



UTTAR PRADESH  
RAJARSHI TANDON OPEN UNIVERSITY

# CHR-02

## Human Rights and India

Block

# 1

## HUMAN RIGHTS — INDIA'S HERITAGE

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Ancient and Medieval India

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Modern India

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# UNIT 1: ANCIENT AND MEDIEVAL INDIA

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## 1.0 OBJECTIVES

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After reading this Unit you would get an idea about

- the nature of India's cultural heritage,
- elements of tolerance and harmony in Ancient India,
- the contributions made during the medieval period of India's history towards a human rights perspective,
- the role of movements like Bhakti and Sufi in shaping a human right perspective,
- a concern for environment in Indian tradition, and
- the relevance of India's tradition and heritage for a human right perspective.

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## 1.1 INTRODUCTION

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The question of establishing the relationship between human rights education and Indian historical tradition is a complex one. The concept of human rights is of a recent, post-Second World War origin. It specifically laid down a concern and emancipation of the individual as a cornerstone of any human right activity. The idea of equality of all individuals has fed directly into a human rights perspective. Individualism as a doctrine itself is a purely modern idea. Therefore, if you want to look at India's traditional heritage as a possible source of inspiration for a human rights perspective today, a superficial investigation may not yield much. Such a search is neither easy nor possible. It would be imperative to dissect and dismantle the concept of human rights and to take out the constitutive elements that make the whole. It should then be possible to go back to the Indian tradition and identify those elements that essentially constitute human rights today. In oilier words you may not easily find anv intellectual currents of individualism, universalism or egalitarianism in the remote past. But certain features of a human lights perspective like humanism, concern for the lower social groups, respect for their emancipation, au acceptance of their; right to protest, compassion, nor.-vio- lence etc. register an ambulant presence,

Such an exercise, it is important to point out, can be risky. Scholars can be easily tempted into glorifying the entire Indian tradition and portraying a human rights perspective to be flowing directly from there. Or, alternatively, they may look upon Indian tradition in purely negative terms - full of fissures, caste tyranny and inequality – and deny any connection between the two. In order to avoid the risk involved in the two approaches it is crucial *not* to look upon Indian history and tradition as a uniform, homogenous unilinear progression of a broadly similar trend – whether glorious or tyrannical. Instead Indian tradition has to be seen and understood as a huge ocean of elements, beliefs, attitudes and structures of various kind. Complex and contradictory beliefs and practices have existed and interacted with each other at multiple levels.

This complexity of India's cultural heritage has made it possible for both positive and negative traditions to co-exist. And, it is this co-existence which has imparted a kaleidoscopic character to India's traditional heritage. The Indian tradition has shown a tendency towards both change and resilience. So to say, certain features of Indian tradition have continued whereas some others have undergone a change. It is precisely in this sense that some of our centuries old traditions are still with us. Our cultural heritage has both positive and negative or undesirable features. Whereas it is important to remember and take pride in the possible ones, it would not be fair to block out the negative aspects from our memory. Some of the features of our tradition pertaining to tolerance, respect for plurality, and uplift of the lower sections of the society etc., can be considered the forerunners of the modern day human rights perspective. This Unit is going to delve into some of these aspects.

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## 1.2 OUR HERITAGE IN ANCIENT TIMES

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While talking and writing about human rights violations, some Indian scholars and human rights intellectuals refer to India's glorious and golden past of 5000 years and impress that it must be revived to usher in a new India where the values of tolerance, non-violence, friendship for all, equality, respect for the human person, human dignity and rights and freedom will be observed and cherished. They, however, leave us in the dark as to which 'glorious' past is to be revived and which one needs to be buried. Obviously, we want to revive that past which will help India claim the inheritance of the blessings of modern civilization. Our Ancient past, as indeed any past of any society, is of an ambivalent nature. This has been aptly pointed out by the noted historian, **Romila Thapar**, in her book *The Past and Prejudice*:

The supposed perfection of the past has hampered our understanding not only of the social processes but also of our own cultural identity. An analysis of the totality of Indian society today has to account for a variety of transitions taking place and involving tribal groups, peasant groups, and, at the most articulate level, the change to industrialisation. The nature of these changes will often involve a basic change of social values. The confrontation can no longer be evaded, as it once was, by recourse to the theory that our concern has always been only with things spiritual, or by an escape into the past. But the process can be facilitated by an awareness of the past, deriving from a realistic assessment....It is only the awareness that history is made by an entire people into its total activity, which can bring us nearer to explaining the past in its concrete actuality. And, this, after all, is the ultimate purpose of historical investigation.

Let us therefore look upon some aspects of our past which have something to offer to a human rights activity today. It is just as well to begin with the **Rig Ved**, the oldest available text in the world.

### 1.2.1 Vedic References

Two statements in the Rig Ved contain vital clues to any enquiry into the nature of truth and justice to be pursued by anyone: **"Truth is one. Wise men interpret it differently"** and **"Let noble thoughts come from everywhere"**. These two might well represent the oldest philosophical acknowledgement of the plurality of ways in which the universal truth can be interpreted and understood. The second statement in addition attempts to create a pool of wisdom to which everybody should contribute and which is in the end beneficial to all. Any human right activist would do well to begin his enquiry from these twin concerns laid down in the Rig Ved.

But there is one problem with the Vedic texts. Being Brahmanical in nature, they do not represent and speak for everybody, mainly the lower castes and groups. For their contribution to a human rights perspective, we would have to turn to Buddhist and Jain texts and sources.

### 1.2.2 Buddhism

Buddhism forms an important part of non-Brahmin or non-Sanskritic traditions that stood up for the downtrodden in society. Buddha himself debunked the Brahmanical claims to any spiritual superiority on the basis of birth. During the Buddhist period, interest in man, in his image, and man's affairs on this earth, unlike interest in gods and goddesses and good life in heaven after death, this earth being a vale of tears, became the primary concern of thoughtful men and women. Buddha rejected the caste system for it was based upon inequality and treated some individuals as morally superior purely on grounds of birth.

Buddha's story is known to everybody. Human sufferings made Prince Gautam Siddhartha restless and he left all luxuries and comforts of the King's palace in search of remedies for all human miseries and sufferings on this earth. The basic tenets of Buddhism are non-violence, non-hatred, and friendliness to all. Emperor Ashokaa who became a devoted follower of Buddha took to the non-violent and humanist philosophy of Buddhism. Also, he became a great champion of freedom and tolerance. He pleaded for universal tolerance. One of the most significant contributions of Buddhism was the introduction and spread of secular education—education for all. Organised universities came to be established under the direct influence of Buddhism.

Buddha ( 564 BC-480 BC) rejected the infallibility of the Vedas as well as Brahman, without which no opposition to Brahmin-upanishadic domination was possible. His *Nirvana* (liberation from the cycle of life and death) was to be attained in this very world, and it could be attained by *anyone*, should he or she follow the right conduct. He came out strongly against elaborate Brahmanical rituals and rites involving animal sacrifices on the grounds of non-violence and compassion to all beings. The important philosophical contribution made by Buddhism that should inspire any human right activist is beautifully contained in the famous story about Buddha's life that he narrated to his disciples in the following words.



## **The Buddha and the Swan**

I was born in Kapilvastu. My father, King Sudhodana brought me up in comfort and luxury. One day I was walking in the garden. Suddenly a white swan fell from the sky at my feet. An arrow had pierced its wing. It was gasping for breath. Its eyes were filled with tears and it was unsuccessfully fluttering its wing. I was overcome with pity. I took him in my lap and carefully removed the arrow. As I was taking him for dressing, my cousin Devadutta came over. He said: "I have shot the swan. A prey belongs to the person who shoots it. Please give it to me." I said: "This swan fell in front of me. I will look after him until his wounds heal so that he can fly again." Devadutta was very angry. He complained to the king that I had stolen his swan. The king called both of us. I told the whole story. The king said: **"One who saves a life is greater than the one who destroys it. So, the swan shall stay with you."** All the noble souls gathered here remember this story. Do not spill blood. Do not destroy life. Respect your elders and do not oppress your slaves. **Good conduct is more meaningful than any sacrifice.** Do not live in so much of a luxury that you lose fellow feelings with your friends and nature. At the same time do not unnecessarily punish your body by not eating and over-exertion. Follow the middle path.

### **1.2.3 Jainism**

Along with Buddhism, Jainism constituted another parallel non-Sanskrit tradition that carried forward this compassion for all human beings. It acknowledged an existence of rights not only of the downtrodden but also plants and animals. Every creature has life and they are all similar in their sensitivity to pain and pleasure. Jainism defined 'sin' as a violence to, and encroachment on, others' right to life. This may have been the first time in human history that a right to life was laid down as a human right. Likewise, a violation of this right by someone else was considered violence and indeed a sin. What is important is that Jainism extended this right not only to all individuals but also to animals and indeed to all living species.

Another important contribution made by the Jain tradition in the search for truth was evolving a philosophical system known as Syad Vad. The term Syad means perhaps. Syad Vad argued that truth cannot be perceived in totality by anyone and so one should always provide enough space for the possibility of a different understanding and interpretation of truth. A famous Jain story of seven blind men and the elephant conveys this sense very well.

### **Seven Blind Men and the Elephant**

One day an elephant made its presence among seven blind men who could not see the whole elephant but only feel its parts. They were all curious to know what this strange object was. The first blind man felt the feet of the elephant and declared that the strange object was a pillar. The second blind man felt the trunk of the elephant and declared that it was a snake. The third blind man felt the tusk of the elephant and concluded that the strange thing was a spear. The fourth blind man felt the head of the elephant and informed everybody that it was a great cliff. The fifth blind man felt the ear of the elephant and told everybody that it was a fan. The sixth blind man felt the tail of the elephant and declared that it was indeed a rope. But the seventh blind man refused to conclude on the basis of a partial enquiry. He felt the strange object up and down, left and right and indeed from all other possible angles. Finally he concluded that the strange new object was indeed sturdy as a pillar, supple as a snake, wide as a cliff, sharp as a spear, breezy as a fan and stringy as a rope. But altogether that something was not a pillar, snake, cliff, spear, fan or a rope but... an elephant. All the other blind men agreed with him. They also agreed that knowing in part might give a partial truth but real wisdom comes from seeing the whole

### 1.2.4 Lokayata

Long before the advent of Buddhism, Indian society had been exposed to another philosophical system called Lokayata, which offered a different and a very radical interpretation of reality. It was a system which persistently rejected the conception of a creator or anything existing prior to matter in one or another form. It however kept company with simple religious beliefs, rites and even cult in daily life.

The Lokayata school of thought was founded by Charvak, who denounced categorically the Karma, Punarjanma, Moksha and Varna System. Some of the Sutras from Lokayat a darshan clearly show their humanist and rationalist nature: "The body, the face and all limbs of all people being similar, how can there be any distinctions of Varna and caste? Such distinctions are unscientific and cannot be defended." Lokayata rejected the superiority of ritualistic Brahmanical functions over others: "Agriculture, cattle breeding, trade, state service etc. are occupations of the wise. They should be followed. But those who smear their bodies with ashes and perform Agnihotra and other religious rites are devoid of intelligence and manhood." Lokayata also provided a humanitarian, as against an other-worldly, interpretation of Moksha (liberation from this world): "Real bondage lies in servitude. Real Moksha lies in freedom." The driving impulse of the lokayat was social and not philosophical which is evidenced in various ways. Many of their Sutras were directed against Brahmanical domination embedded in the concept of Chaturvarna.

There were many other non-Vedic-sects—like the *Nath*, *Yoga*, *Siddha* who, too, like the Buddhists, found the key to all religious mysteries in the human body itself. The position of the Nath-panthi siddhas and jogis in Hindu society needs to be understood. Most of the nath-panthi siddhas and jogis belonged to the low castes, opposed caste-based inequalities, denounced the religion espoused by the Brahmins, and did not favour image worship. Another important feature of these sects was that Women played a significant part in these sects, particularly in the *Tantra*.

### 1.2.5 Ashoka

No discussion of human rights and their roots in Indian tradition can be complete without a reference to King Ashoka. His significant contribution lay in translating the philosophy of tolerance into an attitude to be adopted by all. Ashoka is perhaps the first ruler who developed a totally anti-war perspective. Wars have been fought between rulers throughout history, and generally glorified by the victors. Ashoka stands out in history as someone who gave up not only war but also the attitude of war. He equated war not with triumph and glory but with misery and human sufferings. Ashoka looked at war not from the perspective of the victor but the vanquished and showed a keen sensitivity towards the all round destruction and suffering brought about by war. His attitude to war has been described in his 13th major rock edict. This rock edict is easily the oldest anti-war statement and should actually be treated as one of the oldest and a very- important human rights document.

### Ashoka's 13<sup>th</sup> Major Rock Edict

When he had been consecrated for eight years the Beloved of the Gods, the King Piyadassi (King Ashoka) conquered Kalinga. A hundred and fifty thousand people were deported, a hundred thousand were killed and many times that number perished. Afterwards, now that Kalinga was annexed, the Beloved of Gods very earnestly practised *Dhamma*, desired *Dhamma*, and taught *Dhamma*. On conquering Kalinga, the Beloved of the Gods felt remorse, for, when an independent country is conquered the slaughter, death and deportation of the people is extremely grievous to the Beloved of the Gods, and weighs heavily on his mind. What is even more deplorable to the Beloved of the Gods, is that those who dwell there, whether brahmans, shramanas, or those of other sects, who show obedience to their superiors, obedience to mother and father, obedience to their teachers and behave well and devotedly towards their friends, acquaintances, colleagues, relatives, slaves, and servants – all suffer violence, murder and separation from their loved ones. Even those who are fortunate to have escaped, and those whose love is undiminished (by the brutalising effect of war) suffer from the misfortunes of their friends, acquaintances, colleagues and relatives. This participation of all men in suffering weighs heavily on the mind of the Beloved of the Gods.....

The Beloved of the Gods believes that one who does wrong should be forgiven as far as it is possible to forgive him....

The Beloved of the Gods considers victory by *Dhamma* to be the foremost victory .... What is obtained by this is victory everywhere, and everywhere victory is pleasant....

This inscription of *Dhamma* has been engraved so that any sons or great grandsons that I may have should not think of gaining new conquests, and in whatever victories they may gain should be satisfied with patience and light punishment. They should only consider conquest by *Dhamma* to be a true conquest, and delight in *Dhamma* should be their whole delight, for this is of value in both this world and the next.

### Check Your Progress 1

1. What is the difference between the Vedic and the Buddhist traditions? Write in 100 words  
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2. Read the two stories: 'the Buddha and the Swan; and 'seven blind men and the Elephant'. What is their relevance for a human rights perspective today?  
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3. Mention some features of the Lokayata tradition.  
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## 1.3 OUR HERITAGE IN MEDIEVAL TIMES

The tradition of tolerance, non-violence and respect for plurality that was initiated in Ancient India continued to flourish in medieval times as well. In fact this tradition developed further and was enriched by contributions both from the rulers and also at the popular level. Some of the Islamic rulers, Akbar in particular, were notable in extending a symmetrical treatment to the population without making any discrimination on the grounds of religion. They also made a contribution to the development of a syncretic culture which has a tremendous relevance for a pluralist country like ours. Let us briefly scrutinise some of the features of medieval India which should inspire a human rights activist today.

### 1.3.1 Medieval Rulers

Some of the rulers of medieval India were despotic and intolerant, some others liberal and enlightened. Among all the rulers Akbar really stands out for his contribution towards religious tolerance and for promoting brotherhood of all men. Immediately after assuming office he quite generously remitted pilgrim-tax amounting to crores of rupees on Hindus at Mathura and other places. He also forbade the enslavement of wives and children of rebellious villagers. He abolished *jizya*, a tax that was levied only on Hindus. He completely banned the sale and purchase of slaves. Akbar also extended freedom to all the religions. Those who had been forcibly converted to one religion were allowed to convert back to their original religion. No restrictions were placed on the building of Hindu temples, Christian churches or Jewish synagogues. Given the spirit of the times these were magnanimous steps. Akbar also transformed the educational syllabus by introducing, contrary to the prevailing norms, secular subjects like Mathematics, Agriculture, Geometry, Astronomy, Logic, History etc.

Perhaps Akbar's greatest contribution lay in building an institution called *Ibadat Khana* (literally hall of prayers), at Fatehpur sikri in 1575, as a place for conducting religious debates. These debates convinced Akbar that all religions contained elements of truth. From this he evolved his universalist ideas on religion contained in the concept of *Sulh-i-kul* or peace between all religions. It is this spirit of religious universalism and unity of all men during medieval times that should be of interest to a human rights activist today.

