides that:

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

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

Even though, the text of Article 29 does not specifically refer to minorities though it is quite obvious that the article is intended to protect and preserve the cultural and linguistic identity of the minorities. However, its scope is not necessarily confined to minorities. The protection of Article 29 is available to "any section of the citizens residing in the territory of India" and this may as well include the majority. However, India is a colourful conglomeration of numerous races, religions, sects, languages, scripts, culture and traditions. The minorities, whether based on religion or language, are quite understandably keen on preserving and propagating their religious, cultural and linguistic identity and heritage. Article 29 guarantees exactly that.

Article 30 is a minority-specific provision that protects the right of minorities to establish and administer educational institutions. It provides that "all

minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice." Clause (1A) of Article 30, which was inserted by the Constitution (44th Amendment) Act 1978, provides that "in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the state shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause". Article 30 further provides that "the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language".

It would be worthwhile to note that minority educational institutions referred to in clause (1) of Article 30 have been kept out of the purview of Article 15(4) of the Constitution which empowers the state to make provisions by law for the advancement of any socially and educationally backward classes of citizens or scheduled castes/scheduled tribes in regard to their admission to educational institutions (including private educational institutions), whether aided or unaided.

Article 30 in the Constitution with the obvious intention of instilling confidence among minorities against any legislative or executive encroachment on their right to establish and administer educational institutions. In the absence of such an explicit pro-vision, it might have been possible for the state to control or regulate educational institutions, established by religious or linguistic minorities, by law enacted under clause (6) of Article 19.

4.2.3 WOMEN'S RIGHTS

Today women constitute 48.5% of Indian population. Women have the same ability as men and should therefore have the same rights as men and receive same degree of respect as men. However, for a long time human rights have been based on gender, whereby most human rights were only enjoyed by men. Women Rights therefore help women acquire the same rights as their male counterparts. Since Independence lots of provisions have been introduced to improve the social condition of women and to give them a platform where they can utilize their potential for their betterment and contribute positively towards the growth of their country. It is fact that the in the present era position and development of any country is dependent on the socio-economic position of its women. The provisions which enhanced the value of present women can be divided into two parts:

1. Constitutional provisions

2. Legal provisions

4.2.3.1 Constitutional Provisions to Ensure Dignity of Women

Many provisions have been introduced through constitution to ensure dignity and self respect to the women at large. And we discuss the same under this section.

Article 14 of constitution of India ensures equality before the law or the equal protection of the laws within the territory of India. This is a very important provision which provides equal legal protection to women against any women based crime. This provision also paves way for the introduction of various laws and acts to ensure protection and enforcement of legal rights of women in India. Besides, Article 15 of constitution of India ensures that no one should create any sort of discrimination only on the grounds of religion, race, caste, sex or place of birth or any of them within the territory of India. At the time of Independence there was lots of discrimination in India against women which gradually abolished after introduction of article 15. As per article 15(3) of the constitution state has the authority to make any special provision for women and children.

Article 16 of constitution of India ensures equal employment opportunity to every citizen of India. As per article 16 there should not be any discrimination in respect of employment opportunity under the State only on grounds of religion, race, caste, sex, descent, and place of birth, residence or any of them. Now we can see women are doing really good work in politics and in corporate sector. Presently they are holding responsible positions in Government and Government run institutions. Further, Article 39 of constitution of India ensures the benefit of the directive principles of state policy to the women. Directive principles of state policy mean **guiding principles** for the framing of laws by the government at state level. Article 39(a) of directive principles of state policy ensures and directs a state to apply policies which focus on men and women have an equal right of adequate means of livelihood and article 39(c) ensures equal pay for equal work for both men and women.

Article 42 of constitution of India obligates a duty on every employer to ensure just and humane conditions of work and for maternity relief. In reality the position and treatment of women in corporate offices is really bad and in fact they are exploited by their seniors and bosses. In this scenario the provisions of article 42 are very important and now it is duty of employer to provide good working conditions to all the employees. Article 243 of constitution of India ensures reservation of seats in gram panchayat for women. This opportunity of being a part of local level arbitration process has improved the social conditions of women in village areas.

These are few rights which are given by the constitution to the Indian women in order to ensure their dignity and social respect. Further to protect these constitutional rights there are numerous legal steps that have been taken by the state Governments which we will discuss in detail through this article.

4.2.3.2 Legal Provisions to Rights of Women

In order to ensure adherence to constitutional provisions for women welfare, there was a need to enact specific laws by the state and central Government to ensure safety and protection of women. Keeping in view this requirement, various parliamentary steps have also been taken by the law of India in order to ensure dignified life to the Indian Women. Parliamentary steps means and includes the enactment of various laws and statutory acts to protect the interest of women and to stop the crime against women. These acts have proved really useful towards progress and safety of women in society.

Although a women can be victim of any crime in society and in fact all crimes cannot be classified as a crime against women except few crimes which affects a women largely. However major steps have been taken by the legislation which has proved as weapons for women and helped them to stand in male dominating country. Now we will discuss major crimes against women along with the legal provision which penalize the criminal

A Few crimes which are recognized as crime against women are:

1. Adultery: Adultery is a very serious crime against women in India and affects married women by and large. In simple words adultery means having voluntary sexual relationship with a married person other than the spouse. The offence of adultery is dealt with by section 497 of the Indian penal Code, 1860, which says adultery means sexual intercourse of a man with a married woman without the consent of her husband when such sexual intercourse does not amount to rape. However we may find different meaning of adultery in different laws in different countries. Initially only men were punished under the law of adultery in India but now men and women both are equally responsible for committing the crime of adultery. As per section 497, the offender shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as a partner in crime.

2. Child Marriage: Child marriage is a very awful offence against child as it does not only harms the future of child but also damage social values. Further the doctors have also revealed that child marriage is a very big reason for bad health condition for girl child. Child marriage restricts the social development along with reduction in the educational and employment opportunities in the global market. It was like a burden on society to practice this unwritten custom. The major step was taken by the Law Commission of India by fixing the minimum age for marriage which is 18 years for girls and 21 years for boys. Another major step was mandatory primary education and moreover for girls provision for free education provided by the Government of India.

3. Female Feticides: Female feticide means identifying and killing of female foetus before they take birth. This is the most brutal way of killing women. The custom of female feticide is practiced by the society form ancient times and it is really shameful to note that even today, when we considers ourselves educated and civilized, this custom is practiced in a big manner. Government has taken so many steps to spread awareness among people about the consequences of this crime. Many awareness programs are conducted by the Government to spread the awareness about the physical, mental and social effect of this practice. Punishment of 3 years imprisonment and Rs. 10,000 fine has been prescribed by Pre conception and Pre Natal Diagnostic Techniques (Prohibition of Sex selection) Act, 1994, for the offence of Female feticides. In a recent development Maharashtra government has recommend to the centre that the crime of female feticide should be treated as murder. To ensure this amendment in Pre conception and Pre Natal Diagnostic Techniques (Prohibition of Sex selection) Act, 1994, (PCPNDT Act, 1994) would become necessary. This provision will bring this crime within the category of murder under section 302 of the Indian Penal Code (IPC).

4. Trafficking and Prostitution: Trafficking means import and export of humans for sex business. Prostitution is one of the biggest problems in this world which is damaging the women in many ways. In general, the term prostitution means offer of sexual services for earning money. Prostitution is a problem which exists across the world. There are quite a few laws in India in order to prevent the crime of prostitution like Suppression of Immoral Traffic in Women and Girl Act 1956 and Immoral Traffic (Prevention) Act 1956. There are few commissions are made by state Government to save women and specially girls to protect them from this practice.

5. Domestic Violence: Domestic violence has become a very serious problem for women. In general the term Domestic violence means mental, physical, emotional and economical harassment of a woman by family members. For the purpose of domestic violence family includes spouse, his mother, father, brother, sister, his relatives and sometimes even friends. We call ourselves educated and talk too much about morality, ethics and civilization and expect others to be good to create a dream world but forget that without giving due respect to the women, a nation's growth is impossible. Now in India domestic violence is recognized as a criminal offence under section 498A of Indian Penal Code, 1860. Domestic violence means cruelty by husband towards women. Cruelty can be done by physically, mentally, economically emotionally. Domestic violence Act, 2005 was introduced to handle the cases of Domestic violence in India. This act is a very noteworthy attempt in India to recognize domestic violence as a punishable offence. Before the introduction of this act two kinds of remedies were available to a women affected by Domestic violence. These two remedies were divorce through civil courts and application of section 498A through criminal courts.

