

UNIT -1

1. Meaning ,nature and scope of Human rights – Theories of Human rights
2. Historical evolution of Human Rights
3. Universal Declaration of Human Rights
4. International Covenant on economical, social and cultural rights

MEANING OF HUMAN RIGHTS

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. These claims are formulated in what is today known as human rights. Human rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

DEFINITION OF HUMAN RIGHTS

The essence of human rights are brought to light and defined as “Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a ‘member of human family’ irrespective of any consideration. The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as “rights derived from the inherent dignity of the human person.” Human rights when they are guaranteed by a written constitution are known as “Fundamental Rights” because a written constitution is the fundamental law of the state.

CHARACTERISTICS AND NATURE OF HUMAN RIGHTS

Following are the characteristics of human rights:

1. Human Rights are Inalienable - Human rights are conferred on an individual due to the very nature of his existence. They are inherent in all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.
2. Human Rights are essential and necessary - In the absence of human rights, the moral, physical, social and spiritual welfare of an individual is impossible. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people.
3. Human Rights are in connection with human dignity - To treat another individual with dignity irrespective of the fact that the person is a male or female, rich or poor etc. is concerned with human dignity.
4. Human Rights are Irrevocable: Human rights are irrevocable. They cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he is a human being. As such human rights have similarities to moral rights.

5. Human Rights are Necessary for the fulfillment of purpose of life: Human life has a purpose. The term “human right” is applied to those conditions which are essential for the fulfillment of this purpose.

6. Human Rights are Universal – Human rights are not a monopoly of any privileged class of people. Human rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.

7. Human Rights are never absolute – Man is a social animal and he lives in a civic society, which always put certain restrictions on the enjoyment of his rights and freedoms. Human rights as such are those limited powers or claims.

8. Human Rights are Dynamic - Human rights are not static, they are dynamic. Human rights go on expanding with socio-eco-cultural and political developments within the State. Judges have to interpret laws in such ways as are in tune with the changed social values.

9. Rights as limits to state power - Human rights imply that every individual has legitimate claims upon his or her society for certain freedom and benefits. So human rights limit the state’s power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals, or in the nature of demands on the State, i.e. positive obligations of the State.

CLASSIFICATIONS OF RIGHTS

Human rights can be broadly classified on five bases. They are: Civil Human Rights Political Human Rights Economic Human Rights Social and Cultural Human Rights Development Oriented Human Rights

a. The seventeenth, eighteenth and nineteenth centuries contributed and strengthened the civil and political rights, which assured civil and political liberties. The Civil and Political Human Rights are collectively known as ‘Liberty Oriented Human Rights’ because they provide, protect and guarantee individual liberty to an individual against the State and its agencies. Liberty rights also referred to as Blue Rights are the First Generation of Human Rights.

b. The twentieth century contributed to the development and strengthening of economic, social and cultural rights and the rights of minorities as well. These rights aim at promotion of the economic and social security through economic and social upliftment of the weaker sections of the society. These rights are essential for dignity of personhood as well as for the full and free development of human personality in all possible directions. These rights ensure a minimum of economic welfare of the masses and their basic material needs, recognized by the society as essential to civilized living.

The economic, social and cultural rights, including the rights of the minorities are collectively known as the “Security Oriented Human Rights” because these rights collectively provide and guarantee the essential security in the life of an individual. In the absence of these rights, the very existence of human beings would be in danger. These are also known as the “Second Generation of Human Rights”. They are also referred to as Red Rights or also as positive rights. These rights along with the Civil and Political Rights were declared by the Universal Declaration of Human Rights and later were recognized by (1) the Covenant on Civil and Political Rights and (2) the Covenant on Economic, Social and Cultural Rights in December 1966.

c. The Development Oriented Human Rights are of a very recent origin in the late twentieth century. These rights enable an individual to participate in the process of all round development and include environmental rights that enable an individual to enjoy the absolutely free gifts of nature, namely, air, water, food and natural resources, free from pollution and contamination. These are known as the Third Generation of Human Rights or Green Rights. They are also called as Solidarity Rights, because their implementation depends upon international cooperation.