However, it is important to keep in mind that the initiative for unity of all religions and syncretism was not just confined to the kings but had powerful roots in the society. Bhakti and Sufi, two powerful social movements did more than anybody else to promote and spread these ideas in the society. Let us now look at the tenets of some of the Bhakti and Sufi saints

### 1.3.2 Bhakti and Sufi Saints and Their Contributions

There are many folk religions and sects which came into prominence in the medieval period. Well-known among them are Bhakti and Sufi movements, and also the Baul movement in Bengal. They are remarkable for their simplicity, directness, and for preaching and practising tolerance, love and friendliness

Bhakti, the path of devotion, implies a belief in the Supreme Person, not a supreme Abstraction. It is, therefore, a very straightforward and unsophisticated belief. It was opposed by the Brahmins for a long time because of its utter disregard for caste divisions, religious rituals and ceremonies. But, later they treated Bhakti with respect. The tradition of Bhakti played an important role among the Tamils as mentioned in the works of the Alvar saints, most of whom came from low castes. In the beginning, the movement was restricted to the lower strata of society who were the

chief victims of the Brahmanical tradition. At a later stage, Vaishnavas of even higher castes hailed their literature. One Alvar saint, Andal belonged to a lower caste; she was accepted as a religious leader by the society in general. This is an indication of the popularity of the Bhakti movement. The great scholar, **Ramanuja**, the best known exponent of this movement, was influenced and inspired by the “**works of the Alvars**”, which were collected by the disciples of Ramanuja at his special request, and from which Ramanuja himself drew much inspiration and food for this system of thought.

The devotional Bhakti and the Sufi traditions (the first Sufi teacher, Khwaja Moinuddin Chishti came to India in 1193 ) had much in common. In medieval north India, mysticism was the product of both the Bhakti movement and the tradition of Sufis. One important aspect of this mysticism was its complete independence from orthodox scriptures. These teachers practised and taught tolerance.

The interaction of Bhakti and Islam, specially the Sufi idea, gave rise to a number of progressive movements with the core philosophy of tolerance. Human Rights educationists should give utmost importance to this aspect. It is regrettable that it has, with some notable exceptions, been generally studied in isolation. It should, therefore, be emphasised in our text books that relations between Islam and the religions of India were marked by mutual understanding and tolerance. This spirit of mutual understanding, tolerance and cooperation were, to large extent, promoted by the rise and spread of **Sufi and Bhakti ideas**.

**Namdeva** and **Tukaram** from Maharashtra, the former a tailor and the latter a peasant, made the Bhakti movement increasingly acceptable to the people. Namdeva spread the virtues of simplicity and argued forcefully against rituals and superstitions. He said: “The stone image speaks not, see the lord within, the Tirthas (holy pilgrimage) cannot wash away sins, clean your hearts instead. Fasting and other observance are futile unless your being is purified. What can ceremonies do if love awake not in your heart?”

In Bengal, the well-known Vaishnava poets **Jaidev**, **Vidyapati** and **Chandidas**, as also **Chaitnaya** popularised the Bhakti movement. It spread to almost all parts of India. Though the movement did not succeed in completely breaking through caste barriers, the very fact that many of its leaders belonged to lower castes, and also that it believed in the equality of men, must be taken note of by human right educationists.

In the fourteenth-fifteenth century, **Ramananda** (1370-1440) challenged caste divisions, revolted against traditional religious rituals and started preaching in local dialects, and not Sanskrit which was the preserve of the upper castes. His thought is well reflected in his following words: “Wherever I go, I see water and stone, but it is You who had filled them all with Your presence. In vain do they seek You in the Vedas...” Ramananda had 12 important disciples. They all belonged to low castes. One of them, **Ravidas** was a cobbler. “The recitation of the Vedic Mantras, even for many millions of time will not satisfy the pangs of the longing (to see You)”, sang Ravidas.

The most famous disciple of Ramananda was **Kabir**, who combined in his writings the essence of Sufi and Bhakti traditions. He struck at the roots of ritualism and superstition. “O God, Whether Allah or Rama, I live by thy name.”, sang Kabir. Since Kabir composed songs for the common people he chose his own language which was a combination of many local dialects. He said: “Sanskrit is like water in a well, the language of the people is a flowing stream.” He practised and preached the gospel of universal tolerance and was one of the exponents of the idea of India with full religious freedom for all. **Kabir gave utmost importance to human equality and denounced inequality based on caste, religion and wealth.**



The founder of the great Sikh religion, Guru Nanak, was greatly influenced by Bhakti and Sufi ideas. Both Kabir and Guru Nanak found a common link between Hinduism and Islam. The Supreme significance of Nanak was that he was the harbinger of Hindu - Muslim unity, for he sought sincerely to reconcile Islam with Hinduism as the following verse will show : "Guru Nanak Shah faquir/ Hindu Ka Guru aur/Musalaman ka pir." (Guru Nanak is a royal pauper. He is a Guru to Hindus and a Pir (saint) to Muslims.)

Bauls are not known outside Bengal. The philosophy of the Baul movement lies in the simple man's (sahaj) search for the "Man of his heart"- his God. The movement traces its origin to the fall of Buddhism and Vaishnavism. Bauls are like the wind (Baul means wind, *vayu*)- always free, not tied to any religious traditions. They accepted no caste division, they did not worship any special deity nor did they accept any temple or mosque. Baul devotees belonged to the lowest strata of both Hindus and Muslims. "What need have we of other temples, when our body is the temple where the spirit has its abode", they sang. They did not observe asceticism, nor did they believe in celibacy. Earthly love, they argued, helps them to feel divine love, and harmony between material and spiritual needs.

### Check Your Progress 2

1. Justify Akbar's eminence among the medieval rulers in 100 words.

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2. Write 5 lines on the Bhakti movement

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3. Bring out Kabir's significance as a proponent of Sufi and Bhakti traditions.

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4. Write a short note on Guru Nanak.

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5. What do you know about the Bauls.

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## 1.4 ENVIRONMENTALIST TRADITION

An acute environmental awareness has been the feature of our social life for the last four or five decades. It is generally believed that the 1950s and 1960s brought about an anxiety that the natural resources of the earth were getting depleted as a result of excessive consumption of natural resources in some parts of the world and an increasing population in some other parts. An accompanying anxiety was that mindless developmental activities in the world were polluting the entire earth making it an unsafe place to live. It was felt that the modern man had proved himself unfit to live in harmony with nature at large. The tendency to conquer nature and destroy other species could lead to the destruction of nature as well as man. A powerful environmental movement has now grown throughout the world around these ideas. As a result the environmental awareness has become a considerable part of any human rights activity. In this context, it is crucially significant to point out that although an environmental perspective is completely alien to any western or European tradition, it finds ample references in Indian history and tradition.

The Ancient Indian philosophy did not place man at the apex or the centre of the universe but only as one of the many elements. At the same time every element biotic or non-biotic was perceived to be a living being with a life of its own. Therefore all the trees, forests, mountains, rivers, birds, animals and other species were considered as much a part of nature as man was. It was his duty, therefore, to live *along with them and not at their expense*. The nature was not placed at the service of man and he was not privileged over other species in any way. This philosophical position proved enough of a safeguard against a man-centred view of nature. It is possible to trace the philosophical origins of the modern environmental awareness to the Ancient Indian tradition.

A crucial aspect of this tradition was that it did not just remain confined to the realm of philosophy but was manifested in concrete practice at the level both of the rulers and the people. Among the rulers, Ashoka is perhaps the earliest one to have prohibited the killing of certain birds and animals in his kingdom. These instructions were inscribed on his pillar edicts. He set up hospitals and reserves for wild animals and birds and also implemented various species-specific protection measures.

Much more than the rulers, the observance of environment friendly practices by some of the local communities is quite remarkable. In this context, mention must be made of *Bishnois* (followers of *Bishnoi* faith), a community that has been living in the state of Rajasthan for centuries. *Bishnois* have, as a matter of practice and routine, used their natural resources judiciously and shown tremendous respect for the environment around them. The community has maintained very strict rules regarding the protection of wildlife and the trees in their area. The penalty for violating any of these community rules is very severe. There is a remarkable and well-known incidence in the history of *Bishnois*. In 1730, the Maharaja of Jodhpur ordered his men to fetch some wood from a *Bishnoi* area. The *Bishnoi* men were away at work. All the *Bishnoi* women and children got together and decided to protect their trees. They hugged their trees in order to save them from being felled by the king's men. Over 360 women and children were hacked to death in the process but they did not allow their trees to be cut. The king had to finally ask his men to stop killing innocent women and children, offer atonement for the killings and undertake not to cut any *Bishnoi* tree. This glorious saga of protecting the environment by laying down their lives inspired the famous Chipko movement centuries later in 1973 in the hills of U.P. The *Bishnois* still practise the same life-style and treat their environment as sacred. Any human rights activist interested in the environmental question would do well to observe and study some of the *Bishnoi* practices.

### Check Your Progress 3

1. What is the relevance of ancient Indian tradition for an environmentalist perspective today?  
Write in five lines.  
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2. What is the relevance of the Bishnoi community for the environmental movement today?  
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## 1.5 LET US SUM UP

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The purpose of the Unit was to sensitise the learner about the wealth of inspiration Indian history and tradition has to offer to the modern human rights activist. The unit began by evolving a perspective for studying cultures and traditions. It is imperative to avoid the risk of either glorifying India's culture or denigrating it in totality. Indian tradition, like all other traditions, is extremely complex and contains both positive and negative features. There is much in the Indian tradition that is informed by a basic humanitarian concern. Through a cursory glance at the ancient and medieval history you learnt that India has a long tradition of acceptance of contrary view-points, tolerance towards others, non-violence, love and compassion, syncretism, religious universalism and an emphasis on the brotherhood of all men. The anti-war declarations made by Ashoka in the 3<sup>rd</sup> century B.C. and the remarkable respect for the environment practised by the *Bishnois* of Rajasthan deserve a special mention for any student of human rights education.

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## 1.6 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress Exercise 1

1. Base your answer on Sub-sections 1.2.1 and 1.2.2.
2. Read the two stories in the respective boxes (Sub-sections 1.2.2 and 1.2.3) and conclude for yourself.
3. Refer to Sub-section 1.2.4.

### Check Your Progress - 2

1. Refer to Sub-section 1.3.1.
2. See Sub-section 1.3.2.
3. Refer to Sub-section 1.3.2; para 8.
4. Refer to Sub-section 1.3.2; para 9.
5. Refer to Sub-section 1.3.2; the last para.

### Check Your Progress - 3

1. See Section 1.2.
2. Base your answer on Section 1.4. Concentrate on the last para.

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## UNIT 2 MODERN INDIA

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### Structure

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Responses To The British Rule
- 2.3 The Early Activists
  - 2.3.1 Raja Rammohan Roy
  - 2.3.2 Bankim Chandra Chatterjee
  - 2.3.3 Ishwar Chandra Vidyasagar
  - 2.3.4 Swami Vivekanand
  - 2.3.5 Justice Ranade
  - 2.3.6 Tilak and Phule
- 2.4 Muslim Reformists
  - 2.4.1 Sir Syed Ahmed
  - 2.4.2 Maulana Abul Kalam Azad
- 2.5 The Decisive Lead
  - 2.5.1 Rise of the Mahatma
  - 2.5.2 The Vaikom Movement
  - 2.5.3 Champion of the Dalits
  - 2.5.4 The Communist Factor
- 2.6 The Indian Promises
- 2.7 Let Us Sum Up
- 2.8 Answers to Check Your Progress Exercises

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## 2.0 OBJECTIVES

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After reading this Unit, you will be able to,

- learn about the state of human rights in India, in progression,
- understand and discuss various trends that helped pave way for an improved human rights situation,
- explain diverse views of the Indian leaders under the Raj, and
- have a glimpse of the promising future of human rights as envisaged in the Constitution of India.

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## 2.1 INTRODUCTION

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Broadly speaking, the modern period in India started with the advent of the British and the English education in the early 19<sup>th</sup> century. India's exposure to the British rule was both a blessing and a bane. While the Brahminical hegemony persisted, the common Indian started thinking in terms of a change in the methods of production and education. The 1857 mutiny crushed the Indian voice of protest and revolt. In this Unit, we propose to acquaint you with the various trends in the 19<sup>th</sup> century and the better part of the 20<sup>th</sup> century that, in one way or the other, paved way for an improved human rights situation. We will study the repercussions of the British rule and its earlier reactions among the Hindus and the Muslims. We will learn about the various social reforms as well as the movements dedicated to the liberation of India. We will see how these influenced the Indian psyche and ultimately contributed to the betterment of human rights situation in India. We will, in this Unit, have a feel of the diverse views represented by such stalwarts as Ram Mohan Roy, Vivekanand, Tilak, Phule, Sir Syed Ahmed, Gandhi and



Ambedkar among others. The Unit will lead you into the period of Independence and enlighten you about the promising future of human rights as envisaged in the Indian Constitution. Hope, it prepares you for the detailed study of Human Rights.

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## 2.2 RESPONSES TO THE BRITISH RULE

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The arrival of the British in India initiated a new phase in Indian history. It was under the British rule that fundamental economic and political changes took place in India. Many of these changes were far from the ones intended by the British rulers. It is important to study this period because it contains much that would enrich a human rights perspective.

The impact of the British rule on Indian society was a mixed one. Although it brought forces of modernisation to the Indian soil, it also impoverished the peasantry and tribals with its exploitative policies. This led to a series of revolts against the British rule by the peasants and tribals throughout the 18<sup>th</sup> and 19<sup>th</sup> centuries. The Sanyasi rebellion in Bengal (1763 to 1800), Chuar uprising in districts of Bihar and Bengal (1766 to 1772 and again from 1795 to 1816) and tribal rebellions of Kols from 1820 to 1837, Santhals in 1855-56, Rampas in 1879 and Mundas from 1895 to 1901 are only some of them.

It is important to remember that the great revolt of 1857 was not the **beginning** but the **culmination** of a long tradition of rebellions and protest. After 1857, although the peasant and tribal rebellions continued (Indigo rebellion in 1860, Pabna rebellion in 1870s and frequent rebellions in Malabar, among others), a new form of organised protests was added to it. In the 20<sup>th</sup> century various other sections of Indians joined and participated in this struggle for independence against foreign rule.

In a way, we can say that the great tradition of protest and struggle against injustice is a contribution of the peasants and tribals and not of the educated Indians. At a time when the educated Indians welcomed the British rule and considered it providential, i.e., god sent, it was the rebellious peasant who fought against the British. Educated Indians joined to later in the 20<sup>th</sup> century. Any human rights activist would do well to keep in mind that Indian people have learnt the political significance of protest and struggle against injustice not from the educated middle classes but from the uneducated peasant and tribals.

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## 2.3 THE EARLIER ACTIVISTS

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Broadly speaking, the modern period in India started with advent of the British and the English education in the early 19<sup>th</sup> century. **Raja Rammohan Roy** of Bengal was the first intellectual-activist of modern India. He was not a revivalist; he ushered in a movement for freedom, social justice, and human dignity. He professed that all men are born equal. This doctrine spread in a few other parts of India. Hence, a number of intellectual-activists and reformists in the 19<sup>th</sup> and early 20<sup>th</sup> century. This intellectual movement, unfortunately, paled into insignificance during the freedom movement in the 20<sup>th</sup> century, particularly since the early nineteen twenties. It is regrettable that after independence too there has not been any such movement. It is precisely for this reason that our human rights educationists and social activists ought to give the utmost importance to our intellectual heritage.

### 2.3.1 Raja Rammohan Roy

Rammohan Roy realised that for the success of any scheme of social and religious reform it was

necessary to carry the people with him. **Sati abolition** would not have succeeded if he had not prepared the ground through his researches and had not carried on an agitation. He educated and roused public opinion against the practice of Sati. He was convinced that legislation without preparation of the ground might drive the practice underground. He maintained that legal sanctions alone will not help because of "the peculiar practice of Hindu idolatry which destroys the texture of the society". He added that "advocates of idolatry and their misguided followers continue, under the form of religious devotion, to practice a system which ... prescribes crimes of most heinous nature, which even the most savage nation would blush to commit". These religious practices are "the source of the total destruction of moral principles..."

Rammohan spoke the language of reason and had a rational and iconoclastic approach. He quoted Vasistha approvingly: "If a child says something reasonable it should be accepted, if Brahma himself says something unreasonable it should be discarded as a piece of straw." He approached the issue of the liberation of women with the seriousness it deserved, in a scientific and rational manner. Rammohan was not only well versed in the text of the Brahminical religion, he had also studied Islam, western history, philosophy, sciences and Christianity. Although he was critical of both Christianity and Islam in certain aspects, he was drawn towards Islam for its egalitarianism. He wrote: "I myself have read all of the Quran again and again, and has that made me Mussalman? Nay. I have studied the whole Bible, and you know I am not a Christian. Why then do you fear to read it? Read it and judge for yourself." This is exactly what our middle and upper middle class people must do.

Today, we tend to ignore our debt to other religions and cultures, particularly Islam. Rammohan was influenced by the teachings of Islam and Christianity, and he acknowledged it. He had shown the path to a solution of communal problem by giving "an intellectual nod to Islamic thought". Regrettably, none except M.N. Roy gave any attention to than "nod".

A champion of civil liberties and freedom, Rammohan petitioned to both the houses of British parliament against the Jury Act of 1827, which had introduced religious bias into Judicial system of India. The partition was signed by both Hindus and Muslims. He protested against the provision of the Bill according to which "“natives, either Hindu or Mohammedan, are subject to judicial trial by Christians, either European or Native...”" while Christians were exempted from being tried either by a Hindu or Mussalman juror.

