

**25****HUMAN RIGHTS**

The basic fact to remember about human rights is that they are not the gift or bounty of any political sovereign through legislation or any edict, but are rights inherent in human existence. The purpose of any law dealing with these rights is merely to recognize them, to regulate their exercise and to provide for their enforcement, and the related matters. Inviolability of some basic rights in a civilized society is based on this premise. Human rights are considered to be universal, indivisible and interdependent.

‘Human rights’ in practice have been defined to include all aspects of dignified human existence which make every human being an equal member of the human family. Human dignity is the essence of human rights. It is the wide understanding of this aspect and appreciation of the range of dignity of the individual which defines the true scope of human rights.

**Objectives**

After studying this lesson, you will be able to

- Explain the basic concept of human rights ;
- Classify the main categories of human rights ;
- Recall the major landmarks in the development of human rights ;
- Trace the evolution of human rights in India ;
- Recognize the role of non-governmental organizations in the promotion and protection of human rights.

25.1 Basic Concept of Human Rights

There have been a number of ways of classifying human rights. Some of the categories are given below :

25.1.1 Classical

These have been defined to include civil and political rights and generally restrict the powers of the state in respect of actions affecting the individual.

25.1.2 Fundamental and Basic Rights

With the recent increase in the number of human rights, a concern has arisen that some rights will become watered down. Consequently, the term fundamental rights tends to be used to indicate more importance of certain rights. Some rights are so important that they must always be given precedence in national and international policy. They include all the rights pertaining to individual dignity as well as to their material needs.

25.1.3 Collective and Individual Rights

In general, most human rights relate to the individual. It will, however, become apparent that some of them can only be exercised by groups. This is especially so when the ability to exercise rights is linked to membership of a particular group.

25.1.4 First, Second and Third Generation Rights

Clearly, this classification follows the historical development of rights. First are the civil and political rights and second are the social, economic and cultural ones. In recent years, academics have started to talk about the existence of a third generation of rights which are solidarity rights, for example the right to peace, the right to development, the right to food and to a clean environment. Human rights are necessarily dynamic.

25.2 Six Features of Human Rights

From the above discussion we can conclude that there are certain common features of all the categories of human rights. We can identify at least six features which are basic to the concept of human rights.

25.2.1 People have rights simply because they are human

All people have the right to lead a dignified and human life, and work towards achieving this for all people. These rights cannot be denied on the basis of caste, colour, religion and gender.

25.2.2 Human rights are universal

They take no account of nation, race, sex or colour. People of all nations, colour, race, religion have same rights everywhere. The developed and developing countries in all continents of the world must guarantee same rights to all their citizens.

25.2.3 Human rights treat all people as equal

This follows the idea that “all human beings are born free and equal in rights and dignity” and therefore deserve the same opportunities and treatment, whilst simultaneously respecting their different cultures and traditions, political persuasion, sexuality, social origin, status etc. Governments must therefore work to create the same opportunities for all the people in the country and this may involve extra work to make those opportunities the same for certain sections in society e.g. women, children, and the disabled.

25.2.4 These rights belong primarily to individuals

This means that they are concerned with the relationship between an individual and the state. Consequently, it is for the government to create a society where each individual can

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enjoy and freely exercise his or her rights to the full.

25.2.5 Human rights encompass the fundamental principles of humanity

These rights are considered to be basic for the development of human personality and for the sake of human dignity. Examples of such rights are the right to life, freedom from slavery and freedom from torture.

25.2.6 The promotion and protection of human rights is not limited to national boundaries but rather stipulates certain ideals that apply the world over

Human rights hold nations accountable for meeting the conditions which satisfy the promotion, protection and respect for these rights.