6. Rape & Murder: Rape is another very serious crime against women and this crime is increasing day by day like anything. Reporting of rape and abduction cases has become very common in print and electronic media which is indeed a very sad affair for all of us. Increasing rape cases are enough to prove that our moral values are still very low and we still to learn how to respect the dignity of women at large.

In simple terms the word 'Rape' means sexual intercourse or sexual penetration, by another person without the consent of the other person or victim. Provisions related to rape are given in section 375 and 376 of the Indian Penal Code, 1860. Section 375 explains the pre-condition which are necessary tp prove the offence of rape whereas section 376 provides punishment for the offence of rape. As per section 376, whoever commits the offence of rape shall be punished with imprisonment of either for a term which shall not be less than seven years (7) but which may be **for life** or for a term which may extend to ten years and shall also be liable to fine.

7. Dowry: Civil law of India has prohibited the payment of dowry in the year 1961. Further Indian Penal Code, 1860 has introduced Sections 304B and 498A, which allows women to file complaint and seek restoration of her rights from serious harassment by the husband's family.

Dowry is one of the strong and biggest reasons of increasing domestic violence. Every year thousands of dowry deaths along with mental trauma cases reported and registered in India. In case of inadequate dowry, incidents like burning, suicides, physical and mental torture of women is very common by husband and his family. Keeping in view the increasing cases of dowry deaths another legislative provision called “Protection of Women from Domestic Violence Act 2005”, was introduced in order to reduce domestic violence cases and to protect women's rights.

Discussing a few, in a nutshell the total acts so far include:

1) Dowry Prohibition Act, 1961
2) The Protection Of Women From Domestic Violence Act, 2005
3) The Commission Of Sati (Prevention) Act, 1987
4) The Immoral Traffic Prevention Act, 1956
5) Civil Procedure Code, 1973
6) Indian Penal Code, 1960
7) Hindu Marriage Act, 1955
8) Child Marriage Restraint Act, 1929
9) The Medical Termination Of Pregnancy Act, 1971
10) National Commission Of Women Act, 1990
11) The Minimum Wages Act, 1948
12) Bonded Labour System Abolition Act, 1976
13) The Special Marriage Act, 1954

14) Foreign Marriage Act, 1969
15) Indian Divorce Act, 1969
16) The Indecent Representation of Women Prohibition Act, 1986
17) Guardians & Wards Act, 1869
18) Equal Remuneration Act, 1976

The above list is not conclusive but inclusive. These acts have given ample provisions to ensure the protection of women rights like minimum wages, protection from domestic violence, right of equal remuneration, prevention from immoral trafficking, prevention from indecent representation of women etc. So there is no doubt that our judiciary and legislature has taken various effective steps to ensure the dignity of women.

4.2.4 RIGHTS OF CHILDREN

Children are the most vulnerable section in the Society. The crime against children is a worldwide concern. But in India where 19 per cent of the total children of the world reside and where one third of its population is below 18 years old, the problem of crime against children has acquired a severe gravity. Every day there are crimes, brutalities taking place against the children in the country. The children are supposed to go to school, get clean and healthy environment, decent care of parents, nutrient diet, and overall conducive environment for their all-round development. But unfortunately in India, the children have been murdered, kidnapped, sexually harassed, raped, sold and bought for flesh trade, girls forcefully indulged into prostitution, and the male children are indulged into begging or smuggling of drugs. The problem of crime against children in India is very complex and complicated. It is almost impossible to estimate the number, rate or ratio of crime against children in India. Because majority of the crimes against children remain unreported. There are several types and forms of crimes against children. Major categories of crime against children include murder of children, infanticide, rape of children, kidnapping and abduction, foeticide, abetment of suicide, Exposure and abandonment, procuration of minor girls, buying and selling of girls for prostitution, child marriage etc. They are also prone to abuse in more than one way. Such abuses include Neglect, Emotional abuse, physical abuse, sexual abuse and Child Labour. It becomes the prime responsibility provide legal protection against the abuses of Children

The issues of children's rights came into limelight particularly after the 1st world war, when the Declaration of Geneva was adopted in 1924. Thereafter, the main credit goes to United Nations and the adoption of the Declaration of Children's Rights in 1959, is a proved fact in this regard. Subsequently, various initiatives were taken at the international platform for the betterment of children. For this purpose, the adoption on November 20, 1989, the adoption of the International Convention on the Rights of the Child was an important milestone, which proved as the first

international legally binding text by recognizing all the fundamental rights of the children. The child rights were also acknowledged in the International Covenant on Civil and political Rights (in particular in Articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in Article 10). At domestic level India too enshrined certain child rights from the beginning and enacted several other laws from time to time in tune with the international initiatives.

4.2.4.1 Constitutional and Legislative Provisions For Child Rights In India

The constitution of India has guaranteed the promotion and protection of the rights of the children through various provisions in the Fundamental Rights under the Part III as well as Directive Principals of State Policy under Part IV.

Article 15 (3) empowers the state to make special provisions for children.

Article 21A of the constitution of India directs the State to provide free and compulsory education to all children within the ages of 6 and 14 in such manner as the state may by law determine.

Article 23 prohibits trafficking of human beings and forced labour.

Article 24 reveals that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 39 (e) asserts that the health and strength of workers, men and women, and the tender-aged children should not be abused and that citizens are not forced by economic necessity to enter in the vocations unsuited to their age or strength.

Article 39 (f) divulges that children are given opportunities and facilities to develop in healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45 emphasizes that the state shall endeavour to provide, within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Article 47 reveals that the state shall regard the raising of the level of nutrition and the standard of living its people and the improvement of public health as among its primary duties.

Article 243 (g) provides for institutionalization of child care by chalking out entrust programmes of women and child development through Panchayats.

4.2.4.2 Legal Provisions

The Juvenile Justice Act, 2000

'The Juvenile Justice Act 2000' deals with the conflict relating incidents regarding children and provides protection in case of violation of children rights. The ultimate purpose of this act, to cater the development needs of the children, especially the issue of rehabilitation of the destitute children seeks immediate attention. Towards this several institutions were established under the act and they are working as the functional bodies. For the adjudication of disputes, Juvenile Justice Board (JJB) assumes vast powers and working as highly trained body under the supervision of Judicial Magistrate. During the hearing of cases, decisions are taken by the majority opinion and inquiry to be completed within four months. Child can be penalized, if he/she is above 14 years of age and earns money, but cannot be awarded death sentence.

The Protection of the Child Rights Act, 2005

The Protection of Child Right Act, 2005 has been passed to provide constitutional status to the formation of a National Commission as well as various State Commissions for protecting the child rights and establishing children courts for providing speedy trial of offences against children or violation of child rights and for matters connected therewith.

Protection of Children from Sexual Offences Act, 2012

The Ministry of Women and Child Development made sincere efforts to bring a special law, the Protection of Children from Sexual Offences Act, 2012 which came into force from November 14, 2012. The Act provides protection to children from the offences of sexual assault, harassment and pornography through stringent punishment.

Legal Realization of the Article 24 of India Constitution

To make Article 24 under the Fundamental Rights a reality, the Child Labour (Prohibition and Regulation) Act, 1986 had been passed by the Parliament of India in 1986. Section 3 the Act clearly prohibits employment of children in the field of factories, companies etc. other than private employments. Besides that, Section 21 of Motor Transport Workers Act, 1961 and Section 45 of the Mines Act, 1952 completely disallow employment of children in any capacity. Further, Section 109 of the Merchant Shipping Act, 1958 disallows employment of persons below the age of fifteen years. Section 67 of the Factories Act, 1948, prohibits employment of children below the age of fourteen years in a factory. Section 109 of Plantation

Labour Act, 1951, sets the minimum age of children for employment at twelve years.

Legal Realization of the Article 21 A (Right to Education)

In India, the 86th Constitutional Amendment (2002) is an important milestone to provide right to education to all the children of the age of 6 to 14 years and it became as a Fundamental Right under Article 21A of the Constitution of India.

4.2.5 LET US SUM UP

This way the rights of the most vulnerable sections of Indian Society have been taken care both under the Constitution of India and additionally through various legal provisions established from time to time. Even though everything is there on paper, it is highly important to take care of the implementation and its monitoring. To fulfil such responsibilities national level commissions for Minorities, Women and Children were created. These commissions closely work with the respective ministries and NGO in fulfilling their responsibilities. Further, several policies have been designed aiming at each of these vulnerable groups. Thus each section discussed above itself constitutes a special topic and requires elaborate discussion on so many issues related to it. However, keeping into consideration the ideal length of the lesson the most important rights and provisions have been discussed.