The Raja protested against a Government action in 1823 which took away the freedom of newspapers and periodicals. He was the first and the only intellectual to send a memorandum to the authorities severely criticising this action and strongly upholding the freedom of the press. He submitted petitions to the Supreme Court and the King in Council.

He made a strong case for the "unrestricted liberty of publication". In his "Appeal to the King in Council", Rammohan protested against "an invasion on our civil rights ...". The appeal concludes: "Do not consign the natives of India to perpetual oppression and degradation."

### 2.3.2 Bankim Chandra Chatterjee

Bankim Chandra Chatterjee, one of the first graduates of the Calcutta University set up by the British to turn out middle level officials for the British empire in India, turned out to be a revivalist. He rejected outright several Hindu traditions calling them effeminate and pleaded for a vigorous Hinduism which could take over the country in course of time. "Bankim was the prophet of nationalism in literature, and yet a Hindu revivalist with an excessive stress on the Hindu character, and tradition seemed to speak out through him." (*Bengal Renaissance and Other Essays*, Shushobhan Sarker, People's Publishing House, New Delhi, 1981, Pp.39).

### 2.3.3 Ishwar Chandra Vidyasagar

Several contemporaries of Bankim Chandra shared this outlook, while many others, particularly in Bengal, saw nothing positive in a continued British Rule. One of the contemporaries of Bankim Chandra, Ishwar Chandra Vidyasagar, proved to be the **best defender of human rights**. He pleaded for such social reforms as widow remarriage, education to all, and help to the needy and deserving. He rejected the line of the Bhakti movement espoused by one of his contemporaries, Ram Krishna Paramhans. Rama Krishna, it was reported, had suggested to Ishwar Chandra not to go ahead with social reforms for that would be an interference with the divine dispensation. Ishwar Chandra did not accept the theory of Bhakti and asserted there was something lacking in Sanskrit literature, and therefore in the syllabus devised for graduations western philosophers should be included. Vidyasagar once got so exasperated, in the context of widow remarriage, that he exclaimed in sheer disgust, "Let not the unfortunate weaker sex (abala) be born in a country where the men have no pity, no dharma, no sense of right and wrong, no ability to discriminate between beneficial and harmful, where preservation of what has been customary is considered the only duty, the only dharma ... by what sin do women come to be born in Bharatvarsha, at all... Oh unfortunate women, what sin had you committed that you should have born in this blessed country where men are so insensitive?" (*Writing Social History*, Sumit Sarkar, Oxford University Press, Pp.267)

### 2.3.4 Swami Vivekanand

Swami Vivekanand, the famous disciple of Ram Krishna Paramhans, pleaded that for a stronger India we need the confluence of two great systems: Hinduism and Islam. Vedantic brain and Islamic body. He felt that education must be given the top priority in India so that the outcastes could also equate with the Brahmins. "To the non-Brahmin castes I say wait, be not in a hurry. He said, "Do not seize every opportunity of fighting the Brahmins because as I have shown, you are struggling for your own fault. Who told you to neglect spirituality and Sanskrit learning? What have you been doing all this time? Why have you been inefficient? Why do you now fret and fume because somebody else had more brains, more energy, more pluck and go than you? Instead of wasting your energies in vain discussions and quarrels in the newspapers, instead of fighting and quarrelling in your own home – which is sinful – use all your energies in acquiring the culture which the Brahmins have done. Why do you not become Sanskrit scholars? Why do you not spend millions to bring Sanskrit education to all the castes of India? That is the question. The moment you do these things you are equal to the Brahmins. That is the secret of power in India." (*Swami Vivekanand on India and her Problems*, Advait Ashram, Calcutta, Pp.70).

### 2.3.5 Justice Ranade

In other parts of the country, for instance in Bombay presidency, the Hindu society did not have anyone like Vivekanand. Justice Ranade was sympathetic to the issues of social reforms. He opposed revivalism. He contended: "What shall we revive?... The men and the gods of those old days ate and drank forbidden things to excess in a way no revivalist will now venture to recommend. Shall we revive 12 forms of sons, or eight forms of marriage, which included capture and recognised mixed and illegitimate intercourse? Shall we revive the Niyoga system of procreating sons on our brother's wives when widowed? Shall we revive the old liberties taken by the rishis and by the wives of the rishis with the marital tie? Shall we revive the hecatombs of animals sacrificed from year's end to year's end and in which human beings were not spared as propitiatory offerings..."



### 2.3.6 Tilak and Phule

The British in India sought through legislation to ban child marriages. Tilak opposed it tooth and nail and organised an opinion in the country that British must not be permitted to reform the Hindu system. Again it was he who made use of pronouncedly Hindu symbol such as Ganapati to draw the common people into the anti imperialist movement. It is rightly argued that Ganapati turned out to be a symbol of Hindu revivalism alienating the Muslims from the freedom movement. In Bombay presidency were heard the first stirrings of the dalits (Scheduled Castes) for a better life and more opportunities. The great reformer Jyotiba Phule rose against Brahminism and espoused the cause of the socially deprived communities of the Hindu system. In the year 1885, when a handful of affluent citizens of the country, under the leadership of a retired British civil servant A.O. Hume, founded the Indian National Congress, Jyotiba Phule, dressed as a common man of Bombay presidency, stood a few yards away and sought to submit a memorandum to the Governor pressing for reservation of jobs for the Dalits.

It is generally recognised that Tilak represented the Brahminical aspirations and Phule the aspirations of the down trodden. See this passage: "Phule vehemently attacked the scriptural doctrine of supremacy of Brahmins and their codes of social behaviour. He could discover and correctly interpret the villainy of the Brahminical system, of social interactions. Supremacy of the Brahmins was directly linked to and supported by the servitude of the Shudras, he maintained." (*Jyotiba Phule and Ideology of Social Revolution*, Gail Omvedt, Economic and Political Weekly, September 11, 1971, Pp.1969-717).

#### Check Your Progress 1

- 1) What was Rammohan Roy's contribution to the human rights situation in the 19<sup>th</sup> century?  
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- 2) Discuss Bankim Chandra Chatterjee's role as revivalist  
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- 3) Justify Ishwer Chandra Vidyasagar's claim as the Dest defender of human rights  
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- 4) What was Vivekanand's advice to the non-Brahmins?  
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- 5) Why did Ranade oppose revivalism?

- 6) Compare and contrast the approaches of Tilak and Phule to the Hindu system.

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## 2.4 MUSLIM REFORMISTS

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The rumblings of a reformist movement were also heard among the Muslim community. The Muslims also opted for social reforms. They had been unaffected by the Western culture and education for long. Their leaders were vehemently opposed to the western thoughts. They were against the British rulers who had disempowered and sidelined them. Gradually, however, they realised that their development would remain blocked without the help and favour of the British rulers. This realisation prompted them to concile with the British. Sir Syed Ahmed and Maulana Azad stood out as the champions of this cause.

### 2.4.1 Sir Syed Ahmed

Sir Syed Ahmed sought to break the alienation of the Muslims by founding Aligarh Muslim University. He successfully convinced the Muslims to avail themselves of European education and knowledge and inspired them to participate in the British administration like Hindu upper castes. The great reformer of the 19<sup>th</sup> century, Sir Syed Ahmed was brought up in affluence. His mother was a very strict disciplinarian and a liberal woman of religious virtues. Her teachings gave him a sense of idealism. He grew up to be a staunch realist and a hater of superstitions. He was a close witness of 1857 mutiny. He wrote a book about it, wherein he urged that keeping the Indians away from law-making was the prime cause of the mutiny. He asserted that the Indian people must have their say in the Councils. The British were greatly impressed by his thoughts. He was not a fundamentalist. He wanted equal opportunities of development for both Muslims and Hindus. His contribution in the sphere of education will remain indelible.

### 2.4.2 Maulana Abul Kalam Azad

Maulana Abul Kalam Azad was another legendary Muslim reformer. He cautioned the countrymen against the narrowness of anti-English movement. He said: "There is no greater hindrance in the progress than narrow mindedness. In the new era of freedom that has dawned, it is our duty to free ourselves from this disease. There is no other disease dangerous for the healthy growth of national life. It makes its appearance in every field of thought and action. Like an actor, it masquerades in disguise. In the domain of religion it appears in the form of blind faith and deceives us in the name of orthodoxy. In learning and culture, it appeals to us under the (exclusive) name of our nation and country. It behoves us not to be taken by these fictitious names. We must remember that the root cause of all this is nothing but narrow mindedness."

The above quoted and the following words of this great man evince his concern for the human beings, his countryman in particular, and their rights. These thoughts speak of his universalist and cosmopolitan bent of mind. His openness and liberalism let in a fresh breeze into the minds of

the Indian nationals. He prescribes a judicious mixture of nationalism and universalism for the ills of his times. Let us see: "Man is always inclined to go to extreme in realms of thought and action. It is seldom that he steers a middle course, and that is where he stumbles. It is not many years that our educated young men had lost themselves in imitating the English in their language, dress, manners, etc. They were not mindful of their own heritage. Some of them were ever ready to quote Shakespeare, Milton, Goethe and Wordsworth but they felt no love for Valmiki, Kalidasa, Khusaro or Anis. Then there came a time when under the leadership of Mahatma Gandhi, the national movement took a new turn and the craze for imitating the British began to wane. But not I notice that a number of my countrymen are on the verge of making another mistake. Previously, they were on one brink of the precipice and now they want to jump over another extreme. Indian nationalism is now taken to have nothing to do with Milton or Shakespeare. From certain quarters I hear that, in order to be true nationalists, we should have no tinge of modern civilisation or literature to the extent that you might forget the grand and proud civilisation of your own country, similarly it would be wrong to put yourself in a cage so that the ray of light of western learning and civilisation may not enter it. Do not forget that you can seal all your worldly possessions within national and geographical limits but no seal can be put on learning and civilisation. For them there are no territorial limits. They are above nationalities. They are free from the stains of race, colour and factions. They might have originated in any part of the world but they are now the common heritage of all countries and nations. No doubt, Shakespeare was born in England, but the immortal works of Shakespeare are for all countries. Even if England wants it, she cannot keep Shakespeare to herself. Do you think that the dramas of Kalidasa were also Indian national just as Kalidasa was? Do you think no foreigner has a claim on them?" (*ibid*, Pp.139).

### Check Your Progress 2

- 1) Explain Sir Syed Ahmed's place as a great Muslim reformist.

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- 2) What were Maulana Azad's views on Indian nationalism

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## 2.5 THE DECISIVE LEAD

About a year before his death in 1920, Bal Gangadhar Tilak presented Gandhi as a man under whose leadership the fight for independence would carry on. Gandhi did not betray his faith. He took the struggle to a desired end. He was well flanked by such stalwarts as B.R. Ambedkar, who, among other things, fought for the human rights of the Dalits. The attainment of liberty in 1947 was the greatest victory in terms of achieving and ensuring human rights for the common masses in India, its price being a bit heavy though. M.N. Roy, the great communist leader, condemned the Vedic Hinduism, the divinely sanctioned inequality, and communalism. He criticised and condemned whatever led to violation of human rights. Let us consider the contribution of the above mentioned figures under separate heads.

### 2.5.1 Rise of the Mahatma

Mohandas Karamchand Gandhi (Mahatma Gandhi) who appeared on the Indian scene in the early decades of the 20<sup>th</sup> century was not averse to using religious symbols to win over the people for political campaigning. On the one side he talked of Ramrajya and the Gita and his Vaishnav Dharma to placate the Hindus and on the other side he sought to use Khilafat movement to win over the Muslims. He was a firm believer in Chaturvarna but he was against the practice of untouchability. But it is also a fact that no other Congress leader, except Gandhi raised the issue of caste and untouchability during the freedom struggle. As is known, Gandhiji was compelled to withdraw his temple entry and eradication of untouchability movement under pressure from his colleagues. On a number of occasions he declared that we have no right to claim independence from the British until these two evils – communalism and scheduled caste problem relating to untouchability – are eradicated.

“This monster of untouchability has invaded every form of society in India and the idea of this message is that there should not only be no untouchability between Hindus and Hindus but there should also be no untouchability between Hindus, Muslims, Christians, Parsis and the rest. It is untouchability in its subtle forms that separates us and makes like itself unlovely and difficult to love”, he had said. (*ibid*, Pp.22).

### 2.5.2 The Vaikom Movement

Down south, E.V. Ramaswamy Naicar, during the freedom struggle and also after independence, espoused the cause of Human Rights for Dalits by demanding removal of restrictions imposed on them. He organised the famous “Vaikom Movement” against the priestly order in the town Vaikom. Gandhi rushed to dissuade him against the move. Thus, the movement now known as Dravidian movement sprung from this point and later swept the whole of Madras state (now called Tamilnadu) and parts of South India. Naicar rejected the Brahmanical religion outright and persuaded his people to discover for themselves indigenous culture and religion. He said, “If we are treated as Sudras by Hinduism what else can we do but destroy that Hindu religion? ... What for did we wage a bitter struggle to drive away the British imperialism? Is it to give the right exclusively for the Brahmin community alone to sweep the posts held by the Britishers? Unless we enable all communities to take part in the government of the country we cannot really have a representative government for all the people.” (*Collected Works of Periyar EVR*, Volume 1, Published by Periyar Self Respect Propaganda Institute, Chennai, Pp.72-73).

In Kerala, Sri Narayan Guru, without rejecting Brahmanism, inspired his community Ezhavas for social and cultural uplift and recorded magnificent results. Even Gandhi appreciated his motives in one of his writings in *Harijan* on February 2, 1934.

### 2.5.3 Champion of the Dalits

The issue of human rights in India needs to be studied in the broader context of social and religious movements. From the year 1920 onwards Dr. B.R. Ambedkar, who single-handedly fought for the human rights of the Dalits, made earnest efforts in this regard within the Hindu framework. He wanted the doors of the temples to be opened for dalits. He struggled hard to make the village ponds accessible to the Dalits. He fought relentlessly against the Brahminical traditions such as ‘Manu Smriti’ and sought to obtain support of the upper caste Hindus for reforming some. He gave a call for annihilation of castes which according to him accounted for the absence of equality in the Hindu fold. However, the upper castes turned a deaf ear. In desperation, at the fag end of his life, he renounced Hindu religion and embraced Buddhism. He took the step to ensure



Human Rights for the dalits. Citing his reason for embracing Buddhism in a broadcast on All India Radio on October 3<sup>rd</sup>, 1954, he said, "Every man should have a philosophy, for every one must have a standard by which to measure his conduct. Negatively, I reject Hindu social philosophy propounded in the Bhagwatgita based as it is, on the Triguna philosophy of the Sankhya philosophy, which in my judgement is a cruel perversion of the philosophy of Kapila, and which had made the caste system and the system of graded inequality the law of Hindu social life. Positively, my social philosophy may be said to be enshrined in three words – liberty, equality and fraternity. My philosophy has roots in religion and not in political science. I have derived them from the teachings of my Master, the Buddha." (*The Legacy of Dr. Ambedkar*, D.C. Ahir, B.R. Publishing Corporation, Delhi, 1990, Pp.156).

He addressed, "There are two aspects of conversion, social as well as religious, material as well as spiritual. Whatever may be the aspect, or line of thinking, it is necessary to understand the beginning, the nature of untouchability and how it is practiced. Without this understanding, you will not be able to realise the real meaning underlying my declaration of conversion. In order to have a clear understanding of untouchability and its practice in real life, I want you to recall stories of the atrocities perpetrated against you. Very few of you might have realised why all this happens. To me it is very necessary that we understand it... Three factors are required for the uplift of an individual. They are sympathy, equality and liberty. Can you say by experience that any of these factors exists for you in Hinduism? The Hindus can be ranked among those cruel people whose utterance and acts are two poles apart. They have this Ram on their tongues and a knife under their armpits. They speak like saint but act like butchers." (*The Legacy of Dr. Ambedkar*, D.C. Ahir, B.R. Publishing Corporation, Delhi, 1990, Pp.20 to 22).

#### 2.5.4 The Communist Factor

Another contemporary of Dr. B.R. Ambedkar was the legendary communist leader M.N. Roy, later a radical humanist, who was unequivocal in his condemnation of the divine sanctions given in Indian culture to inequality. Roy was the only communist, who came down heavily on Vedic Hinduism. He pointed out that, "Spiritual culture has taught the Indian masses to point out the difference in the size of the five fingers of the same hand when their attention is drawn to the social inequity and inequality to which they are subjected. They have been taught to accept their position as befitting their merit. They have not only been taught to be reconciled to their hard lot but to look upon the established social order as an expression of divine dispensation. The entire caste system – that creation of the special genius of India – was based on this principle. The philosopher of facism was inspired by the Aryan spirit of caste when he suggested that 'masses of Asiatic' and African barbarians could be imported so that the uncivilised world might constantly be at the service of the civilised. Why not? Did not the Aryan Brahmins, with the help of their warrior allies, condemn the bulk of the aboriginal population of India to the perpetual servitude of the Shudra." (*Selected Works of M.N. Roy*, Vol. IV, Oxford University Press, 1997, Pp.437).