Intext Questions 25.1

1. Tick (✓) the correct answer:

- (a) Human Rights are inherent in human existence. (True/False)
- (b) Classical Rights include civil and political rights. (True/False)
- (c) The promotion and protection of human rights is limited to national boundaries. (True/False)

2. Fill in the blanks :

- (a) Human rights are _____. (universal, local).
- (b) Human rights are necessarily _____. (static, dynamic, closed)
- (c) Human Rights encompass the _____ principles of humanity. (oldest, medieval, fundamental)

25.3 Major Landmarks in the Development of Human Rights

Incorporation of a Bill of Rights in some early national charters and constitutions in Europe indicates that the concept is not of recent origin.

Early European charters supporting the idea of certain fundamental freedoms were the *Magna Carta* of 1215, the *Union of Utrecht* in 1579 (Netherlands), and the *British Bill of Rights* in 1689.

These charters specified certain freedoms that one could claim if one held a particular *status* and were not all-encompassing, but rather conferred upon an individual. Over the next few centuries, the idea of liberty gradually separated from status and was viewed as a right pertaining to all human beings.

This was also the time when the British colonies in North America strove for independence and drew up their own *Declaration of Independence* in 1776, based on the idea of



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universal equality, and the existence of certain inalienable rights. These documents were eventually incorporated into the *American Bill of Rights* which is a part of the U.S. Constitution. The international growth of the concept can be demonstrated by the *French Declaration of the Rights of Man in 1789*.

The rights of the 18th and 19th centuries can be termed as ‘*classic*’ rights, relating to the freedom of the individual and were incorporated in many national constitutions. Today, governments provide new category of rights in the fields of employment, education, health and welfare. These are termed as *social* rights.

The social rights were first embodied in international regulations for example, the *International Labour Organisation* (ILO) was founded in 1919 and was the originator of various labour regulations.

Important Dates for Human Rights

- 1215 Magna Carta
- 1776 American Declaration of Independence and Bill of Rights
- 1787 Constitution of the United States
- 1789 French Declaration of the Rights of man
- 1946 UN Commission on Human Rights
- 1948 Universal Declaration of Human Rights
- 1949 Geneva Conventions
- 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms
- 1961 European Social Charter
- 1966 International Covenant on Economic, Social and Cultural Rights (ICESC); the International Covenant on Civil and Political Rights (ICCPR); and the (First) Optional Protocol to the Covenant on Civil Inhuman or Degrading Treatment or Punishment (UNCAT)
- 1993 Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights.

The tremendous atrocities of the Second World War can be said to mark the start of the current ‘era of human rights’, for they ended the view that it was up to the individual state to determine how to treat its citizens.

The Preamble to the Charter of the United Nations reaffirms *faith in fundamental human rights.....*”. Article 1 of the UN Charter states that promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion is one of the purposes of the United Nations. Thus, human rights are a legitimate concern of the international community. Signatories to the UN Charter undertake the responsibility of promoting human rights individually and collectively.

In 1946, the *UN Commission on Human Rights* was established and in less than two



years it had drafted the *Universal Declaration of Human Rights* which was adopted by the *UN General Assembly* (UNGA) in 1948.

In 1966 the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. Together with the *First and Second Optional Protocols to the International covenant on Civil and Political Rights*, these five documents comprise the *International Bill of Human Rights*.

Thus internationally recognized human rights have become a new international 'standard of civilization'. After the Second World War there has developed a body of international human rights code reaffirming the morally appealing idea of adherence to shared standards of justice to qualify for membership of the international community. It has become a factor of political legitimacy. These standards of civilized behaviour link national and international legitimacy.

The visible rise of universal human rights culture depicts moral progress and is an effective response to major threats to human dignity posed by modern political and economic trends. Viewing development with the 'rights' perspective for sustainable development appears to be gaining ground. That we are all equally human seems to be more acceptable now, with the current slogans: 'All human rights for all' and 'The world is one family'. To us Indians, it is nothing new. We have for long believed: 'Sarve Bhavantu Sukhinah', and 'Vasudhaiv Kutumbakam'.



