

Human Rights

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Lesson 1.1 Understanding The Concept of Human Rights and Duties

Meaning and Definition of Human Rights

'Right' in ordinary sense means 'the standard of permitted action within a certain sphere'. As a legal term, it means 'the standard of permitted action by law'.

Holland defines legal right as the "capacity residing in one man or controlling, with the assent and assistance of the state the action of others".

According to Austin, right is "faculty which resides in a determinate party or parties by virtue of a given law and which avails against a party or parties (or answers to a duty lying on a party or parties) other than the party or parties in whom it resides."

Gray defines a legal right as "that power which a man has to make a person or persons do or refrain from doing a certain act or certain acts, so far as the power arises from society imposing a legal duty upon a person or persons".

Ihering defines rights as "legally protected interests".

Salmond says, "A right is an interest recognised and protected by rules of right that is by legal rules. It is an interest respect for which is a duty, and disregard of which is a wrong."

According to Sir John Salmond, rights involve five essential elements:

(i) Subject -Right is vested in a person who may be the owner of the right, the subject of it, the person entitled, or the person of inheritance.

(ii) Object -A right operates against some person who is under a duty or obligation to obey or respect that right. He may be distinguished as the person bound, or as the subject of the duty, or as the person of incidence.

(iii) Content -There is some content or substance of a legal right i.e., the act or forbearance by which the person in obligation is bound.

Notes

iv) Acts -There is the act or omission relates to something, which may be termed as the object or subject matter of the right.

(v) Title -Every right has a title, that is to say, certain facts or events by reason of which the right has become vested in its owner. Every right, therefore, involves a three-fold relation in which the owner of it stands:

- (i) It is a right against some person or persons;
- (ii) It is right to some act or omission of such person or persons;
- (iii) It is right over or to something to which that act or omission relates.

Thus, the terms 'person', 'act' and 'thing' are inseparably connected with the term 'right'.

What are 'human rights'?

The word 'human' means pertaining to or characterising man of mankind. It is the synonym of the word 'humane' which means having or showing kindness and tenderness compassionate, tending to refine, polite, elegant. 'Human' means only human beings in strict sense and avoid animals and other creatures otherwise the concept of human being becomes too wide and creates confusion.

Human rights are rights inherent to all human beings, whatever our nationality, place, residence, sex, national or ethnic origin, colour, religion, or status.

Human rights are "basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language or other status." We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

Definitions of 'Human Rights'

'Human rights' can be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedoms allow us to fully develop and use

our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection.

Susan Moller Okin says that a human right is something (whether a freedom, a good, or a benefit) of crucial importance for human life.

According to Milne, human rights are simply what every human being owes to every other human being and as such, represent universal moral obligations. These rights can be summarised as the right to life, to freedom from unprovoked violence and arbitrary coercion, to be dealt with honestly, to receive aid in distress and to be respected as a human person.

According to Louis Henkin, Human rights are rights of individuals in society. Every human being has legitimate, valid, justified claim upon his or her society to various 'goods' and 'benefits' ... they are defined particular claims listed in international instruments ... deemed essential for individual well-being, dignity, and fulfilment and that reflect a common sense of justice, fairness and decency.

Chief Justice of India, J.S. Verma (1978) stated that human dignity is the quintessence of human rights. Every right vital for protecting and maintaining the dignity of individuals and creating conditions in which every human being can develop his or her personality to the fullest extent, may be termed human rights. However, dignity has never been precisely defined on the basis of consensus, but it accords roughly with justice and a good society.

The World Conference on Human Rights (1993), held in Vienna, declared that all human rights are derived from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms.

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

Notes

According to Section 2(1)(d) of the Protection of Human Rights Act, 1993, 'human rights' means "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".

Human rights, as such, are those rights which an individual being a human being is entitled to and which in a civilised society are recognised and enforced. They are the right to freedom, equality and liberty.

According to Universal Declaration of Human Rights, the expression 'human rights' denotes all those rights which are inherent in our nature and without which we cannot live as human beings. In other words, human rights being eternal part of the nature of human beings are essential for individuals to develop their personality, their human qualities, their intelligence, talent and conscience and to enable them to satisfy their spiritual and other higher needs. These are inalienable rights which belong equally to all members of the human family and as such, should be protected by rule of law if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression.

In the Charter of the United Nations, 1945, it reaffirms its 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....

Article 1 of the Universal Declaration of Human Rights states "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 of the Universal Declaration of Human Rights provides that 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.

Meaning of Human Rights

A right may be defined as something to which an individual has a just claim. Human rights are those that individuals have by virtue of their existence as human beings. The right to life itself and the basic necessities of food and clothing may be considered fundamental human rights.

Human beings are rational beings. They by virtue of their being human possesses certain basic and inalienable rights which are commonly known as human rights. Since these rights belong to them because of their very existence, they become operative with their birth. Human rights,

being the birth rights are therefore, inherent in all the individuals irrespective of their race, caste, creed, religion, sex and nationality. These rights are essential for all individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. Because of its immense significance to human beings, human rights are also called as 'fundamental rights', 'basic rights', - "inherent rights", 'natural rights' and 'birth rights'. As fundamental or basic rights they are those which must not be taken away by any legislature or any act of government and which are often set out in a constitution. As natural rights, they are seen as belonging to men and women by their very nature. Another way to describe them would be to call them 'common rights', for they are rights which all men and women in the world should share, just as the common law in England, for example, was the body of rules and customs which, unlike local customs, governed the whole community. Human rights are not created by any legislation, they assume the position of natural rights recognised by all mankind. The law does not establish human rights, as they are inherent entitlements which accrue to every person by virtue of his or her birth into humanity.

Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status. They range from the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty.

Characteristics of Human Rights

Some of the most important characteristics of human rights are:

- (i) are universal-the birth right of all human beings;
- (ii) focus on the inherent dignity and equal worth of all human beings;
- (iii) are equal, indivisible and interdependent;
- (iv) cannot be waived or taken away;
- (v) impose obligations of action and omission, particularly on states and state actors;
- (vi) have been internationally guaranteed;
- (vii) are legally protected.

Lesson 1.2 Nature and Scope of Human Rights

Nature of Human Rights

[Are Human Rights Universal? Indivisible and Interdependent?]

Human rights are often expressed and guaranteed by law in the form of international treaties, customary international law, and general principles accepted by international law. International human rights law lays down obligations of Governments to act in certain acts and protect human rights and fundamental freedoms of individuals and groups.

The term 'human rights' is a relatively modern invention. It covers under its umbrella three different types of rights:

- (i) the fundamental freedoms or classical civil liberties;
- (ii) ethnic and religious rights;
- (iii) socio-economic rights.

The human rights that humans have by the fact of being human, are neither created nor can be abrogated by any government.

Supported by several international conventions and treaties, these include cultural, economic and political rights, such as the right to life, liberty, education and equality before the law and rights of association, belief, free speech, information, religion, movement, and nationality. Promulgating these rights is not binding on any country, but they serve as a standard of concern for people and form the basis of many modern national constitutions.

The Vienna Declaration and Programme of Action, the end result of the 1993 World Conference of Human Rights, asserted that "All human rights are universal, indivisible and interdependent, and interrelated".

Universal and Inalienable Universality of Human Rights

'Universal' means "of or pertaining to the universe; extending to, including, or affecting, the whole number, quantity, or space, unlimited; general; all reaching; all-pervading; universal good; universal benevolence or beneficence; consisting or considered as a whole; total, entire, whole as, the universal world."

Human rights are conceived as universal and egalitarian, with all people having equal rights by virtue of being human. The principles of

universality means that all human beings are entitled to them 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.

Universality means the internally-recognised human rights are the basic core minimum to be observed everywhere-without regional differences. These human rights belong to everyone everywhere, by virtue of being human. Universality means that, as a minimum, all governments should adhere to and implement internationally-recognised standards of human rights which they themselves have drafted and adopted. Governments do not have the discretion to decide which rights they will observe and which they will not.

According to Catherine Laumiere, Secretary General of the Council of Europe, "The Universal Declaration of Human Rights states a common understanding of the people 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."

In March 1993, 240 participants from 110 human rights and development organisations representing about 26 countries across the Asia-Pacific Region in the Asia-Pacific NGO conference on Human Rights declared that "the universal nature of human rights is beyond question; their promotion and protection are the duty of all states, regardless of their cultural, economic or political systems."

In June 1993, at the World Conference on Human Rights, Vienna, Austria, it was declared that "The World Conference of Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond doubt".

Today, nearly 120 States have endorsed the Universal Declaration of Human Rights. They have ratified the two International Covenants and many of them have incorporated the Universal Declaration of Human Rights into their Constitutions. Thus, the fundamental human rights norms enjoy universal protection by customs across all boundaries and civilisations.

It is acceptable when a person says that "Though there is no

government on the moon, but people who go there have the same human rights on the moon that they were born with".

Inalienable

Human rights are inalienable. They should not be taken away, except in specific situations and according to due process as these rights are inherent in the very nature of human being. Jacques Maritain says, "Human person possesses rights because of the very fact that it is a person, a whole, a master of itself and of it acts ... by natural law, the human person has the right to be respected, is the subject of rights, possesses rights. These are things which are owed to a man because of the very fact that he is a man."

Indivisible and interdependent

The principle of indivisibility of human rights recognises that no human right is inherently inferior to any other. Economic, social and cultural rights must be respected, protected and realised on an equal footing with civil and political rights. Human rights form an indivisible whole and only if these rights are guaranteed that an individual can live decently and in dignity. "Freedom from fear, and want", says Amnesty International, "can only be relieved if conditions are created where everyone may enjoy his or her economic, social and cultural rights and his or her civil and political rights."

The principle of interdependence of human rights recognizes the difficulty of realising any one human right in isolation. For instance, it is futile to talk of the right to work, without a certain minimal realisation of the right to education. Similarly, the right to vote may seem of little importance to somebody with nothing to eat or in situations where people are victimized because of their skin colour, sex, language or religion. Taken together, the indivisibility and interdependence principles mean that efforts should be made to realise all human rights together, allowing for prioritisation as necessary in accordance with human rights principles.

The interdependence of human rights is also embodied in international instruments. One example is the Declaration on the Right to Development which was adopted by the General Assembly of the U.N. on December 4, 1986. The basic ideas in this Declaration include: (i) recognition that the human person is the central subject of development and should be the active participant and beneficiary of the right to development; (ii) acknowledgment that all human rights are indivisible

and interdependent; (iii) the realisation that the failure to observe civil and political rights, as well as economic, social and cultural rights constitute obstacles to development.

The Vienna Declaration of 1993, recognizing the indivisibility and interdependence of human rights declared

"All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in 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 background 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."

Regarding the validity of the principal of indivisibility and interdependence, Jose W. Diokno says

"As lawyer for small farmers, fishermen, workers, student and urban poor, many of whom have been detained, most of whom have been threatened with detention, a few of whom have been shot and wounded when they were peacefully exercising their rights of assembly. I have learned the painful lesson that we cannot enjoy civil and political rights unless we enjoy economic, cultural and social rights, anymore than we can insure our economic, social and cultural rights, unless we can exercise our civil and political rights. True, a hungry man does not have much freedom of choice. But equally true, when a well fed man does not have freedom of choice, he cannot protect himself against going hungry."

The principles of universality and indivisibility of human rights, however, are not without critics. Critics are either governments or individuals. They say that human rights are western and bourgeois-liberal constructs reflecting a western world view, born out of European political history and imperialism. They also say that human rights are relative, determined by the political and economic circumstances of each country. The Chinese use this theory of relativity of rights to establish the priority of social and economic rights in their country.

The ideal of free human beings enjoying freedoms from fear and want can only be achieved if conditions are created whereby everyone may enjoy their economic, social and cultural rights as well as their civil and political rights.

Equal and non-discriminatory

All human beings are said to be essentially equal. The only condition to claim human rights is to be a human being. Apparently, this appears to be a very reasonable proposition because it lays down objective equalitaria1 principle according to which a human being, by virtue of being human, can possess or enjoy all human rights without any distinction. From this, Carlos Santiago Nino says, "If the only relevant condition for enjoying certain rights is being human, and if this property does not admit of degrees, there cannot be differences of degree in the extent to which the rights in question are held; this is, all human beings have them to the same degree. This leads to inevitable conclusion that all human beings are equal."

Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the international convention on the elimination of all forms of racial discrimination and the convention on the elimination of all forms of discrimination against women.

The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights".

Both Rights and Obligations

Human rights entail both rights and obligations. States assume obligation and duties under international law to respect, to protect and to fulfil the obligations. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect means the protecting individuals and groups against human right abuses. The obligation to fulfil means that states must' take positive action to facilitate the enjoyment of rights. The human rights are neither created nor can be abrogated by the government at the individual level, while we are entitled our human rights, we should also respect the human rights of others.

Human rights are intrinsic to being born on this planet. Powerful people may put you in chains, but they have not touched your birth right, they have merely prevented it from being actualised.

Lesson 1.3 Evolution of Human Rights (History of Human Rights and their Origin and Development)

Notes

Early History of Human Rights

According to Jack Donnelly, "Human rights are those individual rights entered into the languages of political discourse only three centuries ago. This does not mean, of course, that what we call human rights did not exist before them or that they were never respected. They were often respected in practice for a wide variety of religious, cultural, and social reasons, only vaguely related to the reasons we usually cite for observing rights today. Throughout antiquity and the Middle Ages the language of politics was cast in the terms of obligation (duty) rather than rights."

There is no precise starting point of Human Rights in history. The concept of rights existed from the ancient times. The reforms of Urukina of Lagash, the earliest known legal code (C 2350 BC) must have addressed the concept of rights to some degree, the actual text of his decrees has not yet been found.

The oldest legal codex extant is the Neo-Sumerian Code of Ur-Nammu (Ca. 2050 BC). Several other sets of laws were also issued in Mesopotamia, including the Code of Hammurabi (Ca 1780), one of the most famous examples of document contained rights. It shows rules, and punishment if those rules are broken, on a variety of matters, including women's rights, men's rights, children's rights and slave rights.

The Golden Rules, Cyrus Cylinder (539 BC)

In 539 BC, the armies of Cyrus the Great, the first King of ancient Persia (today, known as Iran), conquered the city of Babylon. He freed the slaves, declared that all people had the right to choose their own religion, and established racial equality. These and other decrees were recorded on a baked-clay Cylinder in the Akkadian language with cuneiform script, known today as the 'Cyrus Cylinder'. This ancient record has now been recognised as the world's first charter of Human Rights. It is translated into all six official languages of the UN and its provisions are parallel to the first four Articles of the Universal Declaration of Human Rights. The Cylinder now lies in the British Museum, and a replica is kept at the UN Headquarters. Some commentators have linked the Cylinder to the decrees of Cyrus recorded in the Books of Chronicles, Nehemiah, and Ezra, which state that Cyrus allowed the Jews to return to their homeland from their 'Babylonian Captivity'.

Early Islamic Caliphate

Many reforms in human rights took place under Islam between 610 and 661; including the period of Muhammad's mission and the rule of the four immediate successors who established the *Raashidun Caliphate*. Muhammad preached the Islamic reforms in areas such as social security, family structure, slavery and the rights of women and ethnic minorities.

The Constitution of Madina (Charter of Madina) established the security of the community, freedom of religion, the role of Madina as a haram or sacred place, the security of women, stabled tribal relations within Madina, a tax system for supporting the community in time of conflict, parameters for exogenous political alliance, a system for granting protection of individuals, a judicial system for resolving disputes, and also regulated the paying of blood-wite.

Muhammad granted women rights and privileges in the sphere of family life, marriage, education, and economic endeavours; rights that helped improve women's status in society. Muhammad by 'instituting rights of property, ownership', inheritance, education, divorce gave women certain basic safeguards. Under Islamic Law, marriage was no longer viewed as a 'status' but rather as a 'contract' in which the women's consent was imperative. Women were given inheritance rights in a patriarchal society that had previously restricted inheritance to male relatives.

The dowry, previously regarded as a bride-price paid to the father, became a nuptial gift retained by the wife as part of her personal property. The Oxford Dictionary of Islam states the general improvement of the status of Arab women including prohibition of female infanticide and recognised women's full personhood.

The Spread of Human Rights

From Babylon, the idea of human rights spread quickly to Greece and eventually Rome. There the concept of 'natural law' arose, in observation of the fact that people tended to follow certain unwritten laws in the course of life. The Roman law was based on rational ideas derived from the nature of things. The City-State of Greece gave to its citizens equal freedom of speech, equality before law, right to vote, right to be elected to public office, right to trade and the right of access to justice. Similar rights were secured to the Romans by the *jus civil* of the Roman law.

Thus, the origins of the concept of human rights are usually agreed to be found in the Greco-Roman natural law doctrines of Stoicism which held that a universal force pervades all creation and that human conduct should therefore be judged according to the law of nature. The natural laws are basic for a decent, civilised and orderly life.

Middle Ages - *Magna Carta* (1215)

"Magna Carta" is an English Charter, originally issued in 1215. As King John I of England violated a number of ancient laws and customs by which England had been governed, Pope Innocent III and English barons revolted and at the battle of Runnymede, the barons of England wrung concessions from King John I. They forced the King to sign the *Magna Carta*, which enumerates what later came to be thought of as human rights.

Magna Carta requires the king to renounce certain rights, respect certain legal procedures and accept that he will be bound by the law.

It explicitly protected certain rights of the King's subjects to own and inherit property and to be protected from excessive taxes. It stressed on the right of the Church to be free from Government interference. It established the right of widows who owned property to choose not to remarry. It also established principles of due process and equality before the law.

The most enduring legacy of *Magna Carta* is considered the right of habeas corpus, allowing appeal against unlawful imprisonment. It also includes the right to due process in clause XXIX thus:

"No Freeman shall be taken or imprisoned, or be disseised of his freehold, or Liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed; nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers, or by the Law of Land. We will sell to no man, we will not deny or defer to any man either Justice or Right."

It also contained provisions forbidding bribery and official misconduct. Widely viewed as one of the most important legal documents in the development of modern democracy, the *Magna Carta* was a crucial turning point in the struggle to establish freedom. Thus, *the Magna Carta*, a great charter was arguably the most significant early influence on the extensive historical process that led to the rule of constitutional law today in the English speaking world.

Petition of Rights (1628)

The next recorded milestone in the development of human rights was the Petition of Rights, produced in 1628 by the English Parliament and sent to Charles I as a statement of civil liberties. Refusal by Parliament to finance the King's unpopular foreign policy had caused his government to exact forced loans and to quarter troops in subjects' houses as an economy measure. Arbitrary arrest and imprisonment for opposing these policies had produced in Parliament a violent hostility to Charles and to George Villiers, the first Duke of Buckingham.

The Petition of Rights, initiated by Sir Edward Coke, was based upon earlier statutes and Charters asserted four principles:

- (i) No taxes may be levied without the consent of Parliament;
- (ii) No soldiers may be quartered upon the citizens; and
- (iii) Martial law may not be used in time of peace.

Then came, a few years later, Holmes and Locke who profoundly influenced the thoughts on liberty. They believed, "The natural liberty of man is to be free from any superior power on earth".

John Locke, developed the concept of natural rights, the notion that people are naturally free and equal. Though Locke believed natural rights were derived from divinity since humans were creations of God, his ideas were important in the development of the modern notion of rights. Lockean natural rights did not rely on citizenship nor any law of the state, nor were they necessarily limited to one particular ethnic, cultural or religious group.

United States Declaration of Independence (1776)

On Jul 4, 1776, the United States Congress approved the Declaration of independence, which states, "we hold these truths to be self-evident that all men are created equal, endowed by the creator with certain unalienable rights; among them are life, liberty and pursuit of happiness." Its primary author, Thomas Jefferson, wrote the Declaration as a formal explanation of why Congress had voted on July 4 to declare independence from Great Britain, more than a year after the outbreak of the American Revolutionary war, and as a statement announcing that the thirteen American Colonies were no longer a part of the British Empire. Congress issued the Declaration of Independence in several forms. It was initially published as a printed broadsheet that was widely distributed and read to

the public.

Philosophically, the Declaration stressed two themes - individual rights and the right of revolution. These ideas became widely held by Americans and spread internationally as well, influencing in particular the French Revolution.

The Constitution of the USA (1787) and the Bill of Rights (1791)

Written during the summer of 1787 in Philadelphia, the Constitution of the USA is the fundamental law of the US federal system of Government and the landmark document of the western world. It is the oldest written national Constitution in use and defines the principal organs of Government and their jurisdiction and the basic rights of citizen.

The first ten amendments to the Constitution - the Bill of Rights came into effect on December 15, 1791, limiting the powers of the federal Government of US and protecting the rights of all citizens, residents and visitors in American territory.

The Bill of Rights protects freedom of speech, freedom of religion, the right to keep and bear arms, the freedom of assembly and the freedom to petition. It also prohibits unreasonable search and seizure, cruel and unusual punishment and compelled self-incrimination. Among the legal protections it affords, the Bill of Rights prohibits Congress from making any law respecting establishment of religion and prohibits the federal Government from depriving any person of life, liberty or property without due process of law. In federal criminal cases it requires indictment by a grand jury for any capital offence, or infamous crime, guarantees a speedy public trial with an impartial jury in the district in which the crime occurred, and prohibits double jeopardy.

Again, Amendments from 13 to 15 known as Civil War Amendments were adopted at the end of the civil war. Since the Bill of Rights was not applicable to the newly freed negroes these amendments extended the civil right liberties to them and imposed obligation upon the state to respect these rights. The Thirteenth Amendment prohibits slavery and involuntary servitude; the 14th Amendment confers citizenship on all persons born or naturalised in the US. The 15th Amendment lays down that the citizen's right to vote shall not be denied or abridged on the grounds of race, colour or previous condition of servitudes. In 1920, the 19th Amendment was added providing that the right to vote shall not be abridged or denied on the ground sex.

The French Revolution: Declaration of the Rights of Man and of the Citizen (1789)

In 1789, the people of France overthrew their monarchy and established the French Republic. Just six weeks after the storming of the Bastille, and barely three weeks after the abolition of feudalism, the Declaration of the Right of Man and of the Citizen (French Declaration: *des droits de L'Homme et ducitoyen*) was adopted by the National Assembly of France on August 26, 1789 as the first step towards a Constitution for the Republic of France. These are, in the document, held to be universal-not only to French citizens but to all men without exception. The proclamation of the Declaration of the Rights of Man and of the Citizen was annexed to the Constitution when it was adopted in 1791.

The Declaration of the Rights of Man and of the Citizen proclaimed that men were born free and equal in their rights. The usual aim of civil associations was the preservation of the natural and imprescriptible rights of man, which consisted of, "liberty, property, security and resistance to oppression." The exercise of these natural rights should be restricted only to the extent it was necessary to secure the enjoyment of their rights by other individuals. Law was considered to be the expression of general will. Every citizen had a right to participate personally, or through his representative, in its formation. It must be the same for all. It ought to prohibit only those actions which it was harmful to the society.

Every person was entitled not to be accused, arrested or imprisoned except in accordance with the procedure prescribed by law. Right to religious liberty and freedom of expression was also recognised. Since right to private property was considered as inviolable and sacred, no one could be deprived of it except for public necessity and on payment of legally ascertained just compensation. The sovereignty resided in the people and all authority in state were derived from them.

The First Geneva Convention (1864)

In 1864, sixteen European countries and several American states attended a conference in Geneva, at the invitation of the Swiss Federal Council, on the initiative of the Geneva Committee. The diplomatic Conference was held for the purpose of adopting a convention for the treatment of wounded soldier in combat.

The main principles laid down in the convention and maintained by

the later Geneva Conventions provided for obligation to extend care without discrimination to wounded and sick military personnel and respect for and marking of medical personnel transports and equipment with the distinctive sign of the Red Cross on a white background. The foundation of the International Committee of the Red Cross, the 1864 Lieber Cod laid the foundations of International humanitarian law.

The USSR – October Revolution (1917)

In October 1917, the Russian Revolution established the superiority of the working class over bureaucracy. The workers believed that they had nothing to lose excepting the chains. It is the liberation of working class from the exploitation of trading class.

These great events manifest in the words of Leon Trotsky: "The historic ascent of humanity taken as a whole may be summarized as a succession of victories of consciousness over blind forces, in nature, in society and in man himself."

The United Nations (1945)

World War II had raged from 1939 to 1945, and as the end drew near, cities throughout Europe and Asia lay in smouldering ruins. Millions of people were dead, million more were homeless or starving. Russian forces were closing in on the remnants of German resistance in Germany's bombed-out capital of Berlin. In the Pacific, US Marines were still battling entrenched Japanese forces on such islands as Okinawa.

In April 1945, delegates from 50 countries met at San Francisco full of optimism and hope. They agreed to create a new body the United Nations to promote peace and prevent future wars. The ideas of the organization were stated in the preamble of its proposed charter: "We the peoples of the UN are determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."

The Charter of the new UN organization went into effect on October 24, 1945, a date that is celebrated each year as United Nations Day.

The Universal Declaration of Human Rights (1948)

Though the UN could not incorporate the Human Rights in its Charter, it was realized by the members that it should be an obligation of the international community to promote human rights.

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By 1948, the UN new Human Rights Commission had captured the world's attention under the dynamic chairpersonship of Eleamor Roosevelt - President Franklin Roosevelt's widow, a human rights champion in her own rights and the US delegation to the UN-the Commission set out to draft the document that became the Universal Declaration of Human Rights. Roosevelt, credited with its inspiration referred to the Declaration as the 'International Magna Carta' for all mankind. It was adopted by the UN on December 10, 1948 as a non-binding declaration. The declaration was the first international legal effort to limit the behaviour of states and press upon them duties to their citizens following the model of the rights- duty duality.

The Preamble of the Declaration provides, " recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

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

Article 1 of the Declaration says, "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."

The document was structured to include the basic principles of dignity, liberty, equality and brotherhood in the first two articles, followed successively by rights pertaining to individuals; rights of individuals in relation to each other and to groups; spiritual, public and political rights; and economic, social and cultural rights. The final three articles place rights in the context of limits, duties and social and political order in which they are to be realised.

The member States of the UN pledged to work together to promote the 30 articles of human rights that, for the first time in history, had been assembled and codified into a single document. In various forms these rights are today part of constitutional laws of democratic nations.

Lesson 1.4: Categories or Classification of Human Rights

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Categories or Classification of Human Rights on different bases

The classification of rights and freedoms is based on various principle elements, which are emphasized in the theory of human rights. It is necessary to consider, in greater detail, the classification of human rights on two bases: in terms of their content and time of occurrence. They are emphasized according to content: civil (personal), political, social, economic and cultural human rights. According to time of occurrence: there are rights of the first, second and third generations.

(A) On time of occurrence

(1) The first generation of rights (end of 18th century civil and political rights)

(i) Right to Life and Liberty

(ii) Freedom of Speech and Expression

(2) The second generation (middle of 20th century economic and social and cultural rights.)

(i) Right to Education

(ii) Right to Work

(iii) Right to Food, Housing

(3) The third generation (1970s).

Group or Collective Rights

(i) Right to Development

(ii) Environment Related Rights.

(B) On areas of public relation

(i) Civil

(ii) Political

(iii) Economic

(iv) Social and

(v) Cultural

(C) On belonging to social norms and mores

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- (i) Natural
- (ii) Moral Standards
- (iii) Positive
- (iv) Written law, legal norms

(D) On political-legal status and individual

- (i) Human Rights
- (ii) Rights of each individual
- (iii) Rights of the individual having a stable, legal bond with the state

(E) On the degree of individualisation of the subject

- (i) Individual
- (ii) Rights of the Individual
- (iii) Collective
- (iv) Rights of Social Communities

(F) On special subjects carrying the rights

- (i) Rights of Refugees
- (ii) Rights of Women
- (iii) Rights of Child
- (iv) Rights of Disabled Persons
- (v) Rights of Stateless Persons
- (vi) Rights of Persons and Armed Conflicts
- (vii) Rights of Prisoners
- (viii) Rights of Workers-Migrants, etc.

(G) On the universality and fixation in constitutions and international norms

- (i) Fundamental (Constitutional) Human Rights
- (ii) Derivative (Non-Fundamental) Rights

(H) On the possibility of time restriction

- (i) Absolute
- (ii) Relative

(I) On the role of the state in ensuring rights and freedoms

- (i) Negative
- (ii) Positive

I. Natural Rights and Civil Rights

Human Rights traditionally have been put in two categories, natural rights and civil rights. Natural Law refers to rules of conduct which are determined by human nature, the natural conditions of human existence, or the requirements for human beings to flourish and develop. It is associated with the will of God and gives raises to questions about enforceability. Natural Rights are rights which persons possess by nature. i.e without any basis in a Declaration, Convention or Act or in the absence of political and legal institutions. Natural rights are, therefore, those rights which derive force from the natural status of things—that all men are born free, that every human being is equal—without any artificial superimpositions like in a society. It is the human nature that determines this status.

Civil Rights are the rights which an individual possesses, which are protected by government, and which may not be impaired by the government. Civil rights are designed to protect individuals' freedom from violation by governments, political and social organizations, and individuals. They protect against discrimination in civil and political society, but this protection depends on the state or nation in which the citizen belongs: "Civil rights are in place to protect citizens from discrimination and to grant them certain freedoms in that nation." e.g., freedom of speech, freedom of press, freedom of religion and freedom of assembly.

II. Participation Needs and Decencies Rights

There are three standard categories of Human Rights:

- (i) Right to participate;
- (ii) Right to basic human needs; and
- (iii) Right to basic decencies.

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(1) Every individual or a group has right to take part in the system which controls the life, choice of work, choice of residence, choice of political views and choice of cultural and religious activities. Duty is, therefore, cast on the government to uphold these rights.

(2) For every individual or a group there exists a fundamental need for nutritious foods, good health, housing, education and hygienic environmental conditions. Duty is, therefore, cast on the government to mobilize resources available towards meeting the basic needs of the people.

(3) The individual and the groups have inherent right for protection by the state against arbitrary arrest, detention, torture, execution and genocide. A duty is also cast on the government to refrain from a course of action which would tend to infringement of fundamental rights.

III. Positive and Negative Rights

Human Rights may be classified as positive rights and negative rights. Civil and political rights are often regarded as 'negative' rights which do not require the infusion of resources for their realisation. For instance, when it comes to rights like the right to life, the right to be free from torture and other civil and political rights, it is stated that all that the state has to do is not to interfere with them. On the other hand, economic, social and cultural rights, like the right to education, health and work are regarded as 'positive' rights which require the state to take legislative, executive, judicial and other measures to ensure their realisation. As they require huge resources, international conventions and laws dealing with economic, social and cultural rights provide that they have to be realised progressively over a period of time.

This positive versus negative dichotomy has been discredited recently in favour of the understanding that all human rights have both positive and negative components. It is a matter of common sense that civil and political rights, including free speech, require the positive outlay of state resources in terms of providing a functioning judicial system and educating people about their rights. Conversely, all economic, social and cultural rights have negative aspects; some states prevent people from freely exercising economic, social and cultural rights, for example by blocking food or medical supplies to disfavoured groups or regions.

A negative right restrains other persons or governments by limiting their actions toward or against the right holder. However, Positive rights

provide the right holder with a claim against another person or the state for some good, service, or treatment.