Roy wrote a book – *Historical Role of Islam*, while in jail from 1931-36, with a view of solving the Hindu-Muslim problem of communalism. Like caste and untouchability, communalism is a most obnoxious form of human rights violation in our country. Roy reminds us that in spite of the fact that Islam had played out its progressive role before it penetrated India, Islam was welcomed as a message of hope and freedom by the victims of Brahminical reactions which had overthrown the Buddhist revolution resulting in a state of chaos in Indian society. "How is it that the Mohammedans, though not large in numbers, managed to rule a vast country for such a long time and millions of people converted themselves to the new faith? The fact remains that the Mohammedans satisfied certain objective requirements of Indian society." M.N. Roy wrote this book from the conviction that "knowledge of Islam's contribution to human culture and proper

appreciation of the historical value of that contribution would shock the Hindus out of their arrogant self satisfaction and cure the narrow-mindedness of the Muslims of our day by bringing them face to face with the true spirit of the faith they profess."

### Check Your Progress 3

- 1) What were the two evils Gandhi pointed out? What was his approach to these evils?

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- 2) Write a brief note on Vaikom Movement.

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- 3) Bring out B.R. Ambedkar's eminence at the Champion of Dalits.

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- 4) What has M.N. Roy to say about Islam?

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## 2.6 THE INDIAN PROMISES

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In the early 1930s, responding to the demand of the Muslims and depressed classes (Dalits), the British government arranged a round table conference in London and gave separate electorate to the Muslims and the depressed classes. Gandhi did not object to the Muslims getting separate electorate but was terribly opposed to the Dalits getting separate electorate. He went on to fast unto death at Pune and pressure was brought on Dr. Ambedkar to give up his demand for separate electorate for depressed classes. There was an agreement to which both were signatories. It provided for political reservation to the depressed classes. It was largely through the personal efforts of Dr. Ambedkar that minorities and the backward classes including the Dalits were given several concessions in free India's constitution in year 1950. The constitution continues to be the fountain source of human rights for all segments of the Indian population.

**Dr. B.R. Ambedkar, the father of the Indian Constitution**, was well aware of the problems facing the Indian society, and he knew that the **legal empowerment** alone would not make it possible for **just and equitable society**. He said, "On the 26<sup>th</sup> January, 1950, we are going to enter a life of contradictions. In politics, we will have equality and in social and economic life we will have inequality. In politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economical structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our

social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this assembly has so labouriously built up."

The Constitution of India assured liberty of thought, expression, belief, faith and worship and equality of status and of opportunity. Article 21 proclaims, "No person shall be deprived of his life... personal liberty except according to the procedure established by law." India also ratified the two covenants of Civil and Political rights and Economic-Social and Cultural Rights. The Indian Constitution has provided all the necessary human and democratic rights in the Fundamental Rights and Directive Principle Chapters. But despite that arbitrary arrests were made and anti democratic laws were passed by the central government and various state governments such as Preventive Detention Act 1950, Defence of India Rules 1962, Maintenance of Internal Security Act 1958, Terrorism and Anti-Disruptive Activities Act (TADA).

In independent India, the movement for Civil Liberties came into being during the infamous emergency imposed on 26<sup>th</sup> June, 1975 by the then Prime Minister Indira Gandhi. Late Jaiprakash Narayan and a number of concerned citizens of the country including academics, mediapersons, jurists, and activists joined hand and formed People's Union for Civil Liberties (PUCL), which is the biggest civil liberty group in the country. After that a number of other organisations have come into being including People's Union for Democratic Rights. Earlier in 1974 Jaiprakash Narayan and his colleagues founded the Citizens for Democracy.

The human right movement in the country is growing with the formation of the National Human Rights Commission (NHRC) and other related bodies like National Commission for Women, National Commission for Minorities, National Commission for Scheduled Castes and Scheduled Tribes, which have opened some avenues for the people to approach. People are not educated about their legal rights, their cultural heritage and various constitutional bodies and hence there is a dire need for human rights educationists to address all these issues comprehensively in their human right training programme at the grass root level where we still find major trappings of the society which Dr. Ambedkar had portrayed in his famous speech in the Constituent Assembly.

#### Check Your Progress 4

- 1) What is Indian Constitution's promise regarding human rights?

.....

- 2) What bodies do we have in India to give momentum to the human rights movement?

.....

- 3) Are you satisfied with the human rights situation in our country? Yes or No. Give reasons.

.....

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## 2.7 LET US SUM UP

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In this Unit, you studied the modern period in India in the context of human rights. You learnt that the outset of modern period in India coincided with the advent of the British rule and the English education. In 1857, the Indian resistance was crushed and it marked a turning point in the Indian history. We saw how these under-currents led us into a society with an improved understanding of human rights. While the social reformers led the intellectual movement and contributed to the human rights situation, the freedom movement produced great champions of human rights. Raja Rammohan Roy worked for the abolition of Sati. He was influenced by Islam. He remained a champion of civil liberties and freedom. Bankim Chandra Chatterjee is remembered as a revivalist. His contemporary, Ishwar Chandra Vidyasagar came out as the best defender of human rights. Swami Vivekanand preached for the confluence of Hinduism and Islam. You also had an insight into the diametrically opposed thoughts of Tilak and Phule. The Muslim reform movement saw a great champion in Sir Syed Ahmed who founded Aligarh Muslim University. Maulana Azad stood up as another Muslim thinker who took a conciliatory stand with the British. He cautioned the fellow countryman against the narrowness of an anti-English movement. The father of nation, Mahatma Gandhi, attacked the social evils while leading the freedom movement. His tireless efforts to improve the lot of the down trodden, the untouchables, in particular, are widely known. B.R. Ambedkar fought for the human rights of the Dalits in his own way. We made a special mention of M.N. Roy, the legendary communist leader. He attacked the element of caste-based inequality in the Indian culture. The Unit also enlightened you about the promising future of human rights in free India as envisaged in our Constitution.

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## 2.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

- 1) Refer to Sub-section 2.3.1.
- 2) Refer to Sub-section 2.3.2.
- 3) Refer to Sub-section 2.3.3.
- 4) Refer to Sub-section 2.3.4.
- 5) Refer to Sub-section 2.3.5.
- 6) Refer to Sub-section 2.3.6.

### Check Your Progress 2

- 1) Base your answer on Sub-section 2.4.1.
- 2) Base your answer on Sub-section 2.4.2.

### Check Your Progress 3

- 1) Refer to Sub-section 2.5.1.
- 2) Refer to Sub-section 2.5.2.
- 3) Base your answer on Sub-section 2.5.3.
- 4) Base your answer on Sub-section 2.5.4.

### Check Your Progress 4

- 1) Refer to Section 2.6, para 3.
- 2) Refer to Section 2.6, last two paras.
- 3) Use your knowledge and discretion to answer this question.

## NOTES





Block

# 2

## **HUMAN RIGHTS IN HISTORICAL CONTEXT**

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### **UNIT 3**

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# UNIT 3 RIGHT TO SELF-DETERMINATION

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## Structure

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Meaning and Nature
- 3.3 The Indian Context
  - 3.3.1 Streams
- 3.4 The No-compromise School
- 3.5 The Liberal school
- 3.6 The Marxists
- 3.7 The Newly Emerging Groups
  - 3.7.1 UN and Indigenous People
- 3.8 Discussion I
- 3.9 Discussion II
- 3.10 Let Us Sum Up
- 3.11 Keywords
- 3.12 Answers to Check Your Progress Exercises

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## 3.0 OBJECTIVES

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In this unit, you should be able to

- understand the meaning and evolution of the concept of right to self- determination,
- identify different schools of opinion on right to self-determination, and
- educate yourself about various positive and negative considerations associated with different ways of looking at the problem of self-determination.

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## 3.1 INTRODUCTION

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The right to self-determination is the most important basic right. Unless the people are able to govern themselves, there is no possibility of real participation. Participation and therefore democracy loses meaning without exercising this right. The principle of equal rights and self determination of peoples has been defined in the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation between States adopted by the General Assembly in 1970. It says:

“All peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter”. Thus the right of a group of people to freely determine would conflict not infrequently with the parent State’s duty to respect that right. Such conflicts underline the demand for self-determination. Rightly or otherwise, the group politics and the pressure of international opinion make right to self determination most controversial since the States are sovereign and all of them have to respect sovereignty as per the UN charter.

## 3.2 MEANING AND NATURE

Traditionally, the right to self-determination meant right to political independence, relevant to many colonized people of Africa and Asia. But once these countries became independent, the meaning of right to self-determination has changed to include the freshly emerging political equations of these former colonies. The political rulers of the new nations however would argue that this principle has largely lost its meaning since the decline of colonialism and apartheid.

After the second world war, right to self determination worked as a dynamic concept. It brought about rapid de-colonization and gave expression to human rights of the people historically living as groups. When the cold war was over, the right to self-determination assumed a new meaning with the United Nations General Assembly passing an important resolution (GA Res. 45/115 of February 21, 1991). It declared that "determining the will of the people required an electoral process that provides equal opportunity for all citizens to become candidates and put forward their political views, individually and in cooperation with others as provided in national constitutions and laws. For this world to grow into a free democracy where participatory rights of people can not be arbitrarily abridged by any government, right to self-determination provides the necessary cement to hold the society together. There is a three way linkage involved in this world-view: democracy, human rights and peace".

The right to self-determination is actually a *collective human right* like the right to human development, right to environment protection, right to peace and security. It encompasses 'solidarity' rights which heavily underline the concept of fraternity since "It is the people, a community, or a group as a whole which is entitled to this right along with its members individually".

In this connection, it may be pointed out that the Universal Declaration of Human Rights contains a contradiction. Whereas the first sentence of the Preamble makes a noble claim: "where as recognition of inherent dignity and of the equal and inalienable rights of all human family is the foundation of freedom, justice and peace in the world....." what actually follows after the Preamble, is a list of *human rights worded in terms of individual human beings' rights*. Take an example: it may take at least two persons to assemble or associate, but the article 20 of UDHR has been phrased, '*everyone* has the right to freedom of peaceful assembly and association'. Similarly, minorities have not been referred to as groups but as '*persons belonging to minorities*'. The member States were actually afraid that minorities might push the self-determination too far making governance difficult and, therefore, the rights of minorities were provided in individual terms. As a matter of fact, the UDHR did not even contain an article on Right to Self-determination. This deficit was realized very soon and was rectified in 1966 in both the Covenants of human rights. The first article of both the Covenants is commonly devoted to the right to self-determination and very importantly, it has been phrased in a group sense: "all peoples have the right of self determination". But again, the word '*peoples*' remains undefined and ambiguous.

In actual practice, one comes across three meanings of people - territorial, ethnic and indigenous. Indian people are an example of the first, Punjabis of the second, Adivasis of the third. After long debates in the Vienna World Conference on human rights in 1993 they agreed to use 'people' rather than 'peoples' "in order to avoid the risk that certain individual groups can claim rights as peoples". The UDHR phrases it in individual terms and understand people in its abstract description making the right to self-determination of minority community a sterile concept in international law.

But in practice, right to self-determination has gained wider expression and acceptance with the establishment of the UN Electoral Committee in 1991 to assist nations in guaranteeing free and fair elections on request. It appears now that the sovereign jurisdiction of the domestic law is coming to terms with the demand of the globalizing forces. One can identify three stages in the evolution of the collective right of self-determination:

1. At the ground level, there is a universal entitlement of every human being in the civil society to participate in the decision to shape the destiny and no government can abridge arbitrarily these participatory rights.
2. In its concrete manifestation, right to self-determination meant freedom from colonization. This is known as *external self-determination*. With the end of colonialism and apartheid, self-determination came to underline the revolution of rising aspirations of the people. In fact, it has come to be understood that human right is not meaningfully secure without self-determination. This self-determination can be brought about through seeking independence, autonomy or self rule of groups of people so that their human rights are secure.
3. The third stage is inseparably linked to democracy. This stage followed the downfall of the Soviet super power. The surviving super power of the cold war days, the USA and the liberal West now insisted on democracy and offered it in a package of *human rights, development* and international *cooperation*. Promotion of such democracy also enjoys international protection for electoral rights and for this necessary mechanism & working rules have also come up during the 90's.

Operationally speaking, there are three situations in which right to self determination can be exercised:

- (i) Colonies clearly have the right to liberate themselves and become free.
- (ii) Large scale violation of human rights like genocide, ethnic cleansing etc. provide justifiable ground for intervention by the world community (UN sanctions, interventions etc.).
- (iii) Democracy is now being construed as a global entitlement of the people. A state is now internationally obliged to maintain democracy for its people. Strange but true, this is what USA did on behalf of the UN to its small neighbouring state of Haiti. It reinstalled the elected prime minister of Haiti and its forces removed the army dictator who had ousted the prime minister.

While ratifying the International Covenant on Civil and Political Rights in 1979, India has made its position clear, by explicitly laying down that "the words 'right to self-determination' appearing (in Article 1) apply only to peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of people or nation which is the essence of national integrity".

In this era of rising aspirations of diverse peoples of religious, linguistic and ethnic communities and dilution of State authorities against assaults of globalization, (transnational corporations, revolution in telecommunications etc.) and the global insistence on democracy as the legitimate political arrangement, right to self- determination is likely to be exercised more easily than before. *This of course needs to be done more responsibly.* This is clearly a warning to the state authorities anywhere: *Human rights must be promoted and protected to the satisfaction of the diverse groups of people so that self determination is not pushed beyond limits, to secession.*



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### 3.3 THE INDIAN CONTEXT

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In daily life, you encounter a variety of situations. You must be seeing that problems tend to get interconnected quite fast. Also that there is no simple straightforward solution to any one problem. And, the question of the 'right to self-determination' is no exception. Most of the social issues of living together tend to get linked up with what rights an individual in a community may be entitled to. In India, we become more and more concerned about our rights, as we become anxious about our nationhood.

As you know, the Indian Constitution is a noble product of our struggle for national self-determination and it defines our rights explicitly. However, the problem arises when we see that, despite rights, the benefits of social and economic development tend to get concentrated in very few hands and the majority of Indians are deprived of a decent standard of living. That is how we define our concerns as activists, seeking to move the process of development along a more equitable path.

Immediately, we run into a problem here. We see that there are communities and groups within our nation state expressing these aspirations in their own ways. In India they are invariably expressed as demands for regional autonomy, a sense of injury against a dominant ethnic group or even demands for secession from the Indian union. The major communities in India, by and large, have become the basis for states within the Indian Union. Thus Tamil, Bengali, Marathi or Kannada nationalities etc. in India have acquired a constitutional recognition. Their struggles for betterment today get expressed in the centre-state disputes which by and large are resolved within the framework of our Constitution. Remember that India is a federation with the Union (Centre) and the States always trying to maintain a balance within the limits set by the Constitution.

The problem becomes tricky, however, when we consider the case of communities which have not acquired a political and legal recognition of their demands for more powers or autonomy within the constitutional framework. It is here that the militant and vicious struggles take place. The Bodos in Assam, the Jharkhand demand, the demand for autonomy in the Kashmir valley are cases in point.

As concerned individuals, how do we look at these? Can the existing literature on 'self-determination' and 'human rights' help us?

To clarify these questions, let us have a look at what this literature tells us.

#### 3.3.1 Streams

Broadly speaking, we can identify four major streams of writings on this issue:

- a) The no-compromise school,
- b) The liberal school,
- c) The Marxists, and
- d) The newly emerging human rights groups.

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### 3.4 THE NO-COMPROMISE SCHOOL

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Simply put, the no-compromise school argues that India has been one civilization from time immemorial, therefore there can be no question of self-determination. The attempt on the contrary is to integrate various peoples and nationalities by the logic of a hard core cultural nationalism.

One of the major figures in this literature is guru Golwalkar. Very often this no-compromise school's hardened stand leads to sectarian and ethnic divides and conflicts. Let us understand where do minorities stand in India from a human rights angle.

### **Do Minorities Have Rights?**

Indian state is committed to protecting and promoting only the values and standards of the Indian Constitution and those of the International Human Rights Instruments. The private beliefs and creeds have been left to the individual and the domain of the community for their choice. It is this right to religious and cultural freedom that the Indian Constitution has guaranteed to all persons and groups as 'sections of citizens' having a distinct language, script or culture of its own' and 'minorities based on religion and language'. This right to cultural freedom again constitutes one of the corner stones of minority rights under Article 27 of International Covenant on Civil and Political Rights (ICCPR), under which the Indian Government is accountable to the UN Human Rights Committee, to which it is required to submit periodic Reports on its implementation. The 1992 UN Declaration on Rights of...Minorities goes beyond the minority's right to preserve its culture, language and script and puts the positive obligation on the States to not only protect the national, ethnic, cultural, religious and linguistic identity of minorities [Article 1 (1)], but also requires them (States) to create favourable conditions to enable the minorities to express their characteristics and to develop their culture, language, religion, tradition and customs [Article 4 (2)]. Similar obligations are put on the State to take "appropriate measures in the field of education, language and culture of the minorities existing within their territory" [Article 4(4)].

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## **3.5 THE LIBERAL SCHOOL**

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The liberal school is a keen defender of pluralism and diversity. However, the defining point for this school are the needs of the market. The concern of this school tends to be overwhelmed by the demands of the global market. The market demands a uniform taste, culture and individualized consumer behaviour.

