

**CLASS: I M.A., POLITICAL SCIENCE**

**SUBJECT: HUMAN RIGHTS THEORIES, INSTITUTIONS AND CHALLENGES**

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## **UNIT-II**

### **UNIVERSAL DECLARATION OF HUMAN RIGHTS**

Universal Declaration of Human Rights (UDHR), foundational document of international human rights law. It has been referred to as humanity's Magna Carta by Eleanor Roosevelt, who chaired the United Nations (UN) Commission on Human Rights that was responsible for the drafting of the document. After minor changes it was adopted unanimously—though with abstentions from the Belorussian Soviet Socialist Republic (SSR), Czechoslovakia, Poland, Saudi Arabia, South Africa, the Soviet Union, the Ukrainian SSR, and Yugoslavia—by the UN General Assembly on December 10, 1948 (now celebrated annually as Human Rights Day), as a “common standard of achievement for all peoples and all nations.” The French jurist René Cassin was originally recognized as the principal author of the UDHR.

The UDHR comprises 30 articles that contain a comprehensive listing of key civil, political, economic, social, and cultural rights. Articles 3 through 21 outline civil and political rights, which include the right against torture, the right to an effective remedy for human rights violations, and the right to take part in government. Articles 22 through 27 detail economic, social, and cultural rights, such as the right to work, the right to form and to join trade unions, and the right to participate freely in the cultural life of the community. The latter right relates to everyone's entitlement to be directly involved in and appreciative of the arts, and it is clearly linked to the full development of one's own personality (which, in accordance with article

26, constitutes one of the goals of the right to education). Because of the ideological fissures caused by the Cold War and the concomitant failure to develop a legally binding international human rights instrument, it became common to view civil and political rights independently of economic, social, and cultural rights, though this is a misinterpretation of both the letter and the spirit of the document. For example, it is impossible for a society to fulfill its commitment to the right to education (Article 26) without taking seriously its commitment to the right to seek, receive, and impart information (Article 19). Likewise, it is difficult to envisage the realization of the right to form and to join trade unions (Article 23) without a commensurate realization of the right to peaceful assembly and association (Article 20). Yet, these obvious linkages were obscured by the selective use of human rights norms by the main adversaries in the Cold War. The selectivity served to highlight what each side considered as its respective strength vis-à-vis the other: the terrain of civil and political rights for the Western bloc and the terrain of economic, social, and cultural rights for the Eastern bloc.

The indivisibility of human rights in Article 28—which many consider the most forward-looking article of the UDHR, though it has been one of the least-studied—links all the enumerated rights and freedoms by entitling everyone to “a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

## **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966**

### **BACKGROUND:**

The United Nations International Covenant of Civil and Political Rights (ICCPR) attempts to ensure the protection of civil and political rights. It was adopted by the United Nations’ General Assembly on December 19, 1966, and it came into force on March 23, 1976. The International Covenant on Economic Social and Cultural Rights, the Universal Declaration of Human

Rights, and the ICCPR and its two Optional Protocols, are collectively known as the International Bill of Rights.

#### PURPOSE:

The ICCPR recognizes the inherent dignity of each individual and undertakes to promote conditions within states to allow the enjoyment of civil and political rights. Countries that have ratified the Covenant are obligated “to protect and preserve basic human rights... [and] “compel[ed] to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.” There are currently 74 signatories and 168 parties to the ICCPR.

#### CONTENT:

The unifying themes and values of the ICCPR are found in Articles 2 and 3 and are based on the notion of non-discrimination. Article 2 ensures that rights recognized in the ICCPR will be respected and be available to everyone within the territory of those states who have ratified the Covenant (State Party). Article 3 ensures the equal right of both men and women to the enjoyment of all civil and political rights set out in the ICCPR.

The rights protected under the ICCPR include:

Article 6 – Right to life.

Article 7 – Freedom from torture.

Article 8 – Right to not be enslaved.

Article 9 – Right to liberty and security of the person.

Article 10 – Rights of detainees.

Article 11 – Right to not be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12 – Freedom of movement and choice of residence for lawful residents.

Article 13 – Rights of aliens

Article 14 – Equality before the courts and tribunals. Right to a fair trial.

Article 15 – No one can be guilty of an act of a criminal offence which did not constitute a criminal offence.

Article 16 – Right to recognition as a person before the law.

Article 17 – Freedom from arbitrary or unlawful interference.