Solidarity rights are of special importance to developing countries, because these countries want the creation of an international order that will guarantee to them the right to development, the right to disaster relief assistance, the right to peace and the right to good government.

Rights for Citizens and for all persons. All human rights can be further classified into two distinct classes on the basis of the eligibility of individual, who can exercise them as under: 1. The rights for citizens and 2. The rights for all persons. Certain rights are conferred only on citizens. For eg. In the Indian constitution provisions in Articles 15, 16, 19 and 29 are limited to citizens. The remaining provisions in Part III of the Indian Constitution are applicable to citizens and aliens alike.

THEORIES ON HUMAN RIGHTS:

- **INTEREST THEORY OF HUMAN RIGHTS:** The Interest theory was propounded by Jeremy Bentham (1748-1832), a utilitarian, stated the importance of moral rights in legal systems, being highly critical of it at the same time. According to his ideals, a person could be considered to vote if someone ratified it with legal rules and regulations.
- **WILL THEORY OF HUMAN RIGHTS:** The will theory was given by H.L. Hart (1907-1992), where he cited the importance of human freedom or liberty. He mainly focused on the freedom of every person, which means that freedom and well being are the two necessary conditions for a rationally purposive agent in the first place. They are the essential prerequisites for a human being, were to be human is to possess the capacity

for rationally purposive action. However, each individual is entitled to have access to them.

However, both these theories faced their shortcomings too, on basis of limiting interests and third party interests in the Interest Theory and lack of non-transferable rights and the cognitive abilities of the right holders in the Will Theory respectively.

THE MARXIST THEORY OF HUMAN RIGHTS can also be considered, where it was believed that property is the basis for coming into existence of law and state, but the argument on this is that neither law nor state existed in primitive society as there was no concept of private property.

Therefore it can be rightfully said that the Marxist theory views human rights from a perspective very different from others.

Unit 1 Lesson -2

Historical Evolution of Human Rights in India

The history and development of human rights in India can be divided into three stages Ancient, Medieval, and Modern.

Human Rights In Ancient India

The concept of human rights is not alien to Indian political thinkers and philosophers. The concept is as old as ancient civilization. In ancient India, law was based on the principle of Dharma. The Epics – Ramayana and Mahabharata make us learn that Dharma was ordained for the advancement of all creatures as well as restraining creatures from injuring one another. The righteousness has been described as the essence of Dharma in The Bhagwad Geeta. The Upanishads speak of Dharma as the foundation of whole universe. The Vedas and Smritis talk about the concept of “Vasudheiva Kutumbakam” (the whole world as one family). All the four Vedas insist on equality and dignity for humans. The teachings of Buddha worked effectively for the protection of human rights. The great King Ashoka had been successful in the creation of a welfare state for his subjects and provided them with basic freedoms and rights. Hence, it is very much clear that Ancient Indian Literatures stood for enlarging and encouraging human rights, freedoms, liberty and equality for all people irrespective of any discrimination based on caste, creed, gender, sex, religion.

Human Rights In Medieval India

The Medieval period signifies the Muslim era in India. The Pre-Mughal period saw the existence of social, political, cultural, religious rights. But with the advent of Mughals, the concept of human rights got lost in the dark. But Akbar's period (1526-1605) showed that the great regard was given to the social, religious and political rights.

In his religious policy Din-E-Ilahi (divine-religion), he tried to preach the idea of secularism and religious tolerance. Similarly, various religious movements like Bhakti (Hindu) and Sufi (Islamic) made remarkable contribution to the emergence of human rights which at times suppressed by the other Mughal Emperors like Babar, Humayun, and Aurangzeb.

Human Rights In Modern India

The British rule in India can be seen in the Modern period. During this period, the British Government of India had not only deprived the Indian people of their freedom but had based itself on the exploitation of the masses, and ruined India economically, politically, culturally and spiritually.