The recent emergence of globalization has brought in its train some developments which were not anticipated before. A global economy has emerged with an increasing share of gross national product directly dependent on foreign exchange and international capital flow. Capital no longer feels constrained by national stipulations. It goes where ever there is profit. Capitalism no longer sells just commodities and goods for creature comforts. The consumer society of material goods of 60's & 70's is changing into a new system which Benjamin R.Barber calls "McWorld" — like in 'Macintosh' or 'McDonald'. Capitalism now sells signs, sounds, images, softwares. The nature of consumption has become heavily dependent on the spectacle of advertisement which is fast becoming a global form of social integration. Look around and you will find how fast your culture and traditions, social and economic behaviour are changing to give rise to a homogenized life-style thanks mainly to MTV, Hollywood films, personal computers etc.

So against this global trend of homogenized life-style or a 'cosmopolitan culture', some culture groups deeply feel that their essentials are under attack. Since "globalization destroys sovereignties", the question of identity of these aggrieved cultural groups occupies the centre of stage. The more globalization grows, the more such societies try to reconstruct their socio-cultural and religious particularities. Confronted with frustrations against this global juggernaut, they give birth to a cultural scene of opposition which can be graphically captured by Barber's another expression of "Jihad versus McWorld". In today's world, Chechnya, Bosnia exhibit this new phenomenon of cultural assertions which had also affected countries like Indonesia, Ethiopia etc.

## Check Your Progress 1

1. Is it correct to say that amongst the 'no compromise' school the question of self-determination finds the first priority?  
.....  
.....  
.....  
.....
2. What are the constraints facing the liberal school over the question of 'self-determination'?  
.....  
.....  
.....  
.....

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### 3.6 THE MARXISTS

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The Marxist school has debated the right to self-determination very extensively. In this school the specificity of the historical growth of a community / nationality is kept in focus. Unlike the no-compromisers who are overwhelmed with cultural nationalism or the liberals who are overwhelmed with the market, the Marxists try to find solutions to social problems keeping the potentiality of the community in view.

The Marxist literature makes it clear that the 'self' we are talking about is a 'self' in community. Though it can be said that the cultural nationalists are also talking about a 'self' in community, the point of departure for Marxists however are the criteria laid out for the definition of this community as a nationality. For the Marxists, nationality /community should possess (for exercise of Right to Self-determination), a sense of shared history, economic growth, language, cultural and psychological makeup. Unlike for the cultural nationalists, religion is not taken to be a defining criterion.

The Marxists also do not place the needs of the market absolutely over and above the aspirations of the nationality. However, it is emphasized that the nationality question should be linked to an internationalist working class movement. It was thus that Karl Marx argued in the context of Ireland in 1860s that the needs of the working class movement were best served if Ireland became independent of British domination: Thus while the pro-market logic of liberals argued that England needed to maintain national unity, Marx was able to argue that such a national unity only prolonged the oppression of the working people in England and Ireland. Similarly, Lenin emphasized that democrats of an exploiting nation should call for secession of an oppressed nationality in an exploited nation while it is considered a duty for the democrats of the oppressed nationality to call for national unity.

From these examples we may find that, for the Marxists, the criterion of national unity is not absolute as it is with the 'no compromise' or the 'liberal' school. B.T. Ranadive, the Indian Marxist, was therefore able to point out the need for an Indian national unity in independent India since imperialism targets small nationalities to weaken Indian working people's efforts towards development.



### 3.7 THE NEWLY EMERGING GROUPS

The newly emerging human rights groups have now raised another problem, namely the problem of the rights of the indigenous people. Indigenous people are also called "first peoples", "Tribal peoples", aboriginal and autochthons. They number more than 300 million and live in more than 70 countries on five continents. A good majority of them — 150 million — live in Asia.

At least 5,000 indigenous groups can be distinguished by linguistic and cultural differences and by geographical separation. All indigenous people proudly love their traditional lands which are in variably rich tracts of mineral and bio-diversity wealth.

They argue that it would be wrong to bring indigenous communities within the traditional domain of either racial or minority discrimination or within the strict parameter of the nationality question (the marxist version).

It may be argued that the debate about the right to self-determination has moved away from the cultural nationalist or bourgeois liberal perspective, and has settled (at least in UN bodies) within the parameters evolved by anti colonial and Marxian framework. However the specific problems of indigenous people continues to dog these parameters. As Douglas Sanders points out, the erstwhile Soviet Union placed the problems of the indigenous people of Latin America within the UN forum but refused to recognize this problem within its own borders. Similarly in India, Canada etc. the indigenous people were bypassed on one ground or the other.

#### 3.7.1 UN and Indigenous People

The UN's consideration of the human rights problems faced by indigenous people began in right earnest with the famous study conducted by special Rapporteur (1971-84) Jose R. Martinez Cabo. This study has led to the creation of the *Working Group on Indigenous Populations* which, under Erica-Irene A. Daes, chairperson /Rapporteur since 1984, has become the focal point for UN activities concerning indigenous people:

- The Working Group meets once a year in Geneva and critically discusses current practices of various governments.
- There is a Voluntary Fund for Indigenous Populations which funds participation of indigenous people from remote areas in such international meets.
- The year 1993 was declared as the year of Indigenous People. The General Assembly Proclaimed the International Decade of the World's Indigenous People, beginning from 10 December, 1994. The UN Commission on Human Rights has submitted its request to create a Permanent Forum in the UN for proper representation of the interests of indigenous people. This is still pending, so also is the approval of the draft on the rights of the indigenous people on which the Working Group has expressed its unanimous agreement.

The UN Working Group set-up to look into this problem combined with ten major human rights groups to work on a solution. In August 1988 it placed a draft which tried to evolve a common standard on issues facing indigenous people.

It defined the following major issues:

- i) *Problems of survival*: In the context of the **Chittagong hill tribals, the issues of survival i.e. right to hunting and gathering, slash and burn agriculture use of land resources ect. was highlighted.**

- ii) *Issue of equality*: Indigenous people have frequently been denied legal equality with other members of the state. Brazil's 'policy of treating Indians as minors is a contemporary example of the old pattern'.
- iii) *Cultural survival*: "Equality rights alone will not protect indigenous peoples or other minorities against assimilationist campaigns by the states. A mere tolerance of minority cultures is also not sufficient if the state is devolving resources to a mono cultural educational system and unilingual state services". An affirmative obligation on states is mandatory to "ensure that indigenous collectivities receive state's support for maintenance of their identity."
- iv) *Economic rights*: Rights to ownership of traditional lands and resources. An attempt to hand over traditional Indian groups their lands in New Zealand recently is a case in point for limited acceptance of this demand. On the contrary, in Australia this move just backfired in the recent elections.
- v) *Political rights*: The main debate in the UN is whether these issues can be addressed within the framework of full "rights to self-determination" under international law. Canada and Sweden have made representation to UN that Sami and Indian people 'collectivity' do not have the rights to 'self determination'. Similarly Daes report of 1986 argues that indigenous peoples do not have a rights to secession. The Martinez Cobo report on the other hand qualified this by saying that the indigenous people did not "necessarily" have the right to secession. Meanwhile, political conflicts continue to simmer on this question in East Timor etc.

Douglas Sanders points out that, ultimately a possibility of some kind of principle of autonomy "reflecting the ideas of tribal sovereignty in the US law, self government in Canadian policy, and similar elements of state's practice or policy in Australia, New Zealand, Scandinavian countries and parts of Latin America", seems to be emerging. Further, he pointed out that the above "formulation is consistent with stated policies for nationalities or minorities in various countries". According to him, "the indigenous peoples generally have the strongest claim of autonomy, because typically they have greater cultural differences from dominant populations as compared to other minorities."

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### 3.8 DISCUSSION I

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The above outline of various ways of looking at the problem of self-determination has crystallized to a particular point. Despite the broadest categorization of who has the right to decide, it becomes very difficult to identify this 'who' in the field of practice. The struggle of the indigenous people is a case in point. Where do they fit in? The 'no compromise' school would try their utmost to fit them into their cultural 'framework', the liberal school would drag them to the market and the left movements are still trying to come to terms with them. Their plight is highlighted in the recent Australian elections (1999) where the conservatives and the democrats both refused to give space to them.

In this context Behar's description of the concept of 'self-determination' as 'highly-controversial and emotional' is fitting. Behar's solution that 'it would be preferable to begin the discussion about external i.e. political self-determination only after agreement has been reached about demands of internal self-determination' however seems problematic. This is so because discussions about 'Internal' self-determination are normally very difficult. The states within whose boundaries they are conducted normally clamp down on these discussions in national or international forum. Witness the difficulties in Chechnya or Kashmir.

In this context, James Anaya has explored the capacity of International law to advance nationality's rights claims. He argues that settling of nationality disputes with reference to sovereignty approach runs into problems. This is because historical claims to a territory etc. are often disputed. These claims also overlook the role of wars & conquests in acquisition of territories, which involved ruthless violation and suppression of human rights of the conquered in the past. Within the international law's expanding lexicon of human rights, self-determination actually takes shape and gets articulated in the light of cultural integration which binds a group together. An emergent human right of cultural survival and flourishing within international law is signalled by the UN Charter, Article 27 of Civil and Political Rights Covenant, the Convention against Genocide and the UNESCO Declaration of Principles of Cultural Cooperation. Similarly, a UN study recognizes various forms of self-determination: 'where self-governance as an inherent part of cultural and legal heritage contributes to the cohesion and maintenance of social and cultural tradition of the indigenous people'.

Anaya identifies two major obstacles to the realisation of the human right approach to self-determination within the International law. Firstly he sees an individualist bias towards human rights conceptions within modern International law which impedes the recognition of collective or group rights. This bias, he argues, results from "traditional western liberal political philosophy with its emphasis on the individual and the exclusion of rich variety of intermediate or alternative associational groupings actually found in human environs". Secondly, he points to the doctrine of state sovereignty which limits the recognition of group rights of families and peoples as distinct from individual or state rights. The African Charter of Human and People's Rights is an attempt to counter this perception.

The placement of 'individual' and 'collectives' is indeed a nodal point in the western and eastern philosophical discourses. A remedial viewing of this problem (along these lines) may open new directions for a realistic appraisal of the right to self-determination.

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### 3.9 DISCUSSION II

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In this section it might be relevant to consider the question of the right to secession of national groups. The question assumes importance with a spate of recent literature addressing this problem. Margaret Moore in a recent article (in Political Studies) has suggested moving to subjective criteria for a definition of nationality. This she suggested is due to legal and philosophical problems in defining "the underpinnings of the territorial conception". That is to say, what territory means becomes difficult to spell out. Therefore, she moves over to a subjective definition of nationality. This, she says, can be done by identifying in practice as to which nationality group is asking for secession or self-determination. Secondly, she suggests that this could be complemented by an approach of imaginatively recognizing equal rights for all nationality groups in a multi ethnic situation

John Rasmuthal (in the Monthly Review) has pointed out the dangerous limits of such subjectively defined criteria for nationality. He points out that it was precisely the subjective criteria which made for erroneous NATO intervention in Kosovo. He warns that it was precisely a moving to a subjective ethnic definition of nationality principle which had led to Nazi hegemony and extermination of the stateless people viz., the Jews

It might be suggested here that the classical literature on secession has still much to offer. If we take the Marxist writings on the question, (either as a point of departure or as point of method), we might just push towards a solution. The problem of territoriality, we suggest, is not solved by ignoring it but rather tackling it. It should be kept in mind that the literature on territory is not

just philosophical. It is, as Marx suggested long ago in the German Ideology, a question of exploring the historical relations in their concreteness. No amount of substituting philosophy or politics here would help. One may suggest that the historical writings on the nature of territoriality have demonstrated a complex unity of kinship and territory in different phases of historical evolution. In fact the criteria for the rights to territory and its partition influenced the concept of territory as it evolved. These need to be investigated and spelt out before any rash generalizations on the nationality question is made.

### Check Your Progress 2

- 1 How do the Marxists define the concept of right to self-determination?  
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.....  
.....
- 2 Can you illustrate how the Marxists link the question of right to self-determination with the question of the international working class movement?  
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.....
- 3 What are the problems faced by the indigenous groups with respect to the question of right to self-determination?  
.....  
.....  
.....  
.....
- 4 What are the limitation of the 'historical sovereignty school' which James Anaya points to when talking of role of international law in solving the question of self-determination?  
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## 3.10 LET US SUM UP

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In this unit you saw how the conception of 'self-determination' differs from perception to perception. However, with the experience of this question now spanning almost a full century certain broad frameworks for its solution have emerged. But the question of how to look at the collectivity still dog the proposed solution of the question of 'self-determination'.

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## 3.11 KEYWORDS

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**Pluralism:** The doctrine which argues that diverse cultures, systems etc. can exist without basic antagonism.

**Secession:** Here the act of a group, nationality or unit of a nation to break away from it.



**Colonialism:** The 18<sup>th</sup> and 19<sup>th</sup> century phenomenon of one nation occupying another nation. Colonialism differs from earlier conquests since it is an outcome of modern capitalist nations to fulfill the aspirations of capital for capturing markets and raw materials for the benefit of the home nation. We have witnessed three phases of colonialism viz., (i) Mercantile, (ii) Industrial, and (iii) Finance. In each phase the differing demands of capital are evident to the colonial country. In different colonies these phases manifest in a complete or incomplete manner.

**Affirmative Obligations:** Duties to be done in compensation for lapses and losses suffered by social groups of the current beneficiaries.

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## 3.12 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check your progress 1

1. Refer to sec. 3.4.
2. Refer to sec. 3.5.

### Check your progress 2

1. Refer to sec. 3.6
2. Refer to sec. 3.6.
3. Refer to sub sec. 3.7.1.
4. Refer to sec. 3.8.

# UNIT 4 COLONIALISM AND HUMAN RIGHTS

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## Structure

- 4.0 Objectives
  - 4.1 Introduction
  - 4.2 Stages of Colonialism
  - 4.3 British Colonialism and Human Rights Violations in India
    - 4.3.1 People and Human Rights Violations
    - 4.3.2 Peasants and Human Rights Violations
    - 4.3.3 Army and Human Rights Violations
    - 4.3.4 Press and Human Rights Violations
    - 4.3.5 Police and Human Rights Violations
    - 4.3.6 Prisons and Human Rights Violations
    - 4.3.7 Workers and Human Rights Violations
  - 4.4 Let Us Sum Up
  - 4.5 Key Words
  - 4.6 Some Useful Books
  - 4.7 Answers to Check Your Progress Exercises
- 

## 4.0 OBJECTIVES

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After reading this unit, you will be able to:

- discuss colonialism and Human Rights in the historical context,
  - the links between colonialism and Human Rights, and
  - the violation of Human Rights in India at that time.
- 

## 4.1 INTRODUCTION

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The age of modern colonialism began about 1500 AD following the European discoveries of a sea route around Africa's southern coast and of America. By discovery, conquest, treason, deceive and settlement, the European nations expanded and colonized throughout the World spreading European institutions and culture.

Colonialism refers to a state of inferiority or of servitude experienced by a community, a country or a nation which is dominated politically, and/or economically and/or culturally by another and more developed community or a nation.

President Sukarno of Indonesia (the Bandung Conference, 1955) referred to colonialism as economic control, intellectual and actual physical control by a small but alien community within a nation. (*Keesing's contemporary Archives*, London, 7-14 May 1955)

While describing the French Colonialism in Africa especially Algeria, *Franz Fanon* explained the meaning of colonialism for the Colonized people which we quote 'the Colonialism is a systematic negation of other person and furious determination to deny the other all attributes of humanity'. (*Franz Fanon, Wretched of the Earth*, New York, 1963)

Colonialism, therefore, means complete control affecting all aspects of life. It is more than a political and economic domination as commonly believed.

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## 4.2 STAGES OF COLONIALISM

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The process of subordination viewed by scholars is defined in terms of stages. The different stages through which a country is ruled differed from country to country. But the nature and content of exploitation remained the same. The colonial societies underwent a fundamental transformation under colonialism. They were made an integral part of the world capitalist system. These changes invariably had adverse effect on the colonies, most often, the violation of human rights.

Colonialism may broadly be divided into three distinct stages related to different forms of exploitation. It varies from colony to colony and from period to period. The stages are always inter-linked though different stages are marked by distinct dominant features. There is a qualitative change from one stage to another. India is a classic example. It remained a colony under the British rule for nearly 200 years. Britain's position in international milieu had led to changes in the nature of its colonialism in India, in forms of exploitation and, consequently, in colonial policies, impact and violation of human rights. As Karl Marx put it 'the misery inflicted by the British in Hindustan is of an essentially different and infinitely more intensive kind than all Hindustan had to suffer before.'

*Karl Marx, New York Daily Tribune, 25 June 1853.*

The three distinct stages of colonialism in India are:

- Monopoly of free trade and direct appropriation by East India Company 1757-1813.
- Free trade of East India Company and British capitalists.
- Direct British rule.