IV. Generation of Human Rights

Louis B. Sohn has classified human rights a

- (i) The Human Rights of first generation;
- (ii) The Human Rights of second generation; and
- (iii) The Human Rights of third generation.

(i) First Generation of Human Rights - Civil and political rights are related to the first generation. The first generation is the 'oldest' generation of universal human rights. The rights to personal immunity (freedom from illegal arrests), the right to private life protection, the freedom of speech, and freedom of religion, etc., were listed in the group of personal rights. The political ones are: the right to suffrage and to be elected, the right to state administration etc. These are the rights that had developed in course of a very long period of time since the time of Greek City States. They arose from European and American philosophy and the political-legal practice of the 18th century. Those were ideas of natural rights having arisen in antiquity in western European countries. Their legislative declaration as being the natural and integral rights inherently belonging to everyone was performed for the first time in Magna Carta in 1215; Virginia Declaration of Rights on June 12, 1776 (during Independent Declaration of the US); in the United States Bill of Rights, (1789-1791), and the French declaration of the Rights of Man and Citizen, 1789. These rights reflect long established human values and as such are incorporated in the national constitutions of various states. That is, above all, the right to life, liberty and safety of the person, right to open and fair legal investigation by an independent court.

The rights were acknowledged in the U.N. documents-the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). They represent an over-whelming consensus of international community giving rise to the rules of international customary law of general application. Louis B. Sohn has suggested that "the consensus on virtually all provisions of the Covenant on Civil and Political Rights is so widespread that they can be considered as part of the law of mankind, a *jus cogens* for all.

(ii) Second Generation of Human Rights - Social and economic rights and freedom of the individual (along with cultural ones) are rights of the second generation.

The second generation of rights came to fruition in the course of the struggle against economic inequality for the material well-being of the population. The right to work, freedom of choice of work, rest and leisure, sufficient salary level, the right to social assistance, professional and other social and economic rights became requirements of economic manifestations throughout the world at the end of the 19th century and beginning of the 20th century. They are considered to originate in the October Revolution in Russia in 1917 and in the Paris Peace Conference of 1919.

The real credit goes to the American President Roosevelt, who in his message to Congress on January 6, 1941, referred to the four essential freedoms, viz., freedom of speech and expression, freedom of every person to worship God in his own way, freedom from want and freedom from fear to which he looked forward as the foundation of a future world. "Freedom from want" formed the basis on which the concept of economic and social rights was formulated. True individual freedom cannot exist without economic scrutiny and independence.

Social and economic rights are included in the 1917 constitution of Mexico, the 1919 Weimer Constitution of Germany, and the 1931 Constitution of the Spanish Republic. Social ideas on world protection of the rights of workers are reflected in the 1936 Constitution of the USSR and the Constitution of the Union Republics. These rights are related to the maintenance and standardization of social and economic conditions of life of the individual, to determine this position in area of work and life, employment, well-being, social security with the purpose of creating the necessary conditions for the people to be free of fear and need. Their number and implementation degree mainly depends on the condition of the economy and resources and, consequently the guarantees of their realisation are less developed, in comparison with civil and political rights, which are considered first generation rights.

The rights of the second generation were appropriate for a long time with the supporting role; opportunities to regulate such rights were estimated negatively. There was a widespread opinion that it is impossible to precisely define and to legally qualify those rights, as they cannot generate direct responsibilities on the state for their ensuring a legal

protection. This tendency was later replaced by negating the equal status of socio-economic and political rights.

The value of social and economic rights for ensuring the legal status of the individual is indisputable today. As it is noted in the preamble of the International Covenant, "the ideal free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights." The indivisibility and interdependence of economic, social, cultural, civil and political rights was acknowledged by the UN General Assembly (Resolution of December 4, 1986).

(iii) Third Generation of Human Rights – Collective rights and community rights are tied in with the third generation. Louis B. Sohn argues that individuals are also members of such units, groups or communities as a family, religious community, social club, trade union, professional association, racial group, people, nation and State. It is not surprising, therefore, that international law not only recognises inalienable rights of individuals, but also recognises certain collective rights exercised jointly by individuals who are grouped into larger communities, including people and nations.

The third-generation rights are the rights of minorities, the rights of nations, the right to development, the right to peace, the right to a favourable environment, and to reproductive rights etc. They refer to the fraternity or brotherhood and the right to self-determination.

In the 1970s'-80s of the last century, the UN ironed out documents on the rights of minorities and the rights of nations. Regional, international norms were accepted; the Helsinki process made its contribution.

Some experts do not relate to collective rights-the rights of nationalities, nations, minorities---to human rights as the subject. In their opinion, the carrier of 'human rights' is the individual. Except for community rights, right of certain social groups, and so-called 'the new rights' began to be related to the third generation. Those are the rights of children, aged, disabled, homeless, jobless, consumers, tenants, persons with certain gender preferences or even of certain hair colour and left-handers etc.

The group of new rights was generated under the influence of the constantly changing social relations. These new rights completed or

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elaborated on the traditional rights; the right to sleep, the right not to be killed during war, the right to be different, the right to an individual lifestyle, the right to silence and peace, the right to self-education, the right to choose euthanasia, freedom from discrimination, the right to create a family with a homosexual partner, the right to refuse military service, the right to due process, etc.

Under the influence of globalization, scientific and technical progress--especially in the fields of computer science, medicine, genetics, cloning, transplantation-the list of new rights keeps extending.

Consequently, statements on the formation of the fourth generation of rights, which will become the legal answer to challenges of the 21st century, when it will be a question of "survival of humanity as a biological species, maintenance of civilization, space socialization of humankind" appear.

Interdependence of three categories of human rights of generation

All human rights of three generations are considered to be interdependent though some rights seemed to be important various international institutions have emphasised upon the interdependence, complementarity and indivisibility of human rights.

The Tehran International Conference on Human Rights (1968) stated in its Declaration that since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievements of lasting progress in the implementation of human rights are dependent on sound and effective national and international policies of economic development. In 1977, General Assembly of UN in its resolution asserted that

"All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political and economic, social and cultural rights".

V. Other Types of Classifications

There are many other types of classifications. Thus, for example, by the politico-legal status of a person (presence of the citizenship of the State), all the rights and freedoms can be divided into two groups: those

belonging to any human and realized regardless of citizenship and those belonging only to the citizen of each specific State. In the second case, political rights and freedoms, such as the right to vote and to be elected, are mainly realised by the citizens of a state.

We distinguish subjects as individual rights belonging to each person-for example, the right to life, the right to speak a particular language and other collective rights belonging to certain social groups for example, the rights of nations, the rights of minorities, the rights of vulnerable groups of society (children, women, the elderly, the disabled, refugees, working migrant, prisoners). A part of the collective rights can be realised simultaneously and individually (for example, rights of believers) and some only like collective ones (the right to participation in a peaceful meeting or demonstration).

Another criterion of classification is the fixation of rights and freedoms in regulatory legal acts. Accordingly, the right and freedoms can be divided into basic (constitutional) and derived ones. The constitutional rights are fixed in the constitutions of the nations and reflect the basic regulations of international documents. They comprise all the sphere of human life (personal, political, social, cultural, and economic). The derivatives from these rights, as a rule, are fixed in other national socio-legal acts.

Regardless of the possibility of the time, limitation from the part of government, all the rights and freedoms can be divided into absolute, suspended and limited of which is never allowed. As a rule, all personal rights and freedoms belong to absolute rights. The right to life and freedom from torture, and relative ones, which can be limited or suspended for a certain term in a state of emergency or imposed by the military, for example, the freedom of movement, etc.

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Lesson 1.5: Theories of Rights (Human Rights Theories)

Some theories have been propounded in past to explain the rights of individuals, known as rights of mankind, natural rights or human rights. They are:

(1) Natural Law Theory of Rights

The credit for giving birth to Natural Law goes to the Greeks. It engaged the attention of eminent Greek scholars such as Socrates and Aristotle. After the Greeks, it was further developed and elaborated on by the Romans. The early and original law of Romans was called '*jus civil*' (It was the positive law of the land enacted by the legislative authority). Later on, the Romans developed another legal system called '*jus gentium*' (It referred to a body of principles applied to non-citizens. It reflected the common principles found across legal systems). In the republican era of Rome, '*jus gentium*' was reinforced by '*jus natural*' (natural law). By '*jus natural*', the Roman meant "the sum of those principles which ought to control human conduct because they are founded in the very nature of man as a rational and social being." According to Romans, natural law embodies the elementary principles of justice which were the dictates of right reason. In other words, those principles were in accordance with nature and were unalterable and eternal. Natural rights theory has been derived from the natural law theory. The concept of human rights can be located in the notion of 'natural rights'. John Locke was the chief exponent of natural rights theory.

According to Locke, certain rights are 'natural' to individuals as human beings, having existed even in the 'state of nature' before the development of societies and emergence of the state. Proponents of natural rights urged that 'natural rights are rights belonging to a person by nature and because he was a human being, not by virtue of his citizenship in a particular country or membership in a particular religion or ethnic group.

As natural rights are intrinsic and independent of rights provided by the state, the latter can be viewed as having the function of protecting these natural, human rights. In other words, the state is merely a guarantor of rights-it isn't the fundamental source of these rights (the rights inherent in individuals) and it cannot take them away. Simultaneously, the inalienable nature of these rights makes it impossible for a person or institution to waive them.

Under the natural rights approach, human beings are entitled to certain basic and natural rights that define a meaningful existence. On the same lines, equal dignity of all persons in the central tenet of human rights.

(2) Social Contract Theories of Rights

The Social Contract Theory became popular through the writings of Thomas Hobbes (1558-1679), John Locke (1632-1704) and Jean Jacques Rousseau (1719-1778). They propagated that a superior power, either manual or legal was established in pursuance of the social contract under which the people collectively undertook to obey the commands of such superior power so long it governed them in their common interest and kept itself the terms of contract. The social contract theory was closely linked with the theory of natural law because the basis upon which the natural law theory were formulated was the same for the Social Contract Theory also.

According to Hobbes, man existed in a 'state of nature' within which he would be preoccupied exclusively by matters of self-interest. According to John Locke, human beings existed in a state of nature where men and women were in a state of freedom able to determine their actions and also in a state of equality. Locke further imagined that in such a state of nature, no one was subjected to the will or authority of another. Subsequently, in order to avoid certain hazard and inconvenience of the state of nature they entered into a contract, some sort of social contract, whereby they mutually agreed to form a community and set up a body politic. But they retained certain natural rights, such as, right of life, liberty and property. It was the duty of the Government to respect and protect the natural rights of its subjects. A Government which failed or neglected the said duty would forfeit its validity and office.

Rousseau states, "what man loses by the social contract is his natural liberty and an unlimited right to everything he tried to get and succeeds in getting; what he gains is civil liberty and the proprietorship of all the possessions. If we are to avoid mistake in weighing one against the other, we must clearly distinguish natural liberty, which is bounded only by the strength of the individual, from civil liberty, which is limited by the general will; and possession, which is merely the effect of force or the right of the first occupier, from property, which can be founded only on a positive title. We might, over and above all this, add, to what man acquires in the civil state, moral liberty, which alone make him truly master of himself; for the mere impulse of appetite is slavery, while obedience to a

law which we prescribe to ourselves is liberty."

The Social Contract Theory clearly reflects the fundamental premise of most human rights movements that governments are constituted to protect rights and serve community goals. They can and must be held accountable for their role in doing so. We generally accept certain laws that reasonably curtail our freedom as legitimate because we recognise that chaos would result in the absence of such regulation. One of the purposes of the social contract was to preserve the natural inalienable rights to men and at the same time, to prevent the state from interfering with the exercise of those rights by the people. In this way the concept of inalienable, natural and imprescriptible nature of human rights was established. The teachings of the social contract writers had not only strengthened and revitalized the concept of natural rights but provided it with dynamic contents.

(3) Utilitarian Theory of Rights or Legal Rights Theory

Jeremy Bentham has criticized the natural right theory as 'nonsense upon stilts'. He has advocated legal rights theory based on utilitarianism. The utilitarian principle requires Governments to maximize the total net sum of the happiness of all their subjects. This stands in contrast to natural rights theory, which prioritizes the specific basic interests of each individual subject. Bentham postulated that all human actions ought to be governed by the pleasure-causing and pain-causing consequences for the human beings in question.

In the opinion of supporters of legal right theory, rights are the creation of state. As such, they are neither absolute nor inherent in the nature of man. Another famous representative of utilitarian thought is John Stuart Mill. Like other utilitarian's, J.S. Mill allows that in moral and legal practice, justice and rights may be considered superior to the liberty to pursue satisfaction of interests. However, they maintain that justice and rights derive from these interests and desires, and thus are to be given context by determining what is necessary to maximise the satisfaction of the latter.

As per the Legal Right Theory of utilitarianism, rights are the creation of State. As such, they are neither absolute nor inherent in the nature of man. These rights such as right to life, liberty or property are artificially created by the law of the land. Hence, the recognition of a right by State is necessary for its enforcement. Bosanquet says,

"A right-has both a legal and moral reference. It is a claim which can be enforced at law, which no moral imperative can be, but it is also recognised to be a claim which ought to be capable of enforcement at law, and thus, it has a moral aspect-A typical 'right' unites the two 'sides. It both is, and ought to be, capable of being enforced at law.

(4) Social Welfare Theory of Rights (Social Expediency Theory of Rights)

Roscoe Pound and Prof. Chaffee supported this theory. They believe that law, custom and natural rights all are conditioned by 'social expediency. For instance, right to freedom of speech is not absolute but rather regulated in accordance with the requirements of social expediency. They have advocated for the 'greatest happiness of the greatest number'

The Social Welfare Theory has played an important role in development of economic and social rights and incorporate them in Universal Declaration of Human Rights and then in the International Convention on Economic, Social and Cultural Rights.

(5) Positivist Theory of Rights

A different approach in respect of the rights was adopted by the positivists. The positivism was in vogue in 18th and 19th centuries. Positivist believed that people would be bound to obey law, if it was created by appropriate legislative authority or sovereign irrespective of its being reasonable or unreasonable. The positivists called this law, 'Law positivism' i.e., law which is in fact as contrasted with law which ought to be.

Apart from Bentham and Austin, Hans Kelsen is a famous proponent of legal positivism. His concept of the 'Basic Norm' (or *Grund norm*) restricts the contingency of positive laws and thus contributes to the idea of human rights.

According to the positivists, the source of human rights lies in the enactment of a system with sanctions attached to it. They emphasized the distinction between 'is' and 'ought' and criticize natural law theorists for under-emphasis on 'ought' and for blurring the distinction between the two.

The modern exponent of positivism is Prof. H.L.A. Hart. According to him, there is a distinction between invalidity of law and the morality of law. This is the basic difference between natural rights theory and

positivist theory. According to the positivists, a law to be valid must be enacted by an appropriate legislative authority. Such a law remains valid, irrespective of its morality.

(6) Marxist Theory of Rights

Karl Marx rejected the theories of natural law and justice as he considers them mere ideologies based on misperceptions of reality. He does not reject the idea of human rights, but questions its implementation. He does not conceive the rights of individuals as distinct from the rights of the society as a whole. According to Marxists, only by achieving the upliftment of the society or community, the higher freedoms of individuals can be achieved. Thus, in view of this theory even satisfaction of basic needs of individuals are contingent on realization of social goals. In their view, notion of individual rights is a bourgeois illusion. They regard concepts of law, morality, democracy, freedom etc., as historical categories whose content is determined by the conditions of life of society or community. The contents of notions and ideas change in accordance with the changes that take place in the lives of people living in a society.

The Marxist understanding of the nature of the legal order and of rights challenges the ideas of human rights, based on the freedom and equality of human beings. There is no equality in capitalist society, the law is the expression of the ruling class, interests in the preservation of the social structure. Like society as a whole, the legal order is based on ownership relations. In order to guarantee conformity with the system, common regulations are established and maintained by the state. The state, in order to operate effectively, has to create the illusion of representing the interests of the whole of society. But in fact, it does only represent the economic interests of the ruling class, maintaining the actual social structure. As long as society itself is composed of classes, there will be no natural justice. The structure of the capitalist society itself is the cause for social injustice. In order to ensure social justice and natural rights, the economic order has to be overthrown and a more human social order has to be established. The content of notions and ideas change in accordance with the change that take place in the lives of people living in society.

(7) Morality of Law theory of Rights

Lon L-Fuller says the role of law in human society is the dichotomy between the moralities of 'duty' and 'aspiration'. The 'morality of

aspiration' refers to the struggle for excellence and the full realisation of man's faculties in any human society. Conversely the 'morality of duty' regulates and enforces the minimum standards required within an ordered society.

According to Fuller, law does enforce the minimal acceptable standards of human conduct. Furthermore, where the law confers right (for example, freedom of movement or the licence to practice a certain trade or profession), it is apparent that such rights do not ensure that excellence will be achieved in the sphere of activity in question. He asserts that the legal regime can and does create the necessary conditions for human endeavour and achievement of Rights.

(8) Theories of Rights based on Justice (Liberal-Egalitarian Theory of Rights)

John Rawls is the chief exponent of this theory. According to him, "Justice is the first virtue of social institutions. In his view, the role of justice is crucial to the understanding of human rights. Indeed human rights are an end of justice. The principles of justice provide a way of assigning rights and duties in the basic institutions of society and also define the appropriate distribution of the benefits and burdens of social co-operation. The general conception of justice behind the principles of justice is one of fairness. The concept of fairness throughout in theories is based on justice. The concepts of fairness and justice help to determine all social primary goals, such as, liberty and opportunity, income and wealth and the leases of self-respect which are to be distributed equally unless an exception is made for the benefit of least forward.

Ronald Dworkin desires protecting society from the potential excesses of utilitarianism by giving weight to individual rights. All citizens, of a state have to be treated equally. Thus, individual human rights as a creation of politics and entrenched as fundamental rights in the constitution, cannot be sacrificed in the name of the common good of a majority.

(9) Theory of Rights based on equality of respect and concern

The significance of Dworkin's jurisprudence lies in his emphasis on 'rights'. In order to display moral integrity. Dworkin states, judges are required to remain faithful to the legal rights of the parties. Thus, the most desirable result in any case would be one that protects rights that are implicit or explicit in the fundamental values of the legal system.

Dworkin's philosophy prioritizes rights over larger community goals or interests.

Dworkin has affirmed the utilitarian principles that 'everybody can count for one, nobody for more than one. He even advances the idea of state intervention in order to achieve social welfare. In his view a right to liberty is too vague to be meaningful but there are certain specific liberties such as, freedom of speech, freedom of worship, right of association and personal and sexual relation require special protection against government interference. If these liberties were left to a utilitarian calculation or an unrestricted calculation of general interest, the balance would tilt in favour of restriction instead of general interests. The basis premises of Dworkin's theory of rights based on equality of respect and concern is that government must treat all their citizens with equal concern and respect.

(10) Theory of Rights with a variable content

The conception of natural law underwent significant change with the change of times. Basing their views on Kant and Hegel, the modern writers adopted natural law in accordance with times and circumstances. The chief exponents of this movement were Stammler and Kohler. Stammler conceded that natural law could be adopted to the changing times and circumstances although its fundamental or basic principles remained unalterable. He provided the theory of natural law of Rights with a variable content.

(11) Theories of Rights based on dignity

The exponents of this theory regard the protection of human dignity as a paramount objective of social policy. Following a value policy-oriented approach based on the protection of human dignity, they point out that the demands for human rights are demands, for wide sharing in all the values upon which human rights depend for effective participation in all community value processes. According to them there are eight interdependent values upon which human rights depend. They are: (i) respect; (ii) power; (iii) enlightenment; (iv) well-being; (v) health; (vi) skill; (vii) affection; (viii) rectitude. The ultimate goal of the exponents of theories based on dignity is to ensure a world community in which there is democratic distribution of values, all available resources to be utilized to the maximum and where paramount objective of social policy is the protection of human dignity.

(12) Historical Theory of Rights

The historical theory of rights maintains that the rights are the creation of historical process. A long-standing custom in the course of time concretise in the specific form of right. Ritchie comments, "Those rights which people think they ought to have are just those rights which they have been accustomed to have, or which they have a tradition of having once possessed. Custom is primitive law.

Many of the natural rights have the sanction of the longest and the least broken custom, for example, the rights of Englishmen, which have found mention in the *Magna Carta* and the Petition of Rights these, in fact, have been enjoyed from very early days. This justifies the comment of Ritchie that those rights which people think they ought to have are just and those rights which they have been accustomed to have or which they have a tradition (Whether true or false) of having once possessed. Custom is primitive law.

(13) Idealistic Theory of Rights (Personality Theory of Rights)

The idealistic theory insists on the inner development of man, on the development of his full potentiality, which is a supreme right. All other natural rights such as, the right to life, right to liberty or right to property, are derived from this fundamental right of personality, which is the only absolute right.

As there are a number of theories relating to human rights, no single theory can satisfactorily explain the present state and development of human rights. However, the natural rights theory based on natural human conditions is more akin to the present concept and development of human rights. The theory of natural rights, along with the theories based on justice, dignity, and equality of respect and concerns, may go a long way to explain the present trend of respect for and protection of human rights.

The Idealistic Theory of Rights is known as personality Theory of Rights. This theory insists on the inner development of man, on the development of his full potentiality. Hence, it treats right of personality as a supreme and absolute right. All other rights, such as, right to life, right to liberty or right to property are derived from this one fundamental right. These various rights are related to the right of personality. It may be illustrated thus; I have a right to life only to the extent to which it is essential for the development of my full potentiality. In this sense society may not permit me to take away my life or to commit suicide. The chief

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merit of this theory is that it insists upon right of personality as the only absolute right and all other rights are derived from it and are conditioned by it.

Self-Assessment Questions

1. Explain the concept of human rights as fundamental, inalienable rights inherent to all human beings. How does the Universal Declaration of Human Rights define and promote these rights globally?
2. Discuss the principles of equality and non-discrimination in human rights law. How are these principles implemented in international and national frameworks?
3. Trace the historical evolution of human rights from ancient legal codes to modern-day declarations. How did documents like the Magna Carta and the Universal Declaration of Human Rights shape the development of human rights?
4. Describe the classification of human rights into first, second, and third generations. How do these categories address different aspects of human dignity and societal needs?
5. Compare and contrast the Social Contract Theory and Utilitarian Theory in explaining the origin and purpose of rights. How do these theories approach the state's role in protecting human rights?

Lesson 2.1 : The UN Charter and Universal Declaration of Human Rights**Universal Declaration of Human Rights****History of the Declaration**

The Universal Declaration of Human Rights, which was adopted by the UN General Assembly on 10 December 1948, was the result of the experience of the Second World War. With the end of that war, and the creation of the United Nations, the international community vowed to never again allow atrocities like those of that conflict to happen again. World leaders decided to complement the UN Charter with a road map to guarantee the rights of every individual everywhere. The document they considered, and which would later become the Universal Declaration of Human Rights, was taken up at the first session of the General Assembly in 1946.

The Assembly reviewed this draft Declaration on Fundamental Human Rights and Freedoms and transmitted it to the Economic and Social Council "for reference to the Commission on Human Rights for consideration . . . in its preparation of an international bill of rights." The Commission, at its first session early in 1947, authorized its members to formulate what it termed "a preliminary draft International Bill of Human Rights". Later the work was taken over by a formal drafting committee, consisting of members of the Commission from eight States, selected with due regard for geographical distribution.

The Commission on Human Rights was made up of 18 members from various political, cultural and religious backgrounds. Eleanor Roosevelt, widow of American President Franklin D. Roosevelt, chaired the UDHR drafting committee. With her were René Cassin of France, who composed the first draft of the Declaration, the Committee Rapporteur Charles Malik of Lebanon, Vice-Chairman Peng Chung Chang of China, and John Humphrey of Canada, Director of the UN's Human Rights Division, who prepared the Declaration's blueprint. But Mrs. Roosevelt was recognized as the driving force for the Declaration's adoption.

The Commission met for the first time in 1947. In her memoirs,

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Eleanor Roosevelt recalled:

Dr. Chang was a pluralist and held forth in charming fashion on the proposition that there is more than one kind of ultimate reality. The Declaration, he said, should reflect more than simply Western ideas and Dr. Humphrey would have to be eclectic in his approach. His remark, though addressed to Dr. Humphrey, was really directed at Dr. Malik, from whom it drew a prompt retort as he expounded at some length the philosophy of Thomas Aquinas. Dr. Humphrey joined enthusiastically in the discussion, and I remember that at one point Dr. Chang suggested that the Secretariat might well spend a few months studying the fundamentals of Confucianism!

The final draft by Cassin was handed to the Commission on Human Rights, which was being held in Geneva. The draft declaration sent out to all UN member States for comments became known as the Geneva draft.

The first draft of the Declaration was proposed in September 1948 with over 50 Member States participating in the final drafting. By its resolution 217 A (III) of 10 December 1948, the General Assembly, meeting in Paris, adopted the Universal Declaration of Human Rights with eight nations abstaining from the vote but none dissenting. Hernán Santa Cruz of Chile, member of the drafting sub-Committee, wrote:

I perceived clearly that I was participating in a truly significant historic event in which a consensus had been reached as to the supreme value of the human person, a value that did not originate in the decision of a worldly power, but rather in the fact of existing—which gave rise to the inalienable right to live free from want and oppression and to fully develop one's personality. In the Great Hall...there was an atmosphere of genuine solidarity and brotherhood among men and women from all latitudes, the like of which I have not seen again in any international setting.

The entire text of the UDHR was composed in less than two years. At a time when the world was divided into Eastern and Western blocks, finding a common ground on what should make the essence of the document proved to be a colossal task.

Drafters of the Declaration

In February 1947, a group consisting of Eleanor Roosevelt, Pen-Chun Chang and Charles Malik began drafting the International Bill of Human Rights. With assistance of the UN Secretariat, the task of

formulating a preliminary draft was given to John Humphrey, Director of the UN Secretariat's Division for Human Rights. Following a letter from the Chairman of the Commission on Human Rights to the President of the Economic and Social Council, dated 27 March 1947, (E/383), this Drafting Committee was enlarged. It was then composed of the members of the Commission on Human Rights for Australia, China, Chile, France, Lebanon, the United States, the United Kingdom, and the Union of Soviet Socialist Republics.

Members of draft Committee

- Eleanor Roosevelt (US), Chairperson of the Commission on Human Rights
- Dr. Peng-chun Chang (China), Vice-Chair of the Commission on Human Rights
- Dr. Charles Malik (Lebanon), Rapporteur of the Commission on Human Rights
- William Hodgson (Australia), Member of the Commission on Human Rights
- Hernan Santa Cruz (Chile), Member of the Commission on Human Rights
- René Cassin (France), Member of the Commission on Human Rights
- Alexandre Bogomolov (USSR), Member of the Commission on Human Rights
- Charles Dukes (United Kingdom), Member of the Commission on Human Rights
- John P. Humphrey (Canada), Director, UN Division of Human Rights

The Universal Declaration of Human Rights

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 (General Assembly resolution 217 A) 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 and it has been translated into over 500 languages. The UDHR is widely recognized as having inspired, and paved the way for, the

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adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).

Preamble

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

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

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

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

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

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

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

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective

recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, was the first legal document to set out the fundamental human rights to be universally protected. The UDHR, which turns 75 on 10 December 2023, continues to be the foundation of all international human rights law. Its 30 articles provide the principles and building blocks of current and future human rights conventions, treaties and other legal instruments.

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.

Article 3

Everyone has the right to life, liberty and the 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.

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Article 7

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

Article 8

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

Article 9

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

Article 10

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

Article 11

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

Article 12

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

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

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

Article 15

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

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.

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Article 20

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

Article 21

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

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.

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.

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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.

Lesson 2.2: International Covenant on Civil and Political Rights (ICCPR)

Notes

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49

The United Nations General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR) on 16 December 1966. It entered into force on 23 March 1976 following the ratification/accession of the thirty-fifth state party. The Covenant's monitoring body, the Human Rights Committee (HRC), was established in 1976.

The ICCPR contains some of the most significant international legal provisions establishing civil and political rights, including rights to life, liberty, and security of person, freedom of expression, assembly, and association, the right to a fair trial, and protection against torture and other cruel, inhuman, or degrading treatment or punishment. The Covenant also includes rights related to privacy, family life, and participation in public affairs.

There are two optional protocols to the ICCPR. The first Optional Protocol allows the Human Rights Committee to hear complaints from individuals who claim to be victims of violations of the rights outlined in the Covenant by a state party that has ratified the Protocol. The second Optional Protocol aims at the abolition of the death penalty, with state parties committing not to carry out executions.

History of the International Covenant on Civil and Political Rights (ICCPR)

The origins of the International Covenant on Civil and Political Rights (ICCPR) are closely linked to the development of the Universal Declaration of Human Rights. Before the adoption of the Universal Declaration in 1948, there was a strong consensus that its principles should be transformed into binding legal obligations through treaties. This vision culminated in the creation of two distinct covenants after nearly two decades of negotiations: the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In 1946, the United Nations Commission on Human Rights was established as a subsidiary body of the UN Economic and Social Council, tasked with developing the international legal framework to protect

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fundamental rights and freedoms. This Commission played a critical role in drafting both covenants. The Human Rights Council (HRC) replaced the Commission on Human Rights in 2006, reporting directly to the UN General Assembly.

At its inaugural session in 1947, the Commission on Human Rights formed a drafting committee to prepare two documents: a preliminary draft of a declaration outlining general human rights principles and a draft covenant proposing binding legal obligations. The draft declaration was prioritized, leading to the adoption of the Universal Declaration of Human Rights by the General Assembly on 10 December 1948. Concurrently, the General Assembly requested the Economic and Social Council to instruct the Commission to continue drafting a covenant on human rights and measures for its implementation.

In 1950, the Commission produced an initial draft covenant on human rights. The General Assembly then directed the inclusion of articles specifically addressing economic, social, and cultural rights, in addition to civil and political rights. By 1951, with assistance from representatives of the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, and the World Health Organization, the Commission completed a new draft: the Draft Covenant on Human Rights. Prolonged discussions led to the General Assembly's decision in February 1952 to split the draft into two separate covenants, addressing the divergent views of states regarding the recognition of economic, social, and cultural rights versus civil and political rights.

The drafting of the two covenants continued until 1962, first by the Commission and subsequently by the United Nations Third Committee (Social, Humanitarian, and Cultural Matters). In December 1963, the General Assembly invited all governments to review the articles adopted by the Third Committee. It wasn't until 1966 that the Third Committee finalized the drafts of both covenants and submitted them to the General Assembly. On 16 December 1966, the ICCPR and the ICESCR, along with an optional protocol to the ICCPR, were adopted by the General Assembly. The ICCPR was adopted with broad support and entered into force on 23 March 1976, following the ratification by the thirty-fifth state party.

The ICCPR, along with the Universal Declaration of Human Rights and the ICESCR, forms the International Bill of Human Rights. These foundational documents have inspired over 50 additional United Nations human rights conventions, declarations, and bodies of international

minimum rules and universally recognized principles. These additional standards have further refined international legal norms on a wide range of issues, including the rights of women, protection against racial discrimination, the rights of migrant workers, the rights of children, and many others, underscoring the global commitment to upholding human dignity and freedom.