After witnessing the colonial rule, every Indian was of the firm opinion that the recognition, protection and implementation of human rights are not only basic but also inalienable for them for leading a civilized life.

The Preamble, Fundamental Rights, Directive Principles of State Policy, newly added Fundamental Duties, reservation for scheduled castes and tribes, special provisions for Anglo- Indians and other backward classes are important constitutional provisions from the human rights point of view. The study of human rights with reference to Indian Constitution reveals that the Constitution enshrines almost all the human rights provided in the various international conventions, covenants and treaties, such as:

Universal Declaration of Human Rights, 1948;

International Covenant on Economic, Social and Cultural Rights, 1976;

International Covenant on Civil and Political Rights, 1976;

Convention on the Prevention and Punishment of the Crime of Genocide, 1948;

International Convention on the Elimination of All Forms of Racial Discrimination, 1965;

Convention on the Elimination of All Forms of Discrimination against Women, 1979;

Convention on the Rights of Child, 1989;

Convention on the Rights of Persons with Disabilities, 2006.

Apart from the various constitutional provisions, various statutes have also been enacted by the Indian legislature with a view to protect and promote human rights. Some of the important legislations enacted by the union are:

Protection of Human Rights Act, 1993;

National Commission for Minorities Act, 1992;

National Commission for Women Act, 1990;

Protection of Civil Rights Act, 1955;

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

Immoral Traffic (Prevention) Act, 1956;

Bonded Labour System (Abolition) Act, 1947;

Juvenile Justice (Care and Protection of Children) Act, 2000;

Child Labour (Prohibition and Regulation) Act, 1947 etc.

India has also adopted a number of legislative measures for the social security of the labor, which have been greatly influenced by ILO's standards.

In this way, the concept of human rights developed and deepened its roots in India.

Unit – 1 Lesson 3

UNIVERSAL DECLARATION OF HUMAN RIGHTS

On 10 December 1948, the United Nations adopted the Universal Declaration of Human Rights in Paris, France. This day is celebrated throughout the world as Human Rights Day.

Background

- The Universal Declaration of Human Rights is a document which consists of 30 articles that affirm an individual's rights.
- This was the first step in formulating an International Bill of Human Rights that came into force in 1976.
- Although the declaration is not legally binding, these rights have been enshrined in many countries' constitutions and national laws.

- After the full horrors of the Second World War came into the fore, it was considered that a universal international declaration on individual rights was required since the UN Charter was not sufficient in itself.
- The United Nations then established the Commission of Human Rights in 1946 to prepare an international bill of rights. This Commission had 18 members all from different nations and having variant political ideologies.
- Eleanor Roosevelt was the Chairperson of the Universal Declaration of Human Rights Drafting Committee that drafted the articles. This Committee met for over two years.
- The Declaration's chief drafter was John Peters Humphrey, a Canadian and the Director of the Division of Human Rights within the United Nations Secretariat. Other important members of this committee were France's René Cassin, China's P C Chang and Lebanon's Charles Malik.
- The Committee completed its task by May 1948. After that, the draft declaration was discussed by the Commission on Human Rights, the General Assembly and the Economic and Social Council of the UN. After making many changes, the declaration was put to vote by the General Assembly in December 1948.
- This Universal Declaration was adopted as Resolution 217 by the Assembly on 10 December 1948. Out of the 58 nations (membership of the UN at that time), 48 voted in favour, 8 abstained, 2 failed to vote and none voted against the declaration. India voted in favour of the Declaration.
- The Soviet Bloc abstained observing that the declaration was not sufficient in condemning Nazism and fascism. Saudi Arabia abstained because it had objections to the 'Right to change his religion or belief'. South Africa abstained since its policy of apartheid violated most of the articles in the declaration.
- **Human Rights Day** is observed annually on this day to mark the adoption of the Declaration.