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## 4.3 BRITISH COLONIALISM AND HUMAN RIGHTS VIOLATIONS IN INDIA

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For the convenience of understanding and highlighting the human rights violations during the British rule, we can divide the issues and areas as follows:

### 4.3.1 People and Human Rights Violations

India was rediscovered by the British imperialists. The imperial ideologues who were administrators, academics, writers, novelists, evangelists, liberals, utilitarians etc shaped the exploitation. They 'discovered' Indian civilization as 'backward'. They rationalized the colonial exploitation by stating that the principle of liberty did not apply to backward states of the society. They legitimized despotic mode of governance in dealing with what they called 'barbarians'. 'Civilizing' the Indians was considered 'the white man's burden'.

**Rudyard Kipling**, British poet and a great apostle of imperialism of his time extended even an invitation to the Americans to join in the task of shouldering the burden of civilizing the 'barbarians'.

Take up the White man's  
burden  
Your new caught, sullen peoples,  
Half-devil and half-child (*The Times*, London, 4 February, 1899)

To propagate, expand and spread leading to domination of the colonised people, the British cultivated a new class of Indians who were described by Lord Macaulay as 'a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals and in intellect'. The Macaulayan system of education was a systematic effort on the part of the British government to educate the upper classes of India through the medium of English language. Education of the masses was not the aim of Macaulay, rather he believed in the 'infiltration theory', saying, these English educated persons would act as a class of 'interpreters' often known in Bengali parlance as 'Bhadralok'. They were the newly introduced English educated, liberal in thought, microscopic in number who helped to propagate the imperial ideas. They played collaborators who showed absolute loyalty to the rulers.

The *hoi polloi* had to suffer the racial discrimination of the minority whites. Various laws were introduced, imposed, and implemented to curb the basic rights of the masses. When India was reeling under the great famine of 1876, the government was preparing for the Prince of Wales' visit in 1877. It was criticized by two Bengali plays. To curb the protests from the natives against the misrule of the government, the government enacted the Dramatic Performance Act of 1876. The government had the power to arrest the performers and those who witnessed. In Arms Act of 1878, the racial discrimination was again brought up. This act exempted the Europeans, Anglo-Indians and some categories of government officials. Under The Indian Telegraph Act 1885 and the Indian Post Office Act, 1898, the government enjoyed powers to intercept and detain respectively any postal article or telegram 'on the occurrence of any public emergency or in the interest of any public safety.'

### Check Your Progress 1

#### 1 What do you understand by Colonialism ?

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#### 2 How did Lord Macaulay describe the Indian 'Bhadralok'

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### 4.3.2 Peasants and Human Rights Violations

The economic exploitation coupled with political control destroyed the traditional Indian handicrafts and agriculture and ultimately *the village communities*. The traditional Indian village was a self-sufficient basic unit of Indian society. The artisans, craftsmen and weavers who were then patronised by the ruling elite, *maharajas* and *nawabs* were compelled to sell their products at uneconomic rates or to *work for* the East India Company at low wages. The traditional Indian agricultural society transformed to cater to the needs of British society. The export of Indian goods exceeded the import of British manufactured goods. The company was interested in large scale 'drain of wealth' from India. This wealth played an important role in promoting industrial revolution in England.

In a blatant violation of the law of the land, the British created a new class of exploiters - the *Zamindars* to collect the revenue. The newly invented revenue systems like the *permanent settlement* in Bengal, the *Ryotwari* and *Mahalwari* systems in the rest of India led to unending woes to



the peasants. The peasants were deprived of their rightful land and put under the *Zamindars*, the feudal lords. The *Zamindars* used unheard of methods to extract maximum from the peasants who had already lost to them their rights to till their lands. During the early phase of colonialism, the East India Company did not impose any ideological set up. Many peasants had withdrawn to the jungles to avoid capture and torture. The *Zamindars* were made the owners of the land.

In the free trade stage, India was thrown open to the individual British capitalists. The internal changes in political and mercantile community in Britain had resulted in passing of the Regulating Acts of which 1773 and the Pitt's India Act of 1784 the Charter Acts of 1813 and 1833 fully opened India to the British exploiters. The British capitalists were permitted to invest, develop, produce and export the capital goods like tea, coffee, indigo and opium. The trade, transport, mining and modern industries were set up for the British capitalists and the government had protected their interests. The rapid industrialization in Europe with increase in population needed raw materials for the industries. The plantation industry made a fertile ground for exploitation. The tea plantation workers in Assam and Bengal, the indigo plantation workers and peasants in Bihar became the worst victims of lusty exploiters. They were forced to work for long hours continuously, even though in Britain various laws were enacted to reduce the working hours in the factories and provide better living conditions to the workers. The indigo planters were forced to cultivate again and again even though they incurred heavy losses while the fertility of the soil was going down drastically.

### 4.3.3 Army and Human Rights Violations

The army in India was controlled and commandeered by the British. It was used to quell the rebellions, conquer colonies, and fight the imperial wars beyond the frontiers. It had transformed from a mere group of upper class 'mercenaries' to the army of 'recruits'. India as 'oriental barrack' was the only large reservoir of trained troops in the empire. It comprised mostly uneducated, illiterate masses and poor peasants. They were the most ill-treated and 'discriminated lot'. They were exploited religiously, economically, socially and physically. The Indian soldiers were denied pay parity with the Europeans, they were seldom promoted, nor were they allowed to command the Europeans. Religiously, the Hindus believe crossing of seas a taboo, but often they had to perform duties abroad. Any denial resulted in disbanding of the unit or hanging of the soldiers. Innumerable examples could be found during Indian army's participation in various theatres of World War I. To name a few, the Singapore mutiny in 1915, a revolt in France and Flanders over the quality of food etc. The Revolt of 1857 was the watershed in British imperialism. The flash point for the revolt was the greased cartridge which affected both the Hindus and the Muslims alike. The mutiny itself was quelled ruthlessly by the bloodthirsty commanders. We quote below in the box an eyewitness account of one of the methods used by the British to suppress the rebellion and reign of terror among the sepoys. After 1857 revolt, the British were cautious of admitting from all the castes into Army. They found a new theory the 'Martial race' and recruited from only those castes which supported them during the 1857 revolt like the Sikhs, Jats etc, into the army

"Some 200 prisoners of the 55<sup>th</sup> Regiment BHI have been tried here (Peshawar) and we blew 40 of them away from our guns, in the presence of the whole force. .... a fearful but necessary example, which has struck terror into their souls. Three sides of a square were formed, ten guns pointed outwards, the sentence of the court was read, a prisoner bound to each gun, the signal given, and the salvo fired. Such 'a scene I hope never again to witness - human trunks, legs, arms, etc, flying about in all directions'. (The Times, London 4 August 1857)

A major result of the revolt was that India had come under direct British Crown. It was also the beginning of the third stage of colonialism in India.

#### 4.3.4 Press and Human Rights Violations

Like the army, press was one of the pillars of British colonialism. It was the press that helped to propagate, preach, disinform, disseminate the false information to the people.

The first attempts to publish newspapers in India were made by the disgruntled employees of the East India Company who sought to expose the malpractices of private trade by the Company's employees. The earlier newspapers were started by the English in their mother tongue and they catered to a microscopic intellectual society of Englishmen and the Anglo-Indians. There was really no threat of a rebellion or a strong public protest. But, there was an apprehension that these newspapers might reach London and expose their misdeeds. This fear had played havoc with freedom of expression in India. The government sometimes enforced pre-censorship, sometimes deported the offending editor of a paper for anti-government policies.

Given below is a brief account of various draconian and gagging Acts which were time and again imposed on the newspapers.

While apprehending Napoleon's invasion of India when the East India Company was engaged in the struggle for supremacy in India, Lord Wellesley imposed the first censorship of the press in 1799. First time the newspapers had to carry the name of the printer, publisher and the proprietor. The publisher had to submit all material for pre-censorship. In 1818, the editors were warned against publishing of the doings of the Court of Directors. The Licensing Regulations of 1823 had proved more stringent than the earlier ones. It made the publisher and printer to obtain a license for starting a press. These regulations were basically aimed at the Indian language press or Indian editors. After this Act was promulgated, most of the publications were stopped. Charles Metcalf as officiating Governor General (1835-36) repealed these obnoxious regulations of 1823. This act earned him the 'liberator of the Indian Press'. Lord Macaulay, a Whig himself had reasoned out that already India was under the control of the British, there was no necessity to control the press. But the liberation did not last long. The Revolt of 1857 changed the destiny of India and the British attitude towards India. The Licensing Act, 1857 had reintroduced the restrictions on Indian press. The Registration Act, 1867 had replaced Metcalfes' 1835 Act. By this Act, every book or newspaper should have the name of printer, publisher, and place of publishing. This has been amended in 1890, 1914, 1952 and 1953.

The 1870 Act amended the Indian Penal Code regarding 'sedition'. This became necessary due to the revolt of *Wahabis* (1869-1870).

The Revolt of 1857 had resulted in racial bitterness among the rulers and the ruled. As a fall out of the Revolt of 1857, the European press in India had sided with the government. The vernacular press by now had grown a major threat to the government in mobilizing public opinion. In 1878, there were about 170 vernacular papers in India. It was calculated that there were probably more than one lakh readers of such papers. In 1876-77, the great Indian famine consumed about 6 million lives of India. The government went into the famine relief casually. Immediately followed the imperial *darbar* at Delhi in 1877 made the press and the public opinion wary of government antipathy to peoples' woes. The Vernacular Press Act of 1878 was designed to 'better control' the native press. This Act empowered a magistrate to confiscate the press. No appeal could be made to a court of law against the magistrate's action. The 'Gagging Act' as it came to be known, discriminated between the 'disloyal native press' and the 'loyal Anglo - Indian press'. It was the major attempt by the colonial power to throttle the freedom of expression by native press. It was widely condemned as an unwise step to smother the rising flames of discontent. Most of the native press however did not have the courage to stand up against the government repressive

measures. This Act paved way for a press commissioner to supply authentic and accurate news to the press. The Vernacular Press Act was repealed by *Lord Ripon* in 1882.

When the Partition of Bengal in 1905 coupled with the extremist faction gaining ground in the Indian National Congress, the newspapers began criticising the government policies. The government followed a repressive policy, enacted the Newspapers (Incitement to Offences) Act, 1908. It enabled the magistrate to confiscate the printing press, property for publishing objectionable material. The Indian Press Act, 1910 enabled the government to increase the deposit to Rs.2000 at the time of the registration.

The First World War 1914-18 saw the Defence of India Rules to supersede the existing rules. The government used the rules not only for war purposes but also aimed to suppress political agitations against the 'compulsory' and forceful recruitment of the government.

In 1921, the Press Committee was constituted under Sir Tej Bahadur Sapru, Law Member, Viceroy's Executive Council. The Committee recommended the repeal of 1908 and 1910 acts. This was done so by the government under the Press Law Repeal and Amendment Act, 1922. There were very minor and cosmetic changes which took place during the rest of the British rule save during the Second World War. But during the freedom struggle, the number of readership increased for both the vernacular and the English language. Vernacular papers were no longer a competition for the English language papers. But the government definitely interfered with the English newspapers on the basis that some newspapers like *The Statesman* and *The Times of India* became pro government sympathisers while others including the *The Hindustan Times*, *The Bombay Chronicle* were pro Congress newspapers who supported the national movement. There were instances during the freedom struggle that the Anglo-Indian press had played on communal feelings amongst various sections of Indians, even at times when communal disturbances were taking place. The government even acted one sided while dealing with Indian owned newspapers. During the civil disobedience movement of 1930-32, many provincial governments prohibited the publication of news items concerning Congress agitation; even the photographs of the events and the leaders were banned. But it happened many times that the newspapers were either confiscated or the editors were deported for not abiding the government order. But *The Times of India* (Bombay) and *The Statesman* (Calcutta) published such items without let or hindrance.

### Check Your Progress 2

1. Who was the first governor general to introduce press censorship?

.....  
.....  
.....  
.....

2. Vernacular Press Act was repealed by.....in the year.....

3. Which are the two newspapers that supported the British Raj:

- a. The Hindustan Times
- b. The Times of India
- c. The Statesman
- d. The Bombay Chronicle
- e. The Hindu

Choose from a and b, b and c, c and e, c and d.



4. Who earned the name the liberator of the Indian press and why?

### 4.3.5 Police and Human Rights Violations

Another pillar of British colonialism is the police force. British 'Raj' was often called 'Police Raj'. The governed were under the constant surveillance of the police. The use of force is an ingredient of the colonialism. The Army used to conquer the land. The Police force used to quell the internal disturbance of the conquered land. Even a civilized state has police force but the colonial state had used the sheer brutal force against the natives. The Police force in India was governed by the Police Act of 1861 and the Special Acts of Madras (1859) and Bombay (1890) presidencies. The Police in India were provincial forces. To an ordinary Indian, the police represent the power of the British government. Policeman was not looked upon as a protector of peace nor the public have any confidence in the police. According to an estimate, there was one policeman to every one thousand three hundred of the population. There were about 10,000 police stations or one in 100 square miles; at the same time, there was one hospital in every 400 square miles. The Police in India, whether in peace or during any agitation, used 'excessive' force and adopted methods which were indefensible and inhuman. *Lathis*, teargas, bayonets, and rifles had been used to disperse unharmed, peaceful and non-violent crowds, pickets or processions. The ordinances were only redundant when it were produced in the court against police 'excesses'. The judiciary itself was a mute spectator to police lies. Often police used third degree methods to extract the truth. The 'disappearances' were common during the British raj. The police *Zulum* included burning of houses, looting and destruction of property, forcible entry into houses and beating of people, blockading of villages, looting of crops, entry of *Zenanas*, molesting and raping the Indian women, etc. The government also imposed punitive fines during the agitation.

The century old Indian Penal Code considered as 'Britain's grim gift to India' is still used and misused by the police and the judiciary alike. The police excesses also included 'forced labour' (*begar*). Forced labour was used by the government contractors for construction of public utility systems like rail roads and roads. They were actively protected by the police. The people were even forced to sell lottery tickets and threatened to attack lands if sufficient tickets were not sold. Police in many occasions behaved in a haphazard manner. Everything was left to the man leading on the spot. The police seldom behaved in a civilized manner with the women and children. One can get a glimpse of police atrocities unleashed on women in the pangs of history. During the Civil Disobedience Movement (1930-32) in Bengal, the women volunteers were taken into custody, then driven miles away from their homes or places of arrest to island *chars* (in many cases uninhabited), and left at dead of night. There had been widespread feeling about the manhandling of women processionists, picketers, and volunteers and threats of molestation loomed large. One such incident we quote:

'Miss. Nilakanta, the head of the local National Girls, School and a graduate of an American University, replied to the threats by appearing as a picket armed with a knife. She announced that if there was one attempt at molestation she would take her life rather than submit to it, as her country women would.' (*Condition of India*, p.204)

The ordinances gave blanket power to the executive officers to detain a person on reasonable grounds of suspicion. In one of *modus operandi* of police raj, a person who was arrested was released and asked to report to the police station at least thrice in a day, which was disobeyed in many cases. Now, the person was re-arrested and a proper case had been filed. The aim of the procedure was to create an offence.



Police raj was much seen in the villages. Villages were considered as backbone of India. Almost none of the villagers were educated. The police had a free hand in dealing with the villagers. Even for a small theft, a villager might be tortured and killed in police custody. For not paying the tax of few rupees, the village household might be ransacked, women were molested and raped. These were never reported in the press, or taken to the courts. The villagers were the silent and mute sufferers of the police raj. Police atrocities were innumerable and unimaginable. In some cases, the menfolk of the family were made to undress themselves in front of the women which include the wife, daughters, daughter-in-law. The children also did not escape the police brutalities. In many incidents, the police used 'unnatural' offence like sodomy on boys.

#### 4.3.6 Prisons and Human Rights Violations

The prisons in India were governed by the provisions of the Indian Prisons Act of 1894. The official estimate of prisons were nearly 2000 in British India. The government discouraged sending of men to the jails, as it was difficult to maintain and feed them there. The prisoners included small time convicts, murderers, and mostly political prisoners who were detained for violation of various ordinances of British government. The government did not recognize the category of 'political' prisoners.

Mohan Kaul is a young fellow of 19 years of age, son of an ex- government official. He refused to *salam* at the call of *Sarkar Salam* in Rajshahi Jail. He was put in standing handcuffs and given other punishments. Each time he was brought before the Superintendent he declined to make the required obeisance. Altogether, he suffered five and a half months of solitary confinement. After the first three months, when he was still adamant about his refusal to *salam*, he was put into a cage with his hands fettered behind his back. The cage was seven by five feet. In this cage Mohan Kaul spent all hours of the day and night; he was obliged to take his food and answer the calls of nature in it'. (*Condition of India*, p245)

In addition to prisoners, there were 'detenues' interned in detention camps without trial for an indefinite period. In jail, there were three classes of prisoners as A, B and C. However, the classification was arbitrary. Most of the Political prisoners were sent to C class even though they were entitled for class A and sentenced to Rigorous Imprisonment. It had been a regular feature of complaints against the jail authorities. Jail strikes were common sight in British India. The women and children too were humiliated without any sympathy. For instance, women prisoners were escorted over long journeys by policemen and head constables, without women warders or other female company. The juvenile prisoners had been given Rigorous Imprisonment, were flogged and whipped, were forced to do the work of adults, most dangerous of all, they were the victims of foul abusive language and even sodomised in the jails. These were against the very nature of the jail manuals. These human rights violations were never heard in the courts. The administration in India was based on racial discrimination despite proclamations and declarations to the contrary. This discrimination was seen in the jails too. Even highly reputed Indian prisoners with high moral character like Mahatma Gandhi, against whom there might not be a formal case, were treated worse than a normal European criminal. The Europeans were jailed only in particular jails. The Europeans, Americans, British and Anglo-Indians enjoyed maximum benefits under the jail manuals. There had been jail riots over the quality of food served inside the jails even though the manuals had given clear instructions regarding the food served. But they were grossly violated. Often the quality betrayed the manuals. The appeals of prisoners went unheard, often resulted in no food or rigorous punishment. The jail manuals said that no convict should work for more than nine hours a day, except in emergency. The labour in the prisons were classed as 'hard', 'medium' and 'light'. The prisoners who were physically fit were put to hard labour including pressing oil, grounding corn, and pounding grain.