4.2.6 EXERCISES

1. Discuss why is it important to protect the rights of sections like Minorities, women and Children?
2. Deal with the Constitutional and Legal Safeguards provided to the Minority sections in India.
3. "Women have equal ability like Men and they deserve equal rights and respect". In the light of the statement discuss various rights and protections available for women in India.
4. Children are the most vulnerable of all. Discuss how their rights are often violated and what kinds of protections Indian constitution protects for Children.
5. Deal with the Legal provisions provided to the Minorities and Women in India.
6. Attempt to establish the linkages between the Women and Children's Rights.

4.3 RIGHTS OF DISPLACED PERSONS: REFUGEES AND INTERNALLY DISPLACED PEOPLE

- V. Nagendra Rao

STRUCTURE

4.3.0 OBJECTIVES

Forced Displacement involves total deprivation of the community life, amenities, facilities, assets, access to natural resources and the hardships involved before, during and after the process. In this lesson you will be studying about such displacement in its external and internal forms. After going through the lesson you

will be able to understand:

- the basic difference between a refugee and an internally displaced person and what causes such displacement;
- the guiding covenants and principles relating to their status and treatment with their implications at national level; and
- the constitutional rights and protection both kinds of people enjoy in India.

4.3.1 INTRODUCTION

The **displacement** of people refers to the forced movement of people from their locality or environment and occupational activities. It is a form of social change caused by a number of factors, the most common being armed conflict. Natural disasters, famine, development and economic changes may also be a cause of displacement. Today one in every 122 humans is now either a refugee, internally displaced, or seeking asylum and Wars, conflict and persecution have forced more people now than at any other time to flee their homes and seek refuge and safety elsewhere. UNHCR's annual Global Trends Report indicates that number of people forcibly displaced at the end of 2014 had risen to a staggering 59.5 million compared to 51.2 million a year earlier and 37.5 million a decade ago.

As the recent UNHCR report indicates, region after region, the number of refugees and internally displaced people is on the rise. In the past five years,(in addition to the decades old instability and conflict in countries like Afghanistan, Syria and Somalia) at least 15 conflicts have erupted or reignited: eight in Africa (Côte d'Ivoire, Central African Republic, Libya, Mali, northeastern Nigeria, Democratic Republic of Congo, South Sudan and this year in Burundi); three in the Middle East (Syria, Iraq, and Yemen); one in Europe (Ukraine) and three in Asia (Kyrgyzstan, and in several areas of Myanmar and Pakistan). Even though a Few of these crises have been resolved, most of them still generate new displacement. In 2014 only 126,800 refugees were able to return to their home countries being the lowest number in 31 years. One of the most recent and highly visible consequences of the world's conflicts and the terrible suffering they cause has been the dramatic growth in the numbers of refugees seeking safety through dangerous sea journeys, including on the Mediterranean, in the Gulf of Aden and Red Sea, and in Southeast Asia. Almost nine out of every 10 refugees (86 per cent) are in regions and countries considered economically less developed and half of the total refugees are Children.

4.3.2 DIFFERENCE BETWEEN A REFUGEE AND AN INTERNALLY DISPLACED PERSON

A refugee is a person who has fled their country of origin in order to escape persecution, other violations of human rights, or the effects of conflict. In international law, the fact of having crossed or not crossed an international frontier is critical, and treaties such as the 1951 Convention and 1967 Protocol relating to the Status of Refugees define a refugee as a person who not only has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, but is also outside their country of nationality (or former habitual residence if stateless), and without the protection of any other State. It should be remembered that a person becomes a refugee because of circumstances which are beyond that person's control, often poignant. S/He is left with no other option but to flee from human rights violations, socio-economic and political insecurity, generalised violence, civil war or ethnic strife all these leading to fear of persecution.

In contrast, UNHCR guidelines on internally displaced defines, **internally displaced** are those people who are forced to flee their homes, often for the very same reasons as refugees – war, civil conflict, political strife, and gross human rights abuse – or but who remain within their own country and do not cross an international border. They are therefore not eligible for protection under the same international system as refugees. Also, there is no single international body entrusted with their protection and assistance. However, some scholars include the people who are displaced as a result of natural disasters, famine, development projects and economic changes under this category.

The IDP concept is unique due to its political, social and humanitarian complexity and the conflicting nature of discourse surrounding IDP protection. While the circumstances that produce internal displacement are comparable to those that produce refugees, many of the needs of IDPs and of refugees are mutually exclusive.

4.3.3 PROTECTION OF A REFUGEE AND AN IDP

The fundamental difference between protection of refugees and protection of IDPs is the responsibility of the government. Once refugees cross international borders, their country of origin is not obligated to protect them. IDPs, on the other hand, remain in their country of origin, the government of which holds the responsibility to protect them regardless of its ability to do so. Without the benefit of a specialized body of law, IDPs fall into a protection gap.

While IDPs are not protected under refugee law, they are protected as

civilians under Human Rights Law (HRL), Humanitarian Law (IHL), and domestic law. Although IDPs remain within one country, there are aspects of Public International Law that apply alongside domestic law to govern the treatment of civilian populations within their national borders. In all armed conflicts, both international and non-international, IHL applies. Similarly, HRL governs the relationship of a government and its citizens at all times. The Guiding Principles on Internal Displacement of 1998 pull together aspects of these legal regimes to address situations specific to displacement. Yet, the Guiding Principles are not legally binding in the way that the Refugee Convention is; there are no enforcement mechanisms to ensure compliance with them. Several countries have incorporated protective aspects into their national legislation and more continue to do so. Even with these trends, protection is not absolute and, given the vulnerability of IDPs, further attempts have been made by various organizations to legally guarantee certain rights specific to their situation.

There are over 25 million IDPs throughout the world facing issues ranging from housing to voting to healthcare. As the number of non-international armed conflicts continues, the problem of displacement becomes more prominent and durable solutions are needed. Internal displacement does not end once conflict subsides. The Inter-Agency Standing Committee established four conditions that IDPs must benefit from in order to reach a sustainable approach to the problem. These conditions are: "(i) long-term safety, security and freedom of movement; (ii) an adequate standard of living, including adequate food, water, housing, health care and basic education; (iii) access to employment and livelihoods; and (iv) access to effective mechanisms that restore their housing, land and property or provide them with compensation". By understanding the solutions sought by international organizations and the legal protections currently applied to IDPs, humanitarian actors will be able to operate more effectively in environments with high levels of displacement among the population.

With this basic understanding about the refugees and internally displaced persons now you will study about who all are living as refugees in India and who all are internally displaced in India and what kind of legal status they are provided and what are their rights.

4.3.4 REFUGEES AND REFUGEE RIGHTS IN INDIA

As it has been discussed in the introductory part, Refugees are victims of gross human rights violations. They are a distinct group of individuals without protection of National State. The linkage between human rights and refugees is clear in the sense that while gross violation of human rights makes it possible for refugees to return home safely. So the problems of refugees are of international character

because of the involvement of two or more states in the sense that they flee from one state to another state. So their problem cannot be sorted without international co-operation.

4.3.4.1 Distinction between Refugees and others

There are at least three other well-defined groups of foreigners who are different from 'refugees'. It is important that the distinction among them is clearly understood and none of them is confused with or mistaken for a 'refugee'. These categories are:

Temporary Residents, Tourists and Travellers

Persons under this category come to India for a specific purpose and duration with the prior permission of the Government of India. However, in certain circumstances anyone in this category could become eligible for being a refugee, if, during their sojourn in India, the situation in their country of origin becomes such as to endanger their lives and liberty if they were to return to their country. Many Iranians who had come to India for studies during the regime of the Shah of Iran, have stayed back in India as refugees after the fall of Shah of Iran and a revolutionary government took his place in 1978. It should be mentioned that no one can automatically claim the right for 'refugee status' under this category. It is the prerogative of the Indian government to satisfy themselves and decide each case according to merits and circumstances.