Content of the Declaration

- There are 30 articles and a Preamble.
 - Articles 1 – 2: concepts of dignity, liberty, equality, and brotherhood.
 - Articles 3 – 11: individual rights like right to life and prohibition of slavery; fundamental legality of human rights.
 - Articles 12 – 17: individual rights towards the community including freedom of movement.
 - Articles 18 – 21: constitutional liberties like political, public and spiritual freedoms; freedom of thought, opinion, religion and conscience, word and peaceful association.
 - Articles 22 – 27: economic, social and cultural rights; healthcare.
 - Articles 28 – 30: ways of using these rights and areas where they cannot be applied.
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The International Covenant on Economic, Social and Cultural Rights (ICESCR) together with its sister Covenant, the International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration, form the International Bill of Human Rights which is the pillar for human rights protection within the United Nations.

The ICESCR was adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966. The Covenant reflects the commitments adopted after World War II to promote social progress and better standards of life, reaffirming faith in human rights and employing the international machinery to that end.

Since the ICESCR is an international human rights treaty, it creates legally binding international obligations to those States that have agreed to be bound by the standards contained in it. As of November 2006, 155 States are parties to the ICESCR, thus, it can be seen as a treaty that reflects global consensus on the universal human rights standards that apply to the economic, social and cultural fields.

The Preamble of the Covenant recognises, *inter alia*, that economic, social and cultural rights derive from the "inherent dignity of the human person" and that "the ideal of free human beings enjoying freedom of fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as civil and political rights." Furthermore, the overarching principles of the Covenant are: (1) equality and non-discrimination in regard to the enjoyment of all the rights set forth in the treaty; and (2) States parties have an obligation to respect, protect and fulfil economic, social and cultural rights.

The Covenant recognises the following rights:

- The right to work (Article 6);
- The right to just and favourable conditions of work (Article 7);
- The right to form and join trade unions and the right to strike (Article 8);
- The right to social security including social insurance (Article 9);
- The right to protection and assistance for the family and the prohibition of child labour (Article 10);
- The right to an adequate standard of living for oneself and one's family, including adequate food, clothing and housing and to the continuous improvement of living conditions (Article 11);
- The right to the highest attainable standard of physical and mental health (Article 12);
- The right to education, the freedom of parents to choose schools other than those established by public authorities (Articles 13 and 14); and
- The right to take part in cultural life and to benefit from scientific progress (Article 15).

States Parties to the ICESCR

States become parties to an international treaty through ratification or accession. When a country becomes a State party to the ICESCR, it voluntarily accepts a range of legally binding obligations to promote the realisation of economic, social and cultural rights at the national level. Moreover, upon ratification or accession to the ICESCR, a State party is also offering itself to the scrutiny of an international committee of independent experts (the Committee on ESCR) on the basis of these norms and standards.

It is also important to note that when governments become States parties to the ICESCR, they can identify that they will not be bound to particular provisions. This is known as "entering a reservation." Sometimes States parties can also make declarations and these have the same effect as reservations.

The Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights is the supervisory body of the International Covenant on Economic, Social and Cultural Rights. It was established under United Nations Economic and Social Council (ECOSOC) Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the ECOSOC in Part IV of the ICESCR.

The ECOSOC is the primary body dealing with the economic, social, humanitarian and cultural work of the United Nations system. ECOSOC oversees five regional economic commissions and six "subject-matter" commissions, along with a sizeable system of committees and expert bodies. ECOSOC is composed of 54 member States, elected by the United Nations General Assembly for three-year terms.

The Committee on Economic, Social and Cultural Rights is composed of eighteen independent experts. Members of the Committee are elected by ECOSOC by secret ballot from a list of persons who qualify as "experts in the field of human rights" and who have been nominated for that purpose by the States parties. Members are elected for four years and are eligible for re-election.

The Committee meets in Geneva and normally holds two sessions per year, consisting of a three-week plenary and a one-week pre-session working group.

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