Intext Questions 25.2

1. Tick (✓) the correct answer:

- (a) The Universal Declaration of Human Rights was adopted in 1949. (True/False)
- (b) Atrocities of Second World War mark the start of current era of human rights. (True/False)
- (c) Human Rights like Fundamental Rights are enforceable. (True/False)

2. Fill in the blanks :

- (a) Human Rights have now become _____ (local, national universal)
- (b) The world leaders gathered in _____ for the World Conference on Human Rights (Vienna, Geneva, New York)
- (c) The rights of the 18th and 19th centuries can be termed as _____ rights (individual, social, classic)

25.4 Human Rights in the Indian Constitution

The Constitution of India duly recognizes the importance of human rights and guarantees certain Fundamental Rights in Part-III which include the right of equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and the right to constitutional remedies. Article 32 gives the right to constitutional remedy in the form of original jurisdiction of the Supreme Court of India for the enforcement of these

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Fundamental Rights. This is the protection of individuals against invasion of their human rights.

Part-IV of the Indian Constitution contains Directive Principles of State Policy which are the principles fundamental in governance, to be observed by the State in the formulation of its policies. These include the duty of the State to secure a social order for the promotion of the welfare of the people, social justice, right to work, to education and social security, provision for just and humane conditions of work, promotion of interests of the weaker sections, duty to raise the level of nutrition and the standards of living and to improve public health, protection and improvement of environment, ecology and wild life etc.

In addition, the Fundamental Duties of every citizen covering a wide range to strengthen the guarantee of Fundamental Rights are in Article 51A (Part IVA of the Constitution). In addition to Article 32 empowering the Supreme Court to enforce the Fundamental Rights, the High Court is empowered by Article 226 for the same purpose to exercise its powers. The primary duty of the higher judiciary to protect and enforce human rights is the constitutional mandate. Rule of law is a basic feature of our Constitution, as is judicial review.

The role of the Supreme Court of India is commendable in expanding the human rights and it has found Article 21 of the Constitution as the most fruitful article. In several cases the Indian Supreme Court has said that compensation is to be given for violation of rights under the article, such as, right to human dignity, right to healthy environment, right to social security, right to protection of childhood etc.

The impact of the 1948 Universal Declaration of Human Rights on the drafting (Parts III and IV) of the Indian Constitution is felt throughout. India has acceded to the Universal Declaration of Human Rights as well as to both the Covenants with certain reservations.

25.5 National Human Rights Commission

The Protection of Human Rights Act, 1993 was enacted in India to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States for better protection of human rights and for matters connected therewith or incidental thereto. '*Human rights*' are defined in Section 2(1)(d) of the Act to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. The functions of the Commission are enumerated in Section 12 which include a wide area to enable the Commission not only to enquire into the violations or negligence in prevention of violation of human rights but also to promote the human rights culture and perform any function necessary for the promotion of human rights.

Ever since its constitution in 1993, the National Human Rights Commission has been discharging a role complementary to that of the Supreme Court of India by performing those tasks which by their very nature the NHRC can perform better e.g. monitoring any situation or functioning of an institution. The dependence between these institutions has considerably improved the mechanism for the protection of human rights in the country, which is primarily a state responsibility.

The interpretation of the fundamental rights, particularly, Article 14 (right to equality) and Article 21 (right to life) by the Supreme Court has considerably enlarged the meaning and scope of human rights in India.



The National Human Rights Commission has also interpreted its functions enumerated in Section 12 of the Act especially to include therein monitoring of the functioning of the institutions of governance with a view to ensure better protection of human rights and to prevent their violation. The NHRC visualizes its role as that of a catalyst to improve the quality of governance with the firm belief that good governance in accordance with the Constitution and the rule of law alone can be effective for better protection of human rights. The linkage between the two is direct and clear.

The nature and extent of State's responsibility for the protection of human rights was indicated by the NHRC in its orders made in the case of recent Gujarat communal disturbances. The Commission observed :

“It is the primary and inescapable responsibility of the State to protect the right to life, liberty, equality and dignity of all of those who constitute it. It is also the responsibility of the State to ensure that such rights are not violated either through overt acts, or through abetment or negligence. It is a clear and emerging principle of human rights jurisprudence that the State is responsible not only for the acts of its own agents, but also for the acts of non-State players acting within its jurisdiction. The State is, in addition, responsible for any inaction that may cause or facilitate the violation of human rights”.