Illegal Economic Migrants

Any foreigner who might have left his or her country of origin without due authorisation from the authorities concerned, both in the country of origin as well as the country of destination, solely to improve his or her economic prospects, i*s not a refugee*. After all, there is no element of persecution or coercion compelling the individual to leave the country of origin. Illegal migrants from Bangladesh are examples of this category. Such persons have to be treated as illegal and unauthorized entrants into the country and dealt with under the appropriate laws applicable to foreigners like Foreigners Act, Indian Passport Act etc. besides the IPC, Cr.PC etc.

Criminals, Spies, Infiltrators, Militants etc

None of these can ever become eligible to be refugees. They have to be dealt with under the provisions of the Indian criminal laws as well as any other special laws in force even though some of them may be in possession of valid travel documents.

4.3.4.2 According Refugee Status in India

India plays host to millions of Refugees and it is the second largest refugee receiving country in South Asia, after Pakistan. India's multi-ethnic, multi-lingual society has made it an attractive destination for a lot of asylum-seekers. Tamil refugees from Sri Lanka, the Jumma people from Bangladesh, the Chin and other tribal refugees from Myanmar, refugees from Afghanistan, Iran and even Sudan comprise the bulk of India's refugee population. India is not party to the 1951Refugee Convention or its 1967 Protocol and does not have a national refugee protection framework. In the absence of a national legal and administrative framework, UNHCR, based in New Delhi, conducts refugee status determination (RSD) for asylum-seekers from non-neighbouring countries and Myanmar. Despite of its non party status, India continues to grant asylum to a large number of refugees from neighbouring States. The lack of specific refugee legislation in India has led the government to adopt an ad hoc approach to different treatment of refugee influxes. While it officially recognises only Tibetan and Sri Lankan Tamil refugees and provides them state protection, for all other refugee populations – the Burmese Chin, Chakmas and Rohingyas from Bangladesh, Sudanese and Afghans, etc – it's left to the United Nations High Commissioner for Refugees (UNHCR) in New Delhi to administer operations to provide refugee identity certificates to those belonging to communities/nationalities not recognised by the government.

For example, Afghan refugees of Indian origin and others, who entered India through Pakistan without any travel documents, were allowed entry through the Indo-Pakistan border till 1993. Most of the refugees had entered India through the Attari border near Amritsar in Punjab. Subsequent to 1993, the Government altered its policy of permitting Afghan refugees freely into India.

In the case of a large number of them (many of them were Afghan Sikhs and Afghan Hindus) who had to flee from Afghanistan under circumstances which fulfilled one or more of the grounds specified earlier for being treated as a 'refugee', the GOI did not officially treat them as refugees. However, the UNHCR with the consent of the GOI, recognized them as refugees under its mandate and is rendering assistance to them. In such cases, even though the local Government is kept in the picture, the UNHCR becomes responsible to look after them as well as 'administer' them and also to ensure that such refugees do not in any way violate the code of conduct governing them.

In contrast, in 1989, when the Myanmar authorities started suppressing the pro-democracy movement in that country and about 3,000 nationals of that country sought refuge in India, the GOI declared that in accordance with well accepted international norms defining refugee status, no genuine refugee from Myanmar would be turned back and in fact, they were accepted as refugees by the GOI. Similar

is the case of Sri Lankan Tamil refugees crossing the sea to enter the southern Indian State of Tamil Nadu. The Government of India followed a specific refugee policy regarding Sri Lankan refugees and permitted them entry despite the fact that the refugees did not have travel documents.

In cases where the Government of India recognizes the claim of refugee status of a particular group of refugees, there is minimal interference if any, caused to the refugees. This is the case even though there may be no official declaration of any policy of grant of refugee status to that group. However, there are instances where refugees recognised by the Government of India and issued with valid refugee identity documents by the government, are later prosecuted for illegal entry/over stay. The National Human Rights Commission had taken up successfully the cause of a number of Sri Lankan Tamil refugees who had been likewise prosecuted.

4.3.4.3 Legal Status of the Refugees

The legal status of refugees in India is governed mainly by the Foreigners Act 1946 and the Citizenship Act 1955. Refugees encounter the Indian legal system on two counts. There are laws which regulate their entry into and stay in India along with a host of related issues. Once they are within the Indian territory, they are then liable to be subjected to the provisions of the Indian penal laws for various commissions and omissions under a variety of circumstances, whether it be as a complainant or as an accused. These Acts do not distinguish refugees fleeing persecution from other foreigners; they apply to all non-citizens equally. Under the Acts it is a criminal offence to be without valid travel or residence documents. These provisions render refugees liable to deportation and detention. Once recognized, Afghan, Burmese, Palestinian and Somali refugees receive protection from the UNHCR. Many refugees receive a small monthly subsistence allowance and all have access to the services provided by the UNHCR's implementing partners in Delhi: the YMCA, Don Bosco and the Socio-Legal Centre (SLIC). The YMCA helps refugees to find accommodation and provides access to education for children and young adults in government schools through the provision of an education allowance. Don Bosco provides psychosocial support and vocational training such as English language classes and computer courses. It also funds other vocational courses such as beautician training and driving lessons. The support of these organizations is vital, providing a degree of support to the refugee community.

In addition to these initiatives, SLIC provides legal aid, legal trainings and sensitization programmes, carries out file renewals for the UNHCR and provides naturalization assistance for eligible refugees. Despite the support provided by these organizations, the majority of refugees in India experience great hardship, both economically and socially. The largest refugee populations in India does not fall

under the UNHCR's mandate, but are nonetheless considered refugees by the government. At present, there are over 150,000 Tibetans and 90,000 Sri Lankans who have fled violence and persecution and sought refuge in India. These groups are accommodated and assisted in accessing education, healthcare, employment and residence to varying degrees is discussed in more detail below.

4.3.4.4 Constitutional Rights Applicable to Refugees:

Indian Constitution Provides certain rights to refugees along with the citizens, before going into the constitutional rights it is important to discuss about the principle of Non-refoulment.

4.3.4.5 The Principle of Non-refoulement under Indian Law

Refugee rights under the Convention and Protocol consist of two primary components. First, the principle of *non–refoulement* prevents the states from returning a refugee to his or her home country where he has a well-founded fear of persecution. It is often considered as the duty of the host state than as a right of the refugee. Second relates to those rights available for the refugee which affects his day to day life in the host country. These like the right to education, the right to hold property, etc. The later rights arise only when the first principle is exercised. The lack of a specific statute for dealing with refugees or formal obligation under international documents gives an impression that India is not under a formal duty to follow the principle of non-refoulement. But there are three arguments which say that indirectly Indian system provide a mechanism to retain the refugee on his arrival in the Indian Territory. One is the working of legal institutions like UNHCR and the NHRC which prevent the return of valid refugees to their home Countries. Another attempt is to read it under Art 21 by laying down that the State shall not expel or return a refugee in any manner what so ever to- the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion for it may turn out to be unfair unjust and unreasonable. Another view is that the Constitution under Article 51 automatically incorporates the international rule of non-refoulement into India's domestic laws.

4.3.4.6 Rights Provided Under Indian Constitution

There are a few Articles of the Indian Constitution which are equally applicable to refugees on the Indian soil in the same way as they are applicable to the Indian Citizens.

Articles 22(1), 22(2) and 25(1) of the Indian Constitution reflect that the rules of

natural justice in common law systems are equally applicable in India, even to refugees. The established principle of rule of law in India is that no person, whether a citizen or an alien shall be deprived of his life, liberty or property without the authority of law. The Constitution of India expressly incorporates the common law precept and the Courts have gone further to raise it to the status of one of the basic features of the Constitution which cannot be amended.

The Supreme Court of India has consistently held that the Fundamental Right enshrined under Article 21 of the Indian Constitution regarding the Right to life and personal liberty, applies to all irrespective of the fact whether they are citizens of India or aliens. The various High Courts in India have liberally adopted the rules of natural justice to refugee issues, along with recognition of the United Nations High Commissioner for Refugees (UNHCR) as playing an important role in the protection of refugees.

Thus, the state is bound to protect life and liberty of every human being be it a citizen or Refugee. Accordingly, in which ever states the refugees are there the State government cannot tolerate threat by one group of person to another group of persons. It is duty bound to protect the treatment group (refugees under protection) from such assaults and if it fails to do so it would amount to its failure to perform constitutional and statutory obligations.