Key Provisions of the International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) establishes a broad range of civil and political rights, reflecting the commitment to protect individuals' fundamental freedoms and dignity. Here are the key provisions:

- **Right to Self-Determination:** All peoples have the right to self-determination, including the freedom to determine their political status and pursue their economic, social, and cultural development.
- **Non-Discrimination:** The rights recognized in the Covenant are to be enjoyed without any discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.
- **Equality of Men and Women:** States Parties are to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant.
- **Right to Life:** Every human being has the inherent right to life, and this right must be protected by law. No one shall be arbitrarily deprived of life.
- **Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment:** No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.
- **Freedom from Slavery and Servitude:** Slavery and servitude are prohibited in all their forms.
- **Right to Liberty and Security of Person:** Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

- **Humane Treatment of Persons Deprived of Liberty:** All persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- **Freedom of Movement:** Everyone lawfully within the territory of a State has the right to liberty of movement and freedom to choose their residence.
- **Right to a Fair Trial:** Everyone is entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.
- **Right to Privacy:** No one shall be subjected to arbitrary or unlawful interference with their privacy, family, home, or correspondence, nor to unlawful attacks on their honor and reputation.
- **Freedom of Thought, Conscience, and Religion:** Everyone has the right to freedom of thought, conscience, and religion, including the freedom to have or adopt a religion or belief of their choice.
- **Freedom of Expression:** Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds.
- **Freedom of Assembly:** The right of peaceful assembly shall be recognized.
- **Freedom of Association:** Everyone has the right to freedom of association with others, including the right to form and join trade unions.
- **Protection of the Family:** The family is recognized as the natural and fundamental group unit of society and is entitled to protection by society and the State.
- **Rights of the Child:** Every child has the right to protection, without discrimination, as required by their status as a minor.
- **Political Participation:** Every citizen has the right and opportunity to take part in the conduct of public affairs, to vote and

be elected at genuine periodic elections, and to have access to public service.

- **Rights of Minorities:** Ethnic, religious, or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practice their religion, or to use their own language.

These provisions establish a comprehensive framework to protect civil and political rights, reinforcing the principles of freedom, justice, and peace in the world. The ICCPR obligates States Parties to respect and ensure these rights for all individuals within their territory and jurisdiction.

International Monitoring and Implementation of the International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) is a cornerstone of international human rights law, adopted by the United Nations General Assembly on December 16, 1966, and entered into force on March 23, 1976. The ICCPR is monitored by the United Nations Human Rights Committee, which is established by Articles 28 to 45 of the Covenant.

Monitoring Mechanisms

The Human Rights Committee, a body of independent experts, is the main mechanism for monitoring the implementation of the ICCPR by its States Parties. This Committee examines reports submitted by States Parties on their compliance with the Covenant's provisions. These reports are reviewed, and the Committee provides concluding observations and recommendations to guide further improvements.

Additionally, the Committee can consider individual complaints alleging violations of the ICCPR by States Parties that have recognized the Committee's competence to do so under the First Optional Protocol to the Covenant. This procedure allows individuals to bring complaints directly to the Committee once all domestic remedies have been exhausted.

Implementation at the National Level

For effective implementation, each State Party is required to take necessary measures to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the ICCPR (ICCPR Centre guide for r...). This includes ensuring that any person whose rights are violated has an effective remedy, which is determined by competent

judicial, administrative, or legislative authorities, and that these remedies are enforced.

Role of National Human Rights Institutions

National Human Rights Institutions (NHRIs) play a crucial role in the implementation of the ICCPR. They monitor and promote compliance with the Covenant at the national level, provide recommendations to the government, and assist individuals in claiming their rights under the ICCPR. The effectiveness of NHRIs is often evaluated against the Paris Principles, which set out the standards for their independence and functioning.

Reporting and Follow-Up

The reporting procedure involves States Parties submitting periodic reports to the Human Rights Committee on the measures they have adopted to give effect to the rights enshrined in the ICCPR. These reports are typically due every four years. The Committee reviews these reports in public sessions, where representatives of the State Party are invited to participate and respond to questions. Following the review, the Committee issues its concluding observations, highlighting areas of concern and recommending specific actions for improvement.

In addition to the periodic reporting, the Committee has developed a follow-up procedure to ensure that its recommendations are implemented. States Parties are requested to provide information on the steps they have taken in response to the Committee's concluding observations. This follow-up mechanism helps maintain a continuous dialogue between the Committee and the States Parties, encouraging ongoing improvements in the protection of civil and political rights.

Detailed document is as follows:

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

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

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

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

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other

status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

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

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

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

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

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or

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commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

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

Article 8

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

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

- (iv) Any work or service which forms part of normal civil obligations.

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Article 9

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

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2.
 - (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
 - (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

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

Article 12

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

Article 13

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

Article 14

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

justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be

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compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

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

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

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

Article 21

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

Article 22

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

Article 23

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

Article 24

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

Article 25

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

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

Article 26

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

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

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

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Article 29

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

Article 30

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

Article 31

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

Article 32

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

Article 33

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

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

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Article 35

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

Article 36

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

Article 37

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

Article 38

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

Article 39

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

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

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

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the

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State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief

statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.

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

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

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3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.
5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.
6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.
7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:
 - (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
 - (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
 - (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
 - (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

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

Article 44

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

Article 45

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

PART V

Article 46

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

Article 47

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

PART VI

Article 48

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

Article 49

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

Article 50

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

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

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

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Lesson 2.3: Optional Protocol to the International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 9

The States Parties to the present Protocol,

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

Article 1

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

Article 2

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

Article 3

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

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any

communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

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

Article 7

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

Article 8

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

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2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

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

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

Article 10

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

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

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

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

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

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

Article 14

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

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

Lesson 2.4 : Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989

The States Parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

Recalling article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life, Desirous to undertake hereby an international commitment to abolish the death penalty,

Have agreed as follows:

Article 1

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

Article 2

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

during wartime.

3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Article 3

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

Article 4

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

Article 5

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

Article 6

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

Article 7

1. The present Protocol is open for signature by any State that has signed

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the Covenant.

2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 8

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

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

Article 9

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

Article 10

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

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

Article 11

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

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Lesson 2.5: International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

entry into force 3 January 1976, in accordance with article 27

The United Nations General Assembly adopted the International Covenant on Economic, Social and Cultural Rights on 16 December 1966. It entered into force on 3 January 1976 following the ratification/accession of the thirty-fifth state party. The Convention's monitoring body, the Committee on Economic, Social and Cultural Rights (CESCR), was established in 1985.

The Covenant contains some of the most significant international legal provisions establishing economic, social, and cultural rights, including rights relating to work in just and favourable conditions, social protection, an adequate standard of living, the highest attainable standards of physical and mental health, education, and the enjoyment of the benefits of cultural freedom and scientific progress.

History of the International Covenant on Economic, Social and Cultural Rights

Even before the Universal Declaration of Human Rights adoption in 1948, there was a broad consensus that the rights enshrined in the Declaration needed to be transformed into legally binding obligations through treaties. After about 20 years of negotiations, this led to the adoption of two separate treaties in 1966: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the Universal Declaration on Human Rights, these documents form what is often referred to as the International Bill of Human Rights.

In 1946, the United Nations Commission on Human Rights was established as a subsidiary body of the UN Economic and Social Council. Its mission was to protect and promote fundamental rights and freedoms. The Human Rights Council (HRC) replaced the UN Commission on Human Rights in 2006, reporting to the UN General Assembly.

At its first session in 1947, the Commission on Human Rights set up a drafting committee, which prepared two documents: a preliminary draft of a declaration setting forth general principles of human rights and a

draft outlining a convention on binding obligations. The focus was initially on the draft declaration, leading to the adoption of the Universal Declaration of Human Rights by the General Assembly on 10 December 1948. In the same resolution, the General Assembly requested the Economic and Social Council to ask the Commission on Human Rights to prioritize the preparation of a draft covenant on human rights and measures for its implementation.

In 1950, the Commission prepared an initial draft covenant on human rights. The General Assembly then requested the inclusion of articles specifically on economic, social, and cultural rights, in addition to civil and political rights. By 1951, with assistance from representatives of the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, and the World Health Organization, the Commission completed a new draft: the Draft Covenant on Human Rights. After lengthy discussions, the General Assembly decided in February 1952 to split the draft into two separate covenants, recognizing the need to address economic, social, and cultural rights and civil and political rights separately.

The preparation of the two draft covenants continued until 1962, first by the Commission and then by the United Nations Third Committee (Social, Humanitarian, and Cultural matters). In December 1963, the General Assembly invited all governments to consider the articles adopted by the Third Committee. It wasn't until 1966 that the Third Committee completed drafting both covenants and submitted them to the General Assembly. On 16 December 1966, the General Assembly adopted the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, along with an optional protocol to the latter. The ICESCR was adopted with a unanimous vote of 105 to 0 and entered into force on 3 January 1976 following the ratification/accession of the thirty-fifth state party.

The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, along with their optional protocols, set global human rights standards. They have inspired over 50 additional United Nations human rights conventions, declarations, and bodies of international minimum rules and universally recognized principles. These standards have further refined international legal norms on a wide range of issues, including women's rights, protection against racial

discrimination, protection of migrant workers, the rights of children, and more.

There is one optional protocol to the Covenant, which allows the Committee to hear complaints from individuals. State parties that ratify the Optional Protocol recognize the competence of the Committee to receive and consider communications, including complaints, submitted by or on behalf of individuals or groups of individuals from a state that has ratified the protocol, claiming to be victims of a violation of any of the economic, social, and cultural rights outlined in the Covenant.

Key Provisions of the International Covenant on Economic, Social and Cultural Rights

The preamble of the International Covenant on Economic, Social and Cultural Rights (ICESCR) acknowledges that "in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights." As a UN ICESCR factsheet highlights, the Covenant offers the most crucial international legal framework for safeguarding these essential human rights.

The Covenant is designed to ensure the protection of economic, social, and cultural rights, encompassing:

- **Right to Self-Determination:** All peoples have the right to determine their political status and freely pursue their economic, social, and cultural development.
- **Non-Discrimination:** Access to these rights without discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.
- **Equality of Men and Women:** Both men and women have an equal right to enjoy the rights set forth in the Covenant.
- **Right to Work:** This includes just and favourable conditions of work, such as fair wages, equal remuneration for work of equal value, safe and healthy working conditions, periodic holidays, and reasonable limits on working hours.

- **Trade Union Rights:** The right to form and join trade unions, the right of trade unions to establish national federations, and the right to strike.
- **Right to Social Security:** This includes social insurance.
- **Family Protection and Assistance:** This includes support for family establishment and care and education of dependent children.
- **Special Protection for Mothers:** Mothers are to receive special protection during a reasonable period before and after childbirth, with paid leave or leave with adequate social security benefits.
- **Protection of Children and Young Persons:** This includes protection from economic and social exploitation and the prohibition of child labour.
- **Right to an Adequate Standard of Living:** This includes adequate food, clothing, and housing.
- **Freedom from Hunger:** This is to be achieved by improving methods of production, conservation, and distribution of food and ensuring an equitable distribution of world food supplies in relation to need.
- **Right to Health:** This includes the highest attainable standard of physical and mental health, the prevention, treatment, and control of diseases, and access to medical services in the event of sickness.
- **Right to Education:** This includes free and compulsory primary education, as well as secondary and higher education that is generally available and accessible, particularly through the progressive introduction of free education.
- **Right to Participate in Cultural Life:** This includes the right to enjoy the benefits of scientific progress and its applications.
- **Protection of Moral and Material Interests:** This includes benefiting from the protection of the moral and material interests

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resulting from any scientific, literary, or artistic production of which he/she is the author.

The ICESCR provides a comprehensive framework to promote and protect these fundamental human rights, aiming to create a world where everyone can live with dignity and freedom.

International Monitoring and Implementation of the ICESCR

The implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is overseen by the Committee on Economic, Social and Cultural Rights (CESCR). Unlike other treaties where a monitoring committee is established within the treaty itself, the CESCR was created by the UN Economic and Social Council in 1985 specifically for this purpose. The Committee meets annually at the United Nations in Geneva.

Composition and Functioning of the CESCR

The CESCR is composed of 18 experts with recognized competence in human rights. These members are elected by the states parties based on principles of equitable geographical distribution and representation of diverse social and legal systems. Importantly, the members serve in their personal capacity as independent experts, not as representatives of their governments. The United Nations Centre for Human Rights provides the necessary support for the Committee's activities.

Mandate and Activities

According to a UN ICESCR factsheet, the primary function of the CESCR is to monitor the implementation of the Covenant by its state parties. The Committee strives to foster a constructive dialogue with these states, assessing whether the norms outlined in the Covenant are being adequately applied and identifying ways to improve implementation and enforcement to ensure that all individuals fully enjoy the rights enshrined in the Covenant.

The Committee uses the legal and practical expertise of its members to assist governments in fulfilling their obligations under the Covenant. This assistance comes in the form of legislative, policy, and other recommendations to more effectively secure economic, social, and cultural rights.

Reporting and Review Process

States parties are required to submit periodic reports to the CESCR. The initial report is due within two years of the Covenant's entry into force for the respective state, followed by subsequent reports every five years. These reports should detail the legislative, judicial, policy, and other measures taken to ensure the enjoyment of the rights contained in the Covenant, as well as data on the degree of implementation and any challenges faced.

The CESCR examines these reports and issues, concluding observations that outline the Committee's concerns and provide suggestions and recommendations. Additionally, the Committee issues general comments to assist and promote the implementation of the Covenant by the states parties, suggest improvements in reporting procedures and stimulate the efforts of states, international organizations, and UN specialized agencies towards achieving the full realization of the Covenant's rights.

Sources of Information

The CESCR bases its work on a wide range of information sources, including reports from states parties, UN specialized agencies (such as the International Labour Organisation, United Nations Educational, Scientific and Cultural Organization, World Health Organization, Food and Agriculture Organization of the United Nations, Office of the United Nations High Commissioner for Refugees, and United Nations Centre for Human Settlements), and non-governmental and community-based organizations operating in states that have ratified the Covenant. The Committee also considers input from international human rights organizations, other UN treaty bodies, and general literature.

Notably, the CESCR was the first treaty body to provide non-governmental organizations (NGOs) the opportunity to submit written statements and make oral submissions regarding issues related to the enjoyment or non-enjoyment of the Covenant's rights in specific countries. This inclusive approach allows the Committee to comprehensively understand the situation in various states and make informed recommendations.

The CESCR's efforts are pivotal in ensuring that the rights outlined in the ICESCR are respected, protected, and fulfilled globally, promoting a world where all enjoy economic, social, and cultural rights.

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The detailed provisions are as follows:

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

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

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

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

Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

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PART II

Article 2

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

Article 3

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

Article 4

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

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized

herein, or at their limitation to a greater extent than is provided for in the present Covenant.

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

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

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

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

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Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

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

Article 10

The States Parties to the present Covenant recognize that:

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1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

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

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

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

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

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(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.

(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

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3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

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

Article 19

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

Article 20

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

Article 21

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

Article 22

The Economic and Social Council may bring to the attention of other

organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

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

Article 24

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

Article 25

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

PART V**Article 26**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United

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Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

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

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

Article 28

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

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds

majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

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

Article 30

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

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

Article 31

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

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Lesson 2.6: Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

The General Assembly adopted resolution A/RES/63/117, on 10 December 2008

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

The General Assembly,

Taking note of the adoption by the Human Rights Council, by its resolution 8/2 of 18 June 2008, of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,

1. *Adopts* the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the text of which is annexed to the present resolution;

2. *Recommends* that the Optional Protocol be opened for signature at a signing ceremony to be held in 2009, and requests the Secretary-General and the United Nations High Commissioner for Human Rights to provide the necessary assistance.

Preamble

The States Parties to the present Protocol,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Noting that the Universal Declaration of Human Rights¹ proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, 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,

Recalling that the Universal Declaration of Human Rights and the International Covenants on Human Rights² recognize that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy civil, cultural,

economic, political and social rights,

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Recalling that each State Party to the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the Covenant) undertakes to take steps, individually and through international assistance and cooperation, 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,

Considering that, in order further to achieve the purposes of the Covenant and the implementation of its provisions, it would be appropriate to enable the Committee on Economic, Social and Cultural Rights (hereinafter referred to as the Committee) to carry out the functions provided for in the present Protocol,

Have agreed as follows:

Article 1

Competence of the Committee to receive and consider communications

1. A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications as provided for by the provisions of the present Protocol.
2. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Communications

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

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Article 3

Admissibility

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted. This shall not be the rule where the application of such remedies is unreasonably prolonged.

2. The Committee shall declare a communication inadmissible when:

(a) It is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit;

(b) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date;

(c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(d) It is incompatible with the provisions of the Covenant;

(e) It is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media;

(f) It is an abuse of the right to submit a communication; or when (g) It is anonymous or not in writing.

Article 4

Communications not revealing a clear disadvantage

The Committee may, if necessary, decline to consider a communication where it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance.

Article 5

Interim measures

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be

necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6

Transmission of the communication

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7

Friendly settlement

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of the respect for the obligations set forth in the Covenant.

2. An agreement on a friendly settlement closes consideration of the communication under the present Protocol.

Article 8

Examination of communications

1. The Committee shall examine communications received under article 2 of the present Protocol in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications under the present Protocol.

3. When examining a communication under the present Protocol, the Committee may consult, as appropriate, relevant documentation emanating from other United Nations bodies, specialized agencies, funds, programmes and mechanisms, and other international organizations, including from regional human rights systems, and any observations or comments by the State Party concerned.

4. When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant.

Article 9

Follow-up to the views of the Committee

1. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

2. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

3. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under articles 16 and 17 of the Covenant.

Article 10

Inter-State communications

1. A State Party to the present Protocol may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant. Communications under the present article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under the present article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Protocol considers that another State Party is not fulfilling its obligations under the Covenant, it

may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not settled to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) Subject to the provisions of subparagraph (c) of the present paragraph the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Covenant;

(e) The Committee shall hold closed meetings when examining communications under the present article;

(f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, with all due expediency after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:

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(i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned

2. A declaration under paragraph 1 of the present article shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 11

Inquiry procedure

1. A State Party to the present Protocol may at any time declare that it recognizes the competence of the Committee provided for under the present article.

2. If the Committee receives reliable information indicating grave or systematic violations by a State Party of any of the economic, social and cultural rights set forth in the Covenant, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

3. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members

to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

4. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

5. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

6. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

7. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report provided for in article 15 of the present Protocol.

8. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 12

Follow-up to the inquiry procedure

1. The Committee may invite the State Party concerned to include in its report under articles 16 and 17 of the Covenant details of any measures taken in response to an inquiry conducted under article 11 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 11, paragraph 6, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 13

Protection measures

A State Party shall take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or

intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 14

International assistance and cooperation

1. The Committee shall transmit, as it may consider appropriate, and with the consent of the State Party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies, its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, along with the State Party's observations and suggestions, if any, on these views or recommendations.

2. The Committee may also bring to the attention of such bodies, with the consent of the State Party concerned, any matter arising out of communications considered under the present Protocol which may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States Parties in achieving progress in implementation of the rights recognized in the Covenant.

3. A trust fund shall be established in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, with a view to providing expert and technical assistance to States Parties, with the consent of the State Party concerned, for the enhanced implementation of the rights contained in the Covenant, thus contributing to building national capacities in the area of economic, social and cultural rights in the context of the present Protocol.

4. The provisions of the present article are without prejudice to the obligations of each State Party to fulfil its obligations under the Covenant.

Article 15

Annual report

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

Article 16

Dissemination and information

Each State Party undertakes to make widely known and to

disseminate the Covenant and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party, and to do so in accessible formats for persons with disabilities.

Article 17

Signature, ratification and accession

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

Article 18

Entry into force

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

Article 19

Amendments

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United

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Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 20

Denunciation

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 2 and 10 or to any procedure initiated under article 11 before the effective date of denunciation.

Article 21

Notification by the Secretary-General

The Secretary-General of the United Nations shall notify all States referred to in article 26, paragraph 1, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment under article 19;
- (c) Any denunciation under article 20.

Article 22

Official languages

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

Self-Assessment Questions

1. Analyse the role of key figures, such as Eleanor Roosevelt and René Cassin, in the drafting and adoption of the Universal Declaration of Human Rights. How did their contributions shape the document?
2. Examine the historical development, key provisions, and implementation mechanisms of the International Covenant on Civil and Political Rights (ICCPR).
3. Examine the historical development of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and discuss its key provisions.
4. Discuss the structure, mandate, and functioning of the Committee on Economic, Social and Cultural Rights (CESCR) in overseeing the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
5. Compare and contrast the ICESCR with the ICCPR. What are the primary differences in focus, and how do both covenants complement each other as parts of the International Bill of Human Rights?

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UNIT - III

GROUP RIGHTS IN HUMAN RIGHTS FRAMEWORK: INDIAN CONTEXT

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Lesson 3.1: Minority Rights: Protection from Communal Violence; Power-Sharing

Introduction

India, known for its rich tapestry of social, cultural, religious, and linguistic diversity, faces unique challenges in safeguarding minority rights. Protecting minorities against communal violence and ensuring their equitable participation in power-sharing are critical issues within this pluralistic society. The Indian Constitution, while not explicitly defining 'minority,' provides an array of rights and safeguards to religious and linguistic minorities to maintain their distinct identity and promote their welfare. These constitutional provisions are designed to uphold the principles of secularism, equality, and social justice, ensuring that minorities are not only protected from discrimination and violence but also actively participate in the nation's socio-political fabric.

Communal violence, often driven by deep-seated prejudices and socio-political factors, poses a significant threat to the harmony and security of minority communities. In response, the Indian legal framework and various Supreme Court judgments have emphasized the importance of protecting minority rights, particularly in educational settings. Articles 29 and 30 of the Indian Constitution play a pivotal role in this regard, granting minorities the right to establish and administer educational institutions, thus preserving their cultural and religious ethos.

The distinction between 'common domain' and 'separate domain' rights within the Constitution underscores the dual approach to minority protection. Common domain rights, such as equality before the law (Article 14) and the prohibition of discrimination (Article 15), are applicable to all citizens, ensuring a broad framework of equality and non-discrimination. In contrast, separate domain rights are specifically tailored to address the unique needs of minorities, such as the right to conserve their language, script, or culture (Article 29) and the right to establish educational institutions (Article 30).

This constitutional framework reflects India's commitment to a

multi-religious, multi-cultural, and multi-lingual society, where national integration and communal harmony are paramount. However, the practical realization of these constitutional promises requires robust legal enforcement, proactive governmental policies, and a vigilant civil society. Addressing the root causes of communal violence and ensuring genuine power-sharing mechanisms are essential to safeguarding minority rights and fostering an inclusive and just society.

The constitutional provisions and judicial interpretations that protect minority rights in India examine the socio-political dynamics of communal violence, and explore the mechanisms for power-sharing that can enhance minority participation in governance. Through this exploration, we aim to highlight the critical role of legal and institutional frameworks in upholding the dignity and rights of minorities in a diverse and democratic India.

Constitutional Provisions for Minority Rights

The Indian Constitution is a robust document that enshrines the rights of minorities through a series of specific provisions aimed at preserving their cultural, educational, and social identity. These provisions are divided into two broad categories: common domain and separate domain rights.

Common Domain Rights

Common domain rights refer to those constitutional safeguards that apply to all citizens, ensuring equality and non-discrimination across the board. These include:

- 1. Equality Before the Law (Article 14):** This article ensures that every individual is treated equally before the law and guarantees equal protection of the laws within the territory of India.
- 2. Prohibition of Discrimination (Article 15):** This article prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. It also allows the state to make special provisions for the advancement of socially and educationally backward classes, which includes minorities.
- 3. Equality of Opportunity in Public Employment (Article 16):** This article guarantees equal opportunity to all citizens in

matters of public employment and prohibits discrimination on various grounds, including religion and race.

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4. **Freedom of Conscience and Religion (Article 25):** This article provides individuals with the freedom of conscience and the right to profess, practice, and propagate religion, subject to public order, morality, and health.
5. **Protection of Interests of Minorities (Article 29):** This article ensures that any section of 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. It also prohibits discrimination in admission to educational institutions maintained by the state on grounds only of religion, race, caste, language, or any of them.

Separate Domain Rights

Separate domain rights are those that are exclusively available to minorities to help them preserve their distinct identity and promote their welfare. These include:

1. **Right to Establish and Administer Educational Institutions (Article 30):** This article grants all religious and linguistic minorities the right to establish and administer educational institutions of their choice. It also prohibits the state from discriminating against minority educational institutions in granting aid.
2. **Provision for Facilities for Instruction in Mother-Tongue at Primary Stage (Article 350A):** This article ensures that every state provides adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups.
3. **Special Officer for Linguistic Minorities (Article 350B):** This article mandates the appointment of a Special Officer for linguistic minorities to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution.

Educational and Cultural Rights of Minorities in India

India, a nation characterized by its vast cultural, linguistic, and religious diversity, has enshrined various protections for minority

communities in its Constitution. These protections are essential in safeguarding the cultural and educational rights of minorities, ensuring that they can preserve their unique identities while participating fully in the nation's educational and social life. The constitutional provisions, coupled with judicial interpretations, provide a robust framework for protecting these rights.

Constitutional Provisions for Minority Rights

The Indian Constitution, through Articles 29 and 30, extends significant protections to minority communities, particularly in preserving their cultural identities and managing educational institutions that align with their values and traditions. Article 29 plays a crucial role in this framework by safeguarding the interests of minorities, particularly their cultural and linguistic rights. Article 29(1) ensures that any section of citizens with a distinct language, script, or culture has the right to conserve and promote these aspects of their identity. This provision, though not limited to minorities, is of particular significance to them as it allows for the protection and promotion of their cultural heritage within the broader national framework. Moreover, Article 29(2) prohibits discrimination in admission to state-aided educational institutions on the grounds of religion, race, caste, or language, ensuring that minority students have equal access to educational opportunities in government-funded institutions.

Complementing these cultural rights, Article 30 provides minorities the specific right to establish and administer educational institutions of their choice. Article 30(1) is foundational for religious and linguistic minorities as it grants them the autonomy to educate their children in environments that reflect their cultural and religious values. This provision has been interpreted by the Supreme Court as not being restricted to institutions focused solely on preserving language or culture, but also extending to those offering general secular education. This interpretation ensures that minority institutions serve a broader purpose, equipping students to contribute meaningfully to national life while maintaining their cultural roots.

However, the autonomy granted under Article 30 is not absolute. The state retains the authority to impose reasonable regulations to maintain educational standards and ensure transparency in the administration of these institutions. Judicial decisions have consistently aimed to balance the autonomy of minority institutions with the need for

regulatory oversight to uphold merit and fairness.

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Judicial Interpretation and Safeguards

The judiciary has played a pivotal role in interpreting and safeguarding the educational and cultural rights of minorities. In *St. Xavier's College v. State of Gujarat*, the Supreme Court clarified that minority institutions are not confined to preserving language or culture alone but can also provide general secular education. The court held that Article 30(1) covers institutions imparting general secular education and is not restricted to those concerned solely with the language, script, or culture of minorities. This broad interpretation ensures that minorities can establish educational institutions to prepare their children for the broader world while maintaining their cultural identity.

Nonetheless, the autonomy of minority institutions is subject to reasonable state regulation. The *T.M.A. Pai Foundation v. State of Karnataka* case highlighted the need to balance minority rights with the broader goal of maintaining educational quality and fairness across the country. The Supreme Court ruled that while minority institutions have the right to manage their affairs, they are subject to state regulations, particularly in areas like admissions and fee structures. This decision emphasized the importance of ensuring that minority institutions contribute to the national objective of quality education.

The relationship between Articles 29(2) and 30(1) has also been a subject of judicial scrutiny. In the *St. Stephen's College v. University of Delhi* case, the Court held that while minority institutions could reserve a certain percentage of seats for students from their own community, they must also ensure that the admissions process is fair and transparent, thereby maintaining a balance between community interests and merit-based selection.

A notable case concerning the minority status of institutions is *S. Azeez Basha v. Union of India*, where the Supreme Court ruled that Aligarh Muslim University (AMU), despite being administered by Muslims, could not claim minority status under Article 30 since it was established by an act of the legislature. This case illustrates the complexities involved in determining the scope of minority rights under the Constitution and the nuanced interpretations required to apply these provisions effectively.

The educational and cultural rights of minorities in India are crucial

to preserving the country's pluralistic character. While the Constitution provides significant protections for these rights, it also ensures that minority institutions contribute to national goals of inclusivity and educational excellence. Through various judicial interpretations, a delicate balance has been struck between respecting minority autonomy and upholding broader constitutional principles of equality and non-discrimination. This careful balance ensures that minority educational institutions not only preserve their unique identities but also contribute meaningfully to the nation's educational landscape.

Minority Protection from Communal Violence

The protection of minority rights and safeguarding them from communal violence remain critical challenges in India. The nation's diverse demographic landscape is marked by various religious and ethnic minorities, including Muslims, Christians, Sikhs, Buddhists, and numerous indigenous communities. Despite constitutional safeguards and legal frameworks aimed at protecting these groups, incidents of communal violence and systemic discrimination persist, undermining social harmony and the principles of equality and justice enshrined in the Indian Constitution.

The issue of communal violence against minorities in India is deeply intertwined with the socio-political dynamics of the country. Over recent years, there has been a significant increase in such incidents, often exacerbated by divisive political rhetoric and discriminatory policies. For example, the rise in cow vigilante violence targeting Muslims and Dalits, who are involved in the cattle trade or consume beef, has been a notable concern. These acts are often justified under the guise of protecting cows, considered sacred in Hinduism, but they disproportionately affect minority communities.

The Muzaffarnagar riots in 2013, which resulted in over 60 deaths and displaced more than 50,000 people, predominantly Muslims, are a stark reminder of the catastrophic impact of communal violence. Such incidents are frequently fueled by inflammatory speeches and misinformation spread through social media.

Judicial Responses: Minority Protection from Communal Violence

The Indian judiciary has played a crucial role in addressing communal violence and protecting minority rights. The Supreme Court

and other judicial bodies have sought to uphold constitutional principles of equality, secularism, and justice through various landmark judgments and directives.

The Best Bakery Case

The Best Bakery case, formally known as *Zahira Habibulla H. Sheikh and Another vs. State of Gujarat and Others*, stands as a stark example of the challenges minority communities face in seeking justice amidst communal violence. On the night of March 1-2, 2002, in the aftermath of the Godhra train burning, which claimed the lives of fifty-six Hindus, a wave of retaliatory violence erupted across Gujarat. Among the many tragic incidents, the Best Bakery, owned by a Muslim family in Hanuman Tekri, Vadodara, was attacked by a large mob. Fourteen people, including eleven Muslims and three Hindu workers, were brutally killed—either burnt alive or beaten to death. Zahira Sheikh, a key eyewitness and daughter of the bakery owner, became a central figure in the case, highlighting the struggles of victims in pursuing justice.

Initially, the Vadodara Sessions Court acquitted all twenty-one accused in June 2003, after several prosecution witnesses, including Zahira, retracted their statements, reportedly due to coercion and intimidation. The Gujarat High Court upheld these acquittals later that year, criticizing the investigation's shortcomings. However, the Supreme Court intervened in April 2004, ordering a retrial due to concerns over the fairness of the initial proceedings and transferring the case to the Bombay High Court. Despite these efforts, the retrial was plagued with challenges, including further allegations of witness tampering.