Article 18 – Right to freedom of thought, conscience and religion.

Article 19 – Right to hold opinions without interference.

Article 20 – Propaganda for war shall be prohibited by law.

Article 21 – Right of peaceful assembly.

Article 22 – Right to freedom of association with others.

Article 23 – Right to marry.

Article 24 – Children’s rights

Article 25 – Right to political participation.

Article 26 – Equality before the law.

Article 27 – Minority protection.

## **INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS, 1966**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 through GA. Resolution 2200A (XXI), and came in force from 3 January 1976.

The ICESCR aims to ensure the protection of economic, social and cultural rights including: the right to self-determination of all peoples (article 1); the right to non-discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2); the equal right of men and women to enjoy the rights in the ICESCR (article 3); the right to work (articles 6–7); the right to form and join trade

unions (article 8); the right to social security (article 9); protection and assistance to the family (article 10); the right to an adequate standard of living (article 11); the right to health (article 12); the right to education (articles 13–14); and the right to cultural freedoms (article 15).

Following article 4, States parties may, in certain circumstances, limit some rights enshrined in the Covenant; however, such limitations must be determined by law, compatible with the nature of the rights included in the Convention and imposed to promote the general welfare in a democratic society.<sup>2</sup> Moreover, in keeping with article 2(1), States parties are obliged to undertake steps, in accordance with the maximum of their available resources, to progressively achieve the full realization of the rights contained in the ICESCR.

The Committee on Economic, Social and Cultural Rights has noted persistent problems with the implementation of this right, with very low levels of access. Several parties, including France and Monaco, have reservations allowing them to set residence requirements in order to qualify for social benefits. The Committee on Economic]

## **FUNDAMENTAL RIGHTS**

Fundamental rights are those rights which are essential for intellectual, moral and spiritual development of citizens of India. As these rights are fundamental or essential for existence and all-round development of individuals, they are called 'Fundamental rights'. These are enshrined in Part III of the Constitution of India.

Articles 12-35 of Indian Constitution deal with Fundamental Rights. These human rights are conferred upon the citizens of India for the Constitution tells that these rights are inviolable. Right to Life, Right to Dignity, Right to Education etc. all come under one of the six main fundamental rights.

1. Right to Equality
2. Right to Freedom
3. Right against Exploitation

4. Right to Freedom of Religion
5. Cultural and Educational Rights
6. Right to Constitutional Remedies

1. Right to Equality (Articles 14 – 18)

Right to equality guarantees equal rights for everyone, irrespective of religion, gender, caste, race or place of birth. It ensures equal employment opportunities in the government and insures against discrimination by the State in matters of employment on the basis of caste, religion, etc. This right also includes the abolition of titles as well as untouchability.

Aspirants can read more about Right to Equality in the linked article.

2. Right to Freedom (Articles 19 – 22)

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees freedom to citizens. The freedom right includes many rights such as:

- Freedom of speech
- Freedom of expression
- Freedom of assembly without arms
- Freedom of association
- Freedom to practise any profession
- Freedom to reside in any part of the country

Read more on the Right to Freedom in the linked article.

Some of these rights are subject to certain conditions of state security, public morality and decency and friendly relations with foreign countries. This means that the State has the right to impose reasonable restrictions on them.

Aspirants can find the details on Right to Life (Article 21), in the linked article.

3. Right against Exploitation (Articles 23 – 24)

This right implies the prohibition of traffic in human beings, begar, and other forms of forced labour. It also implies the prohibition of children in factories, etc. The Constitution prohibits the employment of children under 14 years in hazardous conditions.

Read more on the Right against Exploitation in the linked article.

#### 4. Right to Freedom of Religion (Articles 25 – 28)

This indicates the secular nature of Indian polity. There is equal respect given to all religions. There is freedom of conscience, profession, practice and propagation of religion. The State has no official religion. Every person has the right to freely practice his or her faith, establish and maintain religious and charitable institutions.

Read more on the Right to Freedom of Religion in the linked article.

#### 5. Cultural and Educational Rights (Articles 29 – 30)

These rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture. Educational rights are for ensuring education for everyone without any discrimination.

Read more on Cultural and Educational Rights in the linked article.

#### 6. Right to Constitutional Remedies (32 – 35)

The Constitution guarantees remedies if citizens' fundamental rights are violated. The government cannot infringe upon or curb anyone's rights. When these rights are violated, the aggrieved party can approach the courts. Citizens can even go directly to the Supreme Court which can issue writs for enforcing fundamental rights.