The State Government must act impartially and carry out its legal obligations to safeguard several aspects of Refugee's everyday life such as:

- Right to life, health and well being
- Right to work without being non-discriminated
- Right to education, Right to employment on wages and salaries
- Right to public assistance& Right to social security
- Right to travel to courts since they are not in a position to use their own national passport;
- business, such as agriculture, art, cottage industry;
- Right to choose their place of residence and to move freely within territory;
- The Right not to charge taxes of any description higher than those which are or may be levied on their Nationals in similar situations;
- Right not to impose penalties on refugees who have illegally entered into their territories without authorization; Right not to expect a refugee lawfully in their territory or on grounds of National Security or Public Order

- Right to marriage and self help
- Right to acquire both movable and immovable property
- Right to form association which must be nonpolitical and Non-profitable;
- Right to enjoy asylum and Right to return to their own country.

4.3.5 INTERNALLY DISPLACED PERSONS AND THEIR RIGHTS:

Presently the United Nations Guiding Principles on Internal Displacement is used as a tool to deal with the problems of IDPs.UNHCR guidelines on internally displaced defines, **internally displaced** are those people who are forced to flee their homes, often for the very same reasons as refugees - war, civil conflict, political strife, and gross human rights abuse –or but who remain within their own country and do not cross an international border. They are therefore not eligible for protection under the same international system as refugees. Also, there is no single international body entrusted with their protection and assistance.

At the end of 2014, 38 million people around the world had been forced to flee their homes by armed conflict and generalized violence, and were living in displacement within the borders of their own country. This represents a 15 per cent increase on 2013, and includes 11 million people who were newly displaced during the year, the equivalent of 30,000 people a day. The steady increase in the number of IDP s over the past ten years reflects the changing nature of conflict worldwide. This Involuntary displacement can be conceived as the total deprivation of the community life, amenities, facilities, assets, access to natural resources and the hardships involved before, during and after the process.

4.3.5.1 Important Rights Recognized by the Guiding Principles

Generally the Guiding Principles seek to protect all internally displaced persons in internal conflict situations, natural disaster and other situations of forced displacement. The Guiding Principles provide for the equality and equal treatment of IDPs in the rights and freedoms under the national and international law. Similarly internally displaced people cannot violate international and domestic law with impunity. Like all other persons these people are subject to individual criminal responsibility for genocide, crime against humanity and war crimes. However, they cannot be discriminated on any ground.

These Principles emphasise on the right of the IDPs not to be arbitrarily displaced and explicitly state the grounds and conditions on which displacement is prohibited. They make it clear that displacement should not be carried out in a

manner that violate the right to life, dignity, liberty or the security of those affected. Moreover, States have a particular obligation to provide protection to indigenous people and other groups with a special dependency on and attachment to their land.

After prescribing this kind of general norms prohibiting cruel and inhuman treatment the principles specify that internally displaced persons must not be forcibly returned or resettled to conditions where their life, safety, liberty and health are at risk. Principles also contain norms in respect of family life specifying that families separated by displacement should be reunited as quickly as possible. Recognition of a person before the law is universal human right. The right is given effect by specifying that IDPs shall be issued all documents necessary to enable them to enjoy their legal rights and that authorities must facilitate the replacement of documents lost in the course of displacement. In the Guiding Principles special attention is paid to the needs of women and children including prohibition against gender specific violence. As the women are often not included in community consultation and decision making process the principles therefore, call for the full participation of women in the planning and management of their relocation. Further women's health needs not often met because of which the Guiding Principles affirmed access by women to female health care services. Women have been given equal right with men to obtain necessary documentation issued in their names. The forcible recruitment of children into armed forces is prohibited and special efforts are to be made to reunite children with their families. The principles make it clear that international humanitarian organizations and other appropriate actors have the right to offer their services and aid to the internally displaced persons. The principles also make a special mention and elaborate discussion on the right to freedom of movement and return, the right to receive humanitarian assistance and the mental health of the IDPs.

The UN Security Council and other Intergovernmental agencies, UNHCR, UNDP, and OHCHR have incorporated these principles in their policy with regard to internal displacement. United Nations treaty bodies, which monitor the implementation of UN human rights conventions by state parties, such as Human Rights Committee or the Committee on the Rights of the Child, have referred to the Guiding Principles in their observations to the states. Regional organizations have made use of the Guiding Principles in their work and have further encouraged their dissemination. References to the Guiding Principles can be found in resolutions, recommendations and reports adopted by a number of organizations. For instance, the Organization of African Union (OAU) has formally acknowledged the principles. The Economic Community of West African States (ECOWAS) has called on its member states to disseminate and apply them. A ministerial declaration of the Intergovernmental Authority on Development (IGAD) has called the principles a useful tool in development of national policies on internal displacement. The Organization for Security and Cooperation in Europe (OSCE) has recognized the

principles as a useful framework in addressing internal displacement. The above mentioned General principles also guide the treatment of Internally Displaced Persons in India.

4.3.5.2 Internally Displaced People in India:

As renowned professor Mahendra P. Lama rightly observes, Even though Indian is prone to violence it has generated few refugees. However, the war, conflict, human rights abuses, development projects, communal clashes and forced relocation have created a high level of internal displacement. Estimating such number and its monitoring have become a difficult task in the absence of central authority for coordinating the data. The nature frequency and extent of the causes of internal displacement in the country are too varying. As Lama argues, majority of the cases in which people have been forced to flee their homes are the consequence of government pursuit of political goals and development objectives and development induced displacement is overwhelmingly dominating the IDP scenario in India. The Internal Displacement Monitoring Centre (IDMC) estimates that there are at least 616,140 people internally displaced as a result of armed conflict and communal violence in India as of April 2015.

4.3.5.3 Broad Categories of Displacement in India:

Scholars identify four broad categories of displacement in India and the causes are discussed below.

1. **Political Causes including the Secessionist movements:** The political causes and secessionist movements caused widespread displacement in India. Examples for this include the people displaced by Naga Movement and the violent responses of the government as well as the Killing of Kashmiri Pandits, widespread anarchy and continuous human rights violations by both the sate and militant groups in Kashmir leading to large scale displacement of Kashmiri Pandits.
2. **Identity based autonomy Movements:** The identity based autonomy movements like the ones in Punjab, and Assam also lead to the cleansing and forced non local to live in Camps.
3. **Localized Violence:** The third kind of displacement took place as a result of localized violence and the caste disputes in Bihar, Uttar Pradesh, the religious fundamentalism and riots that took place in Mumbai, Coimbatore, Bhagalpur and Aligarh and aggressive denial of residency and employment rights to non-indigenous groups in Meghalaya and Arunachal Pradesh can be cited as examples to this category of displacement

4. **Environmental and Development Related Displacement:** Together with the nature induced displacement emphasis on the development of Industrial projects, Dams, Roads, Mines, power plant and new cities is the fourth kind of displacement. As the above mentioned development projects are possible only through massive acquisition of land and causing displacement of people in large number and this kind of displacement is increasing year after the year. Coming to the displacement induced by the nature, India remains to be the second flood affected country in Asia and its flood affected areas are increasing continuously despite of the construction of several dams. Besides, these kinds of disaster led displacements are often not recorded after the initial dose of relief and rehabilitation assistance. These kinds of displacements are thus silent but acute and frequent in their nature.

4.3.5.4 Rights of Internally Displaced Persons in India

Even though there is no separate law in India pertaining to the State's legal responsibility to the IDPs, the Constitution of India and writ jurisdiction of the Court can provide some relief to the internally displaced population. One of the most important right guaranteed by the Constitution is the Article 21 that provides the framework for securing the right to life.104 In addition Article 39 of the Constitution of India directs the state to secure its citizens with right to an adequate means of livelihood. Besides, Article 41 of the Constitution imposes responsibility on the state to make effective provision to secure the right to work, education and to public assistance in cases of unemployment, old age, sickness and in other case of disabilities.

In a landmark decision popularly known as 'pavement dwellers case', the Supreme Court of India expanded the meaning of right to life to include the 'right to livelihood'. In this case the Court ruled that any person deprived of his or her right to an adequate livelihood or right to work can challenge the deprivation of livelihood as violation of right to life as guaranteed by the Article 21, the Supreme Court of India in Francis Coralie Mullin vs. the Administrator, Union Territory of Delhi and Others elaborated on right to adequate shelter as part of all encompassing right to life. In another case the Supreme Court has held that the right to life includes the right to food, water, decent environment, education, medical care and shelter. The Court further held that right to life prohibited the eviction of slum dweller families unless alternative accommodations are provided In the Maneka Gandhi's case the Supreme Court gave a new dimension to the Article 21. The Court held that right to 'live' is not merely confined to physical existence but includes within its ambit the right to live with human dignity.