The National Human Rights Commission (NHRC) played a pivotal role in advocating for justice, criticizing the investigation's inadequacies and urging for the involvement of the Central Bureau of Investigation (CBI). They also recommended the establishment of special courts and prosecutors to ensure impartiality in such sensitive cases. The broader context of the 2002 Gujarat riots, where widespread violence predominantly targeted the Muslim minority, underscores the urgent need for effective protection mechanisms for minorities. This case not only highlights the systemic failures in law enforcement and judiciary but also underscores the critical importance of power-sharing, independent investigations, and the protection of witness rights to uphold justice and safeguard minority rights. The Best Bakery case continues to serve as a grim reminder of the consequences of communal violence and the

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essential role of judicial integrity in maintaining social harmony in pluralistic societies.

In the context of India's diverse society, ensuring the protection of minority rights and fostering power-sharing mechanisms are crucial to prevent communal violence and upholding the principles of equality and justice. The Best Bakery case, a tragic instance of targeted violence against a minority community during the 2002 Gujarat riots, underscores the vulnerabilities faced by minorities in the face of majoritarian aggression. Despite multiple eyewitnesses, the initial acquittal of the accused due to witness intimidation and systemic biases highlighted severe flaws in the legal and judicial response to communal violence. The retrial ordered by the Supreme Court of India led to convictions, illustrating the importance of judicial intervention and the need for robust legal frameworks to protect minority communities.

Naroda Patiya Massacre Case

The Naroda Patiya massacre, another grim episode of the 2002 Gujarat riots, serves as a crucial case study in understanding the vulnerabilities of minority communities during periods of communal violence and the importance of power-sharing to protect these groups. On February 28, 2002, a violent mob attacked the predominantly Muslim neighbourhood of Naroda Patiya in Ahmedabad, resulting in the brutal killing of 97 people, including women and children. The violence was characterized by extreme brutality, with numerous victims being burned alive, hacked to death, and subjected to horrific sexual violence. This atrocity occurred amidst a backdrop of widespread communal unrest following the Godhra train burning incident. The subsequent legal proceedings highlighted the challenges of achieving justice in cases involving powerful political figures. In 2012, a special court convicted 32 individuals, including Maya Kodnani, a former Gujarat state minister, and Babu Bajrangji underscoring the involvement of political elements in the violence.

Impact and Implications:

- The Naroda Patiya case, like the Best Bakery case, illustrates the deep-seated communal tensions in India and the challenges in securing justice for minority communities. It highlighted the need for effective legal and institutional measures to protect minorities and prevent communal violence.

- The case also emphasized the importance of witness protection and the judiciary's role in ensuring that justice is served, even in politically sensitive cases.

Both the Best Bakery and Naroda Patiya cases demonstrate the systemic issues that minorities face in securing justice and the critical need for judicial independence, fair investigations, and protection from communal violence. These cases serve as stark reminders of the importance of safeguarding minority rights in a pluralistic society and the necessity of an impartial and effective judiciary, along with proactive state measures, to ensure accountability and prevent the recurrence of such atrocities. The broader implications of this case advocate for power-sharing arrangements that give minority groups a voice in governance, thereby promoting social cohesion and preventing the marginalization that often leads to communal strife.

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Lesson 3.2: Caste System and Social Justice: Equality of Opportunity and Protective Discrimination

Definition of the Caste System

The caste system in India is an ancient form of social stratification that categorizes people into hierarchical groups based on their birth. This system is deeply ingrained in Indian society and has historically dictated many aspects of life, including occupation, social interactions, and marriage. The fundamental units of this system are **varna** and **jati**.

Varna, literally meaning colour, is a concept that dates back to the Rigveda, one of the oldest sacred texts of Hinduism, where it initially distinguished between the Arya (noble) and the Dasa or Dasyu (servants). Over time, the varna system evolved into four main categories:

1. **Brahmanas** (priests and teachers)
2. **Kshatriyas** (warriors and rulers)
3. **Vaishyas** (farmers, traders, and artisans)
4. **Shudras** (labourers and service providers)

In the later Vedic period, these varnas became more rigid, and social mobility was limited. Professions became hereditary, and strict rules about endogamy (marriage within one's varna) and commensality (eating together) were established. The **Purusha Sukta** hymn from the Rigveda symbolically justifies this hierarchy by associating each varna with a part of the cosmic being Purusha: the Brahmanas from his mouth, the Kshatriyas from his arms, the Vaishyas from his thighs, and the Shudras from his feet.

As society progressed, the concept of **jati** (birth-based caste) emerged, making the caste system even more complex. Jati is derived from the Sanskrit root "jan" (to be born) and refers to the thousands of sub-castes within the larger varna system. Each jati has its own rules and customs, further entrenching social divisions and restrictions on interactions between different groups. The jati system ensured that professions and social roles became strictly hereditary and endogamous, reinforcing social stratification and inequality.

Definition of Social Justice

Social justice is a concept that emphasizes fair and just relations between individuals and society. This includes the distribution of wealth,

opportunities for personal development, and social privileges. Social justice aims to create a society where all individuals have equal access to resources and opportunities, allowing them to live dignified lives without discrimination or oppression.

In the context of Indian society, social justice seeks to address historical injustices and social inequalities rooted in the caste system. The Indian Constitution explicitly underscores the importance of social justice. The Preamble of the Constitution resolves to secure "justice, social, economic and political" for all citizens. Article 38 directs the state to strive to create a social order in which justice informs all aspects of national life, emphasizing the need to eliminate social, economic, and political inequalities.

This commitment to social justice is reflected in various constitutional provisions aimed at protecting the rights of marginalized communities and ensuring equality of opportunity. These provisions include affirmative action policies such as reservations in education and employment for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). These measures are intended to rectify the historical disadvantages faced by these communities and promote their social and economic upliftment.

The pursuit of social justice in India is an ongoing process that requires continuous efforts to dismantle entrenched social hierarchies and ensure that all individuals can participate fully in society without facing discrimination or exclusion based on their caste or any other social marker.

Equality of Opportunity

Equality of opportunity refers to the principle that all individuals should have the same chances to pursue their goals and aspirations, regardless of their social background, including caste. In the context of India, achieving true equality of opportunity necessitates dismantling the structural barriers imposed by the caste system, which historically denied lower castes access to education, employment, and social mobility.

Education and Equality

Education is a crucial area for promoting equality of opportunity. The Indian Constitution guarantees the right to education for all children between the ages of 6 and 14 under Article 21A. Additionally, the Right to

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Education (RTE) Act of 2009 mandates free and compulsory education for children in this age group. However, children from lower castes, particularly Dalits (Scheduled Castes) and Adivasis (Scheduled Tribes), often face discrimination and inadequate access to quality education.

Efforts to promote equality of opportunity in education include:

- **Reservation Policies:** Reserved seats in educational institutions for SCs, STs, and OBCs aim to improve their access to higher education.
- **Scholarship Programs:** Financial aid and scholarships for students from marginalized communities help alleviate economic barriers to education.
- **Mid-Day Meal Scheme:** This program provides free meals to children in primary and upper primary schools, aiming to improve enrollment, retention, and attendance rates among disadvantaged children.

Employment and Economic Opportunity

Employment opportunities are another critical aspect of ensuring equality. The Indian government has implemented various affirmative action policies to promote the inclusion of lower castes in public sector jobs and educational institutions.

Key measures include:

- **Reservation in Employment:** The Indian Constitution mandates reservation in government jobs for SCs, STs, and OBCs. This policy aims to ensure representation and equal opportunity in public employment.
- **Skill Development Programs:** Initiatives like the Pradhan Mantri Kaushal Vikas Yojana (PMKVY) provide vocational training and skill development programs to enhance employability among marginalized communities.

Protective Discrimination

Protective Discrimination, often referred to as affirmative action, involves measures designed to protect and uplift historically disadvantaged groups by providing them with special considerations and opportunities.

Protective discrimination, also known as affirmative action, is a policy framework aimed at promoting the advancement of historically disadvantaged groups by providing them with special privileges or considerations. The concept is deeply rooted in the principle of equality, which posits that genuine equality cannot be achieved by treating unequals equally. This principle is enshrined in the Indian Constitution, particularly in Article 15(4), which empowers the state to make special provisions for the advancement of socially and educationally backward classes, as well as Scheduled Castes and Scheduled Tribes.

The rationale behind protective discrimination is to rectify the effects of centuries of discriminatory treatment and to elevate the downtrodden to an equal status with the rest of society. The judicial control of protective discrimination involves scrutinizing state actions to ensure that they comply with constitutional provisions while promoting the intended social justice objectives.

A landmark case in this context is **State of Madras v. Champakam Dorairajan (1951)**, which invalidated reservations for backward classes in educational institutions. This led to the First Amendment of the Indian Constitution, introducing Article 15(4) to explicitly permit such reservations. Another significant case is **M.R. Balaji v. State of Mysore (1963)**, where the Supreme Court held that caste could be a relevant factor in identifying backward classes but should not be the sole criterion.

Protective discrimination has provoked much litigation, often questioning the criteria for classifying backward classes and the extent of reservations. For instance, in **Rajendran v. State of Madras (1968)**, the Supreme Court upheld reservations for certain castes classified as socially and educationally backwards, emphasizing that caste, while not the only factor, could indicate social and educational backwardness. Overall, protective discrimination in India represents a critical mechanism for achieving social justice and equality, balancing the need for special provisions with the broader constitutional commitment to non-discrimination.

In India, protective discrimination is primarily implemented through the system of reservations in education, employment, and legislative representation.

Reservation System

The reservation system in India is one of the most significant forms

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of protective discrimination. It seeks to address the historical injustices and social disadvantages faced by SCs, STs, and OBCs by reserving a certain percentage of seats in educational institutions, government jobs, and political bodies.

Key features of the reservation system include:

- **Education:** Reserved seats in schools, colleges, and universities for SC, ST, and OBC students aim to improve their educational attainment and access to higher education.
- **Employment:** Reservation in public sector jobs ensures that members of these communities have fair representation and access to stable employment.
- **Political Representation:** Reserved seats in the Parliament, State Assemblies, and local bodies (Panchayats and Municipalities) ensure that marginalized communities have a voice in the legislative process.

Legal and Constitutional Framework

The legal and constitutional framework for protective discrimination in India includes various provisions and amendments designed to promote social justice and equality.

- **Article 15(4):** Allows the state to make special provisions for the advancement of socially and educationally backward classes, SCs, and STs.
- **Article 16(4):** Permits the state to provide reservations in public employment for any backward class of citizens that, in the opinion of the state, is not adequately represented in the services under the state.
- **Article 46:** Directs the state to promote the educational and economic interests of SCs, STs, and other weaker sections of society and to protect them from social injustice and exploitation.

Challenges and Criticisms

While the principles of equality of opportunity and protective discrimination are essential for promoting social justice, they also face several challenges and criticisms.

Implementation Issues

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Effective implementation of reservation policies and other affirmative action measures often encounters significant bureaucratic hurdles, lack of awareness, and resistance from various social groups.

- 1. Bureaucratic Hurdles:** The complex administrative procedures involved in identifying and verifying the eligibility of beneficiaries can delay the implementation of affirmative action measures. The process of issuing caste certificates and other necessary documentation can be time-consuming and often mired in red tape. This bureaucratic inefficiency can prevent eligible individuals from accessing the benefits they are entitled to.
- 2. Lack of Awareness:** Many individuals from marginalized communities are not fully aware of the benefits and opportunities available to them through affirmative action policies. This lack of awareness can be due to limited access to information, educational deficiencies, or mistrust in government programs. As a result, many potential beneficiaries do not apply for or take advantage of these programs.
- 3. Resistance from Social Groups:** Affirmative action policies often face resistance from various social groups, particularly those who perceive these measures as unfair advantages granted to certain communities at the expense of others. This resistance can manifest in social and political opposition, legal challenges, and even violent protests, all of which can hinder the effective implementation of these policies.
- 4. Monitoring and Evaluation:** Ensuring that the intended beneficiaries receive the full benefits of affirmative action policies requires continuous monitoring and evaluation. However, inadequate monitoring mechanisms and lack of accountability can lead to corruption, misallocation of resources, and failure to achieve the desired outcomes. Effective implementation necessitates robust oversight and regular assessment to address these issues.

Caste-based Discrimination and Social Exclusion

Despite legal protections, caste-based discrimination and social exclusion persist in many parts of India, undermining efforts toward social justice.

- 1. Untouchability:** Practices of untouchability, though legally abolished, continue to exist in various forms in rural and urban areas. Dalits often face social ostracism, are denied access to public places such as temples, schools, and water sources, and are subjected to degrading treatment. This systemic discrimination perpetuates social exclusion and reinforces caste hierarchies.
- 2. Segregation in Schools and Workplaces:** Segregation based on caste is prevalent in educational institutions and workplaces. In schools, children from lower castes may face discrimination from teachers and peers, affecting their academic performance and self-esteem. In workplaces, lower caste individuals may encounter bias in hiring, promotions, and interactions with colleagues, limiting their career growth and opportunities.
- 3. Violence Against Lower Castes:** Caste-based violence is a severe issue, with incidents of atrocities against Dalits and other marginalized communities reported regularly. These acts of violence, ranging from physical assaults to social boycotts, aim to maintain caste dominance and suppress any attempts by lower castes to assert their rights. Such violence creates an environment of fear and inhibits social mobility and equality.
- 4. Intersectionality of Discrimination:** Caste-based discrimination often intersects with other forms of discrimination, such as gender, economic status, and geographic location. Dalit women, for example, face compounded disadvantages due to their caste and gender, making them particularly vulnerable to exploitation and abuse. Addressing social exclusion requires a comprehensive approach that considers these intersecting factors.

Debate on Meritocracy

Critics of reservation policies argue that they compromise meritocracy and lead to reverse discrimination against upper castes, raising important questions about the balance between social justice and merit-based allocation of opportunities.

- 1. Compromising Meritocracy:** Opponents of reservation policies contend that these measures undermine the principle of meritocracy by prioritizing caste-based quotas over individual merit and qualifications. They argue that admissions to

educational institutions and appointments in government jobs should be based solely on merit to ensure the selection of the most capable individuals, regardless of their caste.

- 2. Reverse Discrimination:** There is a concern that affirmative action policies result in reverse discrimination, where members of upper castes feel unfairly disadvantaged due to the preferential treatment given to lower castes. This perception of reverse discrimination can lead to social tensions and division, as well as legal challenges against affirmative action measures.
- 3. Economic Criteria vs. Caste-based Criteria:** Some critics advocate for affirmative action based on economic criteria rather than caste, arguing that poverty and economic disadvantage cut across caste lines. They propose that benefits should be extended to all economically disadvantaged individuals, regardless of caste, to ensure a more inclusive approach to social justice.
- 4. Need for a Balanced Approach:** The debate highlights the need for a balanced approach that ensures both social justice and the merit-based allocation of opportunities. While affirmative action is necessary to address historical injustices and social inequalities, it is equally important to ensure that merit and competency are not entirely overlooked. Policymakers must strive to create a system that upholds both principles, providing opportunities for marginalized communities while maintaining standards of excellence.

Conclusion

Achieving social justice in the context of the caste system requires a multifaceted approach that addresses the deep-rooted and complex nature of caste-based discrimination and social inequality. Legal protections, affirmative action, and societal change are crucial components of this endeavour, each playing a vital role in dismantling historical injustices and promoting an inclusive and equitable society.

Legal Protections

Legal protections are fundamental to safeguarding the rights of marginalized communities and ensuring that caste-based discrimination is addressed at its core. The Indian Constitution provides a robust legal framework designed to promote social justice and equality. Articles such as 15(4), 16(4), and 46 empower the state to implement special provisions

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for the advancement of socially and educationally backward classes, Scheduled Castes, and Scheduled Tribes. These legal measures are essential for creating an environment where marginalized groups can claim their rights and access opportunities that were historically denied to them.

However, the effectiveness of these legal protections depends on their rigorous implementation and enforcement. Continuous monitoring, judicial oversight, and public awareness are necessary to ensure that the legal provisions translate into tangible benefits for the intended beneficiaries. Legal reforms and amendments may also be required to address emerging challenges and ensure that the legal framework remains relevant and effective.

Affirmative Action

Affirmative action, including the reservation system, is a critical tool for promoting equality of opportunity and addressing historical disadvantages faced by lower castes. Reservation policies in education, employment, and political representation aim to level the playing field and ensure that marginalized communities have access to opportunities for growth and development. These measures are essential for breaking the cycle of poverty and social exclusion that has persisted for generations.

Despite its importance, affirmative action faces significant challenges, including resistance from various social groups and debates over meritocracy. To address these challenges, it is crucial to adopt a balanced approach that combines affirmative action with efforts to enhance the overall quality of education and employment opportunities for all citizens. This includes investing in educational infrastructure, vocational training, and skill development programs that benefit both marginalized and non-marginalized communities.

Societal Change

Societal change is perhaps the most challenging yet essential aspect of achieving social justice in the context of the caste system. Legal protections and affirmative action can only go so far if societal attitudes and cultural practices continue to perpetuate caste-based discrimination and social exclusion. Changing deeply ingrained social norms and prejudices requires sustained efforts at multiple levels, including education, awareness campaigns, and community engagement.

Educational institutions play a crucial role in fostering an

environment of inclusivity and equality. Curriculums should incorporate teachings on social justice, human rights, and the importance of diversity. Schools and colleges should also actively work to eliminate caste-based discrimination and promote interactions and collaborations among students from different backgrounds.

Media and civil society organizations can also contribute significantly to societal change by raising awareness about the issues faced by marginalized communities, challenging discriminatory practices, and advocating for social justice. Public campaigns, storytelling, and positive representations of marginalized groups in media can help shift public perceptions and promote a more inclusive society.

Continuous Efforts and Vigilance

Achieving social justice is an ongoing process that requires continuous efforts and vigilance. Policymakers, administrators, educators, civil society, and the general public must remain committed to the principles of equality and justice. Regular assessments and evaluations of affirmative action policies, legal protections, and societal initiatives are necessary to identify gaps and areas for improvement.

Feedback from marginalized communities is crucial for understanding their needs and challenges and ensuring that policies are effectively addressing their concerns. Engaging these communities in the decision-making process can lead to more informed and inclusive policies that better serve their interests.

Moreover, efforts to promote social justice must be adaptable and responsive to changing social dynamics and emerging issues. This includes addressing new forms of discrimination and inequality that may arise and ensuring that social justice initiatives remain relevant and effective in a rapidly evolving society.

By working together and remaining committed to the cause of social justice, it is possible to create a society where all individuals, regardless of their caste, can thrive and contribute to the nation's progress.

Lesson 3.3: Gender Discrimination and Empowerment

Gender Justice

Introduction

The discourse on gender justice has been ongoing and remains a significant human rights issue. Despite gender equality being a fundamental human right crucial for a peaceful and advanced society, achieving it is still a work in progress. In India, cultural institutions contribute significantly to gender inequality. Indian courts and the Indian Constitution are crucial in striving for gender justice.

The Indian Constitution introduces new aspects of societal structure but uses the term 'sex' instead of 'gender' in articles 15(1), 16(2), and 325, which prohibit discrimination based on sex. Although 'sex' has a narrower scope than 'gender,' these provisions aim to prevent sex-based discrimination. Articles 14, 15, and 16 promote equality before the law and prohibit discrimination on various grounds, including sex, and direct the state to make special provisions for women and children. Many laws have been enacted to empower and improve the status of women, and the government has amended laws affecting women adversely. The Supreme Court has passed several progressive judgments for women's rights, and various welfare schemes have been introduced to improve their living conditions. However, outdated social customs and traditions still undermine these efforts, leading to unequal distribution of progress and development benefits.

Global View on Gender Justice

Gender justice refers to equality between the sexes and is influenced by social, economic, political, environmental, cultural, and educational factors. Globally, the cause of gender justice has gained strength, recognizing that no state can progress if half its population is held back. Human rights activists, feminists, NGOs, and government support have made strides in this area, but women still face significant challenges. Globalization has introduced new issues, such as consumerism and cultural heterogeneity, which have led to more objectification of women. In some cultures, women's conditions remain dire, with limited control over their bodies and lives, particularly in Africa and the Middle East. Gender justice involves integrating women's rights and needs into mainstream society, ending violence, and ensuring equal distribution of

social necessities.

The United Nations has played a crucial role in promoting gender justice. Since its inception, the UN has focused on gender equality, with the Commission on the Status of Women working to collect data, promote women's rights, and raise awareness. The Decade for Women and World Conferences significantly contributed to gender equality and justice. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been ratified by 185 states. Gender mainstreaming has become a critical strategy for achieving gender equality, with various UN bodies working to integrate gender perspectives into all policy areas. The UNIFEM and the United Nations Development Programme (UNDP) also support women's empowerment and gender equality, with the Gender Development Index (GDI) measuring inequalities between men and women.

Indian Legislative Framework on Gender Justice

India's commitment to gender equality is embedded in its Constitution, the guiding document for governance in a democratic setup. Gender justice is fundamental to the application of democratic principles in the country. The Constitution's inclusion of gender justice provisions—such as equality before the law, the right to vote, and affirmative actions to mitigate social and economic disparities—forms the bedrock of India's legal framework.

Although true gender equality is yet to be fully realized, the Constitutional Foundation has facilitated ongoing efforts to level the playing field and inspired the passage of various legislations post-1950. Key constitutional provisions supporting gender justice include Articles 14, 15, 16, 39, and 42:

- **Article 14** ensures equality before the law and equal protection of the laws, implying that the state should not discriminate between citizens and should implement positive discrimination to support disadvantaged groups, including women.
- **Article 15 (1)** prohibits discrimination on several grounds, including sex. It empowers the state to take affirmative actions for women and children under Article 15(3).
- **Article 16** guarantees equal opportunities in public employment, explicitly forbidding discrimination based on sex.

- **Article 39** mandates equal rights for men and women to an adequate means of livelihood and equal pay for equal work.
- **Article 42** directs the state to ensure just and humane working conditions and maternity relief.

Following independence, India enacted numerous laws to uphold these constitutional mandates, addressing various issues, from social discrimination to support for women. Specific crimes against women under the BNS Law include rape (Sec. 64), kidnapping (Secs. 137-141), dowry-related homicides (Sec. 80), torture (Sec. 79), molestation (Sec. 136), and sexual harassment (Sec. 78).

Representation of Women in the Indian Judiciary

Addressing a query about the number of women judges in the Supreme Court, High Courts, and tribunals, Union Law Minister Ravi Shankar Prasad informed Parliament that, as of September 1, 2020, out of the total 1,113 judges in these courts, only 80 are women. Specifically, there are 2 women judges in the Supreme Court and 78 women judges across various High Courts. He also provided a detailed statement on the working strength of judges and the number of women judges in these courts.

Given that a significant proportion of judges in high courts and the Supreme Court are promoted from the bar, the relatively low number of women advocates narrows the pool from which women judges can be selected. A shift in judicial culture is likely to impact litigants positively. According to a 2014 report by the International Commission of Jurists, having more women judges can encourage women to seek justice and assert their rights through the courts. While not universally applicable, having a judge of the same gender can ease a litigant's mind. For example, a transgender woman judge hearing a case involving other trans women could inspire confidence in the litigants.

Gender diversity is one aspect of a truly diverse judiciary. True diversity in the Indian judiciary would require representation from various gender identities, including trans and non-binary individuals, as well as different caste, socioeconomic, religious, and regional backgrounds. It also calls for the inclusion of judges from doubly marginalized sections to represent intersectional voices. While progressive male judges can issue pro-women judgments, the presence of women judges, even those not necessarily progressive or feminist, contributes to a more inclusive

judiciary.

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Significant Role of The Judiciary in Ensuring Gender Justice

In India, gender-based stereotypes entrenched in patriarchal ideology have persisted for centuries, gradually infiltrating the legal system. Historically, societal injustices against women were also reflected in judicial decisions. The Constitution of India emphasizes equality of status and opportunity. The framers of the Constitution believed that equality should exist among equals; otherwise, it might lead to injustice. Therefore, they introduced the concept of substantive equality, making special provisions for those who are not on an equal footing to bring them up to par with others. They recognized women as victims of a rigid hierarchical social system. They introduced Article 15(3) in the Constitution, directing the State and its machinery to take affirmative action and apply protective discrimination to counteract centuries of women's exclusion from politics, education, and public employment. The Judiciary, notably the Supreme Court and various High Courts, has played a crucial role in this regard. Through numerous decisions, they have affirmed that compensating for discrimination is not an exception to equality but a necessary means of achieving it. The Supreme Court has utilized Article 15(3) to uphold laws that favour women over men and interpret laws in ways that extend protection to women.

The Impactful Role of the Judiciary in Promoting Gender Justice

The notorious *Mathura Rape Case*, *Nandan Kanan Rape Case*, *Raju's Case*, *Soumithri Vishnu Case*, and *M. Kishwar vs. State of Bihar* are notable examples of the Supreme Court's conservative and patriarchal stance. The judgments in *Soumitri Vishnu vs. Union of India* and subsequently in *Revathi vs. Union of India* were particularly detrimental to gender justice, as they inadvertently increased the inequalities faced by married women under the guise of protection. However, with the rise of judicial activism, the judiciary has increasingly positioned itself as a defender of women's rights. Whenever the judiciary identified adverse discrimination against women in existing laws and state actions, it acted swiftly to rectify the situation. Simultaneously, it upheld the validity of legislations designed to protect women's rights.

Judicial activism in India can be traced back to the pre-independence era. One landmark case is *Dadaji Bhikaji vs. Rukhmabai*,

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where Justice Robert Hill Pinhey delivered a revolutionary judgment in the Bombay High Court concerning women's emancipation. In this case, 11-year-old Rukhmabai questioned her marriage's validity to 19-year-old Dadaji Bhikaji, causing significant societal upheaval. Justice Pinhey ruled that compelling a young woman to cohabit with a man she dislikes is barbarous and cruel, thus drawing attention to the intricate relationship between morality and law and embedding the case within a broader legal-humanitarian framework.

Over the years, the Indian judiciary's stance on women's issues has evolved. While the immediate post-independence period up to the seventies witnessed a conservative judicial system, the late eighties and nineties marked the rise of judicial activism, which has reached its peak in recent years. Notably, in 2018, the Supreme Court took significant steps to dismantle many gender-based stereotypes and inequalities imposed by society on women.

In *C.B. Muthamma vs. Union of India*, the Supreme Court struck down discriminatory rules in the Indian Civil Services, deeming them violative of women's fundamental right to equal treatment in public employment. Justice Krishna Iyer emphasized that ignoring the constitutional guarantees of equality for women reflects the gap between the written Constitution and its practical application.

In the *Nargesh Meerza Case*, the Supreme Court declared Air India Regulations regarding the retirement and pregnancy bar for air hostesses unconstitutional, considering them unreasonable and arbitrary. The nineties ushered in a new era of judicial activism, particularly concerning rape laws. Modern scientific and technological advancements and the enlightenment of public conscience influenced the judiciary's renewed efforts to safeguard rights and liberties, especially for women.

In the landmark judgment of *Githa Hariharan vs. RBI*, the Supreme Court recognized that a mother could act as a natural guardian even when the father is alive. In *Neera Mathur vs. L.I.C.*, the Court acknowledged a woman's right to privacy concerning information about her reproductive functions, ruling that intrusive questionnaires amounted to an invasion of privacy.

The Supreme Court has consistently upheld protective discrimination under Article 15(3) of the Constitution. It demonstrated significant judicial activism in addressing workplace sexual harassment,

issuing landmark directions in the *Vishaka vs. State of Rajasthan* case, which emphasized the need for effective legislation to curb such harassment. This decision was reiterated in *Apparel Export Promotion Council vs. A.K. Chopra*.

In *Madhu Kishwar vs. State of Bihar*, Justice K Rama Swamy highlighted the persistent discrimination and suffering faced by women, emphasizing the need for judicial intervention. Although the State has yet to introduce a Uniform Civil Code, the judiciary has recognized its necessity in cases like *Sarla Mudgal vs. Union of India*.

The judiciary has delivered key verdicts on women's property rights in cases like *Mary Roy* and *C.M. Mudaliar vs. Idol of Sri S. Swaminanthaswami Thirukoil*, aiming to eliminate gender-based discrimination and promote economic empowerment. In *Gaurav Jain vs. Union of India*, the Court issued guidelines for the rescue and rehabilitation of prostitutes and their children.

The Court has also addressed the issue of rape, emphasizing the crime's gravity and ordering compensation for victims. In the *Delhi Domestic Working Women's Forum vs. Union of India*, the judiciary outlined parameters for assisting rape victims, aligning with international guidelines. In *Chairman, Railway Board vs. Chandrima Das*, the Court ordered the railways to compensate a rape victim.

The Supreme Court has upheld the principle of "equal pay for equal work," as seen in the *Associate Banks Officers' Association vs. State Bank of India* case. In *State of Maharashtra vs. Mahukar Narayan Mardikar*, the Court affirmed a prostitute's right to privacy under Article 21. In *Rajesh Kumar Gupta vs. State of Uttar Pradesh*, the Supreme Court upheld the reservation of posts for female primary school teachers, recognizing the benefits of women teaching young girls.

In *Anuj Garg vs. Hotel Association of India*, the Supreme Court declared a section of the Punjab Excise Act unconstitutional, emphasizing women's empowerment over restrictive measures. The recent *Charu Khurana and Others vs. Union of India* case further expounded the concept of gender justice, addressing discriminatory practices in professional associations.

The Delhi High Court's judgment in *Annie Nagaraja and Others vs. Union of India* removed the gender-based denial of permanent service commissions for women in the military.

In the case of *Lillu @ Rajesh and Anr vs. State of Haryana*, the accused contested his conviction for rape under Section 376 of the IPC. This conviction was initially made by the Court of Additional Sessions Judge in Delhi and upheld by the High Court on appeal. The medical evidence, which included a two-finger per vagina test, indicated that the hymen was completely torn. The doctor testified that it was possible the prosecutrix was accustomed to sexual intercourse. However, the Supreme Court ruled that the sole testimony of the prosecutrix was sufficient for a conviction if her evidence was credible in its entirety. Since the prosecutrix was a minor, her prior sexual history was deemed irrelevant to the issue of consent. The Court further held that a victim's previous sexual experience cannot be used to justify rape. The Supreme Court also declared that the two-finger test and its interpretations violate the privacy, physical and mental integrity, and dignity of rape survivors. Medical examinations must not be conducted in a way that amounts to cruel, inhuman, or degrading treatment.

In recent rulings, such as the TRIPLE TALAQ and SABARIMALA cases, the Supreme Court has taken unprecedented steps to ensure gender justice, benefiting not just women but humanity as a whole. The abolition of triple talaq by the Supreme Court has fostered a positive shift towards a uniform civil code, ending a practice that subjected wives to subservience to their husbands.

On September 6, 2018, Chief Justice Deepak Misra issued a landmark judgment that decriminalized homosexuality by reading down Section 377 of the IPC. This judgment stands as one of the most significant decisions by the Supreme Court in promoting gender justice.

In the case of *The Secretary, Ministry of Defence vs. Babita Puniya & Ors*, the Supreme Court granted permanent commissions to women officers in the Army regardless of their length of service.