The National Commission on Human Rights has investigated several cases of gross violation of human rights by official agencies and also terrorist groups. The commission while inquiring into the complaint of the violation of human rights may call for information or report from the Central Government or any State Government or any other authority or organisation subordinate there to, within such time as may be specified by it. When after the inquiry the Commission comes to the conclusion that violation of human rights has occurred, it may take the following steps :

1. where the inquiry discloses that violation of human rights or negligence in the prevention of human rights by a public servant, it may recommend to initiate proceedings for prosecution by the concerned government or authority.
2. approach the Supreme Court or the High Court concerned for directions.
3. recommend to the concerned government or authority for the grant of immediate interim relief to the victim or the members of his family.

Whenever a complaint of violation of human rights is made against a member of the Armed Forces the commission is required to follow a different procedure, It may seek a report from the Central government and may make its recommendations. The Commission took notice of reports dated 22 March 2000, which appeared in all leading newspapers, concerning the killing of 35 members of the Sikh community in a village of Anantnag District during the night of 21 March 2000 by armed militants. It was stated that all those killed were men, aged between 16 and 55. Later, a woman died of shock on seeing the bodies of those killed. At least two families lost all of their male members. The incident occurred a few hours before the President of the United States of America was to begin an official tour to India. The Commission issued notice to the Chief Secretary and Director General of Police, Government of J&K as well as to the Secretary, Ministry of Home Affairs, Government of India calling for detailed reports.

On 15 April 1996 six naxalites were killed by the police at Murumdag village, Daltonganj, Bihar. The Peoples Union for Civil Liberties at Palamau which had earlier enquired into

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the matter stated that an armed group came to the village to settle a dispute. On receipt of information: the police came and encircled the members of the armed group who surrendered to the police. Thereafter, the members of the group were made to stand at different places and fired at by the police. In all six persons were killed as a result of the firing by the police. The PUCL found that the allegation of the police that the naxalite group had attacked the police party with bombs and firearms and that the police returned fire in self-defence resulting in the death of six persons to be untrue. The armed group came in plain clothes but after their post mortem they were dressed in khaki uniforms which had neither any holes nor bullet marks on them. The dead bodies were thrown away but when there was a protest by the people, six bodies were transported in a police van and cremated by the police. As the police attached to the same police station were involved in the firing resulting in the killing, the Commission recommended that the case should be made to an independent investigation agency, namely, CID and to complete the investigation within four months. If the investigation called for launching of prosecution, steps for speedy trial be taken. The Commission expressed the hope that compensation would be awarded by the State if the case ended in conviction.

The Commission took notice of a matter reported in the newspaper 'Indian Express' dated 27 January 1999 captioned "Bihar: old script, new victims, and upper caste Ranbir Sena kills 21 Dalits in Jehanabad". According to the report, the Ranbir Sena, a private army of upper caste landlords in Bihar, armed with sophisticated weapons, had killed at least 21 people including 6 children and 5 women on 25 January 1999 in Rukhsagar Bigha village under the Mehandia Police Station in Jehanabad district of Bihar. The victims were all from the backward castes and included several Dalits. The Commission, while taking cognizance of the matter on 27 January 1999 expressed shock at the news of the killing of 21 Dalits in Jehanabad and effectively investigate and bring to book the guilty persons, and to ensure that there was no recurrence of such incidents. It further directed the State Government to grant relief and succour to the members of the families of the deceased and to the injured victims.

National Human Rights Commission neither does render decisions the way a Court of law does, nor can its recommendations be enforced like judgements of the Courts. The recommendations of the Commission receive wide publicity and have a tremendous impact politically and socially. The role played by the Commission in the campaign against TADA is worth mentioning. It has a temporary legislation which expired on 23 May 1995. When TADA lapsed a substitute legislation by the government was not cleared by Parliament.