Coming to the rehabilitation issues, under the 1984 Land Acquisition Act, Indian Government's position mostly remained to be that of 'rehabilitation is not a

prime consideration when acquiring land for public purpose'. Therefore, in India Supreme Court was the only forum for individuals whose land is acquired by the Government for public purpose. As a result rights of displaced persons have been significantly curtailed. However, On September 26, 2013, India adopted a historic new bill which, for the first time, addresses internal displacement caused by development. The long name chosen by the lawmakers for this bill sounds almost like a manifest: "The Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act" (LARR). The new bill abolished India's century-old Land Acquisition Act (LAA) of 1894, based on coerced land acquisition through the state's power. That act also wrongly de-coupled such acquisition from its dire effects – impoverishment and human upheaval. Moreover, the LAA was also completely silent on the recovery of those victimized by dispossession of land and property.

In stark contrast, the LARR institutes not only novel rules for acquiring land, but also legislates the obligation of the project which causes the displacement to resettle affected communities and enable their recovery. The LARR also provides, for the first time, a measure of protection of the human rights of internally displaced persons (IDPs) – rights trampled upon and denied to them in previous displacements. The LARR also sets forth new economic entitlements for IDPs, and new entitlements to information and consultation on the changes that displacement imposes on their work, income and entire existence. For these and many other reasons, India's historic new law deserves praise, international recognition and support in its implementation.

Among the States in India only the State of Maharashtra has a legislative enactment recognizing the rights of displaced people. Other States have passed only resolutions and issued circulars regarding the need for adequate resettlement and rehabilitation of displaced persons. In absence of legal enactment these ad-hoc decisions and measures largely depend on strong public opinion and how well organized the affected people are in a particular project area. As a result it produces inequality in the treatment of project displaced persons. Thus the equality before the law and equal protection of law in equal circumstances guaranteed as fundamental right by the Constitution of India cannot apply.

Displaced persons belonging to the tribal communities have been given another valuable fundamental right under Article 29 of the Constitution of India. The right guarantees the fundamental right to preserve the cultural identity of any citizen or group of citizens from Governmental encroachment.

The fundamental right contained in the Article is an absolute right and not subject to reasonable restriction. If, for example, the rehabilitation of tribal communities is detrimental to cultural identity then it may be challenged in court for the violation of their fundamental rights guaranteed by Article 29.

To sum up, as we have discussed, the refugees and IDPs rights are protected under the Indian Constitution. However, India is often criticized for not having any policy or institutional framework deal with either refugees or IDPs. As India has not ratified the 1951 Convention and 1967 Protocol, it is often accused of not permitting UNHCR access to most refugee groups. In the absence of a permanent institutional structure to oversee refugee issues, the granting of refugee status has been at the discretion of the political authorities. Due to a similar absence of a national policy on resettlement and rehabilitation of IDPs, there have been only piecemeal and ad hoc initiatives at project and state level. There is an urgent need to fix the government accountability for the consequences of state-imposed displacement.

Further the lack of credible information on numbers and subsistence needs of the displaced leaves large numbers of people unassisted and unaccounted for. There is thus an urgent need for national authorities to conduct surveys in conflict-affected areas to document the number of internally displaced and their specific needs. A more coherent response to situations where people flee conflicts would also include the creation of a national institutional focal point on internal displacement and a national legal framework upholding the rights of internally displaced. A draft national displacement policy has been formulated that addresses the rehabilitation of people displaced by development projects, but has been severely criticised for failing to acknowledge the rights of the displaced.

4.3.6 LET US SUM UP

In the current lesson so far we have tried to understand the basic difference between the refugees and internally displaced persons and reasons behind seeking refugee status and displacement. We have tried to understand international principles and covenants governing these categories of people and the status of both categories in India, the legal provisons govern them and the Constitutional protection and the rights enjoyed by them as well as the criticism on institutional response in India.

4.3.7 EXERCISE

1. Discuss the difference between Refugees and IDPs.
2. Write a short note on the reasons behind the increase in Refugees and IDPs
3. Discuss the policy practiced by India towards Refugees.
4. Who all constitute the Refugees of India? How is their legal status determined and what are the rights enjoyed by them under Indian Constitution.
5. Write a Short note on the principle of Non-refoulement.

6. Discuss the significance of Guiding Principles on Internally Displaced Persons.
7. Give a detail of various categories of Internally Displaced Persons and the rights they enjoy in India.
8. "The Indian response towards Refugees and Internally Displaced Persons is often considered to be ad hoc and lacking strong policy and mechanisms". Critically address the statement

4.4 HUMAN RIGHTS MOVEMENTS IN INDIA

- V. Nagendra Rao

STRUCTURE

4.4.0 OBJECTIVES

The national emergency period remains to be a watershed in the history of Human rights in India giving birth to numerous new human rights movements that came to play significant role in Human Rights protection in India. Against this background after going through this lesson you will be able to understand:

- the origin and growth of Human Rights Movement in India;
- how the emergency period became a catalyst to the Human Rights Movement in India;
- Civil Liberties Movement that gave rise to many other Human Rights Movements in India and their significant contributions; and
- the future concerns for the Human Rights Movement in India.

4.4.1 INTRODUCTION

The notion of human rights is founded on core values of freedom, equality, equity and justice. It insists on equality of treatment for all and no discrimination against anyone. These rights are basic guarantees of entitlements and freedoms that every human being must enjoy in order to be able to live a life of dignity and pursue opportunities to realize one's full potential. They are the means when fulfilled, will ensure human needs are met, human potential realised, opportunity is equally available to all, benefits are equitably shared and the weakest are included and protected.

Guided by this philosophical belief like in many other countries the Human Rights Movement in India took its birth is significantly striving towards the promotion and protection of rights of individuals and groups, often mediating between them and the state. Organizations part of this movement may differ in their origins, histories, ideological orientation and strategies of intervention, but they share the same basic perspective, to gather information and influence implementation of human rights by the state or government.

In the last quarter of the 20th century Indian society witnessed a growing recognition and relevance of human rights essentially due to the pressure exerted by various human rights movements. The reasons for the increased attention towards human rights have their roots in the denial of life and liberty that was a pervasive aspect of the emergency (1975–77). The absence of democratic rights during those eighteen months sensitised people towards the human rights violations happening around. This period also stimulated students, intellectuals, political activists, and many other sections of civil society into action. Thousands of people joined massive rallies to protest against the anti-democratic acts of the government and to mobilize public opinion to safeguard the Indian democracy. The National Emergency of the time dramatically exposed not only the inadequacies of the post-Independence developmental strategies adopted by successive governments, but also the continuing impoverishment and marginalisation of millions of people–a process which is increasingly recognized as inherent in the very model of development. Forty years of "democracy" of popularly elected governments have brought little benefit to the bottom 40 percent of India's population. Distributive justice, popular participation, wars on poverty–all these still remain, by and large, pious intentions.

Thus the Emergency period is often considered to be a watershed in the history of human rights movement clearly demarcating the later movement from the earlier one. In the following section will study about the origin and growth of the movement.

4.4.2 ORIGIN AND GROWTH OF HUMAN RIGHTS MOVEMENTS

The first human rights group in the country – the Civil Liberties Union – was formed by Jawaharlal Nehru and some of his colleagues in the early 1930s with the specific objective of providing legal aid to nationalists accused of sedition against the colonial authorities. However, this effort was short lived. The excitement and hopes generated by the national liberation subsumed the political spirit of an independent watchdog initiative. The human rights movement in the post-independence period is generally divided into two phases: pre- and post-Emergency. The Civil Liberties Committee was formed in West Bengal in 1948 to protest against the state repression on the communists. There is no recorded account of this phase of the movement.

4.4.2.1 The Civil Liberties Movement

The major civil liberties movement began in the late 1960s with the brutal attack by the state on the naxalites. This movement raised the issue of democratic rights' of the oppressed sections of society for justice and equality. The struggle for democratic rights in essence is the struggle to assert the rights already guaranteed formally but not ensured in practice. Denial of democratic rights takes the form of an attack on the right to assert rights already guaranteed. This was triggered off when both the privileged social classes and the government systematically cracked down on groups fighting for the rights of traditionally oppressed peoples – landless labour, marginal and small peasants, the unorganized working class (though to an extent this is something that is only now picking up) and their mobilizes and supporters among the articulate and conscientious were formed during this period. Notable amongst these were the Association for the Protection of Democratic Rights (APDR) in West Bengal, the Andhra Pradesh Civil Liberties Committee (APCLC) and, somewhat later, the Association for Democratic Rights (AFDR) in Punjab.