In the case of *Joseph Shine vs. Union of India*, the Supreme Court overturned its previous judgment in *Soumithri Vishnu vs. Union of India & Anr.* by decriminalizing adultery and removing it from the Indian Penal Code. The Court held that the law was based on gender stereotypes, violating Articles 14 and 15 of the Constitution, as it only considered the husband of an adulterous woman to be aggrieved, while ignoring the wife of an adulterous man. Additionally, the Court ruled that adultery should not be a criminal offense as it would constitute an unwarranted intrusion into the right to privacy by subjecting personal relationships to the rigors

of criminal law.

Recently, the Court also lifted the ban on women aged 10 to 50 from entering the Sabarimala temple in Kerala. Justice Deepak Misra highlighted the ongoing gender inequalities in society. He criticized the contradictory nature of religion that both venerates women as goddesses and imposes strict sanctions on them in matters of devotion. This dualistic approach, he argued, results in indignity and degrades the status of women. Society must shift from promoting patriarchal standards of purity and chastity solely for women to cultivating equality, where women are not considered frailer or inferior to men.

The widespread protests following the Sabarimala verdict indicate that judicial activism in gender justice has outpaced societal acceptance. In *Krishan Lal vs. State of Haryana*, Justice Krishna Iyer aptly remarked, "One sensitized judge is a far better armour against gender outrage than the long clauses of sections with all the protection written into it."

It is indeed a moment of great pride that the judiciary is finally acknowledging and addressing the injustices and atrocities faced by women. Sometimes, laws must serve as instruments of social change, and the deeply entrenched patriarchy in Indian society calls for judicial intervention to liberate women from its grasp.

Self-Assessment Questions

1. Analyse the constitutional provisions and judicial interpretations that protect minority rights in India.
2. Discuss the impact of communal violence on minority rights in India. What measures have been implemented to protect minorities from such violence, and how effective have these measures been?
3. Explain the caste system in India and its implications for social justice. How has the Indian Constitution addressed the issues arising from caste-based discrimination?
4. Critically evaluate the reservation system in India as a form of protective discrimination.
5. Discuss the role of the Indian judiciary in promoting gender justice. How have landmark cases addressed gender-based discrimination and upheld women's rights?

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UNIT - IV HUMAN RIGHTS COMMISSIONS

Notes

Lesson 4.1: National Human Rights Commission

Introduction

The United Nations Educational Scientific and Cultural Organization (UNESCO) mooted the idea of the creation of an impartial institution for the protection of human rights in the States as early as 1946. In pursuance of the resolution of the General Assembly adopted in 1966, the Economic and Social Council requested the Human Rights Commission of the United Nations to consider the question of creating a National Commission of Human Rights to perform certain functions related to the observance of the International Covenants on Human Rights. The question was taken up by the Commission in 1970 and it recommended that the question of establishment of National Commission of Human Rights in each Member State of the United Nations ought to be decided by each Government of the Member State keeping in view the traditions and institutions of each country. The Commission in 1978 again emphasized the need for the creation of a National Institution. But all these attempts, however, were fruitless.

Realising the importance of such an institution or commission, the World Conference on Human Rights in 1993 urged Governments to strengthen national structures, and institutions of society, which play a role in promoting and safeguarding human rights. The Vienna Declaration and Programme of Action adopted by the World Conference prompted a number of States to establish such institutions.

Historical Background

The Western countries, America in particular, criticised India for the violation of human rights by Indian armed forces and para-military forces, especially in the State of Jammu and Kashmir. In the early 1990's India felt the need to establish a commission as a positive response to the criticisms of the foreign Governments in the context of political unrest and violence in Punjab, Jammu and Kashmir, the North-East and Andhra Pradesh. Though it is now a well-recognised fact that terrorism is a serious violation of human rights. America never missed the opportunity to

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criticize India whenever Indian security forces sought to deal sternly with extremists and ultras. America claims to be the champion of human rights all over the world. America's practices of human rights are discriminatory. They use human rights as an instrument to harass and even coerce other States. At the same time, America criticises India and China for alleged violations of human rights. America has adopted a liberal and biased attitude regarding human rights violations in Pakistan, even though Pakistan's record in upholding human rights is not only unsatisfactory but also deplorable. America also pressurizes international financial institutions, which grant loans, not to give or grant loans or financial aid to such States. In addition to the pressure from foreign countries, there was a strong demand from the domestic front as well for the creation of a National Human Rights Commission. All these led the Government to enact a law to establish a Human Rights Commission. The Government's proposal to establish the Commission was of course sudden and without due deliberations. The President of India on September 27, 1993 promulgated an Ordinance for the creation of a National Human Rights Commission.

Justice Ranganath Mishra, the former Chief Justice of India, was appointed the Chairperson of the Commission on October 12, 1993. Justice M.N. Venkatachaliah, the former Chief Justice of India assumed office on November 26, 1996 as the Chairperson after the retirement of Justice Ranganath Mishra. Justice J.S Verma, the former Chief Justice of India became the Chairperson on November 4, 1999 when Justice Venkatachaliah attained the age of 70 years. After the retirement of Justice J.S. Verma on January 16, 2003, the former Chief Justice of India Justice A.S. Anand was appointed the Chairperson of the Commission.

Protection of Human Rights Act, 1993 (Act 10, 1994)

The Human Rights Commission Bill introduced in the Lok Sabha on May 14, 1992 was referred to the Standing Committee on Home Affairs of the Parliament. The President of India promulgated an Ordinance, which established a National Commission on Human Rights on September 27, 1993, owing to pressure from foreign countries as well as from the domestic front. Thereafter, a Bill on Human Rights was passed in the Lok Sabha on December 18, 1993 to replace the ordinance promulgated by the President the Bill became an Act, having received the assent of the President, on January 8, 1994 (Act 10 of 1994) and was published in the Gazette of India, Extraordinary Part II, Section I, on January 10, 1994.

Thus, the Protection of Human Rights Act (No. 10 of 1994) came into force. Article 1(3) provided that the Act should be deemed to have come into force on the 28th day of September 1993. Section 1(2) states that the Act is extended to the whole of India and that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters related to any of the entries enumerated in List I or List III in the Seventh Schedule of the Constitution applicable to that State. The purpose of the enactment is laid down in the Preamble of the Act i.e., it provides for the establishment of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights.

Definition of Human Rights under the Act

Section 2(d) of the Act defines human rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. The above definition, however, limits the scope of the functioning of the National Human Rights Commission. India, therefore ratified the two Covenants - International Covenant on Civil and Political Rights and the International Convention Economic, Social and Cultural Rights. But the Covenants are not directly enforceable as law before the Indian courts. The definition of human rights under the Protection of Human Rights Act 1993 limits human rights strictly to the fundamental rights embodied in part III of the Constitution, which are enforceable by the courts in India. A pertinent question naturally arises here: why was the Commission established for the protection of fundamental rights when they are being constitutionally guaranteed and are enforceable by the courts? It appears that the main purpose of the enactment was to provide a better protection of human rights.

National Human Rights Commission (N.H.R.C.)

The National Human Rights Commission (NHRC) is responsible for the protection and promotion of human rights in India. The Protection of Human Rights Act, 1993 states that the commission is the protector of "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants".

On July 8, 2019, the Protection of Human Rights (Amendment) Bill, 2019 was introduced in Lok Sabha by the Minister of Home Affairs, Amit

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Shah. This bill proposes amendments to the Protection of Human Rights Act, 1993 established the NHRC, State Human Rights Commissions (SHRC), and Human Rights Courts.

Chapter II of the Act deals with the constitution of the National Human Rights Commission (N.H.R.C.). Section 3 of the Act lays down that the Central Government shall constitute a body known as the National Human Rights Commission.

N.H.R.C. is an eight-members body. The Commission 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 these, the Commission shall include:

- e) The Chairperson of National Commission for Minorities
- f) The Chairperson of the National Commission for the Scheduled Castes and Scheduled Tribes
- g) The Chairperson of the National Commission for Women

The Act also makes provision for a Secretary General who shall be the Chief Executive Officer of the Commission, who shall exercise such powers and discharge such functions of the Commission as are delegated to him. As pointed out by the Supreme Court in *Paramjit Kaur v. State of Punjab*, the Chairperson of the Commission in his capacity as a judge of the High Court and then as a judge of the Supreme Court and also as Chief Justice of India, and so also the two other members of the Commission who have held high judicial offices as Chief Justice of High Courts, have throughout their tenure, considered, expounded and enforced the fundamental rights and are, in their own way, experts in the field.

The headquarters of the National Human Rights Commission (N.H.R.C.) is located at Delhi. The Commission may, however, with the previous sanction of the Central Government establish offices at other

places in India.

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Appointment of Chairperson and other Members

The President appoints the Chairperson and other members of the Commission after obtaining the recommendations of the Committee consisting of ,

- a) Prime Minister - Chairperson
- b) Speaker of the House of People - Member
- c) Minister in charge of Ministry of Home Affairs in the Government of India - Member
- d) Leader of the Opposition in the House of the People - Member
- e) Leader of the Opposition in the Council of States - Member
- f) Deputy Chairperson of the Council of States – Member

Term of Office of the Members

The person appointed as Chairperson and the members shall hold the office for a term of five years from the date of their appointment or until he or she attains the age of seventy years whichever is earlier. The Chairperson and the member; shall hold office for a period of five years from the date on which they enter upon their office. They are eligible for reappointment for another term.

Removal of a Member of the Commission

The Chairperson or any other member of the Commission may be removed from his office by an order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on enquiry, reported that the Chairperson or such other member ought on any such ground to be removed. But despite this provision, the President may by an order remove from office the Chairperson or any other member if the Chairperson or such other person is:

- a) adjudged an insolvent or
- b) engaged during his term of office in paid employment outside the duties of his office or
- c) unfit to continue in office by reason of infirmity of mind or body or

- d) of unsound mind and stands so declared by a competent court.
- e) convicted and sentence to imprisonment for an offence which in the opinion of the president involves moral turpitude

Powers and Functions

The functions of the Commissions are as follows,

- The Commission shall inquire suo motu or on a petition presented to it by a victim or any person on his behalf into complaints of

(a) violation of human rights or abatement thereof, or

(b) negligence in the prevention of such violation by a public servant.

- The Commission may intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

- The Commission shall visit, under intimation to the State Government, any jail or any other institution under the control of the State Government where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmate: and make recommendations thereon.

- The Commission shall 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 will recommend measures for their effective implementation.

- The Commission shall review the factors, including acts of terrorism that inhibit exercise of one's human rights as well as the safeguards currently in force and make appropriate recommendations.

- The Commission shall study the treaties and other international instruments on human rights and make recommendations for their effective implementation.

- The Commission will undertake and promote research in the field of human rights.

- The Commission shall spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means.

- The Commission shall encourage the efforts of non-governmental organisations and institutions working in the field of human rights.
- The Commission may perform any other function it may consider necessary for the promotion of human rights.
- The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter, which in its opinion, is of such urgency or importance that it shall not be deferred till the submission of the annual report. The Central Government and the State Government shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any
- The Commission shall perform functions pursuant to the directions issued by the Supreme Court in exercise of the jurisdiction under Article 32 of the Constitution. The Supreme Court in *Paranjit Kaur v. State of Punjab*, stated, "the Commission would function pursuant to the directions issued by this Court and not under the Act under which it is constituted." In deciding the matters referred by this Court, National Human Rights Commission is given a free hand and is not circumscribed by any condition. Therefore, the jurisdiction exercised by the National Human Rights Commission in these matters is of a special nature not covered by enactment of law, and thus acts sui generis.

The Commission while inquiring into complaints shall have all the powers of a civil court trying a suit under the Code of Civil Procedure of 1908, and in particular in respect of the following matters:

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and production of any document,
- (c) receiving evidence on affidavits,
- (d) requisitioning any public record or copy thereof from any court or office,
- (e) issuing commissions for the examination of witnesses or documents and

(f) any other matter which may be prescribed.

The Commission has the power to request any person to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so requested shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and Section 177 of the Indian Penal Code. The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised by the Commission, may enter any building or place where the Commission has reason to believe that any document relating to the subject-matter of the inquiry may be found, and may seize any such document or take extracts or copies from there.

The Commission may, after completing the inquiry recommend to the appropriate Government or authority to take action against the person concerned where the inquiry discloses the violation of human rights. It may also recommend the appropriate Government or authority to grant necessary 'interim relief to the victim or to his family members. The Commission may approach the Supreme Court or the High Court concerned to pass such directions, orders or writs as that court may deem necessary". The Commission provides a copy of the inquiry report to the petitioner or his representative. It shall also send a copy of its inquiry report together with its recommendations to the Government concerned or authority that shall, within a month, forward to the Commission its comments on the report, including the action taken or proposed to be taken. The Commissions shall publish its inquiry report together with the comments of the Government or authority concerned, if any, and the action taken or proposed to be taken by the appropriate authority on the recommendations of the Commission.

The Commission in accordance with the power conferred on it by sub-section (2) of Section 10 of the Act made the regulations, which are called National Human Rights Commission (Procedure) Regulations, 1994. These Regulations came into force with effect from March 1, 1994. Regulation No. 8 dealing with procedure for making complaints was substituted by N.H.R.C. (Procedure) Amendment Regulations, 1996.

Procedure for Dealing with Complaints

Regulation 8 of the National Human Rights Commission (Procedure) Regulations, 1994 lays down the following procedure for

dealing with complaints of alleged violation 'human rights':

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1. All complaints in whatever form received by the Commission shall be registered and assigned a number and placed for admission before a bench of two members constituted for the purpose not later than two weeks of receipt thereof. Ordinarily complaints of the following nature are not entertainable by the Commission:

a) in regard to events which happened more than one year before the making of complaints.

b) with regard to matters which are sub-judice

c) which are vague, anonymous or pseudonymous

d) which are of frivolous nature; or

e) those which are outside the purview of the Commission

2. No fee is chargeable on complaints.

3. Every attempt should be made to disclose a complete picture of the matter leading to the complaint and the same may be made in English or Hindi to enable the Commission to take immediate action. To facilitate the filing of the complaints, the Commission shall, however, entertain complaints in any language included in the Eighth Schedule of the Constitution. It shall be open to the Commission to ask for further information and affidavits to be filed in support of allegations whenever considered necessary.

4. The Commission may, in its discretion, accept telegraphic complaints and complain conveyed through fax.

5. The Commission shall have the power to dismiss a complaint in limine.

6. Upon admission of a complaint, the Chairperson /Commission shall direct whether the matter could be set down for inquiry by it or should be investigated into

7. On every complaint on which the Chairperson /Commission takes a decision to either hold an inquiry or investigation, the Secretariat shall call for report/comments from the Government/authority concerned giving the latter a reasonable time therefore.

8. On receipt of the comments of the authority concerned, a detailed note on the merits of the case shall be prepared for consideration of the

Commission.

9. The directions and recommendations of the Commission shall be communicated to the Government/authority concerned and the petitioner as provided in Section 18 and 19 of the Act.

10. The Commission may, in its discretion afford a personal hearing to the petitioner or any other person on his behalf and such other person or persons, as in the opinion of the Commission should be heard, for appropriate disposal of the matter before it and, where necessary call for records and examine witnesses in connection with it. The Commission shall afford a reasonable hearing, including opportunity of cross-examining witnesses, if any, in support of the complaint and leading of evidence in support of his stand to a person whose conduct is enquired into by it or where in its opinion the reputation of such person is likely to be prejudicially affected.

11. Where investigation is undertaken by the team of the Commission or by any other person under its discretion, the report shall be submitted within a week of its completion or such further time as the Commission allows. The Commission may, in its discretion, direct further investigation in a given case if it is of the opinion that investigation has not been proper or the matter requires further investigation for ascertaining the truth or enabling it to properly dispose the matter. On receipt of the report, the Commission on its own motion, or if moved in the matter, may direct inquiry to be carried by it and receive evidence in course of such inquiry.

12. The Commission or any of its members when requested by the Chairperson may undertake visits for an on-the-spot study and where such study is undertaken by one or more members, a report thereon shall be furnished to the Commission as early as possible.

Steps After Inquiry

After the inquiry under the Act is complete, the Commission may take any of the following steps,

1. Where the enquiry discloses the Commission of violation of human rights, or negligence in the prevention of violation of human rights by a public servant, it may recommend to the Government or the authority concerned the initiation of proceedings for prosecution of such actions the Commission deems fit against the person or persons concerned.

2. Approach the Supreme Court or the High Court concerned for such direction, order or writs as; that court might deem necessary.
3. Recommend to the Government or the authority concerned for the grant of such immediate interim relief to the victim or the members of his family, as the Commission may consider necessary.
4. Subject to the provisions of Clause (5) provide a copy of the inquiry report to the petitioner or his representative
5. The Commission shall send a copy of its enquiry report together with its recommendations to Government or the authority concerned and the Government authority concerned shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission.
6. The Commission shall publish its enquiry report together with the comments of the Government or the authority concerned, if any, and the action taken or proposed to be taken by the Government or the authority concerned on the recommendations of the Commission.

Regulation 11 of the National Human Rights Commission (Procedure) Regulations, 1994 further provides that report of follow-up action shall be submitted to the Commission at every subsequent sitting indicating therein the present stage of action on each item on which the Commission has taken a decision in any of its earlier meeting, except the items on which no further action is called for.

Procedure with Respect to Armed Forces

Section 19 of the Protection of Human Rights Act, 1993 provides:

1. Notwithstanding anything contained in the Act, while dealing with complaints of violation of human rights by members of armed forces, the Commission shall adopt the following procedures, namely:
 - a. it may, either on its own motion or on receipt of a petition, seek a report from the Central Government
 - b. after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.
2. The Central Government shall inform the Commission of the action

taken on the recommendations within three months or such further time as the Commission may allow.

3. The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations

4. The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representatives.

It is stated that the members of the armed forces and the para military forces cannot be regarded as persons above the law. They should come under the purview of the N.H.R.C. as they have, in the past, committed a number of acts, which amount to serious violations of human rights. Excesses of the army or the para-military forces in Kashmir and North East are likely to be curbed if the N.H.R.C. starts taking up cases against them on the complaint of the families of victims. Lack of jurisdiction over military and para-military forces has been pointed out in International forums as a serious infirmity affecting the credibility of the N.H.R.C. This has led the N.H.R.C. to recommend to the Government for the exclusion of para-military forces from the meaning of the word 'armed forces'. However, the Government have not yet accepted the recommendations.

State Human Rights Commissions (S.H.R.C's)

The Protection of Human Rights Act under Chapter V also provides for the setting up of State Human Rights commission in States consisting of a Chairperson who has been a Chief Justice of a High Court, one member who is, or has been, a Judge of a High Court, one member who is, or has been a District Judge in that State and two members to be appointed from amongst persons having knowledge of or practical experience in matter; relating to human rights. The Governor shall appoint the Chairperson and other members of the Commission.

The State Commission is empowered to perform all those functions, which have been entrusted to the National Human Rights Commission. However, paragraph C of Section 29 excludes the study of treaties and other international instruments on human rights from the purview of S.H.R.C. The study of such treaties and the eligibility to make recommendations for their effective implementation are the exclusive domain of the N.H.R.C. The state Commission may inquire into violations of human rights only in respect of matters related to any of the entries enumerated in List II and III in the Seventh Schedule of the constitution.

Section 36(1) of the Act, however, states that the State Human Rights Commission shall not enquire into any matter which is pending before a National Commission or any other statutory Commission duly constituted under any law in force.

The Commission is required to submit its annual report to the State Government and it may submit at any time special reports on any matter, which in its opinion is of such urgency or importance that it cannot be deferred till the submission of the annual report. The State Government shall submit these reports before each House of State Legislature with a memorandum of action taken and the reasons for non-acceptance of the recommendations, if any.

The States having their own S.H.R.Cs are Jammu and Kashmir, Himachal Pradesh, Punjab, Rajasthan, Madhya Pradesh, Chhattisgarh, Maharashtra, Kerala, Tamil Nadu, West Bengal, Assam and Manipur. Uttar Pradesh, from where the N.H.R.C. receives maximum number of complaints of human rights violations every year, set up a S.H.R.C. in October 2002. Similarly, Odisha and Bihar Governments have also issued Notifications for constituting S.H.R.Cs in their respective States. It is to be noted that certain State Governments have informed the N.H.R.C. of their difficulty in establishing the Commissions because of financial constraints or due to the non-availability of retired Chief Justice or Justices of the High Court whose presence is essential to the proper composition of the five-member Commission envisaged under the provisions of Section 21(2) of the Protection of Human Rights Act of 1993.

The N.H.R.C. in its 1998-99 report has recommended that the State level Commissions be established as early as possible, where they do not yet exist. It is indeed desirable that every State should set up S.H.R.C. in view of the fact that the issue of promotion and protection of human rights of people in a civilized society is a matter of prime concern because in spite of various Constitutional and legal safeguards and institutional mechanism for upholding the fundamental rights of the people such rights are often violated. The Chairperson of the National Human Rights Commission have written to all Chief Ministers in respect of his matter and reminded them frequently of the necessity of constituting the S.H.R.C. The National Human Rights Commission in its 1999-2000 report has observed that it is disappointed with the slow pace with which State Governments are acting to constitute S.H.R.Cs. The Commission has also noted that not all the State Human Rights Commissions, that have been

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established, are being appropriately supported through the provision of adequate financial, and manpower resources. Greater political will is, therefore, required at the State level, combined with encouragement from the Central Government (and the major political parties to proceed conclusively in this direction. If State Human Rights Commission is established in the States and their work is co-ordinated with that of the N.H.R.C. much confusion and duplication could be averted.

Lesson 4.2: National Commission for Minorities

Notes

Introduction

The National Commission for Minorities (NCM) is a statutory body set up by the parliament of India by passing the National Commission for Minorities Act, of 1992. The first Statutory National Commission was set up on 17th May 1993. It was originally set up as a non-statutory body by the resolution of the Ministry of Home Affairs in 1978. In 1984, the Minorities Commission was separated from the Ministry of Home Affairs and placed under the Ministry of Welfare. The commission is dedicated to the betterment of India's recognised religious minorities.

Historical Context and Establishment

The establishment of the NCM can be traced back to India's commitment to secularism and inclusivity, principles enshrined in the Indian Constitution. Since independence, India has recognized the importance of protecting the rights of its minority communities amidst its diverse socio-cultural landscape. The idea of setting up a dedicated commission to address minority concerns gained momentum over the years, culminating in the enactment of the NCM Act in 1992.

Objectives and Mandate

The National Commission for Minorities operates with the following broad objectives:

- 1. Safeguarding Minority Rights:** Ensuring the protection of rights and interests of religious, linguistic, and ethnic minorities in India.
- 2. Promoting Minority Welfare:** Recommending measures for the welfare of minority communities, including educational, economic, and social initiatives.
- 3. Monitoring Implementation:** Monitoring the implementation of constitutional and legal safeguards for minorities.
- 4. Investigating Violations:** Investigating specific complaints regarding deprivation of rights and safeguards of minorities.
- 5. Advisory Role:** Advising the Government on policy matters affecting minority communities.

6. Educational Initiatives: Promoting and supporting minority educational institutions.

Minority Communities Recognized by NCM

The NCM recognizes the following communities as minorities in India:

1. Muslims
2. Christians
3. Sikhs
4. Buddhists
5. Zoroastrians (Parsis)
6. Jains (since 2014)

Constitutional provisions for minorities in India

The Fundamental Rights under Part III of the Constitution contains the following clauses that have major significance for minorities:

Article	Provisions
Article 14	The right to “equality before the law” and “equal protection under the law”
Article 15(1) & (2)	Discrimination against citizens based on religion, race, caste, sex, or place of birth is prohibited.
Article 15(4)	The State has the authority to make “any specific arrangement for the progress of any socially and educationally backward classes of citizens” (besides the Scheduled Castes and Scheduled Tribes).
Article 16(1) & (2)	Citizens’ right to ‘equality of opportunity’ in matters relating to employment or appointment to any State office – and prohibition of discrimination on the basis of religion, race, caste, sex, or place of birth in this regard.
Article 16(4)	State authority to establish “any arrangement for the reservation of appointments or posts in favour of any backward class of people who, in the view of the State, is not adequately represented in the State’s services.”

Article 25(1)	People's right to freely express, practice, and propagate religion — It is only subject to public order, morality, and other Fundamental Rights. Sikh community's right of 'wearing and carrying of kirpans
Article 26	It is the right of 'every religious denomination or any section to establish and maintain institutions for religious and charitable purposes, 'manage its own affairs in matters of religion', and own and acquire movable immovable property and administer it 'by the law.
Article 27	It prohibits compelling any person to pay taxes for the promotion of any particular religion.
Article 28	It provides freedom to people to attend religious instruction or religious worship in educational institutions wholly maintained, recognized, or aided by the State.
Article 29(1)	right of 'any section of the citizens' to 'conserve' its 'distinct language, script or culture
Article 30(1)	right of all Religious and Linguistic Minorities to establish and administer educational institutions of their choice.

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Directive Principles of State Policy Relating to Minorities

DPSP under Part IV of the Constitution contains the following clauses that have major significance for minorities:

Article	Provisions
Article 38 (2)	It is the obligation of the State 'to endeavour to eliminate inequalities in status, facilities and opportunities' amongst individuals and groups of people residing in different areas or engaged in different vocations.
Article 46	It is the obligation of the State 'to promote with special care the educational and economic interests of 'the weaker sections of the people' (besides Scheduled Castes and Scheduled Tribes).

Fundamental Duties Relating to Minorities

The Fundamental Duties under Article 51(A) of Part IVA of the Constitution contain the following clauses that have major significance for minorities:

Article	Provisions
Article 51A (e)	citizens' duty to promote harmony and the spirit of common brotherhood amongst all the people of India 'transcending religious, linguistic, and regional or sectional diversities
Article 51A (f)	citizens' duty to value and preserve the rich heritage of our composite culture.

Additional Provisions

Article 347	Special provision relating to the language spoken by
Article 350	Provision for a Special Officer for Linguistic Minor-
Article 350A	Provision for facilities for instruction in mother-

Composition of NCM

Detail	Explanation
Composition	As per Section 3 of the NCM Act 1992, the Commission consists of <ul style="list-style-type: none"> • Chairperson • Vice-Chairperson • Five Members
Nomination	The Chairperson, Vice-Chairperson, and five Members are nominated by the Central Government from amongst persons of eminence, ability and integrity. Provided that five Members, including the Chairperson, shall be from amongst the minority communities.

Term	Member holds office for a period of three years from the date of entering the office.
Removal	<p>The Central Government may by order remove the Chairperson or any other Members from the office if the Chairperson other Member:</p> <ul style="list-style-type: none"> • Is adjudged insolvent. • Engages during his term of office in any paid employment outside the duties of his office. • Refuses to act or becomes incapable of acting. • Is of unsound mind and stands so declared by a competent court. • Has abused his office to render his continuance in office detrimental to the public interest. • Is convicted and sentenced to imprisonment for an offense, which in the opinion of the Central Government, involves moral turpitude.

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Functions and responsibilities vested with the NCM under the act

As per Section 9 of the NCM Act, 1992, the Commission is required to perform the following functions:

- Evaluation of the progress of the development of minorities under the Union and States.
- Monitoring of the working of the safeguards for minorities provided in the Constitution and in laws enacted by Parliament and the State Legislatures.
- Making recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments.
- Looking into specific complaints regarding deprivation of rights and safeguards of minorities and taking up such matters with the appropriate authorities.
- Conducting studies, research, and analysis on the issues relating to the socio-economic and educational development of minorities.

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- Suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments.
- Making periodical or special reports to the Central Government or any matter pertaining to minorities and, in particular, the difficulties confronted by them.

Powers of NCM

The Commission, while investigating, shall have all the powers of a Civil court in respect of the following matters:

- Summoning and enforcing the attendance of any person from any part of India and examining him/her on oath.
- Requiring the discovery and production of any document.
- Receiving evidence on affidavits.
- Requisitioning any public record or copy thereof from any court or office.
- Issuing commissions for the examination of witnesses and documents.

What is the responsibility of the Central and State Governments towards the reports and recommendations of the Commission?

- The Central Government shall lay before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance of any of such recommendations.
- The state Government concerned shall lay before the Legislature along with a memorandum explaining the action taken or proposed to be taken or the recommendations relating to the State and the reasons for the non-acceptance of any of such recommendations.

Challenges and limitations of the NCM

The National Commission for Minorities (NCM) has faced a number of challenges in fulfilling its mandate. Some of these challenges include,

- **Human resource deficiency:** The composition of NCM over the years shows inconsistencies in the staffing and appointments of key officials in the Commission.

- **Limited role of state-level minority commissions:** There is a lack of case processing capacity due to the lack of integration of Minority Commissions in the states with the National Minorities Commission.
- **Underutilization of technology:** While the Commission utilizes a complaint monitoring system, it is still a rather basic software that does not by itself facilitate an end-to-end complaint handling mechanism.
- **Financial planning & expenditure-related challenges:** Only a small proportion of the allocated budget of the Commission is spent in research activities. Due to financial constraints and the non-allocation of funds for research on minority-related issues, there is an obstruction in the achievement of the mandate of the Commission.
- **Legal and constitutional authority-related challenges:** NCM hasn't been provided with any real power in terms of its legal capacity to carry out its constitutional mandate. The decision of the Commission can be overturned by the District and High courts.

Recommendations for the effective functioning of the NCM

There have been a number of recommendations made to improve the effective functioning of the National Commission for Minorities (NCM). Some of these recommendations include:

- **Outcome-based performance measurement:** NCM should evaluate the performance of its members based on specific performance criteria to ensure accountability.
- **Setting baseline targets to keep pendency in check:** To reduce the pendency of cases at the organizational level, the Commission should set certain baseline targets related to the pendency rates.
- **Feedback mechanisms:** NCM should develop a Stakeholder Satisfaction Survey for parties to anonymously provide feedback regarding how their appeal was processed, irrespective of the decision made.
- **Technological upgrades for efficiency:** The Commission may invest in an "e-hearing" mechanism that connects appellants from

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their home districts to the Commission through audio-visual conferencing for appearing in hearings.

- **Expanding the role of State Minorities Commissions:** The strengthening of the State Commissions and setting up new state-level commissions can help in reducing the pendency rates and increasing the effectiveness of the Commission.

Lesson 4.3: National Commission for Women

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Introduction

Problems faced by the women in the country have been one of the biggest concerns of the Government and other authorities. Over the years, many Commissions have been set up by the Government to look into the welfare of Women in the country. According to the reports of these commissions, all of them state the necessity of setting up an apex body for reviewing and addressing the grievances of women in the country. The demand for setting up a body persisted for long and ultimately to keep the interest of the people, the National Commission for Women Bill 1990 was introduced in the Lok Sabha on 22nd May 1990.

The National Commission for Women established in 1992, is a body with the authority to assess the country's constitutional safeguards for women. The commission's major proposal is to facilitate redressal channels while simultaneously enacting legislative steps to reduce disparities. The panel has the authority of a civil court and advises the government on creating policies and legislation that are more likely to preserve and safeguard women's rights. The first commission was formed on January 31, 1992, and was led by Jayanti Patnaik. Alok Rawat IAS was the NCW's first male member.

The National Commission for Women is a statutory body set up in 1992 under the national commission for women act to review the constitutional and legal safeguards for women. It also recommends remedial legislative measures, facilitates redressal of grievances, and advises the government on all policy matters affecting women. It was set up as a national machinery to protect and promote the interests of women in India.