25.6 Role of Non-Governmental Organizations (NGOs)

The impact of human rights has brought about a profound change on the notions of State sovereignty. Today, no nation can say that the way it treats its citizens is purely a domestic concern. Globalisation of human rights with the modern concept of a global village has resulted in the human rights situation anywhere in the world becoming a matter of international concern. Voluntary organizations, which are also called non-governmental organizations, all over the world have begun to support and promote human rights in all societies.

The actions of international non-governmental organizations like the Amnesty International and the Human Rights Watch, and organizations like the People's Union for Civil Liberties with regard to massive human rights violations in the former Yugoslavia (Kosovo, Bosnia etc.), Rwanda, East Timor, Sierra Leone, Sudan, and Gujarat in India, and the number of



other places of conflict are obvious examples of this concern. The activities of such organizations are coordinated at the international level through the Human Rights Commission established by the General Assembly of the United Nations in 1946.

As a result of these activities of the non-governmental organizations it has now become familiar requirement for States to submit reports to a statutory organ (Human Rights Committee, Children's Committee, Women's Committee, Committee on Elimination of Racial Discrimination etc.) about their internal implementation of human rights obligations.

Half a century back it would have appeared unthinkable that sovereign States would periodically submit a report to an international body about their internal matters involving treatment of their citizens by the government, and then the State's participation in a discussion of the report with members of an international body drawn from all over the world. Such is the power of the idea of human rights today. Impact of non-governmental organizations with regard to protection and promotion of human rights is no longer debatable. The impact is clear and visible. Along with the genuine human rights agencies, official or non-governmental, the human rights movement in India is quite strong. One great stumbling block in preventing violation of human rights is poverty.



What You Have Learnt

- 'Human rights' in practice have been defined to encompass every aspect of dignified human existence which makes every human being an equal member of the human family.
- Human dignity is the essence of human rights. It is the wide comprehension of this aspect and appreciation of the range of dignity of the individual which must define the true scope of human rights.
- The core values of our constitutional philosophy indicated in the Preamble and in the chapter on Fundamental Rights to the Constitution of India are '*dignity of the individual*' and '*unity and integrity of the nation*'. These represent both the social and individual aspects of human rights.
- The National Human Rights Commission protects the basic human rights of the individuals. It examines and investigates the complaints and cases of gross violations of human rights in India.



Terminal Exercises

1. How can we classify human rights?
2. What are the six basic features of human rights?
3. Discuss the significance of human rights in the Constitution of India.
4. Write short notes on:
 - (a) Universalisation of Human Rights
 - (b) Role of the National Human Rights Commission in India.

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(c) Role of Non-governmental organizations in the promotion and protection of human rights.



Answers to Intext Questions

25.1

- (a) True
(b) True
(c) False
- (a) universal
(b) dynamic
(c) fundamental

25.2

- (a) False
(b) True
(c) False
- (a) Universal
(b) Vienna
(c) Classic

Hints for Terminal Exercises

- Refer to Section 25.1
- Refer to Section 25.2
- Refer to Section 25.4
- Refer to Section (a) 25.3 (b) 25.5 (c) 25.6



Let us ponder over adolescence issues

DO PEOPLE LIVING WITH HIV/AIDS (PLWHA) HAVE SPECIAL RIGHTS?

PEOPLE LIVING WITH HIV/AIDS HAVE A RIGHT TO LIVE WITH DIGNITY. IT IS THEIR RIGHT TO DECIDE WHETHER OR NOT TO DISCLOSE THEIR HIV STATUS.

ALL CITIZEN ENJOY CERTAIN FUNDAMENTAL RIGHTS GUARANTEED UNDER THE CONSTITUTION THAT PROTECT THEM AGAINST ALL KINDS OF DISCRIMINATION. PEOPLE LIVING WITH HIV/AIDS HAVE THE SAME RIGHTS AS NON-INFECTED PEOPLE. THEY ALSO HAVE THE RIGHT TO EDUCATION, EMPLOYMENT, HEALTH CARE, TRAVEL, MARRIAGE, PRIVACY,