The Constitution empowers the Supreme Court and High Courts to issue orders or writs.

The types of writs are:

- Habeas Corpus
- Certiorari
- Prohibition

- Mandamus
- Quo Warranto

### Habeas Corpus

Habeas Corpus is a writ that is enforced to protect the fundamental right to liberty of an individual against unlawful detention. This writ commands a public official to deliver a detained person in front of the court and provide valid reasons for the detention. However, this writ cannot be issued in case the proceeding is for contempt of a legislature or a court.

### Certiorari

The writ of certiorari is issued to a lower court directing that the transfer of a case for review, usually to overrule the judgment of the lower court. The Supreme Court issues the writ of Certiorari in case the decision passed by the lower court is challenged by the party. It is issued in case the higher court finds it a matter of over jurisdiction or lack of jurisdiction.

It is one of the mechanisms by which the fundamental rights of the citizens are upheld.

### Prohibition

Prohibition is a writ issued by a higher court to a lower court to enforce inactivity in the jurisdiction. It happens only in case the higher court is of the discretion that the case falls outside the jurisdiction of the lower court. Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.

### Mandamus

The writ of mandamus is issued to a subordinate court, an officer of the government, or a corporation or other institution commanding the performance of certain acts or duties.

Unlike Habeas Corpus, Mandamus cannot be issued against a private individual.

The writ of mandamus can be used to order the completion of a task or in other cases, it may require an activity to be ceased.

## Quo-Warranto

Quo warranto is issued against a person who claims or usurps a public office. Through this writ, the court inquires 'by what authority' the person supports his or her claim.

Through this writ, the court enquires into the legality of a claim of a person to a public office.

This writ prevents the illegal assumption of a public office by an individual.

## Features of Fundamental Rights

- Fundamental rights are different from ordinary legal rights in the manner in which they are enforced. If a legal right is violated, the aggrieved person cannot directly approach the SC bypassing the lower courts. He or she should first approach the lower courts.
- Some of the fundamental rights are available to all citizens while the rest are for all persons (citizens and foreigners).
- Fundamental rights are not absolute rights. They have reasonable restrictions, which means they are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.
- They are justiciable, implying they are enforceable by courts. People can approach the SC directly in case of violation of fundamental rights.
- Fundamental rights can be amended by the Parliament by a constitutional amendment but only if the amendment does not alter the basic structure of the Constitution.
- Fundamental rights can be suspended during a national emergency. But, the rights guaranteed under Articles 20 and 21 cannot be suspended.
- The application of fundamental rights can be restricted in an area which has been placed under martial law or military rule.

## **DIRECTIVE PRINCIPLES OF STATE POLICY**

Articles 36-51 under Part-IV of Indian Constitution deal with Directive Principles of State Policy (DPSP). They are borrowed from the Constitution of Ireland, which had copied it from the Spanish Constitution.

The Sapru Committee in 1945 suggested two categories of individual rights. One being justiciable and the other being non-justiciable rights. The justiciable rights, as we know, are the Fundamental rights, whereas the non-justiciable ones are the Directive Principles of State Policy.

DPSP are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws. There are various definitions to Directive Principles of State which are given below:

- They are an ‘instrument of instructions’ which are enumerated in the Government of India Act, 1935.
- They seek to establish economic and social democracy in the country.
- DPSPs are ideals which are not legally enforceable by the courts for their violation.

#### Directive Principles of State Policy – Classification

Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types-

- Socialistic Principles,
- Gandhian Principles and,
- Liberal-Intellectual Principles.

#### Socialistic Principles

These principles contemplate the ideology of socialism and lay down the framework of a democratic socialist state. The concept envisages providing social and economic justice, so that state should achieve the optimum norms of welfare state. They direct the state through- Article 38, Article 39, Article 39 A, Article 41, Article 42, Article 43, Article 43 A and Article 47.

### Gandhian Principles

These principles reflect the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfil the dreams of Gandhi, some of his ideas were included in DPSP and they direct the state through- Article 40, Article 43, Article 43 B, Article 46, Article 47 and Article 48.

### Liberal-Intellectual Principles

These principles inclined towards the ideology of liberalism and they direct the state through- Article 44, Article 45, Article 48, Article 48 A, Article 49, Article 50 and Article 51.