Background of NCW

The need for a national commission for women was felt after the 4th World Conference on Women held in Beijing in 1995. In this conference, India committed to setting up a national commission for women. Prior to this, the Committee on the Status of Women in India (CSWI) was set up in 1971 to examine the constitutional, legal, and administrative provisions that have a bearing on the social status of women. The CSWI recommended the setting up of a permanent national commission for women. This led to the establishment of the national commission for women in 1992.

National Commission for Women (NCW)

- The NCW is the statutory body of the Government of India, generally concerned with advising the government on all policy matters affecting women.
- It was established in January 1992 under the provisions of the Indian Constitution, as defined in the 1990 National Commission for Women Act.
- The objective of the NCW is to represent the rights of women in India and to provide a voice for their issues and concerns.
- The subjects of their campaigns have included dowry, politics, religion, equal representation for women in jobs, and the exploitation of women for labour.
- The NCW also receives and investigates complaints from women who are victims of violence, discrimination, harassment, or deprivation of their rights.

State Commissions for Women

- Apart from the NCW, there are also State Commissions for Women in various states and union territories of India.
- These commissions are also established under the respective state acts or orders and have similar functions and powers as the NCW.
- Some of the states and union territories that have their own commissions for women are Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Telangana, Tripura, Uttar Pradesh, Uttarakhand and West Bengal.

Composition of NCW

As per Section 3 of the National Commission for Women Act 1990, the Commission shall consist of a Chairperson, 5 Members, and a Member-Secretary who are nominated by the Central Government.

Composition Eligibility

Chairperson Committed to the cause of women5 MembersAmongst persons of ability, integrity, and standing who have had experience in **law or legislation, trade unionism, women's voluntary organizations**, administration, health, education, etc.

Note: At least one Member shall be from amongst persons belonging to the **Scheduled Castes** and **Scheduled Tribes**, respectively.Member-SecretaryAn expert in the field of management, organizational structure, or sociological movement (or) an officer who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union with appropriate experience.

- Term: The Chairperson and every Member shall hold office for a period of three years.
- Removal: The Central Government may by order remove the Chairperson or any other Member from office if the Chairperson or any other member:
 - Is adjudged insolvent.
 - Engages during his term of office in any paid employment outside the duties of his office.
 - Refuses to act or becomes incapable of acting.
 - Is of unsound mind and stands so declared by a competent court.
 - Has so abused his office as to render his continuance in office detrimental to the public interest.
 - Is convicted and sentenced to imprisonment for an offense which in the opinion of the Central Government, involves moral turpitude.

Note: No person shall be removed until that person has been given an opportunity of being heard in the matter.

Objectives of the National Commission for Women

The primary objective of the National Commission for Women (NCW) is to safeguard and promote the rights and welfare of women in India. It aims to ensure gender equality and to address issues affecting women's lives, providing them with legal aid and support.

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- Representation of Women's Rights:
 - The primary objective of the National Commission for Women (NCW), is to represent and advocate for the rights of women in India.
 - They act as a voice for women's issues and concerns, addressing various challenges faced by women in society.
- Policy Advice:
 - Women's commissions are tasked with advising the government on policy matters that affect women.
 - They provide valuable recommendations and suggestions to shape policies and legislation that promote gender equality and safeguard women's rights.
- Safeguarding Constitutional Provisions:
 - Women's commissions are responsible for investigating and examining all matters related to the safeguards provided for women under the Indian Constitution and other laws.
 - They ensure that constitutional rights and protections for women are upheld and implemented effectively.
- Handling Complaints:
 - These commissions are mandated to address complaints related to women's rights violations.
 - They play a crucial role in investigating and resolving issues of discrimination, harassment, violence, and other injustices faced by women.
- Suo Motu Actions:
 - Apart from responding to complaints, women's commissions can also take suo motu notice of matters related to the deprivation of women's rights and non-implementation of laws aimed at protecting women.

- This allows them to proactively address emerging issues affecting women.
- Empowering Women:
 - Women's commissions work towards empowering women by promoting their economic development, education, and health.
 - They aim to enhance women's employment potential and create opportunities for their advancement in various sectors.

Functions of the National Commission for Women

- Inquiry and Investigation - The National Commission of Women enjoys the powers of a civil court. It investigates and examines the matters related to the safeguards ensured for feminine society under the Constitution of India. It takes complaints suo moto notice of issues related to the non-implementation of laws and non-enforcement of laws and non-compliance of policy decisions, guidelines enacted and aimed at mitigating hardships ensuring the welfare and then takes up issues arising out of matter with the concerned authorities.
- Action Research - NCW members participate in the planning process of the socio-economic development of women, propose measures to encourage their representation in all spheres and review their advancement. It also examines the safeguards provided for women in the Constitution and other laws study their working, recommends amendments to meet any inadequacies or deficiencies, and advocates measures for effective implementation.
- Legal Intervention - The Parivarik Mahila Lok Adalat, (PMLA) is an innovative component with its roots in the traditional Nyaya Panchayats. It is created by NCW for the redressal and speedy disposal of cases. It has taken up 7500 cases so far. The essential feature of PMLA is cordial mutual settlement and flexibility in implementation, aiming to empower women in the justice delivery mechanism.

The Act outlines several functions for the Commission to protect and promote women's rights in India. The following are the key functions as per the Act:

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1. **Investigation and Examination of Safeguards:** The NCW is tasked with examining how effectively women's legal and constitutional safeguards are being implemented. This includes investigating specific incidents or broader trends of rights violations. The Commission can study cases of discrimination, harassment, and violence to understand whether the existing laws are adequately protecting women. By identifying shortcomings, the NCW can advocate for better enforcement of laws and introducing new measures to protect women's rights.
2. **Review of Laws:** This function thoroughly review of existing legislation affecting women. The NCW analyses how current laws impact women's rights and identifies gaps or outdated provisions that may no longer serve their intended purpose. For instance, laws may not adequately address modern issues like cyber harassment. The Commission then suggests amendments or new laws to the government to address these issues, ensuring the legal framework remains relevant and effective.
3. **Cases of Violation of Women's Rights:** The NCW has the authority to take up cases where women's rights have been violated. This can include individual complaints from women or cases that come to the Commission's attention through other means. The NCW can investigate these cases, make recommendations, and assist victims in accessing legal remedies. This function is crucial for directly supporting women who might otherwise lack the resources to seek justice.
4. **Implementation of Policies and Measures:** The Commission reviews how government policies and programs are being implemented with respect to women's welfare. It assesses whether these initiatives reach the intended beneficiaries and have the desired impact. The NCW provides feedback and recommendations to the government to enhance the effectiveness of these programs. This oversight ensures that policies are well-intentioned and practical and impactful in real-world situations.
5. **Special Studies and Investigations:** The NCW conducts in-depth studies and investigations into specific issues affecting women. For example, the Commission might study the impact of economic policies on women or investigate the prevalence of gender-based violence in a particular region. These studies help gather data and insights that can inform policy-making and advocacy. The NCW uses these findings to recommend targeted interventions to address specific challenges faced by women.

6. **Reporting:** The NCW must submit annual reports to the central government, detailing its activities, findings, and recommendations. These reports include an assessment of the status of women's rights in India, progress made, and areas needing attention. The government is then required to present these reports, along with an action-taken report, to Parliament. This function ensures accountability and transparency in the NCW's work and the government's response to its recommendations.

7. **Awareness and Publicity:** The NCW undertakes various activities to raise public awareness about women's rights and the mechanisms available to protect them. This can include organizing seminars, workshops, and campaigns to educate both women and the general public. The aim is to empower women with knowledge about their rights and the legal protections available, thereby enabling them to assert these rights more effectively.

8. **Counselling and Assistance:** The Commission recommends the establishment of counseling and support services for women in distress. This includes victims of domestic violence, sexual assault, workplace harassment, and other forms of discrimination. The NCW can work with the government to set up support systems such as helplines, shelters, and legal aid services, providing women with necessary psychological, emotional, and legal support.

9. **Special Cells:** To address specific issues, the NCW can establish specialized units or cells. These special cells focus on areas like domestic violence, sexual harassment, trafficking, and other critical issues. For example, a special cell on domestic violence might provide dedicated support, resources, and advocacy for victims, including coordinating with law enforcement and other stakeholders to ensure effective intervention and protection.

10. **Other Functions:** The Commission can address emerging challenges that may not have been anticipated at the time the Act was written. This could include new forms of gender-based discrimination or technological issues like online harassment. The NCW can adapt its functions to meet the evolving needs of women, ensuring comprehensive protection and advocacy.

These functions collectively allow the NCW to play a crucial role in safeguarding and promoting women's rights in India. The Commission acts as a bridge between women and the government, ensuring women's

voices are heard and their concerns addressed at the highest levels of policy-making and law enforcement.

Complaints and Counselling Unit of the National Commission for Women

This cell is the Core unit of the commission and pro members. The power selecting members is vested with the Union Government and the nature of the country's volatile political scenario tends the commission to be politicized.

The jurisdiction of the commission is not operating cesses the complaints received oral, written, or suo moto under Section 10 of the NCW Act. The complaints received relate to domestic violence, harassment, dowry, torture, desertion, bigamy, rape, and refusal to register FIR, cruelty by husband, deprivation, gender discrimination, and sexual harassment at the workplace.

The complaints are dealt with and tackled in various ways such as investigations by the police are expedited and monitored, disaggregated data are made available to various state authorities to facilitate action, and family disputes are resolved or compromised through counselling.

Various initiatives undertaken by NCW to carry out its mandate

In keeping with its mandate, the Commission initiated various steps to improve the status of women and worked for their economic empowerment.

- The Commission completed its visits to all the States/UTs and prepared '**Gender Profiles**' to assess the status of women and their empowerment.
- It received a large number of complaints and acted **Suo-moto** in several cases to provide speedy justice.
- It took up the issue of child marriage and sponsored legal awareness. programmes, Parivarik Mahila Lok Adalats, and reviewed laws such as Dowry Prohibition Act 1961, PNDT Act 1994, Indian Penal Code 1860, and the National Commission for Women Act 1990 to make them more stringent and effective.
- The Commission has proposed amendments to the Hindu Marriage Act 1955, Medical Termination of Pregnancy Act 1971, and the Indian Penal Code 1960, etc.

- It organized workshops, constituted expert committees on economic empowerment of women, conducted seminars for gender awareness, and took up publicity campaigns against female foeticide, violence against women.
- NCW has recently established a "J&K and Ladakh Cell" to address women's complaints and promote their development in all areas within these newly-formed UTs, due to the unique challenges faced by women there.

List of Women-Specific Legislation

Multiple laws have been passed for the safety and rights of women in India. Below is a list of a few such laws:

- The Immoral Traffic (Prevention) Act, 1956
- The Dowry Prohibition Act, 1961 (28 of 1961) (Amended in 1986)
- The Commission of Sati (Prevention) Act, 1987 (3 of 1988)
- The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013
- The Criminal Law (Amendment) Act, 2013
- Protection of Women from Domestic Violence Act, 2005
- The Indecent Representation of Women (Prohibition) Act, 1986

Challenges faced by NCW

The National Commission for Women (NCW) faces a number of challenges in its efforts to protect and promote the rights of women in India. Some of them include:

- **Limited legal power:** The NCW's authority is mainly recommendatory in nature, and it does not have the power to enforce its recommendations or take legal action against violators.
- **Lack of resources:** The NCW often faces a shortage of staff and resources, which hinders its ability to carry out its mandate effectively.
 - A **report** by the **Parliamentary Standing Committee on Home Affairs** noted that the NCW has a shortage of staff and needs additional resources to effectively address women's issues.

- **Inadequate representation:** The NCW has been criticized for inadequate representation of marginalized women, including those from lower castes, tribes, and religious minorities.
 - A study by the **Centre for Social Research** found that the NCW lacks representation from these groups and needs to be more inclusive in its approach.
- **Limited outreach:** The NCW's outreach efforts are often limited, and it may not be able to effectively reach out to women in remote areas or those who are illiterate.

Measures could be recommended for the effective functioning of the commission

Some recommendations for the effective functioning of the National Commission for Women (NCW):

- **Increasing awareness:** The NCW could deploy resources at the district level to bring attention to local atrocities and raise awareness about the NCW.
- **Strengthening the legal powers:** To enhance the NCW's ability to effectively address issues related to the rights of women and to strengthen the laws for the safety of women in the workplace, it would be beneficial to give the NCW more legal powers.
 - The 257th report of the Law Commission of India recommended that the NCW be given greater powers to take action against violators of women's rights.
- **Increasing the funding:** To ensure the NCW has the resources it needs to effectively carry out its mandate, it would be helpful for the central government to devolve more funds to the NCW and to give it an independent budget.
- **Outreach to remote areas:** The NCW needs to have effective outreach mechanisms to reach women in remote areas or those who are illiterate.
 - The Human Rights Watch has recommended that the NCW work to improve its outreach efforts and ensure it reaches women needing assistance.

- Education and empowerment: The NCW should educate women about their rights and empower them to make informed decisions regarding their lives. It should establish self-development centres and encourage women's participation in small-scale work to promote empowerment and independence.

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Self-Assessment Questions

1. Evaluate the impact of the Protection of Human Rights Act, 1993, on the functioning and effectiveness of the NHRC in India.
2. Examine the NHRC's structure and its key members' roles in fulfilling the commission's mandate.
3. Evaluate the constitutional provisions that protect minority rights in India and the role of the NCM in upholding these rights.
4. Evaluate the impact of the NCW on policy changes and legal reforms regarding women's rights in India.
5. Propose recommendations for strengthening the NCW and enhancing its role in addressing women's rights issues across diverse regions in India.

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Lesson 5.1: Indian Human Rights Traditions (Hindu, Buddhist and Islamic)

Concept of Human Rights in Hinduism

Introduction

Hinduism, one of the world's oldest religious traditions, provides a rich and complex framework for understanding human dignity and ethical conduct, which intersects with contemporary notions of human rights. Hindu teachings offer valuable insights into human respect and dignity principles.

At the heart of Hindu thought is the concept of **dharmā**, which refers to individuals' ethical and moral duties and responsibilities. Dharma extends beyond personal obligations to include social responsibilities, emphasizing that each person plays a crucial role in maintaining societal order and harmony. This notion indirectly supports the respect for and protection of others' rights by stressing the importance of fulfilling one's duties to others.

Hindu scriptures and traditions reflect diverse perspectives on equality and non-discrimination. Concepts such as **Sarva Dharma Sambhava** (all religions are equal) and **Vasudhaiva Kutumbakam** (the world is one family) highlight an inclusive worldview.

The tradition also recognizes the importance of **free will** and individual choice. The belief in personal **karma** and the journey of the **soul** underscores the significance of each individual's decisions and path in life, aligning with the notion of respecting personal autonomy and rights. Hindu texts such as the **Bhagavad Gita**, the **Upanishads**, and various **Puranas** frequently discuss the inherent dignity of all beings as part of the divine cosmic order. They teach that every individual possesses a divine essence and, therefore, deserves respect and care.

While Hinduism may not explicitly frame its teachings regarding "human rights" as understood in contemporary contexts, its principles of dharma, **ahimsa** (non-violence), and respect for the individual contribute

to a broader understanding of human dignity and ethical behaviour. The tradition continues to evolve, engaging with modern human rights issues and integrating these concerns into its ethical and spiritual frameworks.

Cultural Values and Human Rights

The interplay between cultural values and human rights reflects distinct individual and collective well-being approaches. In traditional Indian culture, the concept of human rights, as understood in modern contexts, was not explicitly defined. Instead, the focus was on the relationship between individuals and society through the lens of duty and moral obligations.

Duty-First Approach

Indian cultural values traditionally emphasized a duty-first approach, where the individual and society were seen as complementary rather than antagonistic. The Hindu vision of an orderly society envisioned individuals fulfilling assigned roles, with mutual obligations ensuring communal well-being. This approach was more concerned with moral dimensions than with formal legal rights. The guardians of society developed a social order based on moral and ethical principles rather than legalistic frameworks.

Thus, the duty-first (rather than rights-first) approach is the hallmark of Indian traditions. A dictum of the Gita which has taken deep roots in the Indian mind is *"karmanyē vadhikaraste mā phalesu kadāchan"* (i.e. one must go on performing one's duties without being concerned about the fruits or results).

While traditional Indian society did have legal codes to regulate social relations, these differed significantly from contemporary notions of the Rule of Law. The focus was not on individual rights but duties and maintaining societal harmony. Authority in Hindu tradition was believed to originate from a divine source. According to this view, gods appointed kings to protect people and maintain order, with the king's authority legitimized by divine sanction and a share in the production of the land. The caste system was also considered to have a divine origin, contributing to a structured social order.

In this cultural framework, the concept of human rights, as understood today, was not present. However, performing duties according to dharma (righteousness) was thought to ensure the rights and protections of others. Rights were thus seen as a byproduct of fulfilling

one's duties, and failure to adhere to duty codes could lead to societal anarchy, undermining both individual and communal stability.

This duty-first perspective aimed to prevent conflicts arising from competing claims of individual rights. By focusing on duties rather than rights, traditional Indian society sought to avoid anarchy and maintain a stable social order. This approach highlights how cultural values shaped the understanding of human rights in a context where moral and social harmony took precedence over individual claims.

Ahimsa and Human Rights

Ahimsa, or non-violence, is another pivotal value in Indian culture that implicates human rights. Emerging from a profound Buddhist tradition, ahimsa extends beyond mere non-violence to encompass respect for all forms of life, both physically and psychologically. Unlike Hinduism, which often associates authority with divine sanction, Buddhism presents a republican governance model. In Buddhism, the people elect the ruler, reflecting their collective will rather than divine appointment. This democratic aspect underscores the importance of the people's sovereignty, aligning with the protection of individual rights.

The Buddhist concept of governance highlights a more human-centric view of authority, focusing on ensuring an orderly society through the collective choice of leadership. While the Buddhist tradition did not formalize a theory of individual rights, its emphasis on communal welfare and the people's sovereignty intersects with the principles of human rights. Ahimsa, in its broadest sense, advocates for the protection of every life from harm, resonating with the global human rights movement's focus on preventing violence and ensuring the well-being of all individuals. Thus, ahimsa reflects a commitment to a protected existence free from both mental and physical violence.

S. V. Puntambekar, knowledgeable about both Hinduism and Buddhism, argued that Hinduism offers significant "spiritual aims and values for mankind." He asserted that both Manu and Buddha advocated essential human freedoms and virtues, which he claimed were more fundamental and comprehensive than those proposed by contemporary thinkers.

According to Puntambekar, Hinduism emphasizes five social freedoms and five personal virtues. The social freedoms are:

1. Freedom from Violence (Ahimsa)

- 2. Freedom from Want (Asteya)**
- 3. Freedom from Exploitation (Aparigraha)**
- 4. Freedom from Violation or Dishonour (Avyabhichara)**
- 5. Freedom from Early Death and Disease (Amritatva and Arogya)**

The five personal virtues are:

- 1. Absence of Intolerance (Akrodha)**
- 2. Compassion (Bhutadaya, Adroha)**
- 3. Knowledge (Jnana, Vidya)**
- 4. Freedom of Thought and Conscience (Satya, Suntra)**
- 5. Freedom from Fear, Frustration, and Despair (Pravrtti, Abhaya, Dhrti)**

These principles, Puntambekar argued, reflect a comprehensive framework of human rights rooted in Hindu philosophy.

Reform Movements in Hinduism

In the nineteenth century, the introduction of Western liberal ideas spurred several reform movements in India aimed at addressing and transforming the entrenched social inequalities. Key movements relevant to the discourse on human rights include the Brahmo Samaj led by Raja Rammohan Roy, the Hindu spiritual movement of Ramakrishna Paramahansa and his prominent disciple Swami Vivekananda, the Prarthana Samaj founded by Mahadev Govinda Ranade, and the Arya Samaj established by Swami Dayanand Saraswati.

These reformist movements were characterized by their critique of traditional religious orthodoxy and their advocacy for progressive values. They promoted substantial social reforms that challenged existing practices. Rammohan Roy, for instance, opposed the practice of "Sati" (Article 16 of the UDHR) and worked towards social changes such as the abolition of child marriage and polygamy, as well as the promotion of women's rights and widow remarriage. His disciple Keshabchandra Sen continued this legacy, further advocating for the emancipation of women and progressive social reforms, aligning with several articles of the UDHR, including Articles 16, 3, 4, 5, and 25.

Ramakrishna Paramahansa strongly advocated religious freedom,

upholding the right to freedom of thought, conscience, and belief as outlined in Article 18 of the UDHR. He demonstrated his commitment to this principle by exploring and practicing various religious traditions, including Islam and Christianity. Similarly, Swami Vivekananda sought to reconcile Hindu spirituality with modern rationality and progressive thought, reflecting a synthesis of traditional beliefs with contemporary human rights values.

The Shadows of Hindu Tradition: Untouchability and Dalits

The Indian caste system, a deeply entrenched aspect of Hindu tradition, has long marginalized Dalits, officially known as Scheduled Castes and referred to by Gandhi as Harijans. This system relegated Dalits to roles of social exclusion and menial labour, including scavenging and working on land owned by higher castes. Such systemic discrimination, reinforced by socio-cultural norms, significantly violates human rights by confining Dalits to degraded roles and denying their fundamental dignity.

During the Indian independence movement, awareness of Dalit rights began to grow, though it was still in its nascent stages. Mahatma Gandhi, sensitive to the injustices faced by Dalits, sought to improve their social status. He identified with them, advocating for their upliftment and launching a campaign against untouchability, referring to Dalits as "Harijans" or "children of God." B.R. Ambedkar, a Dalit and a key architect of the Indian Constitution, took a distinct approach, focusing on legal and constitutional reforms. His efforts led to significant protections for Dalits in the Constitution.

Post-independence, the Indian Constitution introduced measures such as Article 17, which abolishes untouchability and provides Dalits with a fundamental right to seek legal remedies for discrimination. Despite these protections and legislative measures, Dalits still face substantial discrimination and exploitation at the grassroots level.

Conclusion

The exploration of human rights within the framework of Hinduism reveals a complex interplay between ancient values and modern concepts. Hinduism's emphasis on dharma—ethical and moral duties—provides a foundational perspective that complements contemporary human rights principles, though it does not always align perfectly with them. Traditional Hindu thought underscores the importance of maintaining societal harmony and fulfilling one's role in the social order by focusing on duties

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rather than rights. This duty-first approach highlights how cultural values have historically shaped the understanding of human dignity and ethical behaviour.

However, the persistence of practices such as the caste system has posed significant challenges to the realization of these ideals. While Hinduism offers rich philosophical and ethical insights into human respect and dignity, historical and systemic issues like untouchability have significantly impacted marginalized communities, such as the Dalits. Reform movements within Hinduism, driven by figures like Raja Rammohan Roy, Ramakrishna Paramahansa, and B.R. Ambedkar, have worked to address these inequalities, aligning more closely with modern human rights values and advocating for greater social justice.

In summary, Hinduism's contributions to human rights are deeply rooted in its traditional values and ethical teachings. Although these contributions have evolved and adapted over time, integrating these ancient principles with contemporary human rights frameworks continues to be a work in progress. The ongoing efforts to reconcile traditional beliefs with modern human rights standards reflect a broader commitment to advancing human dignity and equality in an evolving social context.

Lesson 5.2: Concept of Human Rights in Buddhism

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Introduction

The intersection of Buddhism and human rights presents a nuanced relationship marked by both convergences and tensions. Although scholarly examination of this relationship has been relatively recent, two significant developments have highlighted this dialogue: the debate on Asian values and the rise of Engaged Buddhism.

The debate on Asian values challenges the universality of human rights, arguing that such rights are a construct of Western cultural norms and do not necessarily align with Asian traditions. Critics assert that Western human rights principles, which emphasize individualism and personal autonomy, are at odds with the Asian focus on social harmony, collective well-being, and duties towards authority figures. This perspective suggests that Asian values prioritize social cohesion and communal responsibilities over individual rights.

Engaged Buddhism, which emerged prominently in the 20th century, seeks to integrate Buddhist principles with social and political activism. This movement emphasizes the application of Buddhist teachings to foster a more compassionate and just society, using human rights language to advocate for social change. Practitioners in regions such as Myanmar, Tibet, and Cambodia actively use human rights frameworks to address social injustices and promote equity as part of their spiritual and social missions.

Despite these developments, classical Buddhism does not explicitly frame concepts regarding "human rights." Instead, Buddhist teachings focus on Dharma, which outlines reciprocal duties and ethical conduct rather than individual rights. However, the concept of human rights can be seen as implicitly embedded within this framework, as rights provide the foundation for duties. Thus, while traditional Buddhist doctrine emphasizes duties, it implicitly acknowledges the importance of rights as a basis for justice.

Justifications and Concerns

Justifications

1. The Preciousness of Human Birth and Enlightenability

Buddhism's concept of human dignity is rooted in the belief that

human birth is exceptionally rare and valuable. According to Buddhist thought, human life provides a unique opportunity to attain enlightenment and Buddhahood, which underscores the inherent dignity of every individual. This perspective aligns with the notion that human rights are fundamentally grounded in the inherent worth of human beings.

2. The Five Lay Precepts

The Five Lay Precepts are central to Buddhist ethical practice, which forms a foundational moral code. These precepts include abstaining from killing, refraining from taking what is not freely given, avoiding sexual misconduct, steering clear of false speech, and abstaining from intoxicants that lead to heedlessness. These ethical guidelines parallel many principles found in international human rights norms, such as the right to life and protection from harm.

3. Human Equality

Buddhism's doctrine of no-self (anatta) asserts that all individuals are fundamentally equal, as the self is not a permanent or unchanging entity. This belief challenges hierarchical distinctions based on caste or social status. The Buddha's teachings, which reject the caste system and emphasize moral actions over birthright, affirm that everyone, including women and marginalized groups, has the potential for spiritual liberation and equal dignity.

4. Nonviolence (Ahimsa)

Ahimsa, or nonviolence, is a core Buddhist value that aligns closely with human rights principles. It encompasses respect for all beings, minimal use of coercion, and a commitment to not causing harm. These values support human rights related to the right to life and protection from violence, reflecting a shared commitment to non-harmfulness and respect for individual autonomy.

5. Human Freedom

Buddhism values the freedom to pursue spiritual self-development and Buddhahood. This freedom is integral to the human experience and aligns with several human rights, such as freedom of thought, religion, and personal development. Protecting these rights is essential for achieving spiritual growth and self-realization, which are central to Buddhist teachings.

Concerns

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Individualism

The concept of human rights is often associated with Western individualism, which emphasizes personal autonomy and self-interest. This individualistic focus can be at odds with Buddhist values, prioritising collective well-being and interconnectedness. However, Engaged Buddhism demonstrates that human rights can be used to protect individuals and communities, suggesting that human rights can complement rather than conflict with Buddhist principles.

2. The Privileging of Humanity

Buddhism does not strictly separate humans from other sentient beings. The Buddhist worldview emphasizes compassion for all forms of life, challenging the idea that human rights should be prioritized over the rights of other beings. Engaged Buddhism integrates this broader ethical concern by advocating for the welfare of all sentient beings, thus contributing to a more inclusive understanding of human rights.

3. Responsibilities vs. Rights

Buddhist ethics traditionally focus on duties and responsibilities rather than individual rights. Although Buddhist teachings emphasize duties, they implicitly acknowledge the concept of rights as the counterpart to these duties. The 14th Dalai Lama has articulated a framework that reconciles human rights with universal responsibilities, highlighting the need for a rights-based language to address moral and ethical concerns in contemporary society.

4. Adversariality

Buddhist and broader Asian cultural traditions often emphasize harmony and consensus, avoiding direct confrontation and adversarial approaches. Human rights, particularly in Western contexts, can involve adversarial processes and power struggles. Some Buddhist leaders resist these aspects of human rights, preferring approaches that align with Buddhist values of cooperation and unity. Conversely, Engaged Buddhists view human rights as tools for empowerment and justice, acknowledging their role in challenging entrenched power structures.

In conclusion, while Engaged Buddhism actively incorporates human rights into its advocacy and practice, intellectual debates continue regarding the compatibility of Buddhist principles with human rights

frameworks. Despite concerns about individualism and adversariality, many Buddhists view human rights as necessary tools for addressing contemporary issues and promoting justice in a fragmented world.

Buddhism and the Idea of Human Rights: Resonances and Dissonances

The relationship between Buddhism and the concept of human rights involves both resonances and dissonances. Historically, under Emperor Ashoka in the 3rd century BCE, Buddhism influenced political and social reforms that align with the protection of individual freedom and ethical governance. Traditional Buddhist teachings emphasize compassion, non-violence, and the welfare of all beings, which resonate with the principles of human rights. The idea that all beings yearn for happiness and recoil from pain supports the notion of protecting individual rights. Modern interpretations further illustrate this connection. For instance, B.R. Ambedkar's Buddhist convictions significantly influenced the Indian constitution's abolition of caste distinctions and the guarantee of human rights, showing a legislative commitment to these ideals. Similarly, the Dalai Lama has explicitly stated that traditional practices cannot justify human rights violations, advocating for the precedence of universal principles of equality over cultural traditions. Additionally, a symposium on Buddhism and human rights issued a declaration suggesting that those with the potential for awareness and freedom have a duty to respect the rights of others, reflecting a Buddhist affirmation of human rights.

However, there are significant philosophical tensions. Some Buddhist scholars argue that the concept of human rights promotes the idea of an ego, which is contrary to Buddhist teachings that view the self as an illusion. The emphasis on individual rights can be seen as reinforcing egotism, which Buddhism seeks to transcend. Buddhism's holistic view of life, focusing on the interconnectedness of all beings, contrasts with the rights perspective, which is often seen as atomistic and centered on individuals rather than collective well-being. This leads to a conceptual incompatibility with traditional Buddhist ethics. Bhikkhu Buddhadasa, a Thai Buddhist reformer, advocates for "Dictatorial Dhammic Socialism," where the community's well-being is prioritized over individual freedom, highlighting a significant divergence from the human rights framework. This view suggests that while protecting rights is important, it should be done calmly and with consideration for others, rather than through

assertive self-claims.

Practical concerns also arise in integrating human rights within a Buddhist framework. Some Buddhists criticize the language of rights, associating it with aggressive, self-centered demands. They argue that while protecting rights is crucial, the approach should be more considerate and less assertive, reflecting the Buddhist values of calmness and non-violence. Thus, while Buddhism shares several fundamental values with the concept of human rights, such as compassion, non-violence, and the protection of individual freedom, there are also significant philosophical and practical tensions. The integration of human rights within a Buddhist framework requires careful navigation of these resonances and dissonances, balancing the respect for individual rights with the emphasis on collective well-being and the transcendence of ego.