While these groups highlighted the growing repression and exploitation in the countryside and played a crucial role in confronting and' exposing the violent role of the state, their reach and capacity to stir the imagination and to involve concerned liberal and progressive elements was limited. The impact of these organisations was limited as they were fragmented and sectarian in nature, coupled with the indifference of the media and public opinion towards the plight of the marginalized sections of society. There was also a failure to see the issues – especially the political with socioeconomic in their co-relation.

It was only after Jayaprakash Narayan launched a major agitation against the growing authoritarianism of Mrs. Gandhi that a large number of prominent liberals and humanists came together with radicals in 1975 to form the first (and only) national human rights organization, the People's Union for Civil Liberties and

Democratic Rights (PUCLDR). Within a few months, a series of political developments helped in consolidating the scattered concerns for the rights of the poor and oppressed on the one hand and for the issues agitating middle class dissidents on the other. The announcement of the Emergency on June 26, 1975 however, proved to be a major catalytic event. With the imprisonment and ostracism of intellectuals and political activists, the national consciousness was stirred and new meaning infused in the Indian understanding of democracy. In an effort to stifle dissent, thousands were imprisoned, some' for the entire period. The press was gagged, and a host of new legislations severely restricted both traditional and nascent challenges to the centralization of power; namely, the rise of a vigorous literature of dissent, in some cases through the politicization of influential journals. But, as the latter picked up, and the Emergency moved nervously into its second year, the Centre cracked down further, delivering a serious setback to the activities of human rights organizations.

Even after the defeat of Mrs. Gandhi at the polls in 1977, these civil rights activists maintained a relatively low profile for almost two years. This was primarily due to a widely shared perception among lawyers and academics that the new government would be more amenable to dialogue and corrective action. However, some significant advances marked this period – the rise of both investigative journalism and public interest litigation, in addition to some important socioeconomic gains by the more radical groups working among the landless and the tribals. The latter were significant because while the Janata government was politically more liberal than the Congress Party, its social base was more conservative and prejudicial to the lower classes.

It was in October 1980, after the fall of the Janata government and the return of Mrs. Gandhi to power, that a major National Convention took place in Delhi which led to the split of the PUCLDR into two organizations – a Delhi based PUDR and a national PUCL.

Today, there are wide range of organizations specifically concerned with issues of civil liberties and democratic rights. While a couple of new initiatives have crystallized and some efforts towards a more federal all India organization made, most of the organizations are those which were formed between 1968-1970 and 1975. It is important to mention here that there are in India thousands of groups and movements struggling for distributive justice. There are also advocacy and support groups. At one level, these can all be classified as human rights groups. What we are concerned with here are those groups that have a sole purpose of highlighting and defending human rights. In periods of major crises these movements have also thrown their weight with independent action groups and mass movements in providing relief and rehabilitation and carrying out lobbying on behalf of the oppressed and the victimized. This collaboration was clearly evident following the

carnage of the Sikhs in November 1984 and the Bhopal disaster a month later. One significant achievement of such groups have been the substantial body of literature they have produced which highlights the complex causes of social, political, economic and cultural oppression. Some publications, like *Who are the Guilty,* which came out a fortnight after the massacre of the Sikhs, have gone into several editions with tens of thousands of copies sold.

These groups have successfully raised three kinds of issues: 1) direct or indirect violations by the state (police lawlessness, including torture and murders of opponents through fake "encounters," repressive legislation, political manipulation and terror by mafia groups, etc.), 2) denial in practice of legally stipulated rights as well as the inability of government institutions to perform their functions, and 3) structural constraints which restrict realization of rights, e.g., violence in the family, landlord's private armies, the continuing colonization of tribals, etc.

There have been significant achievements in mitigating some of the complex sources of oppression. Bonded labourers have been freed and rehabilitated, major judgments by the more sensitive individuals in the judiciary have opened up new avenues for the realization of justice, and corrupt public officials and policemen have been prosecuted. But above all, these groups have kept the democratic movement alive among a section of the urban middle class, as well as helped protect and, to an extent, expand the spaces for independent political action. They have thus made a definite contribution in widening, even if marginally, the base of democratic consciousness in the country.

As the impact of these groups has earned them greater legitimacy, it has also brought on regular attacks from vested interests, both within government and outside. As a result, some human rights activists have been tortured and killed, publications have been banned and their authors charged with sedition and imprisoned. The ruling parties have launched a vilification campaign against some groups (particularly PUCL, PUDR and APCLC) and attempted to paint them as anti-national or extremist.

Through all this, each organization has retained a distinct identity. And although organizational and methodological differences distinguish them, there has been close collaboration amongst most of them. Several weaknesses, however, remain. Principal among these is the problem of voluntarism resulting in a lack of sustained effort by a committed and recognised cadre of activists. This has prevented a consistent response to violations, as well as the growth of each organization through broad-basing of education and action and sustained collaboration among them. All this dues take place, but usually precipitated by some crisis or dramatic event. Also all these groups do not accept any governmental or foreign funds and operate under severe financial constraints.

Additionally, the wide range and frequency of violations has kept them so occupied (often through deliberate attempts at keeping them pinned down in false legal charges and economic vendetta) that most of the activity, so far, has been primarily defensive. While there has been a very weak "early warning system," mere also is a lack of understanding of international human rights instrumentalities, of the role and importance of new organizational initiatives that need to be undertaken which would strengthen both each individual organization and their aggregative impact, and of solidarity with relevant developments elsewhere in the world. The latter point has tremendous significance in the years to come as horizontal linkages both within countries and globally are essential if we are to simultaneously counter the international underpinnings of authoritarian structures and actively assist in positive movements for social and political change- global, regional, national and local.

4.4.2.2 Women's Movement

The same period also saw the emergence of a nascent women's movement. In December 1974, the Committee on the Status of Women in India submitted its report to the Government of India preceding the heralding in of the International Women's Year in 1975. The Status Report, in defiance of standard expectations set out almost the entire range of issues and contexts as they affected women. Basing their findings, and revising their assumptions about how women live, on the experiences of women and communities that they met, the Committee redrew the contours of women's position, problems and priorities gave a fillip to the re-nascent women's movement.

The women's movement has been among the most articulate, and heard, in the public arena. The woman as a victim of dowry, domestic violence, liquor, rape and custodial violence has constituted one discourse. Located partly in the women's rights movement, and partly in the campaign against AIDS, women in prostitution have acquired visibility. The question of the practice of prostitution being considered as 'sex work' has been variously raised, while there has been a gathering unanimity on protecting the women in prostitution from harassment by the law. The Uniform Civil Code debate, contesting the inequality imposed on women by 'personal' laws has been resurrected, diverted and re-started. Representation, through reservation, of women in parliament and state legislatures has followed the mandated presence of women in panchayats. Population policies have been contested terrain, with the experience of the emergency acting as a constant backdrop. 'Women's rights are human rights' has demanded a re-construction of the understanding of human rights as being directed against action and inaction of the state and agents of the state. Patriarchy has entered the domain of human rights as nurturing the offender. Saheli, Delhi, Vimochana, Bangalore and Forum against Oppression of Women, Mumbai are a few that represent the organizations that contributed for the furtherance of Women Rights in India.

4.4.2.3 Public Interest Litigation

In the late 1970s, but more definitively in the early 1980s, the Supreme Court devised an institutional mechanism in public interest litigation (PIL). PIL opened up the court to issues concerning violations of rights, and non- realisation of even bare non-negotiables by diluting the rule of locus standi; any person could move the court on behalf of a class of persons who, due to indigence, illiteracy or incapacity of any other kind were unable to reach out for their rights. In its attempt to make the court process less intimidating, the procedure was simplified, and even a letter to the court could be converted into a petition.

In its early years, PIL was a process which recognized rights and their denial which had been invisible in the public domain. Prisoners, for instance, hidden amidst high walls which confined them, found a space to speak the language of fundamental and human rights. led to 'juristic' activism, which expanded the territory of rights of persons. The fundamental rights were elaborated to find within them the right to dignity, to livelihood, to a clean environment, to health, to education, to safety at the workplace. The potential for reading a range of rights into the fundamental rights was explored. Individuals, groups and movements have since used the court as a site for struggle and contest, with varying effect on the defining of what constitute human rights, and prioritising when rights appear to be in conflict.