"In oil mills political prisoners were made to run like bullocks. They had to eat while they were doing work". (Hari Singh, Bareilly Jail, U.P. Committee Report, 1930.)

Other kinds of hard work included weaving, weighing and storing grains, also pounding, cooking, water raising from well, water carrying, carrying stone, quarrying etc. Punishments for not complying with the above included severe labour, hand-cuffing (front of body-fetters, and back of body-chains) fetters (Bar fetters, link fetters and crow bar fetters), penal diet, solitary confinement, cellular confinement, whipping, etc. Like police 'raj' outside, the treatment in the prison cell is partly the consequence of official callousness to human suffering and dignity. It was also the basic nature of British superior race ideology that ruled the minds of the officials and their collaborators.

### Check Your Progress 3

1. Most of the Political Prisoners were sent to .....class prisons.

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.....  
.....  
.....

2. Detenues were interned in camps without trial. True / False

3. What were the categories of labour in prison.

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.....

4. Write a short note on atrocities of women by the prison authorities.

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.....

## 4.3.7 Workers and Human Rights Violations

One of the most affected lot during the colonial rule was the labour force. The Chartist movement in Britain paved the way for trade unionism and workers rights. In India, the trade unionism was dealt with iron fist. The government had always supported the owners against the workers. The

in England the Child labour was abolished, it still continued in India. The government turned a Nelson's eye to the atrocities of the mill owners of both Indian and British origin. In India, by law, agricultural serfdom was abolished. But in practice 'forced labour' still persisted under the British rule. The 'forced labour' was used both by private individuals and the official contractors for public construction. The question of forced labour had been raised in International fora time and again but were officially refuted. The slavery of labour was officially abolished in 1843 but it paved the way for the indentured labour. One can see even today the forced labour and slavery in remote India.

### **Check Your Progress 4**

8 • The slavery in India was abolished in .....

9 • The Chartist Movement in Britain is connected with .....

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## **4.4 LET US SUM UP**

In this unit, we have seen the relation between the colonialism and the human rights. Colonialism is a synonym for exploitation. British colonial rule in India affected the common man, children, women, labourers, workers, peasants, either directly or indirectly. The police and the army were used as basic tools to suppress the rights of the individuals. The judiciary either had played second fiddle or been a silent spectator to the police raj. The prisons were fertile ground for human rights violations because of the veil of secrecy around them. Unless a prisoner lived to tell his story, the brutalities get buried inside the four walls of the prisons. The press which brought out the colonial atrocities suffered seizure, or pressmen deported and fined.

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## **4.5 KEY WORDS**

**Fetter** : A fetter is one of a pair of chains which were used to tie prisoners to a place, by the legs, and so prevent them from escaping.

**Rigorous Imprisonment** : Hard Labour.

**Zulum** : Hindustani word for oppression.

**Sarkar Salaam** : Hindustani Word means saluting the governance.

**Char** : Small islands, in the middle of the rivers in East Bengal.

**Lathi** : Long stick used by the police.

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## 4.6 SOME USEFUL BOOKS

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## 4.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. See Section 4.1.
2. See Sub-section 4.3.1.

### Check Your Progress 2

1. Lord Wellesley.
2. Lord Rippon, 1882.
3. b and c
4. See Sub-section 4.3.4.

### Check Your Progress 3

1. c
2. True
3. See Sub-section 4.3.6.
4. See Sub-section 4.3.6.
5. See Sub-section 4.3.5.
6. See Sub-section 4.3.5.

### Check Your Progress 4

1. 1843
2. Workers Rights



# UNIT 5 NATIONAL MOVEMENT AND HUMAN RIGHTS

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## Structure

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Origins
- 5.3 National Movement and Human Rights
  - 5.3.1 Incorporating in the Programme
  - 5.3.2 Making Demands from the Government
  - 5.3.3 Struggling for Human Rights
  - 5.3.4 Practising Human Rights
- 5.4 Struggles for Social Transformation
  - 5.4.1 Struggle Against Caste Oppression
  - 5.4.2 Rural Reorganisation
- 5.5 Spread
- 5.6 Implications
- 5.7 Let Us Sum UP
- 5.8 Answers to Check Your Progress Exercises

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## 5.0 OBJECTIVES

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After you have read this Unit, you will learn about

- the sources from which the national movement drew inspiration,
- the nature and the programmatic content that the national movement evolved *vis-à-vis* the question of human rights,
- the different ways in which the national movement practised and demonstrated its concern for human rights, and
- what was its implication for the future of India's society and polity.

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## 5.1 INTRODUCTION

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It is now common knowledge that the national movement was primarily a struggle against British imperialism. What is however not so widely known is that Indian National Movement was actually more than that. It was also a grand project to build a modern India along democratic and civil libertarian lines. The fight against the British was a part of this larger struggle. As the colonial state frequently trampled upon peoples' human rights and civil liberties, the Indian National Movement constantly strove to defend and uphold these values. In fact, overthrow of British imperialism was seen by the leaders of the national movement as a precondition to the development of India as a country where people would be able to defend their basic rights. This would become amply clear if we compare India's record of civil liberties and human rights with other developing post-colonial societies. Evidently, the human rights that the people of India enjoy, in however limited a measure, is a legacy of our national movement.

If you look at the records and documents of the national movement, speeches and writings of its leaders, you would not find the term human rights anywhere. But this should not lead you to assume that this concern did not exist during the national movement. It is important to keep in mind that the term human rights is of a latter origin and came into vogue only at the end of the World war II, in 1948. The experience of fascist politics and horrors of the world war gave birth

to a renewed concern for a man's right to live with freedom from want and fear and enjoy some basic economic and cultural rights along with the political ones. The common expression used before the second world war was civil liberties. The concept of civil liberties was about 200 years old and could be dated back to the French Revolution of 1789. It was this understanding that was inherited by the leaders of the national movement and made an integral part of their struggle against the British imperialism. It is therefore important to look at the sources that inspired our national movement in its struggle for civil liberties and human rights.

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## 5.2 ORIGINS

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In the year 1776, delegates from English colonies from North America met and adopted a declaration of independence. In the declaration the colonies considered themselves independent from British control and, in so doing, provided a framework for all subsequent liberation struggles. The Congress asserted : "All men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are Life, Liberty and the Pursuit of Happiness." This was perhaps the first political document that emphasised the basic equality of all men and their natural rights. Then in 1789 during the French Revolution, the National Assembly of France adopted the "Declaration of the Rights of Men and Citizen". This declaration inspired revolutionary and democratic movements not only in Europe but also in Asia and Africa. The declaration said: "The principle of all sovereignty rests essentially in the nation. No body and no individuals may exercise authority which does not emanate from the nation expressly."

When these ideas were applied to the Indian society at the beginning of the 19<sup>th</sup> century, well before the start of the national movement, they acquired a uniquely Indian character. During the course of the social reforms various human rights came to be looked at as *individual rights*, *rights of the community* and *those of the nation*. All the three were expressed throughout the 19<sup>th</sup> century. The campaigns for the removal of Sati and the advocacy of widow remarriage were projected as important individual rights. Leaders like Rammohan Roy, Ishwarchandra Vidyasagar and others championed these issues as part of an individual's basic rights. Similarly, low caste leaders like Jyotiba Phule fought for the rights of the community as a whole. And leaders like Bankim Chandra and Vivekanand took the initiative in projecting rights of the nation. All the three concerns were incorporated in the 20<sup>th</sup> century during the course of the national movement in concrete struggles around these issues. Thus, the national movement derived its inspiration from the classical European doctrine of 'rights' and also its creative application during the social reform movements in the 19<sup>th</sup> century India.

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## 5.3 NATIONAL MOVEMENT AND HUMAN RIGHTS

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There was a variety of ways in which the leaders of the Indian National Movement introduced the issue of peoples' human rights into the anti-imperialist struggle. It included:

- giving these issues top priority on its agenda,
- constantly making demands from the government specially at the initial stage of the movement,
- educating the people regarding their rights and conducting struggles around these issues, and
- demonstrating through practice, whenever they could, their utmost concern for civil liberties and human rights.

### 5.3.1 Incorporating in the Programme

As you are probably aware, in the initial stages, the national movement did not go in for a direct confrontation with the colonial government. Instead, it confined itself to educating the people through speeches and writings and acquiring a programme that would include the rights of all Indians and also specific groups. *Vis-a-vis* the minority groups, the early nationalist leaders displayed a special sensitivity. Immediately after its formation in 1885, the Indian National Congress passed many resolutions to ensure that no injustice was done to the voice of the minorities. In the years 1888 and 1889, the Congress resolved at its sessions that no proposal relating to minorities could be passed if the majority from that group was opposed to it. At its Karachi session in 1931 the Congress came out with its declaration of fundamental rights. The declaration guaranteed to “every citizen of India of every caste and creed the right of free expression of opinion, free association and combination, freedom of conscience and the right freely to profess and practise his religion subject to public order and morality.”

Merely passing of a resolution may seem simple but it was not always easy to stand by it. Often it became difficult for the organisation to carry together different ideals. For instance, from the early days, Congress had committed itself to the establishment of national unity or unity among different groups and communities. But at the same time Congress also resolved that it would not impose unity on any group against its wishes. Thus when the Muslim League, under the leadership of M.A.Jinnah, began demanding a political separation between Hindus and Muslims after 1940, Congress leadership opposed it but conceded that any group, if it so desired, could opt for separatism. Gandhi put it beautifully: “We are at present a joint family. Any member can seek a separation.” It was thus that while pure nationalism was to be maintained and upheld as a desirable principle, it was not to be done by violating groups’ rights of self-determination. Let us take another example. When in 1938, World War II broke out between forces of democracy (Britain, France and Poland) and those of fascism (Germany, Italy and Japan), it became imperative that our national movement would side with the forces of democracy. But whereas in the global context, Britain represented the forces of independence and democracy, in the Indian context, Britain was the imperial power denying independence and democracy to the people of India. Should the national movement support Britain as a democratic force engaged in a war against fascism, or oppose it as an imperial power? Should the national movement focus only on the Indian reality (and fight the British) or express solidarity with the people of the world in their struggle against fascism? This was a serious dilemma. But the mainstream leadership of the Congress managed to resolve it. Jawaharlal Nehru wrote:

We want to combat fascism. But we will not permit ourselves to be exploited by imperialism, we will not have war imposed upon us by outside authority, we will not sacrifice to preserve the old injustices or to maintain an order that is based on them. We will not and cannot forget our own struggle for freedom for slogans which may sound pleasant to the ear but have little reality behind them...

Nehru argued that the people of India were willing to participate in a global war in order to uphold independence and democracy for the people of the world, but they could not do it as long as they themselves were not free. Therefore, Nehru demanded independence for India as a pre-condition for their participation in the war. It was thus that the national movement was able to combine its national commitment with a global commitment and also emphasize independence and democracy as basic human rights for the people of the world.

### 5.3.2 Making Demands from the Government

It should be emphasized here that ideas of political modernity (democracy, representational



government, peoples' sovereignty, respect for human rights, freedom of the press among others) were not a gift of the British, contrary to popular belief. These were constantly demanded by the leaders of the national movement and conceded only grudgingly, and partially, by the British government. For instance, from the beginning of the 20th century, Bal Gangadhar Tilak, followed by Gandhi and others, began demanding adult franchise (even though it did not exist in Britain till 1928), but it was not granted to Indians till independence. Till as late as 1935, only three per cent of Indians had the right to vote. But complete adult franchise was firmly put on the agenda. Indian leaders, from the 19th century onwards, constantly criticized the British government for its non-representative character and questioned its credentials in preparing a constitution for India. Motilal Nehru and Tej Bahadur Sapru went to the extent of preparing a national constitution in 1928. It recommended the declaration of fundamental rights, a parliamentary system of government, adult franchise and an independent judiciary among other things. Even though the Nehru Report, as it came to be known, was rejected by the British government, it inspired the Indian people and re-affirmed their capacity for governing themselves. From 1930s onwards, leaders like Jawaharlal Nehru began demanding the creation of an elected Constituent Assembly, which would prepare a constitution for India.

In making issues of human rights central to the struggle for independence, the contribution of early leaders like Bal Gangadhar Tilak and Gopal Krishna Gokhale is very important. Gokhale, throughout his career, argued against heavy taxation levied by the British. But he was willing to support the existing taxes if primary education was made compulsory and if the colonial state took responsibility for it. Gokhale was probably the first Indian leader who saw education as a basic human right. Tilak was a great champion of the liberty of the press and freedom of speech. His famous statement — "freedom is my birth right" — is perhaps the earliest attempt by an Indian leader to look at freedom as a human right. He practised his freedom of speech and wrote freely against the British policies in newspapers. He was arrested twice for it — in 1897 and again in 1908 for six long years.

### 5.3.3 Struggling for Human Rights

Apart from making demands on the British government to enlarge the space available for exercise of human rights, the national movement, from 1920 onwards, actually conducted popular struggles around this issue. It is important to remember that the first all-India mass movement against the British was organised on the question of violation, by the British, of a crucial aspect of human rights. In 1919, the British government brought forth the notorious Rowlatt Bill (known after its author Sir Sidney A.T. Rowlatt) which would authorize the government to imprison any person without trial and any other legal procedure. This move by the British government was received with unprecedented and fierce opposition by Indian leaders of all shades of opinions. All the Indian members of the Legislative Council — from Srinivasa Shastri to Mohammad Ali Jinnah — opposed the Bill (yet it was passed). The national press was indignant calling it "monstrous" (*New India* from Madras), "a gigantic blunder" (*Amrita Bazar Patrika* from Calcutta), "repression in exelsus" (*Bombay Chronicle* from Bombay) and a matter of "shame, indignation and disgust" (*The Hindu* from Madras). An all-India Hartal was organized and the entire country rose in protest against what it considered a blatant violation of human rights. Throughout its life, the Indian National Movement upheld human rights as an uncompromisable issue.

### 5.3.4 Practising Human Rights

Yet another way in which the Indian National Movement contributed to the enlargement of space for human rights was by actually practising it when the opportunity came. The Government of India Act of 1935 provided fully elected popular governments in the provinces. As a result, the



Indian National Congress formed a government in seven provinces and successfully practised what it had preached for many years in the past. All the emergency powers exercised by the previous provincial governments were repealed. Ban on illegal political organizations was lifted. All restrictions on the press were removed and securities taken from them were returned. Confiscated arms were returned and forfeited arms licenses were restored. But the most important achievement was the release of thousands of political prisoners who had been languishing in various prisons for many years. During its brief stay of twenty-eight months in office, the Congress was able to demonstrate its serious concern for the issue of civil liberties and human rights.

### Check Your Progress 1

1. What was Nehru's argument about the dilemma of joining the British rulers in the war? What was his pre-condition for it?  
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.....  
.....
2. 'The Ideas of political modernity were not a gift of the British' — comment.  
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.....
3. Discuss briefly the effects of the Government of India Act, 1935.  
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## 5.4 STRUGGLES FOR SOCIAL TRANSFORMATION

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Apart from integrating the issue of human rights into the struggle for independence, the national movement also created space for various social struggles as important human rights issues. This took many forms but was quite evident in two fields:

- (i) the struggle against caste oppression and discrimination, and
- (ii) the endeavour for village reorganisation.

### 5.4.1 Struggle Against Caste Oppression

The struggle against caste oppression was in some ways more complex than the fight against the British. The battle against the caste system was against attitudes and prejudices, which were thousands of years old and could take centuries to overcome. Moreover, it was not a battle against the alien rule but against oneself and one's own people. It was therefore easier to throw out the British but very difficult to eradicate caste oppressions. Since it was not a straight problem it also did not have a straight solution. Different leaders therefore adopted different approaches to the problem. Gandhi and B.R.Ambedkar looked at the question very differently from each other. They also adopted different methods but in the end, their efforts rather complemented each other. Gandhi thought that the practice of untouchability was at the core of the caste oppression and

unless it was removed, it would not be possible to destroy caste system. Ambedkar, on the other hand, thought that problem of untouchability was inherent in the caste system and was integral to it. Therefore, according to Ambedkar, the struggle against untouchability was essentially a struggle against the caste system. Gandhi thought that social work and social reforms in the villages would help in imparting social respect to lower caste people and make living more honourable for them. He, therefore, undertook extensive campaigns for making village temples and wells accessible to the lower caste people. He even coined a new word for them – Harijan.