Essential Elements of Human Rights in Buddhism

It is often argued that Buddhism focuses more on other issues than human rights, and the concern for human rights is considered a post-religious phenomenon more aligned with secular ideologies and power politics. Consequently, it might be unreasonable to accuse Buddhism of neglecting this area, especially since much of its literature remains untranslated, potentially containing undiscovered elements related to human rights. The term "right" generally denotes something objectively true, straight, or upright, often used metaphorically in a moral context as a standard for conduct. In another sense, a "right" is something done by a person because it is their entitlement. Hence, even if certain rights are incorporated into religious philosophy, they are still considered the rights of individuals. Broadly speaking, elements or principles of human rights are either explicitly or implicitly incorporated in the teachings of most world religions, including Buddhism. The transition from the moral use of "right" to the notion of rights as personal entitlements took place in the West during the late Middle Ages, with the concept of natural rights evolving towards the end of the seventeenth century, as reported by John Locke. Earlier, this connotation was used in the thirteenth century and by Grotius in the seventeenth century, while the modern use of "right" was articulated in Hobbes' writings in the mid-seventeenth century. Natural rights are inalienable and not conferred by judicial or political entities, thus individuals cannot be deprived of their rights by these or other entities. The concept of natural rights in the seventeenth and eighteenth centuries culminated in the notion of human rights in the eighteenth

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century, continuing to prominence in the twentieth and twenty-first centuries. Therefore, while Buddhism may not traditionally focus on human rights as modern secular ideologies do, many elements of human rights are likely embedded within its teachings, awaiting discovery and translation.

The concept of human rights evolved through a historical process, influenced significantly by Christian doctrine and various other philosophies and religions, including Buddhism. Human rights are fundamentally personal, conceived as something an individual inherently possesses. By definition, a right is a benefit that confers upon its holder either a claim or liberty. The modern concept of human rights is multifaceted. In metaphorical and moral senses, the term "right" appears in Buddhist and other languages. However, Pali lacks a word that conveys the idea of rights as subjective entitlements. Instead, the notion of rights might be dispersed across various terms in Buddhist languages, similar to how Latin uses terms like "librettos," "jurisdictio," and "dominium." Cultures may have concepts of rights without specific vocabulary to express them, using the concept without a single explicit term. For instance, in English, "right" and "duty" are often translated as "ought," suggesting that the concept of rights can exist without a dedicated word. In Buddhism, "Dharma" conveys what is right and just in all contexts and from all perspectives. Dr. Ambedkar observed that "religion" is an undefined term with no fixed meaning, evolving through various stages, each with different connotations. Similarly, the concept and scope of human rights are dynamic and ever-changing, liberal in nature, and broadening over time.

Regarding Buddha and Buddhism, anything that does not relate to human welfare cannot be accepted as Buddha's teachings. According to Buddha, his Dhamma (religion) has nothing to do with God, the soul, or life after death. The focus of Dhamma is on humanity and the relationships among people during their lives on Earth. The world is full of suffering, and the sole purpose of Dhamma is to eliminate this suffering. According to Dhamma, if everyone follows the path of purity, righteousness, and virtue, all suffering would end. The path of purity includes principles such as not injuring or killing, not stealing, not lying, not indulging in lust, and not using intoxicants. The path of righteousness consists of eight components known as the Ashtang Marg: Right View, Right Intention, Right Speech, Right Action, Right Effort, Right

Livelihood, Right Mindfulness, and Right Concentration. Buddha's path of virtues includes Sila (moral conduct), Dana (generosity), Uppekha (equanimity), Nekkhamma (renunciation), Virya (effort), Khanti (forbearance), Sutta (truthfulness), Adhithana (determination), Karuna (compassion), and Maitri (loving-kindness) (Anand, 2002).

There are varying interpretations of Buddha's teachings, with some emphasizing his principle of Samadhi or Vipassana, while others see his teachings as metaphysical, mystical, or a systematic repression of emotions. Despite these differing views, many agree that Buddha's Dhamma conveyed a social message of nonviolence, peace, justice, love, liberty, equality, and fraternity, which align with modern human rights principles found in international declarations, covenants, and constitutions. According to Buddha, Dhamma means maintaining purity and striving for perfection in life, living in Nibbana (a state of happiness in the present life), and exercising control over one's passions. Greed is seen as the source of unhappiness, and Nibbana represents a righteous life free from craving, acknowledging the impermanence of all things, and understanding Karma as the instrument of moral order.

Buddha rejected beliefs in the supernatural, God, soul, union with Brahma, sacrifices, and speculative beliefs as false Dhamma. Saddhamma, or true Dhamma, includes promoting equality, making learning accessible to all, breaking down social barriers, and measuring worth by one's actions rather than birth. Buddha emphasized that Dhamma must promote equality and loving-kindness and that all social barriers should be dismantled. He practiced the principles he taught, without claiming any exceptions for himself.

The United Nations conceived the philosophy of protecting human rights and fundamental freedoms as a reaction to the atrocities of World War II. The UN Charter reaffirms faith in fundamental human rights, the dignity and worth of the human person, and the equal rights of men and women. When Prince Siddhartha (Buddha) was born, India was in a spiritual and social crisis, with rampant human and animal sacrifices, hatred, discrimination, bonded labour, exploitation, slavery, and sexual abuses under the Brahmanical order. Buddha sought to address these issues through Dhamma, a collection of natural truths aimed at restoring human rights and fundamental freedoms. This human rights perspectives in Buddhist philosophy, the essential elements of human rights in Buddhism, and their compatibility with modern human rights concepts

and the Universal Declaration of Human Rights.

Buddhist Philosophy in Relation to the Universal Declaration of Human Rights

There is an intimate and vital relationship between the Buddhist concept of Dhamma and human rights. Buddhism views human rights as a legal extension of human nature, crystallizing the mutual respect and concern inherent in all people. Few would dispute that human rights are grounded in human nature, which is the ultimate source of these rights. Rights are extensions of human qualities such as security, liberty, and life. Modern Western notions of human rights are compatible with Buddhist principles, as the latter endorse the principles of the Universal Declaration of Human Rights (UDHR). Buddhism subscribes to the concept of universal human rights without any reservations or exceptions, and its teachings align with the articles of the UDHR both in letter and spirit. Every article of human rights has been upheld and meaningfully incorporated into Buddhist views on life and society. Early Buddhist teachings harmonize with the spirit of the UDHR, contributing to contemporary human rights movements. According to Kenneth Inada (1982), human nature is more fundamental than human rights in Buddhism. The concept of human rights is a legal extension of human nature, formalizing mutual respect and concern. Therefore, human rights are grounded in human nature and are extensions of human qualities like liberty, life, and security. Buddhism credits the human personality with dignity and moral responsibility, thus contributing to an ethic of human rights.

Buddhist thought accords with Article 1 of the UDHR, which states that all human beings are born free and equal in dignity and rights, and with other articles for the advancement of humanity. Universal rights are consistent with Buddhist morality, with compassion for all beings as the most persuasive argument. On the 50th anniversary of the UDHR in 1998, the Dalai Lama urged Buddhists to actively implement peace and human rights, including economic, social, and cultural rights. Rights derive from ethical principles, and there is a clear convergence between Buddhist ethics and modern human rights discussions. Buddhism recognizes the inherent dignity and equal, inalienable rights of all human beings. Natural rights, which are inalienable and not conferred or removed by judicial or political means, were the forerunners of contemporary human rights. The concept of rights is as old as civilization itself and is implicit in classical

Buddhism. All people have reciprocal obligations, which can be analysed into rights and duties. Early Buddhist teachings do not conflict with any of the thirty articles of the UDHR; they are in harmony in both letter and spirit. Even labour rights to fair wages, leisure, and welfare have been upheld and meaningfully incorporated into Buddha's overall view of life and society.

Unlike Article 2(7) of the UN Charter, which restricts interference in the domestic affairs of sovereign states, Buddhism did not prescribe such limitations. It spread far beyond India to protect and restore human rights and fundamental freedoms globally. Buddhism championed human rights and fundamental freedoms even before the UN and other bodies. It actively opposed slavery, as Buddhist monks were forbidden from keeping slaves, accumulating wealth, owning private property, or engaging in spiritual enslavement. Buddhism eliminated caste prejudice and hereditary distinctions, granting equal rights and status to every human being. Buddhist penology emphasizes the protection of human rights, dignity, and worth, prescribing punishment aimed at transforming offenders' attitudes, without retribution or sadism. The Buddhist law seeks to prevent crime from the outset, negating the denial of human rights and fundamental freedoms. Therefore, the Buddhist doctrine is supreme compared to the UDHR of 1948. Buddhism is the supreme law of all laws concerning human rights protection and fundamental freedoms, transcending beyond humans to protect all beings. The Buddhist doctrine profoundly influenced civilizations twenty-five centuries before the UN and UDHR, restoring human rights and fundamental freedoms through compassion and persuasion rather than legislation.

Buddhist Principles and Their Alignment with Human Rights

Buddhism outlines clear and reciprocal duties that promote social justice and orderliness. These duties, as explained by Buddha, apply to various relationships, including parents and children, teachers and students, spouses, friends, neighbours, employers and employees, and clergy and laity. These duties create a just, peaceful, and harmonious society. In Buddhism, dharma denotes both duties and rights, implying that the concept of rights is inherent within Buddhist philosophy.

Buddhist teachings emphasize that everyone has duties, which can be analyzed into rights and obligations. For instance, a husband has a duty to support his wife, while the wife has the right to be maintained. This concept parallels other civilizations, such as Roman law, where duties

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correspond to rights. In a just society, a king or political authority dispenses justice impartially, and citizens have the right to just and impartial treatment before the law. Therefore, the notion of rights is present in Buddhism, providing a framework for justice.

Buddhism originated in a caste-based society but advocates profound equality, similar to the Christian doctrine that all men are created equal. Dr. Ambedkar, a prominent figure in Indian history, embraced Buddhism for its doctrine of social and spiritual equality, noting that a true religion must include liberty, equality, fraternity, and morality. According to Albert Einstein, Buddhism transcends personal god, avoids dogmas, and addresses both natural and spiritual aspects, making it a potential cosmic religion for the future.

Buddhist principles of reciprocal obligations can be seen as an embryonic form of rights, where duties and rights are correlative and reciprocal. Many rights and liberties outlined in human rights charters are present in the moral teachings of Buddha, either explicitly or implicitly. For example, the prohibition against trade in living beings implies a right not to be held in slavery. These rights are extrapolations of what is due under dharma and have always been inherently present in Buddhism.

The basis of human rights doctrine is set out in the third and fourth noble truths of Buddhism, making it legitimate to speak of rights and human rights within Buddhist philosophy. Modern doctrines of human rights align with the moral values of classical Buddhism, both emphasizing human welfare, peace, and justice.

Buddhist teachings contribute significantly to the ethic of human rights. The Pali term "uju" (meaning straight, direct, honest) aligns with the concept of rights, although there is no exact term in Sanskrit or Pali for subjective entitlement. In many cultures, including African tribal law, the concept of rights exists even if a specific word for it does not. In Buddhism, dharma determines what is right and just in all contexts. Duties are sacred and reciprocal, with each duty corresponding to the entitlements or rights of others, indicating that the notion of rights is intrinsic to classical Buddhism.

Buddhism endorses the Universal Declaration of Human Rights (UDHR), with its articles harmonizing with early Buddhist teachings in both letter and spirit. The Buddhist concept of human rights is seen as a legal extension of human nature, formalizing mutual respect and concern for all

persons. The right to life, liberty, security, and freedom from slavery and torture are fundamental in both the UDHR and Buddhist teachings. The right to freedom of religion, vital to the Buddhist vision, highlights the compatibility between Buddhist ethics and modern human rights.

Buddha's mission focused on rebuilding unjust social orders on pillars of love, compassion, equality, and brotherhood. Contrary to the doctrine of inequality in Brahmanism, Buddha advocated for equality, liberty, and universal brotherhood. He recognized women's rights to education and socio-political activity, revolted against the caste system, and provided an alternate way of life based on equality.

Dr. Ambedkar, in piloting the Indian Constitution, drew from Buddhist principles of liberty, equality, fraternity, and secularism. He emphasized that the foundation of Buddha Dhamma lies in the right relation of man to man, aiming to remove suffering and ignorance. Buddhist teachings stress the importance of virtues accompanied by understanding, compassion, wisdom, and character, promoting justice and peace in society.

Buddhist monks, as teachers, emphasized democratic principles within the Sangha, where each monk had equal voting rights. This early form of democracy influenced Indian society long before it took root in Greece. Buddhism's approach to human rights and the doctrine of Ahimsa (non-harming) extends to environmental ethics, highlighting the relevance of Buddhist principles in modern contexts.

In conclusion, Buddhism's foundation on human values, natural justice, and equality aligns closely with modern human rights doctrines. The concept of rights, though implicit, is deeply rooted in Buddhist philosophy, making it a significant contributor to the global human rights movement. The teachings of Buddhism extensively incorporate elements of human rights, emphasizing duties with implied corresponding rights, and resonate profoundly with the principles enshrined in the Universal Declaration of Human Rights. By promoting concepts such as liberty, equality, fraternity, and morality, Buddhism has historically upheld human dignity and social justice, influencing civilizations long before modern human rights frameworks were established. The Buddhist commitment to eliminating caste prejudice, protecting human dignity, and fostering mutual respect underscores its role as a custodian of human rights and fundamental freedoms, aligning seamlessly with contemporary human rights ideals.

Lesson 5.3: Concept of Human Rights in Islam (Indian Perspective)

Introduction

The concept of human rights in Islam is often misunderstood or misrepresented, particularly in the context of its implementation and perception in modern-day India. Islamic jurisprudence, grounded in the Quran and the Hadith, asserts a comprehensive framework for human rights, emphasizing dignity, equality, and justice. Historically, Islamic law has laid down principles that protect individual rights and ensure social justice, predating many contemporary human rights charters.

In the Indian context, where a significant Muslim population resides, these Islamic principles of human rights intersect with the diverse socio-political landscape. Scholars like Maqbul Ilaha Malik argue that the resurgence of Islamic values in Muslim-majority nations necessitates a thorough understanding and application of these rights to counter the legacies of colonial rule and ongoing political turmoil. Malik contends that Islam's ethical and moral teachings provide a robust foundation for protecting human rights, advocating for a balanced view that transcends the criticisms and apologist stances often seen in academic and public discourse.

In contrast, Professor Coulson's perspectives suggest that Islamic law's primary function is to govern the relationship between man and God, thereby limiting its scope in comprehensively addressing human relationships and individual freedoms. This viewpoint highlights the tension between traditional Islamic governance principles and modern human rights concepts, particularly regarding individual liberty and state discretion.

These discussions underscore the importance of a nuanced approach to understanding human rights in Islam, especially within the Indian milieu. By exploring the intersections of Islamic jurisprudence with contemporary human rights standards, one can appreciate the potential for these religious principles to contribute positively to the human rights discourse in India.

Historical Foundations of Human Rights in Islam

The historical concept of human rights in Islam is deeply rooted in the teachings of the Quran and the Hadith, which form the foundation of

Islamic jurisprudence. From the outset, Islam emphasized the dignity and equality of all human beings. The Quran declares the inherent dignity of every person, stating, *"We have certainly created man in the best of stature"*. This verse underscores the belief in the fundamental worth and honour bestowed upon every individual by God.

Islamic teachings advocate for the protection of human rights through the principles of justice, equality, and respect for human dignity. These principles are not merely theoretical but are intended to be actively implemented in the governance of society. The Quranic injunctions and the sayings of the Prophet Muhammad (peace be upon him) provide a comprehensive framework for human rights, encompassing various aspects such as the right to life, freedom of speech, justice, and the protection of minorities.

During the time of the Prophet Muhammad, and the subsequent Rashidun Caliphate, these principles were implemented, ensuring that all individuals, regardless of their social status, were treated with justice and respect. For instance, the Prophet's Farewell Sermon emphasized the equality of all humans, declaring that *"All mankind is from Adam and Eve. An Arab has no superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab; a white has no superiority over a black, nor does a black have any superiority over a white; none have superiority over another except by piety and good action."*

The historical development of human rights in Islam also witnessed Muslim jurists' detailed elaboration of these rights. They categorized rights into two main types: the rights of God (Huquq Allah) and rights of human beings (Huquq al-Ibad). While the rights of God relate to religious obligations, the rights of human beings are focused on ensuring justice and welfare within the community. These rights include the right to life, property, personal safety, and the protection against unlawful imprisonment and torture.

Implementation of Human Rights in Islamic Governance

Islamic governance incorporates the principles of Sharia (Islamic law), which outlines various rights and duties for individuals within the society. Historically, Islamic governance aimed to balance individual rights with communal obligations, ensuring justice and moral conduct as primary objectives. This framework is built on the notion that human rights are an integral part of faith, as emphasized by early Islamic jurists. They categorized rights into two main types: God's rights and human

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rights, with human rights often taking precedence due to their immediate impact on societal welfare.

Islamic governance has traditionally focused on the protection of fundamental rights such as the right to life, property, and personal freedom. The Quran and Hadith (sayings of the Prophet Muhammad) provide the basis for these rights, emphasizing the importance of justice, equality, and compassion. For example, the Quran declares that there should be no compulsion in religion, thereby safeguarding an individual's freedom of belief.

The implementation of human rights in Islamic governance also entails the establishment of a just and accountable administration. Historical practices included the appointment of judges who were expected to be impartial and uphold the law without bias. Moreover, the concept of Shura (consultation) was integral to governance, promoting collective decision-making and ensuring that rulers were accountable to the people.

The challenge lies in reconciling traditional Islamic principles with modern human rights standards in the contemporary context. Scholars like Professor Majid Khadduri have called for the development of new traditions that respect individual rights while staying true to Islamic values. This approach emphasizes the need for a dynamic interpretation of Sharia to address current human rights issues effectively.

In summary, implementing human rights in Islamic governance is deeply rooted in the religion's foundational texts and historical practices. However, there is a continuous need for reinterpretation and adaptation to ensure these rights are upheld in modern contexts, reflecting both the spirit of Islam and the demands of contemporary human rights standards.

Conclusion

The concept of human rights in Islam, when examined through the lens of Indian history and contemporary society, reveals a complex yet harmonious interplay between religious teachings and modern values. Rooted in the Quran and Hadith, Islamic principles of human rights emphasize dignity, equality, and justice, providing a robust foundation for advocating individual rights and social justice. The historical context, particularly under Indian Muslim rulers like Emperor Akbar, showcases how Islamic values were integrated with local traditions to foster an environment of religious tolerance and socio-cultural richness.

In modern India, these Islamic principles intersect with the country's secular and democratic framework, aligning closely with constitutional guarantees such as the right to life, equality before the law, and freedom of religion. The principles enshrined in Islamic jurisprudence resonate with the Indian legal system's emphasis on protecting individual rights and ensuring equitable treatment for all citizens. This alignment is evident in the judicial and legislative measures aimed at safeguarding minority rights and promoting social justice.

However, reconciling traditional Islamic governance with contemporary human rights standards presents ongoing challenges. The need for a dynamic interpretation of Sharia that respects both religious values and modern human rights principles is crucial. Scholars and practitioners must continue to explore ways to adapt Islamic teachings to address current human rights issues effectively, ensuring that the principles of justice, equality, and compassion remain central to governance and societal norms.

Ultimately, the Indian perspective on human rights in Islam reflects a successful integration of religious principles with democratic values, demonstrating how a deep understanding of historical and cultural contexts can enrich contemporary human rights discourse. This confluence highlights the relevance of Islamic human rights teachings in today's world and underscores the potential for a more inclusive and respectful approach to protecting and promoting human dignity and justice.

Lesson 5.4: Islam and Human Rights**Introduction**

The interaction between Islam and human rights is a vital and challenging aspect of contemporary human rights discussions. Current global events have highlighted the significance of this issue. To fully comprehend the complex relationship between these two paradigms, it is essential to examine the social, cultural, and political context in which this interaction occurs.

The backdrop of debates surrounding Islam and human rights in Muslim-majority countries is characterized by the historical tension between secular national legal systems, a remnant of colonial influence, and a resurgence of popular demands for the state enforcement of Sharia, or Islamic law. During the colonial era, European legal systems largely supplanted Sharia principles, as the imposition of the modern nation-state concept brought about the dominance of positive law in various aspects of life, excluding family law. However, since the Iranian Revolution of 1979, there has been a noticeable resurgence of Islam's role in public life across many Muslim countries. This shift has significantly impacted numerous aspects of public, social, cultural, and political life, including an increased call for the formal incorporation of Sharia principles into state law. This movement has given rise to what is often referred to as "political Islam."

The central issue in the relationship between Islam and human rights is the hierarchical positioning of Sharia in relation to human rights. Understanding this requires a clear definition of Sharia, which is the canonical law in Islam and the religious legal system that governs members of the Islamic faith. The primary sources of Sharia are the Quran and the traditions of the Prophet, including the Hadith (opinions) and Sunna (the Prophet's life example). Unlike human-made laws, Sharia is derived from divine principles and covers a wide range of issues, regulating both interpersonal relationships and the relationship between individuals and God. Historically, adherence to Sharia has been a defining feature of the Muslim faith.

Notably, only about 200 of the nearly 6000 verses in the Quran directly address social and legal matters. Islamic legal discourse considers these verses as God's law and incorporates them into legal frameworks. The remainder of Sharia consists of interpretations and adaptations of these sacred texts by Islamic jurists, developed over nearly three centuries

following the Prophet's death. This jurisprudential process, which varied between different Islamic sects and schools of thought, particularly between Sunni and Shia traditions, continues to play a crucial role in defining Sharia.

In many Muslim-majority countries, Sharia remains a significant, and sometimes the primary, source of legislation. The role assigned to Sharia in the legal hierarchy by these countries has profound implications for human rights. The critical distinction lies in whether Sharia is viewed as the sole source of law or merely one among others. The differences and conflicts between Sharia and the state's positive law have fueled ongoing debates about the compatibility of Sharia with democracy and human rights.

Historically, while it is asserted that no individual within Islam has the authority to reinterpret the original divine truths, an established tradition of interpretation existed in the early centuries of Islam. This interpretative tradition was vital in connecting the Prophet's teachings with the regulatory norms necessary for both public and private life. The challenge today lies in whether a new phase of interpretation of Islamic texts can be initiated concerning human rights. Key questions include who possesses the authority and legitimacy to reinterpret these teachings and whether the Quran and the Prophet's teachings are inherently incompatible with modern human rights ideals due to the historical crystallization of Sharia.

Two primary schools of thought dominate the current discourse. On one side are the proponents of Islamic theocracies, or "Islamists," who reject the notion of universal human rights as a Western imposition and argue for the primacy of Sharia over human rights. On the other side is the "progressive Islam" movement, which includes Muslim advocates of international human rights standards. This group seeks to harmonize Islamic teachings with human rights principles through critical reinterpretation of Sharia, advocating for independent juridical reasoning and a modern understanding of the Quran and the Sunna in light of human rights. The challenge for progressive Islam is to establish a systematic methodology for reinterpretation and to promote this framework among the broader Muslim public. This challenge is compounded by issues of authority and legitimacy in the interpretation of sacred texts, a problem deeply rooted in Islamic tradition.

The ongoing debate has led to the creation of significant human

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rights documents within the Islamic world, such as the Universal Islamic Declaration of Human Rights (1981), the Cairo Declaration on Human Rights in Islam (1990), and the Arab Charter on Human Rights (2004). These documents represent efforts to reconcile Islamic principles with human rights norms, achieving mixed and sometimes ambiguous results.

In conclusion, the relationship between Islam and human rights remains complex and multifaceted. While there have been positive developments, particularly with the rise of progressive Islam and the formulation of human rights documents within the Islamic world, significant challenges persist. Issues such as religious freedom, women's rights, gender equality, and the rights of religious minorities continue to be contentious. These challenges reflect the broader tension between differing interpretations of Islam and the contemporary human rights framework. The Islamic world faces the critical task of navigating these challenges to foster greater harmony and dialogue between Islamic teachings and human rights.

The Western Approach

Western narratives often attribute the origin of fundamental human rights to their own historical developments, suggesting that these rights emerged from Western thought, particularly from the Magna Carta of Britain. However, it's noteworthy that the Magna Carta was established six centuries after the advent of Islam. Moreover, until the seventeenth century, even the drafters of the Magna Carta did not recognize its now-celebrated principles, such as Trial by Jury, Habeas Corpus, and the Control of Parliament over Taxation. These concepts were not originally intended by those who drafted the document and only later became associated with it.

Historically, Western societies did not have a clear concept of human and civil rights until the seventeenth century. It wasn't until the late eighteenth century that these ideas began to be practically implemented, as seen in the declarations and constitutions of the United States and France. Even then, the rights enshrined in these documents were often not fully realized in practice.

In the mid-twentieth century, the United Nations, which is arguably more divided than united, issued the Universal Declaration of Human Rights and adopted resolutions against genocide. However, these measures lack enforcement power and have often failed to prevent human

rights violations. The United Nations' inability to act effectively against atrocities, such as the ongoing genocide in parts of Pakistan, exemplifies the limitations of these international declarations.

The Islamic Approach

In contrast, the Islamic perspective on human rights is fundamentally different. In Islam, human rights are considered divinely granted by God, not by any earthly authority such as kings or legislative bodies. These divine rights are immutable; no government or legislative assembly has the authority to alter or revoke them. Unlike the rights articulated in secular documents, which can be granted or withdrawn by the same authorities that establish them, the rights in Islam are permanent and non-negotiable.

The Islamic approach insists that these rights are not merely theoretical or philosophical concepts without practical force. They are integral to the Islamic faith, and every Muslim, including leaders and administrators, is obliged to recognize and enforce them. Failure to do so, or any attempt to alter or disregard these divine rights, is viewed as a grave violation. The Quran explicitly states that those who do not govern according to what God has revealed are disbelievers (kafirun), wrongdoers (zalimun), or transgressors (fasiqun). This categorization underscores the seriousness of violating God's ordained rights, as it equates such actions with disbelief or corruption.

Thus, the rights conferred by God in Islam are considered eternal and unchangeable. They transcend any human legislative changes or interpretations, ensuring a consistent standard of justice and equity. The contrast with the Western approach, where rights can be subject to political or legal adjustments, highlights a fundamental difference in how human rights are conceptualized and implemented.

Basic Human Rights in Islam

Islam fundamentally establishes several human rights that apply universally, regardless of one's nationality, faith, or background. Every individual, whether Muslim or non-Muslim, has inherent rights simply due to their humanity, and fulfilling these rights is a duty for every Muslim.

The Right to Life

The foremost human right in Islam is the right to life and the

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sanctity of human existence. The Quran emphasizes:

“Whosoever kills a human being without (any reason like) manslaughter, or corruption on earth, it is as though he had killed all mankind...”

This verse underscores the gravity of unlawful killing, which is considered as severe as killing the entire human race. The Quran further instructs:

“Do not kill a soul which Allah has made sacred except through the due process of law...”

This highlights that the decision to take a life must be governed by a proper legal process, reflecting Islam's firm stance against individual retribution. The Prophet Muhammad also highlighted the gravity of homicide, placing it among the gravest sins next to polytheism.

The prohibition against killing is universal in Islam and does not discriminate based on race, nationality, or religion. This stands in stark contrast to certain historical practices where human rights were limited to specific groups or races.

The Right to the Safety of Life

Following the right to life, the Quran states:

“And whoever saves a life it is as though he had saved the lives of all mankind”

This command extends the duty of protection and assistance to anyone in need, regardless of their background. Contrasting this with other religious texts, such as the Talmud, which historically limited the principle of saving lives to Israelites, Islam emphasizes the universal application of this right to all humans.

Respect for Women's Chastity

Islam also emphasizes the protection of women's chastity. The Quran instructs:

“Do not approach (the bounds of) adultery”

This command applies irrespective of the woman's nationality or religion. Islam's stance on chastity and respect for women is notable compared to other historical contexts where women were often exploited or subjected to violence.

The Right to a Basic Standard of Life

The Quran mandates:

“And in their wealth there is acknowledged right for the needy and destitute”

This directive underscores the responsibility of Muslims to aid those in need, regardless of their origin or status. It establishes that anyone suffering from deprivation has a right to assistance from those who can provide it.

Individual's Right to Freedom

Islam categorically condemns the practice of slavery. The Prophet Muhammad stated:

“There are three categories of people against whom I shall myself be a plaintiff on the Day of Judgement. Of these three, one is he who enslaves a free man, then sells him and eats this money”.

This position is in stark contrast to the historical slave trades conducted by Western nations, which engaged in the systematic capture and exploitation of individuals. Islam's approach focused on freeing slaves and providing humane treatment, eventually leading to the abolition of slavery among Muslims.

The Right to Justice

Justice is a cornerstone of Islamic teachings. The Quran instructs:

“Do not let your hatred of a people incite you to aggression”,

and:

“And do not let ill-will towards any folk incite you so that you swerve from dealing justly. Be just; that is nearest to heedfulness”

Muslims are commanded to uphold justice universally, even towards their enemies, and to maintain fairness in all dealings.

Equality of Human Beings

Islam establishes the principle of absolute equality among all people. The Quran states:

“O mankind, we have created you from a male and female”.

This verse emphasizes that all human beings are equal, with distinctions only meant for recognition and not for discrimination. The Prophet Muhammad reinforced this principle, declaring that no individual

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is superior to another based on race or ethnicity.

The Right to Cooperation and Non-Cooperation

Islam advocates for cooperation in virtue and righteousness while rejecting support for vice and aggression. The Quran says:

"Cooperate with one another for virtue and heedfulness and do not cooperate with one another for the purpose of vice and aggression".

This principle ensures that Muslims support and work with those who are committed to good deeds, regardless of their background, while refraining from aiding those engaged in wrongdoing.

These principles reflect Islam's comprehensive approach to human rights, emphasizing the universal respect and dignity owed to every individual.

Rights of Citizens in an Islamic State

Security of Life and Property

In an Islamic state, the protection of life and property is paramount. During his Farewell Hajj, the Prophet Muhammad emphasized the inviolability of each other's lives and properties until the Day of Judgment. This principle is reflected in the Quran, where it is stated:

"Anyone who kills a believer deliberately will receive as his reward (a sentence) to live in Hell forever. God will be angry with him and curse him, and prepare dreadful torment for him",

The Prophet Muhammad also warned against harming dhimmis (non-Muslim citizens in an Islamic state), stating: "One who kills a man under covenant (a dhimmi) will not even smell the fragrance of Paradise" (al-Bukhari and Abu Dawud). This indicates that killing is only permissible under the law and with just cause. In times of conflict or insurrection, only a just government adhering to Shari'ah (Islamic Law), can determine the legality and justice of such actions. Unjust governments that resort to violence against their citizens without legal proceedings are violating these principles.

Islam also explicitly forbids the unlawful seizure of property, as stated in the Quran:

"Do not devour one another's wealth by false and illegal means".

Protection of Honor

The protection of individual honor is a fundamental right in Islam. The Prophet Muhammad's Farewell Hajj address extended prohibitions beyond life and property to include respect and dignity. The Quran further elaborates on this:

- "You who believe, do not let one (set of) people make fun of another set"
- "Do not defame one another"
- "Do not insult by using nicknames".
- "And do not backbite or speak ill of one another".

These guidelines underscore that defamation and insult are prohibited. Unlike Western laws that require proof of personal honor and may subject victims to further scrutiny, Islamic law mandates punishment for those who tarnish others' reputations, irrespective of the victim's standing.

Sanctity and Security of Private Life

Islam emphasizes the sanctity of personal privacy. The Quran instructs:

"Do not spy on one another" and "Do not enter any houses except your own homes unless you are sure of their occupants' consent"

The Prophet Muhammad further taught that even entering one's own home should be done with consideration to avoid intruding on the privacy of family members. This is in stark contrast to modern practices of surveillance and invasion of privacy, which Islam strongly opposes.