4.4.2.4 Struggle against Pervasive Discrimination

Dalit movements have kept caste oppression, and the oppression of caste, in public view. Moving beyond untouchability, which persists in virulent forms, the movement has had to contend with increasing violence against dalits even as dalits refuse to suffer in silence, or as they move beyond the roles allotted to them in traditional caste hierarchy. The growth of caste armies in Bihar, for instance, is one manifestation. The assassination of dalit panchayat leaders in Melmazhuvur in Tamil Nadu is another. The firing on dalits by the police forces when they were seen to be rising above their oppression in the southern tip of Tamil Nadu is a third. The scourge of manual scavenging has been brought into policy and the law campaigns; there have been efforts to break through public obduracy in acknowledging that untouchability exists. In the meantime, there are efforts by groups working on dalit issues to internationalize deep discrimination of caste by influencing the agenda of the World Conference against Racism.

4.4.2.5 Resisting Displacement Induced By 'Development' Projects

There has been widespread contestation of project-induced displacement. The recognition of inequity, and of violation of the basic rights of the affected people, has resulted in growing interaction between local communities and activists from

beyond the affected region, and the articulation of the rights and the injuries has been moulded in the process of this interaction.

Resource rights were agitated in the early years of protest in the matter of forests; conservation and the right of the people to access forest produce for their subsistence and in acknowledgment of the traditional relationship between forests and dwellers in and around forests. Environmentalists and those espousing the dwellers' and forest users' causes have spoken together, parted company and found meeting points again, over the years. The right to resources is vigorously contested terrain.

4.4.2.6 Fight against Communalism

The 1980s, but more stridently in the 1990s, communalism has become a part of the fabric of politics. The anti- Sikh riots following Indira Gandhi's assassination was a ghastly reminder that communalism could well lurk just beneath the surface. The Bhagalpur massacres in 1989 represent another extreme communal manifestation. The demolition of the Babri Masjid on December 6, 1992 is an acknowledged turning point in majoritarian communalism, and impunity. The complicity of the state is undeniable. The killing of Graham Staines and his sons in Orissa was another gruesome aspect of communalism. The questioning of conversions in this climate is inevitably seen as infected with the communal virus. The forcible're-conversion' in the Dangs area in Gujarat too has communal overtones. Attacks on Christians are regularly reported in the press, and the theme of impunity is being developed in these contexts.

4.4.3 NEW MOVEMENTS AND CAMPAIGNS

The professionalizing of the non-governmental sector has had an impact on finding public space for certain issues and in making work on the issues sustainable. Child labour, AIDS-related work, the area of devolution and aiding women's participation in panchayat institutions, and battling violence against women have found support and sustainability in funding infrastructure development and support. These have existed alongside civil liberties groups and initiatives, grassroots campaigns such as the Campaign for the Right to Information based in Rajasthan, the development struggle which has the Narmada Bachao Andolan at its helm, or the fishworkers' forum that has combated, sometimes successfully, the encroachments by the large-scale and capital-intensive into the livelihoods of traditional fishing communities. Movements for self-determination, militancy, dissent and the naxalite movement have provoked various extraordinary measures which have, in turn, prompted human rights groups into protest and challenge. The Terrorist and Disruptive Activities (Prevention) Act (TADA) is an instance.

The Armed Forces Special Powers Act (AFSPA) continues. Encounter killings, disappearances and the ineffectiveness of the judicial system in places where 'extraordinary' situations of conflict prevail, characterise the human rights-related scenario. A jurisprudence of human rights has emerged in these contexts. Networking, and supporting each other through conflicts and campaigns, is not infrequent. There are glimmerings of the emergence of, or existence of a human rights community in this. This has had groups and movements working on tourism, forest dwellers rights, civil liberties, displacement, women's rights and environment, for instance, finding a common voice in protesting the nuclear blasts in May 1999, or in condemning the attacks on the filming of 'Water' which had undisguised communal overtones. There has also been a building of bridges across causes and the emergence of an inter-woven community of interests. As the vista of rights has expanded, conflicts between rights have begun to surface. There has been a consequent prioritisation of rights. The determination of priorities has often depended on the agency which engages in setting them- sometimes this has been environmental groups, at others workers, and yet other times, it has been the court.

This way the Human rights movement in India has rallied around fundamental rights guaranteed in the Constitution of India as human rights. They kept themselves promoting secular humanism and voicing the concerns of the oppressed, suppressed and brutalized human beings. Their commitment to human rights is not based merely on individual rights but that which includes the collective rights of the people. Under the pressures of the United Nations Organisation (UNO), Amnesty International and human rights groups within the country, the Indian parliament passed the Protection of Human Rights Bill in 1993 which became an Act in 1994. Under this Act, the National Human Rights Commission (NHRC) and various State Level Human Rights Commissions and Human Rights Courts came into existence in strengthening the movement for the promotion and protection of Human Rights.

4.4.4 FUTURE CONCERNS FOR THE MOVEMENT

The achievements of the Human rights Movement so far cannot make it complacent. With the increasing effects of Globalization and the external pressures to adjust Indian Society there is an increase in Human Rights Violations in several forms across the country. Thus the urgent task before the human rights community in India is to consistently focus on the root causes of human rights violations both nationally and internationally and its specific political context. The war on terror is an attack on the rights and dignity of the workers, urban and rural poor.

There is also a need to focus on the fact that the human rights violations on a world scale are due to the unfair terms of international trade and have resulted in the destruction of millions of cultures, economies and ecology. Documenting and

exposing the growing role of intelligence agencies in the disinformation campaign and their penetration into the ranks of movements, including the human rights movement are also required. The argument that human rights must be sacrificed for national security must be countered. In fact preservation of human rights standards is the only way to ensure our nation remains secure, as violation leads to greater alienation of the victims.

The movement must also demand for greater transparency from the government in dealing with militancy, which means that all fundamentalists, fascist forces have to be dealt with equal vigour. Those caught for violating the law and committing crimes must be punished but strictly in accordance with the law and human rights standards. The use of the politics of fear for narrow electoral and short-term political gains serves to encourage corruption among the investigating agencies and undermines the criminal justice system.

To conclude, you have studied so far that the human rights movement in India essentially considers the state as an important player in the human rights field, and its most significant adversary. It is clear that it is keen to emphasize or highlight those violations which are perpetrated by governmental agencies or in conjunction with state authorities. However, it has also identified that the state is not the only adversary, but also other various kinds of power structures. Thus from just focussing on the state, it has started focussing on local power structures of dominance and oppression. The notion that everyday issues of exploitation and oppression should be articulated using human rights concepts is fast gaining acceptance both among the activists and the people at large.

Many of the organizations were indeed first established for the specific purpose of highlighting repression on political prisoners. The emphasis has now shifted to other matters, and they have gradually taken up a wider role. The organizations today address a wide range of issues, and this brings them in direct conflict with various state agencies.

There is no doubt that the government, with its power and resources can be of immense use in strengthening human rights in the country. But unfortunately, the government's response to indigenous organizations throughout has been one of indifference, when not branding them as working against the "national interest." More recently, the government has shown to an extent that it is willing to implement human rights norms in the country. Yet there is more to be done especially in the vital area of developing and enforcing a policy of protecting and supporting organizations working for human rights in the country.

There is a need for cooperation and better coordination among different players - the most important being the rights NGOs and the state. The eventual aim is to create a society where no more vigilance is required and where human rights

organizations are redundant. But until such a time comes, unceasing effort must continue, an effort in which the organizations have indeed a vital role to play.

4.4.5 LET US SUM UP

To quickly sum up the lesson, so far we tried to understand the reasons behind the emergence of Human Rights Movement in India, what kind of issues various movements took up in the initial phase, how the movement became vibrant in the post emergency period, and various kinds of state oppression around which the movements were organized. We have also tried to understand how these movements slowly shifted their focus from the state to other issues like the local power structures of dominance and oppression as well as gender specific issues. Then we have moved towards a discussion emerging concerns for the movement.

4.4.6 EXERCISE

1. Discuss how the emergency period became a catalyst to the Human Rights Movement in India.
2. Discuss the origin and growth of Human Rights Movement n India.
3. Write a brief note on Civil Liberties Movement.
4. Critically analyse the new movements and their concerns.
5. Briefly discuss on the future concerns of Human Rights Movement.

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