Security of Personal Freedom

In Islam, arrest and imprisonment must be based on justice and evidence. The Quran instructs:

"Whenever you judge between people, you should judge with (a sense of) justice"

The Prophet Muhammad demonstrated this by ensuring that arrests were justified and conducted transparently. An example is when he ordered the release of individuals who were unjustly detained, reflecting the Islamic principle that no one should be imprisoned without due process.

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Right to Protest Against Tyranny

Islam acknowledges the right to protest against tyranny. The Quran states:

"God does not love evil talk in public unless it is by someone who has been injured thereby"

This means while public condemnation is generally disapproved, those who are victims of injustice have the right to speak out. This right extends to individuals and groups facing oppression.

Freedom of Expression

Freedom of expression in Islam is meant for promoting virtue and truth. The Quran describes:

"They enjoin what is proper and forbid what is improper"

Islam encourages the promotion of good and the prevention of evil, distinguishing it from Western notions that may allow for the propagation of harmful ideologies.

Freedom of Association

Islam supports the right to form associations and organizations for promoting good. The Quran commands:

"You are the best community which has been brought forth for mankind. You command what is proper and forbid what is improper and you believe in God"

This implies that Muslims are tasked with promoting righteousness through collective efforts. Any association formed to spread evil contradicts this principle.

Freedom of Conscience and Conviction

Islam guarantees freedom of conscience. The Quran says:

"There should be no coercion in the matter of faith"

This means that conversion to Islam must be voluntary, and individuals have the right to practice their own faith without coercion.

Protection of Religious Sentiments

Respect for religious sentiments is crucial. The Quran advises:

"Do not abuse those they appeal to instead of God"

This extends to avoiding insults towards religious figures and beliefs,

ensuring that discussions remain respectful.

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Protection from Arbitrary Imprisonment

Islam prohibits imprisoning individuals for others' actions. The Quran states:

"No bearer of burdens shall be made to bear the burden of another"

This emphasizes personal responsibility, meaning that individuals should not be punished for crimes they did not commit.

Right to Basic Necessities of Life

Islam mandates support for the needy. The Quran instructs:

"And in their wealth there is acknowledged right for the needy and the destitute"

This verse mandates that a portion of one's wealth should be allocated to those in need, including the poor and destitute. It highlights the importance of charity and social responsibility in Islam. The command emphasizes that wealth should be shared to support the less fortunate and address social inequalities. By establishing this right, the Quran aims to ensure that economic resources are used to uplift those in need. It underscores the value of compassion and social welfare in the Islamic economic system.

Equality Before Law

Islam mandates complete equality before the law for all citizens. This principle is clearly articulated in the Quran and Hadith, asserting that every Muslim is equal in rights and responsibilities. The Quran states, "The believers are brothers (to each other)", and further emphasizes that those who embrace faith and fulfill its obligations are considered equals: "If they (disbelievers) repent and keep up prayer and pay the poor-due, they are your brothers in faith". The Prophet Muhammad reinforced this notion, declaring that "The life and blood of Muslims are equally precious" (Abu Dawud; Ibn Majjah). He also asserted that protection offered by any Muslim is valid, stating that even an ordinary person can extend such protection (al-Bukhari; Muslim; Abu Dawud). Additionally, the Prophet clarified that converts to Islam have the same rights and duties as long-standing followers (al-Bukhari; al-Nisa'i). Thus, Islam enforces absolute equality among its followers and ensures that no one's rights or obligations are diminished based on their status or duration of faith.

For non-Muslim citizens under Islamic rule, equality is also upheld. Caliph 'Ali described their status, affirming that "Their lives may be like our lives and their properties like our properties" (Abu Dawud). The Quran condemns the stratification of society into classes as a grave injustice, as evidenced by Pharaoh's oppressive tactics: "He had divided his people into different classes" and "suppressed one group of them".

Rulers Not Above the Law

In Islam, no one, including the highest officials, is above the law. All individuals, regardless of rank, are subject to the same legal standards. Caliph 'Umar demonstrated this principle when he recounted seeing the Prophet Muhammad taking personal accountability for his actions. An example is from the Battle of Badr, where the Prophet allowed a soldier to retaliate for a perceived slight, showing that even leaders must answer for their actions. In another instance, the Prophet mandated that even if his daughter Fatimah had committed theft, she would face the same punishment as anyone else, highlighting that no one is exempt from legal consequences (al-Bukhari).

During 'Umar's caliphate, he upheld justice by personally addressing grievances against his officials. When a governor's son was involved in an incident of physical assault, 'Umar ensured the complainant received justice, including holding the governor accountable. This was to prevent any abuse of power, as 'Umar asserted, "When did you start to enslave the people, though they were born free of their mothers?"

The Right to Avoid Sin

Islam guarantees that no individual will be compelled to commit sins or crimes. If an authority issues an unlawful order, individuals have the right to refuse without facing legal repercussions. The Prophet Muhammad emphasized, "It is not permissible to disobey God in obedience to the orders of any human being" (Musnad of Ibn Hanbal). This means that if someone is instructed to commit a wrongful act, both the issuer of the order and the individual who carries it out are accountable. Officers who retaliate against subordinates for refusing unlawful orders face legal action, and the subordinate can seek justice through the court.

The Right to Participate in State Affairs

Islamic governance is considered a trust from God, entrusted to the

entire Muslim community. The Quran states, "God has promised to appoint those of you who believe and do good deeds as (His) representatives on earth", indicating that leadership is a collective responsibility. The Quran also advocates for governance through mutual consultation: "And their business is (conducted) through consultation among themselves". This principle ensures that every Muslim has the right to participate in state affairs, either directly or through elected representatives. Islam rejects any form of manipulation in elections and governance, as it undermines both the people's rights and the divine trust placed in them. The legislative assembly or shura is meant to be:

1. Elected freely and fairly by the people.
2. Subject to open criticism and expression of opinions.
3. Transparent about the country's conditions for proper public assessment.
4. Ensures that only those with popular support hold authority, with provisions for removing those who fail to maintain it.

These principles safeguard the integrity of governance and ensure that power remains accountable and representative of the people's will.

Conclusion

The intricate relationship between Islam and human rights embodies a multifaceted and dynamic discourse that reflects the broader complexities of modern legal and ethical frameworks. Historically, the tension between secular national legal systems, shaped by colonial legacies, and the resurgence of Sharia in contemporary Muslim-majority states has given rise to a vigorous debate over human rights and religious principles. This debate is further enriched by the diverse interpretations of Sharia, which vary significantly across different Islamic traditions and cultural contexts.

The dichotomy between proponents of Islamic theocracies and advocates of progressive Islam highlights a fundamental conflict within the Islamic world. The former group views Sharia as the paramount source of law, often placing it in opposition to universal human rights standards. In contrast, the latter seeks to harmonize Islamic teachings with modern human rights principles through critical reinterpretation and a renewed jurisprudential approach. The efforts to reconcile these perspectives have led to the development of key human rights documents within the Islamic

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world, such as the Cairo Declaration on Human Rights in Islam and the Arab Charter on Human Rights, although these documents often reflect a nuanced and sometimes ambiguous alignment with international human rights norms.

The Western approach to human rights, rooted in secular and historical contexts, contrasts sharply with the Islamic perspective, which views human rights as divinely ordained and immutable. This distinction underscores a fundamental difference in how human rights are conceptualized and implemented. In Islam, human rights are considered eternal and non-negotiable, derived from divine authority rather than human legislative processes. This perspective offers a unique approach to issues such as the right to life, justice, and personal freedom, emphasizing a universal application of these principles regardless of one's background.

Despite the rich tradition of human rights within Islam, contemporary challenges remain significant. Issues related to religious freedom, women's rights, gender equality, and the rights of religious minorities continue to provoke debate and require ongoing reform. The challenge for the Islamic world lies in navigating these complexities to foster greater harmony between Islamic teachings and contemporary human rights ideals.

Ultimately, the relationship between Islam and human rights is characterized by a continual process of negotiation and reinterpretation. As the global community moves toward greater inclusivity and mutual understanding, it is essential for both Islamic and international human rights frameworks to engage in constructive dialogue. By addressing these challenges with an open and critical perspective, it is possible to advance a more nuanced and comprehensive understanding of human rights that respects both religious traditions and universal ethical standards.

Lesson 5.5: The Theoretical System of Human Rights with Chinese Characteristics

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Introduction

In recent years, the theory and practice of human rights with Chinese characteristics have received extensive attention. Cross-cultural human rights exchanges are becoming increasingly prosperous. China has released the report on achieving the Millennium Development goals. China's great contribution to the realization of the right to development has been fully acknowledged by the international community. This large country with a population of nearly 1.4 billion has promoted innovative development, coordinated development, green development and open development on the basis of "people-oriented". At the same time, the concept of shared development and its results are also recognized by people. China's unique path in promoting economic, political, cultural, social and environmental rights has made outstanding contributions to safeguarding a just world order and promoting international human rights development.

Cultural Resources of the Theoretical System of Human Rights with Chinese Characteristics

Ancient Cultural Resources

The theory of human rights with Chinese characteristics has evolved through a historical process of internal development. In ancient China, the term "civil rights" existed but was limited in its practical application. For instance, historical records from the Yuan Dynasty highlighted that people's rights should not be abused, particularly in economic governance. In the Qing Dynasty, men were noted to have civil rights under the local autonomy clause, with further discussions contrasting the concept of civil rights in national governance strategies. Huang Zongxi's philosophy of "world interests" exemplified the concept of civil rights in ancient China. He advocated that rights should belong to all people, suggesting that the wellbeing of the populace was paramount over familial or dynastic interests. Huang proposed two primary measures: opposing autocratic monarchy in favour of civil rights and rejecting private laws in favour of laws serving the common good, emphasizing the protection of individual rights, including property rights.

Overall, ancient Chinese thought on protecting rights focused on

principles of good law, good governance, and a people-oriented approach. Good law, as conceptualized in ancient China, required acceptance by the people and fair enforcement. Good governance was linked to these principles, and reforms were necessitated to align governance with the people's needs, as historical records from the Han Dynasty indicated the importance of abolishing harmful, strict laws.

Contemporary Theoretical Basis

The establishment of the People's Republic of China marked a new era in human rights protection, with Marxist human rights theory becoming a guiding principle. This theory aims for human freedom and comprehensive development. According to Marx, rights are constrained by a society's economic structure and cultural development. The materialist view of human rights, fundamental to this theory, includes two key aspects: material constraints and cultural restrictions.

Material constraints refer to the dependence of human development on production. In a market-driven society, true freedom cannot be realized, as individuals remain subject to material conditions. Therefore, it is crucial to avoid promoting rights that are disconnected from human nature and societal attributes. Cultural restrictions, on the other hand, suggest that cultural backwardness and bureaucracy can hinder the effective construction of human rights systems. Legal recognition of freedoms is essential, as freedom of the press, for example, is foundational to all other freedoms.

Ultimately, all efforts in human rights protection should aim at human freedom and comprehensive development, emphasizing the fundamental interests of the people. This includes striving for a just and equitable international order, where welfare, justice, and equity are central to governance. The unity of human and civil rights can only be achieved when real freedom and protection of political rights are ensured in economic and social spheres. This holistic approach aligns with Marxist principles, emphasizing the integration of universal human rights with specific economic and social contexts. Thus, China's development path seeks the full realization of human rights across all dimensions, including economic, political, cultural, social, and ecological rights, paving the way for higher levels of human rights protection.

The Establishment of Theoretical System of Human Rights with Chinese Characteristics

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The Struggle for National Independence and People's Well-Being

The foundation of the Chinese human rights theory is rooted in the pursuit of national independence, which is seen as essential for achieving the well-being and happiness of the people. This emphasis on independence as a precursor to freedom and rights is reflected in the thought of Mao Zedong, who advocated for a people's revolution aimed at protecting citizens' rights. Mao's vision included the protection of national sovereignty and the liberation of the nation, which were vital for ensuring the people's right to exist. He advocated for equal human rights, including economic rights, the right to vote, and freedoms such as expression, assembly, association, and belief. Under Mao's leadership, China implemented regulations, including the 1954 Constitution, to guarantee these rights for workers, farmers, soldiers, and all working people, thus laying the groundwork for the Sinicization of Marxist human rights thought.

Mao emphasized that the ownership of the people and safeguarding their freedom are crucial for the realization of human rights, equality, and personal freedom. This perspective aligns with Marxist principles, asserting that the state's power should serve the people's interests and that the design and construction of the entire system should originate from, rely on, and serve the populace.

Socialist Theory of Human Rights and Legal System

The development of socialism with Chinese characteristics and the policy of reform and opening up have been pivotal in establishing a theoretical system of human rights in China. Deng Xiaoping's human rights theory emphasized that human rights should benefit the majority and that modernization in China should be based on the country's unique circumstances. He highlighted that democracy in China is fundamentally a people's democracy, which is key to achieving common prosperity and countering extreme individualism and anarchism. This approach necessitates balancing individual and collective interests, as well as short-term and long-term goals.

Deng's philosophy focused on developing productive forces, eliminating polarization, and achieving common prosperity, thereby

promoting the right to survival and development as fundamental human rights. He advocated for liberating the mind, seeking truth from facts, and pursuing socialist modernization. These ideas have been instrumental in guiding the development of China's human rights discourse. The establishment of a socialist market economy has also been central to this discourse, aiming to achieve common prosperity and avoid economic disparities through redistribution.

The socialist legal system has evolved alongside this, with the 1982 Constitution of the People's Republic of China setting out the rights and obligations of citizens. This legal framework has provided a materialist dialectical foundation for the broader human rights legal system, ensuring that rights and obligations are clearly defined and protected under the law.

Human Rights Protection and Party Construction

In the late 20th century, as international socialism faced challenges, China focused on aligning the fundamental interests of the Communist Party with those of the people. Jiang Zemin's "Three Represents" theory emphasized representing the development needs of China's advanced productive forces, the progression of advanced culture, and the fundamental interests of the majority. This theory sought to integrate collective and individual human rights, aligning universal human rights principles with China's specific conditions. Efforts were made to enhance the legal framework, including the constitutional amendments in 1999 and 2004, which established the rule of law and incorporated human rights protection into the constitution.

This period saw a strengthening of the governance framework, blending the rule of law with ethical governance, aiming to uphold human rights, dignity, and the core interests of the people. The "Three Represents" theory became a guiding principle in Party governance, ensuring that Party regulations and discipline safeguarded the rights and freedoms of the populace. This emphasis on human rights in governance has been integral to the Party's policy-making and implementation.

Harmonious Notion of Human Rights Construction and Scientific Development

As social construction progressed, China faced increasing contradictions and conflicts of social interests and values. Hu Jintao introduced the concept of harmony as an essential attribute of socialism and emphasized scientific development centered on a people-oriented

approach. This approach marked a new direction for the construction of China's human rights theoretical system, promoting a harmonious spirit in human rights practices and emphasizing the balance between individual and governmental rights. Hu stressed the importance of respecting and protecting human rights in economic, political, cultural, social, and ecological aspects, with a focus on equal participation and development for all.

In 2008, marking the sixtieth anniversary of the Universal Declaration of Human Rights, Hu reaffirmed the importance of the people-oriented principle in governance. He highlighted the need to prioritize the fundamental interests of the majority, align the interests of the masses with the scientific outlook on development, and ensure that executive power is exercised for the benefit of the people. This holistic approach aims to guarantee basic human rights and coordinate the construction of human rights across various fields, thereby promoting individual freedom and development.

Human Rights View of Socialism with Chinese Characteristics in the New Era

In the new era, General Secretary Xi Jinping's governance and political thought have been recognized internationally, emphasizing people-centered development. This perspective aims to transform adversarial discourse into harmonious discourse, prioritizing the fundamental interests of the people and the lofty goal of human freedom and all-round development. Xi's concept of building a community of shared future for humanity reflects the core spirit of human rights development, promoting the ultimate realization of comprehensive human development. This approach emphasizes the importance of a systematic human rights protection mechanism, integrating rights and obligations, and establishing a legal system that supports human rights legislation and implementation.

China's human rights theory, grounded in the country's specific economic and social conditions, aims to promote the all-round development of human beings and balance the universality and particularity of human rights. The core focus is on the fundamental right to survival and development, which is essential for building a community of shared future for humanity. China's human rights protection efforts include a fair assessment mechanism, integrating domestic and international human rights indicators, and establishing a standard that

prioritizes the common development of humanity. This framework supports a fair evaluation system for the construction of a community of shared future for humanity.

Human Rights in Chinese Tradition

In the evolving landscape of contemporary China, the interplay between human rights and Chinese tradition plays a pivotal role. Understanding this relationship is crucial, as it significantly influences the theory and practice of human rights in the present day. The perception of Chinese tradition varies widely: some view it as antagonistic to human rights, explaining the lack of robust human rights frameworks in China. Others argue that Chinese tradition has always been supportive of human rights. Scholarly and political voices have explored these extremes and the nuanced positions in between. This debate often converges on three main perspectives: Chinese tradition as an obstacle, an alternative, or a source of human rights.

The complexity of the Chinese tradition means it does not dictate a single, definitive stance on human rights for modern China. However, it undeniably continues to shape contemporary views and practices in diverse ways. The goal here is to unravel how these three perspectives—obstacle, alternative, and source—each hold elements of truth, setting the stage for a deeper examination of modern human rights discourse in later sections. This chapter begins by clarifying key concepts and providing historical context to frame the subsequent discussions on human rights and tradition.

Throughout modern history, particularly after the fall of the last imperial dynasty in 1911, Chinese intellectuals have continuously engaged with and redefined their cultural heritage. Movements like the New Culture Movement of 1915 sought to overhaul Chinese values and practices, leading to a vigorous critique of traditions such as Confucianism. Despite this, modern Confucianism emerged, advocating for the integration of human rights and constitutional democracy as essential for achieving Confucian moral goals. This modern iteration faced challenges, especially after the establishment of the People's Republic of China in 1949, when it found more traction in Taiwan and Hong Kong.

In recent decades, debates around "Asian Values" and their compatibility with human rights have resurfaced in places like Malaysia, Singapore, and China. These discussions, often opposing the concept of

"universal values," highlight the ongoing tension and lack of consensus among modern Confucians regarding human rights.

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The Confucian Tradition as an Obstacle to Human Rights

The relationship between human rights and the Confucian tradition has been a topic of explicit discussion for over a century. Historically, the dominant perspective has been that the Confucian tradition poses significant obstacles to the development of human rights ideas and institutions. Some scholars argue that the incompatibility between Confucianism and human rights is beneficial because it suggests an alternative normative order that they believe is superior to the one supported by human rights.

Four primary arguments illustrate why it is challenging or impossible to construct a human rights framework on a Confucian foundation. First, Confucianism is fundamentally based on hierarchical rituals. This hierarchical structure is seen as incompatible with the concepts of equality, democracy, and human rights. In a notable 1916 essay, Chen Duxiu emphasized that the essence of Confucianism lies in its ritual teachings, which are intrinsically hierarchical. He argued that this hierarchy contradicts the principles of equality and democracy, thus impeding the development of human rights.

Second, Confucianism lacks a clear concept of human rights. Traditional Confucian thought does not explicitly recognize individual rights as understood in the modern sense. This absence of a human rights framework within Confucianism means that the tradition does not inherently support the protection and promotion of individual rights.

Third, Confucianism cannot prioritize human rights over other values. In Confucian thought, the importance of social harmony and the collective good often outweighs individual rights. This perspective makes it difficult for Confucianism to categorically uphold human rights as paramount, especially when they might conflict with other societal values.

Finally, Confucian relationality is seen as incompatible with human rights. Confucianism emphasizes the importance of relationships and the roles individuals play within these relationships. This focus on relationality can undermine the notion of universal human rights that apply equally to all individuals, regardless of their social roles or relationships.

In conclusion, while Confucian virtues such as moral integrity and

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social responsibility are valuable and can complement human rights, the foundational aspects of Confucianism, such as hierarchical rituals and the lack of a clear concept of human rights, pose significant challenges to integrating human rights within the Confucian framework. The tradition's emphasis on social harmony and relationality further complicates the prioritization of human rights, making the Confucian tradition an obstacle to the full realization of human rights.

Lesson 5.6: African Perspectives on Human Rights

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Introduction

Traditional African societies have long been characterized by a communal approach to human rights, emphasizing the collective well-being and harmony of the community over the individual's rights. This perspective is deeply rooted in African communities' social structures and cultural norms, where the concept of *Ubuntu*—a philosophy that underscores the interconnectedness of all people—plays a central role. In these societies, the rights and responsibilities of individuals were closely tied to their roles within the family, clan, or tribe, with the overarching goal of maintaining social cohesion and collective prosperity.

This communal approach starkly contrasts the Western notion of human rights, which tends to prioritize the autonomy and rights of the individual. Western human rights frameworks, developed in the context of Enlightenment thinking and later codified in international law, often emphasize the protection of individual freedoms and liberties, sometimes at the expense of collective interests. In African traditions, however, the community's needs often take precedence, with individual rights being exercised in a way that contributes to the well-being of the larger group.

The African understanding of human rights reflects a broader, more relational perspective, where the rights of individuals are seen as part of a larger tapestry of social obligations and duties. This approach has shaped the development of human rights in Africa, influencing both traditional governance structures and modern legal frameworks. As African societies have navigated the complexities of colonialism, independence, and modern statehood, this emphasis on community rights has remained a central feature of the continent's human rights discourse, offering a distinctive perspective that challenges and complements Western individualism.

History of Human Rights in Africa

The history of human rights in Africa is deeply intertwined with the continent's political, social, and ideological evolution. This history can be broadly divided into four key periods: pre-colonial, colonial, post-colonial, and contemporary.

In the pre-colonial era, African societies were organized into various traditional political systems, which, despite their diversity, shared common elements of democracy and human rights that were embedded in

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the religious and cultural practices of the communities. However, this period was interrupted by European contact, which initially began as commercial relationships and later escalated into the transatlantic slave trade and, eventually, full-scale colonization. The European colonial powers imposed new boundaries, legal systems, languages, and religions, drastically altering the social and political landscape of Africa. The colonial period, lasting from the late 1800s to the mid-1900s, was marked by the subjugation of African societies and the exploitation of their resources.

The post-colonial era, which began in the mid-1900s following the wave of independence movements across the continent, was a period of both hope and disillusionment. While the end of colonial rule was initially seen as a transition to self-determination and national sovereignty, it soon became evident that the new African governments faced significant challenges. Many post-colonial African states experienced political instability, repression, and corruption, often leading to the concentration of power and wealth in the hands of a few elites. Despite these setbacks, human rights remained a central issue, particularly in the context of African nationalism and pan-Africanism, which sought to address the rights abuses perpetrated during the colonial period and to promote social justice and equality.

In the contemporary period, Africa continues to grapple with the legacies of its colonial past and new challenges related to human rights and democracy. The continent has seen both progress and regression, with some countries making strides towards more participatory governance and respect for human rights. In contrast, others have experienced setbacks, including ethnic conflicts, religious intolerance, and authoritarianism.

The African perspective on human rights, as articulated in documents like the African Charter on Human and Peoples' Rights, reflects a unique blend of individual and collective rights, shaped by the continent's complex history and cultural diversity.

African Charter on Human and Peoples' Rights (Banjul Charter)

The African Charter on Human and Peoples' Rights, also known as the Banjul Charter, was adopted on June 27, 1981, and entered into force on October 21, 1986. It represents a significant step in the codification of human rights in Africa, encompassing a blend of both individual and collective rights that align with the continent's socio-cultural context. The

Charter was established under the auspices of the Organization of African Unity (OAU), the predecessor of the African Union (AU).

Unique Blend of Individual and Collective Rights

Individual Rights

The African Charter guarantees a comprehensive set of individual rights, akin to those found in other international human rights instruments. However, it places these rights within a unique African context that emphasizes the interplay between individual and communal welfare. Key individual rights enshrined in the Charter include:

Right to Equality (Article 3): This provision ensures that every individual is equal before the law and is entitled to equal protection of the law. This right is critical in a continent marked by historical injustices and disparities.

Right to Life and Integrity (Article 4): The Charter upholds the sanctity of life, prohibiting arbitrary deprivation and underscoring the protection of personal integrity. This provision is fundamental in contexts where political instability and violence have often threatened basic human rights.

Right to Personal Liberty and Security (Article 6): It protects individuals from arbitrary arrest and detention, reflecting concerns about state abuses of power that have historically affected many African nations.

Freedom of Expression (Article 9): This right guarantees individuals the freedom to express and disseminate their opinions within the law's bounds, which is crucial for promoting democratic governance and accountability.

Collective Rights

The African Charter is particularly notable for its inclusion of collective rights, which are often overlooked in other international human rights frameworks. These rights acknowledge the importance of community and collective identity in the African context:

Right to Self-Determination (Article 20): This right affirms that all peoples have the inalienable right to freely determine their political status and pursue their economic, social, and cultural development. It reflects the continent's colonial history and the ongoing struggles for autonomy and cultural preservation.

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Right to Development (Article 22): It recognizes that all peoples have the right to economic, social, and cultural development, underscoring a commitment to equitable and sustainable growth that benefits entire communities, not just individuals.

Right to a Satisfactory Environment (Article 24): This article stipulates the right of all peoples to a satisfactory environment conducive to their development, highlighting the intersection of environmental and human rights.

Comprehensive Approach to Human Rights

The African Charter adopts a holistic approach by addressing both civil and political rights, as well as economic, social, and cultural rights. This reflects a distinctive African philosophy where human rights are seen as interdependent and indivisible.

Civil and Political Rights

Right to Participate in Government (Article 13): This right guarantees citizens the ability to participate freely in the government of their country, either directly or through freely chosen representatives. This is particularly significant in the context of Africa's historical struggles with authoritarianism and military rule.

Right to Property (Article 14): The Charter protects individuals' right to property, subject to the interests of society. This nuanced approach balances individual ownership with communal interests, recognizing the traditional communal land ownership systems prevalent in many African societies.

Prohibition of Torture and Ill-treatment (Article 5): It prohibits all forms of exploitation, degradation, and torture, including cruel, inhuman, or degrading punishment or treatment. This aligns with global human rights norms but also responds to specific issues of state violence and abuse in African contexts.

Economic, Social, and Cultural Rights

Right to Health (Article 16): These rights mandate that state parties protect the health of their populations and ensure medical care for the sick. It addresses the continent's significant health challenges and underscores the importance of access to healthcare as a fundamental right.

Right to Education (Article 17): It affirms the right to education and

the duty of the state to promote and protect morals and traditional values recognized by the community. This article highlights the role of education in fostering development and preserving cultural heritage.

Right to Work (Article 15): The Charter recognizes the right to work under equitable and satisfactory conditions, emphasizing the importance of employment and fair labor practices in achieving economic stability and personal dignity.

Emphasis on Community Well-being

The Charter places significant emphasis on community well-being, a concept deeply rooted in African philosophies like Ubuntu, which emphasizes communal relationships and the interconnectedness of people. It underscores that individuals have duties towards their families and society at large, reflecting a balanced approach where rights are complemented by responsibilities.

The African Charter on Human and Peoples' Rights represents a landmark achievement in human rights law, uniquely tailored to the African context. By incorporating both individual and collective rights and addressing a broad spectrum of rights—including civil, political, economic, social, and cultural—the Charter reflects a holistic and community-oriented approach to human rights. It serves as a crucial framework for promoting human dignity, equality, and justice across the continent.

Role of Regional Organizations

Regional organizations like the African Union (AU) and the African Commission on Human and Peoples' Rights (ACHPR) play crucial roles in promoting and protecting human rights across Africa. These institutions are integral to the continent's efforts to uphold human dignity, justice, and equality, providing a framework for addressing human rights violations and fostering a culture of respect for human rights.

African Union (AU)

The African Union, established in 2001 as a successor to the Organization of African Unity (OAU), is a pan-African organization dedicated to promoting political and economic integration among African states. A key component of the AU's mission is the promotion and protection of human rights.

AU's Role in Human Rights Protection

1. **Normative Framework Development:** The AU has been instrumental in establishing normative frameworks that set standards for human rights on the continent. Notable among these is the African Charter on Human and Peoples' Rights, which serves as the primary human rights instrument for Africa. The AU also adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) in 2003, significantly advancing women's rights across the continent.
2. **African Court on Human and Peoples' Rights:** The AU established the African Court on Human and Peoples' Rights (AfCHPR) in 2004 to complement the protective mandate of the ACHPR. The Court provides an avenue for individuals and NGOs to bring cases against states for human rights violations, thereby enhancing access to justice and accountability.

Key Interventions and Initiatives

1. **AU Peace and Security Council (PSC):** The AU's PSC has intervened in numerous conflicts to protect civilians and uphold human rights. For instance, the AU's mission in Somalia (AMISOM) has been crucial in stabilizing the region and protecting human rights amidst ongoing conflict and insurgency.
2. **AU's Role in the Darfur Crisis:** In response to the humanitarian crisis in Darfur, the AU deployed the African Union Mission in Sudan (AMIS) in 2004. Although the mission faced challenges, it was a significant step towards addressing widespread human rights abuses, including ethnic cleansing and violence against civilians.

African Commission on Human and Peoples' Rights (ACHPR)

The ACHPR, established under the African Charter on Human and Peoples' Rights, is a quasi-judicial body tasked with promoting and protecting human rights on the continent. It plays a critical role in monitoring compliance with the Charter, examining state reports, and issuing recommendations.

ACHPR's Role in Human Rights Protection

1. **Monitoring and Reporting:** The ACHPR monitors human rights

situations in member states and issues reports that highlight violations and areas for improvement. The Commission's recommendations often form the basis for AU actions and policies.

2. **Special Mechanisms:** The ACHPR has established several special mechanisms, including Special Rapporteurs and Working Groups, to focus on specific human rights issues such as freedom of expression, women's rights, and the rights of refugees, asylum seekers, and internally displaced persons. These mechanisms allow for more targeted monitoring and advocacy.

Key Interventions and Initiatives

- **Resolution on Ending Child Marriage:** The ACHPR adopted the Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence in 2013. This resolution has been instrumental in addressing the issue of child marriage and other forms of gender-based violence, providing a framework for member states to develop national policies.
- **Commission of Inquiry on South Sudan:** In response to the ongoing conflict in South Sudan and reports of severe human rights abuses, the AU established a Commission of Inquiry. The Commission's findings led to increased international attention and pressure on the South Sudanese government to address the atrocities.

The African Union and the African Commission on Human and Peoples' Rights are pivotal in promoting and protecting human rights across Africa. Through their normative frameworks, monitoring mechanisms, and interventions, these organizations have made significant strides in addressing human rights challenges on the continent. While there are still considerable challenges, their ongoing efforts provide hope for a more just and equitable Africa.

Self-Assessment Questions

1. Evaluate how the Buddhist principles of ahimsa and non-self (anatta) align with modern human rights, especially concerning equality and nonviolence.
2. Analyse how Hinduism's traditional values and ethical teachings

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contribute to the concept of human rights. Discuss the challenges and ongoing efforts

3. Compare and contrast the Western and Islamic perspectives on human rights.
4. Examine how both ancient cultural resources and modern socialist principles have shaped the theoretical system of human rights with Chinese characteristics.
5. Analyse how African perspectives on human rights, rooted in communal values, offer an alternative to Western individualistic frameworks.