According to Ambedkar, on the other hand, a share in political power was the key to the problem of caste injustice. He therefore worked hard for creating an entry for the lower caste groups into formal structures of political power. Once they got political power, Ambedkar believed, they would be able to improve their lot. Then they will not have to plead to others for justice and fairplay.

While pointing out the differences between the two approaches, it is important to remember that the two approaches were not contradictory in nature but rather like two different routes to arrive at the same destination. In the long run, both the leaders, through their efforts, succeeded in initiating a process in which the low caste people were able to fight for social justice as well as a share in political power. Gandhi and Ambedkar, and many others too, helped in shaping the dalit question as a powerful human right issue.

#### **5.4.2 Rural Reorganisation**

In the 19<sup>th</sup> and the 20<sup>th</sup> centuries 85% of India's population lived in about 700,000 villages. A majority of them were steeped in utter poverty, exploited not only by the British government but also the rural and urban elite. Industrialisation of the country had rendered them unemployed; the colonial economic system did not create alternative sources of employment. In the late 19<sup>th</sup> and the early 20<sup>th</sup> centuries many people from towns and villages came to live in the cities, thereby accentuating the already heavy pressures on them. No scheme or system existed for the amelioration of their condition. The Indian villages were centres of poverty, disease and ignorance. Gandhi took the initiative in this regard and drew the attention of the country to this violation of some basic human rights of 85% of Indians. Immediately after his entry into Indian politics in 1915, he formed the All India Spinners Association with a purpose to create employment for the villagers by insisting on the city dwelling population to use hand spun cloth only. The spinners association soon reached 5300 villages and provided employment to 220,000 spinners, 20,000 weavers and 20,000 carders. Within ten years of its formation it succeeded in disbursing over two crore rupees in those villages. In 1934, after his temporary retirement from politics, Gandhi settled in Segaoon, a village in Gujarat. He formed an Ashram there and helped in the formation of an All India Village Industries Association. The purpose of the Association was to support and develop industries in villages with little capital and without any help from outside. The Association also set up a school to train village workers in various crafts.

The focus of Gandhian initiative was to make the villages self-sufficient and self-supportive. This, thought Gandhi, was the best way of restoring prestige and dignity to villages and villagers. A good example of this was given in Harijan, a weekly journal started by Gandhi: Chandranath, a man without any higher education but with full commitment to constructive work, enlisted the voluntary labour of about 15,000 villagers and completed a canal, three miles long and a roadway of the same length. The official estimate for this work was Rs. 50,000.

Largely at Gandhi's initiatives, the annual sessions of the Congress began to be held in villages. The canvass of the human rights was thus enlarged to include the pressing problems that had gripped rural India.

## Check Your Progress 2

1. Compare and contrast the views of Gandhi and Ambedkar on the caste problems  
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.....  
.....
2. What was the focus of Gandhi's initiative in the context of the rural India  
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.....
3. Write 5 lines on the All India Spinners Association  
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## 5.5 SPREAD

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Many of the basic themes pertaining to human rights (democracy, self-government, freedom of the press, adult franchise, right to form associations etc.) had been articulated by the early nationalist leaders by the end of the 19<sup>th</sup> century. But, because the national movement itself was confined to very few people at that stage, these ideas also did not reach the majority of the Indian people. But once the national movement started reaching out to new groups and people in the 20<sup>th</sup> century, it carried the ideas of civil liberties and human rights to them. This, on one hand, strengthened the national movement and, on the other, motivated these groups and people to take up the questions of their rights on their own. This was specially true of low caste people, peasants, women and young people. Peasants formed their own Kisan Sabhas to fight for their rights. The All India Students Federation (AISF) was formed in 1936. A number of such organisations came to be formed in the 1920s and 1930s. These were confined to specific groups and articulated their demands and rights.

A major landmark in the growth of civil liberties and human rights was the formation of Indian Civil Liberties Union in 1936 at the initiative of Jawaharlal Nehru. The Civil Liberties Union was to be formed along non-party lines and could be joined by any Indian opposed to the violation of Indian peoples' civil liberties by the British government. The circular, prepared by Nehru, said: "It is proposed to start an Indian Civil Liberties Union, the sole function of which will be the protection of civil liberties in all departments of national activity. It should be open to all individuals who believe in this fundamental proposition and it should avoid any entanglement of any other political or economic issue....The first object of this union would be to collect data and give publicity to it. Other activities such as the organisation of public opinion to resist all encroachments on civil liberties would follow."

The constitution of the Indian Civil Liberties Union (ICLU) was drafted along the lines of the Civil Liberties Union of America and the National Civil Liberties Union of Great Britain. Rabindranath Tagore was its honorary president and Sarojini Naidu the chairperson. The task of the Union was to gather information about the suppression of civil liberties in the provinces,

collect facts, publish them, mobilise public opinion, keep in touch with other foreign unions and reach out to world opinion through them.

These political and social initiatives helped in sensitising people and also resulted in the creation of a certain kind of literature and cinema that were sensitive to the question of people's individual rights. *Achhut Kanya*, a film made in 1936, dealt with a socially explosive theme of marriage between an upper caste boy and an untouchable girl. Another film made in the same year by V. Shantaram, *Duniya Na Mane* projected the plight of a young girl in a male dominated society that forced her to marry an old man against her wishes. The film portrayed the girl's rebellion and assertion of her rights. Many other films of 1930s took up social and even mythological themes that highlighted people's desire for justice and freedom in a cruel world.

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## 5.6 IMPLICATIONS

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The gradual integration of human rights issues into the struggle for independence had important implications not only for the national movement but also for politics and society after the attainment of independence in 1947. For one, it imparted many new dimensions to the national movement and turned it into a very dynamic process. The early 20<sup>th</sup> century notion of political independence gave way to a new and a vibrant notion of economic independence in which people would determine their own destiny. At the same time, it created a space for a variety of other struggles by specific groups for their rights. A healthy respect shown by the national movement for democracy and other social struggles resulted in the creation of a political climate after independence that was conducive for the growth of democracy.

Over the years the canvass of democracy has enlarged itself considerably to include new groups and classes. This extension of democracy to marginal groups and sections has ensured that the issue of human rights remain firm on the agenda. It has also enabled people to conduct their struggles for their rights and justice within a democratic framework.

### Check Your Progress 3

1. Write 5 lines on the **Indian Civil Liberties Union**

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.....

2. **Comment on the implications of integration of human rights into the struggle for freedom**

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## 5.7 LET US SUM UP

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In this Unit, you learnt about the Indian National Movement which derived its inspiration for human rights mainly from the French Revolution and the classical European doctrine of 'rights' of both the individual and the nation. The 19<sup>th</sup> century social reform movement transformed this understanding into 'rights' for the individual, community and the nation. This triple concern for human rights provided the immediate inspiration for the national movement. The organised



national movement that started roughly from the last quarter of the 19<sup>th</sup> century, initially took up issues of democracy, universal franchise, freedom of the press, compulsory education etc. As the movement entered its popular phase under the leadership of Gandhi, it took these issues to the people and educated them regarding their political and economic rights. The national movement took up the battle for human rights in a variety of ways. It increasingly incorporated these issues into its central agenda, made constant demands from the British government for their implementation, conducted struggles around some of these issues and actually practised the principles of human rights whenever the opportunity came. Apart from according supreme position to these issues in its programme, the national movement also created space for other social struggles, which took up the issues of people's human rights. The integration of human rights issues into the struggle for independence transformed the national movement from a mere fight against the British government into a vibrant multi-dimensional phenomenon with respect for democracy, civil liberties and people's urge for self-determination. As a result, the society after independence was able to sustain democracy against all odds. Over the years this democracy has grown and reached out to marginal groups and sections. This has given them the incentive to conduct their sectional struggles within the democratic framework rather than against it.

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## **5.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES**

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### **Check Your Progress 1**

1. Refer to sub-section 5.3.1.
2. Base your answer on sub-section 5.3.2.
3. Refer to sub-section 5.3.4.

### **Check Your Progress 2**

1. Refer to sub-section 5.4.1.
2. Refer to sub-section 5.4.2.
3. Refer to sub-section 5.4.2.

### **Check your progress 3**

1. Refer to section 5.5.
2. Base your answer on section 5.6.

## NOTES



Block

# 3

## **INDIAN CONSTITUTION AND HUMAN RIGHTS**

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### **UNIT 6**

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# **UNIT 6 FREEDOM STRUGGLE, CONSTITUENT ASSEMBLY AND HUMAN RIGHTS**

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## **Structure**

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Background of the Demand for Rights
  - 6.2.1 Nature of People's Resistance
  - 6.2.2 Role Played by the Indian National Congress
- 6.3 The Constitution and the Demand for Rights
  - 6.3.1 Constitution Framing: An Exercise in Self-determination
  - 6.3.2 Various Efforts to Draft a Constitution
  - 6.3.3 Demand for a Constituent Assembly
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- 6.7 Let Us Sum Up
- 6.8 Key Words
- 6.9 Some Useful Books
- 6.10 Answers to Check Your Progress Exercises

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## **6.0 OBJECTIVES**

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In this Unit we shall see

- how the demand for various rights grew in the British Period,
- the nature of the rights demanded, and
- the various forms and means by which the rights were sought to be realized.

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## **6.1 INTRODUCTION**

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The idea that every individual possesses certain 'inherent rights' to be exercised 'equally with others' developed in India in the course of the freedom struggle. It may indeed be said that the freedom movement in India was predominantly a struggle for rights to equality, freedom and justice, which were denied to the Indian people in colonial subjectivity. The long struggle for equal rights against colonial rule was marked by slow and piecemeal reforms by the rulers. A tiny section of Indians, primarily the propertied and affluent sections, were given limited political rights viz., of voting and sitting in governing bodies. All Indians were, however, subject to innumerable restrictions on their right to freedom and equality under demeaning conditions of

colonial rule. The struggle against colonial rule, thus, forms the context in which the language of rights developed. So, the ideas of equality and freedom as primary conditions of dignified human existence were the moving force behind the freedom struggle. And, it led to the setting up of the Constituent Assembly. The Assembly framed the Constitution of India, which became the source of sovereignty of the people of an independent nation. The rights, which were hitherto denied by colonial rule, became the basic and fundamental rights of the people.

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## 6.2 BACKGROUND OF THE DEMAND FOR RIGHTS

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The year 1857 saw the Indians lose their First War of Independence and their direct incorporation into the British Empire as its subjects. The colonial state ruled over India as the representative of the British Crown. The ideals of freedom and equality which were seen as essential values within Britain, were, however, denied to the colonised Indians. In fact, colonial rule was justified on the grounds that the Indian culture, marked by caste and religious loyalties, lacked the conditions in which the values of individual equality and freedom could be understood or applied. Resistance against colonial rule was articulated in the form of demands for rights denied to them. Thus, a range of rights including right to freedom of the press, greater opportunity in senior government jobs including the Indian Civil Service, security of land tenure, rights of the working class etc. were demanded.

### 6.2.1 Nature of People's Resistance

Resistance took the form of local struggles by peasants and workers in their immediate surroundings. It also took a more organised form of mass movements viz., the Non-cooperation Movement (1920-22) and the Civil Disobedience Movement (1930-34) under the leadership of Gandhi and the Indian National Congress.

### 6.2.2 Role Played by the Indian National Congress

In 1930 the Indian National Congress demanded complete independence. In 1931, at Karachi, the Congress adopted the Fundamental Rights Resolution which became the guiding spirit in the formulation of Fundamental Rights in the Constitution of India. While demanding political freedom as the primary condition for realising the rights of the people, the resolution promised to achieve universal adult franchise for all Indians, men and women, education and development for all and social and economic justice for individuals and groups.

In its election manifesto in 1936 before the provincial council elections, the objectives of rights and justice for all were repeated. The last elaboration of Congress policy before the convening of the Constituent Assembly was the manifesto for the provincial elections in the winter of 1945-46, wherein the Congress envisaged a free, democratic and federal state with the 'fundamental rights and liberties of all its citizens guaranteed in the Constitution' (S.K. Chaube, *Constituent Assembly of India*, Delhi, 1973, p.123).

**Check Your Progress 1**

1. Examine the context in which the demands for rights was first articulated in India.....

## **6.3 THE CONSTITUTION AND THE DEMAND FOR RIGHTS**

### **6.3.1 Constitution Framing: an Exercise in Self-determination**

The demand for framing a constitution for India was really an assertion of self-determination. The Constitution was seen as the source of sovereignty and the rights of the people of India. The British imperial practice has no tradition of a written constitution over and above the ordinary law. Rights of the British subjects are derived from royal grants, parliamentary statutes and the common law. Within the British Empire, for the first time in 1921, the Irish Free State framed a Constitution that included a list of fundamental rights. But, the Irish Constitution was a 'rebel' constitution. The British Parliament did not recognize it. Ireland left the British Empire in 1939.

The idea that the Constitution was the source of people's rights and self-determination of the nation emerged in the context of the freedom struggle. The piecemeal reforms introduced by the British failed to satisfy the aspirations of the people. In its Nagpur session in 1920, the Congress adopted the goal of *swaraj* and launched a *satyagraha* in the form of the non-cooperation movement. It became the considered policy of the leaders of the movement not to participate in any reform efforts of the colonial rulers.

### **6.3.2 Various Efforts to Draft a Constitution**

The appointment in 1928 of the Indian Statutory Commission (Simon Commission) to look into the demands for constitutional reforms was considered demeaning as it did not include an Indian representative. The first effort to draft a constitution was made in 1928 when an All-Parties Conference met in Delhi and appointed a committee under the chairmanship of Motilal Nehru to draft a constitution for India. The Nehru Committee recommended a set of fundamental rights which could not be withdrawn by the government. The Simon Commission, however, did not favour the grant of any such rights to Indians. Frustration following the fading out of the Civil Disobedience Movement in 1934, formed the background against which the demand for a constituent assembly was first made.

### **6.3.3 Demand for a Constituent Assembly**

In May 1934, a section of the Indian National Congress revived the Swarajya Party and demanded a Constituent Assembly containing "representatives of all sections of the Indian people". The task of this Constituent Assembly would be to frame an acceptable Constitution as the only means by which the principle of self-determination of India could be applied. The Government of India Act, 1935, which was the outcome of the Statutory Commission Report and the deliberations of the Round Table Conferences in London, did not meet the demands of rights for the Indian people. The Congress rejected the Government of India Act of 1935.

In its Lucknow session in 1936, the Congress declared that the aspirations of the people of India will not be satisfied by a constitution imposed by outsiders. It criticised the reform attempts by the British. It asserted that the 1935 Act curtailed the sovereignty of the people and did not recognise their right to shape and control their political and economic future. In the 1940s, amidst the Second World War and rising discontent in India over India's involvement in it, the demand **for a Constituent Assembly as a means to self-determination gained momentum**

1. Describe some of the earlier efforts at drafting a Constitution for free India.

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2. Why was the demand for a Constituent Assembly raised?

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## **6.4 CABINET MISSION PLAN AND THE BIRTH OF THE CONSTITUENT ASSEMBLY**

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Increasing demands by Indians for a greater say in their own governance led to the acknowledgement by the Viceroy in August 1940, that the framing of the Constitution for India would be 'primarily the responsibility of Indians themselves'. But this exercise, he said, had to wait till the war was over. This announcement, in what has come to be known as the 'August Offer', was followed by the Cripps Mission which promised in its declaration steps for the 'earliest possible realisation of self-government in India'. It also proposed the setting up of a Constituent Assembly after the war. It may be pointed out here that the freedom movement in India was composed of a variety of strands. While the Indian National Congress emerged as the dominant strand, a number of ideologically divergent strands contended Congress' vision of free India. In the matter of the institution of the Constituent Assembly as well, fears were expressed that rights of certain groups, particularly the non-Hindus and the scheduled castes, may not be adequately protected in a Constituent Assembly which was dominated by the Congress. Such fears were expressed by the Muslim League, the Scheduled Caste Federation of India and the Justice Party.

### **6.4.1 Objectives Resolution**

The Cabinet Mission visited India in March 1946 and sought to make 'immediate arrangements' for Indians to decide the future constitution of India in which all such conflicts could be resolved. The Cabinet Mission Plan, issued in May 1946, offered the opportunity to Indians to make a Constituent Assembly for that purpose. In the 'Objectives Resolution' of the Constituent Assembly which is also reflected in the Preamble of the Constitution of India, the Constituent Assembly declared its resolve to constitute India into a sovereign republic. The sovereignty of the Constitution would be derived from the people, who would secure justice, equality and freedom. The Objectives Resolution showed its commitment to democratic ideals by declaring that adequate safeguards would be provided for the rights of minorities, backward and tribal areas, and the depressed and other backward classes.

### **6.4.2 Advisory Committee and its Subcommittees**

The Cabinet Mission had suggested the setting up of an Advisory Committee on the 'right of citizens, minorities and tribal and excluded areas'. Its would be to draw a list of fundamental rights, the clauses for the protection of minorities and a scheme for the administration of the tribal and excluded areas. So, the Constituent Assembly set up an Advisory Committee with Sardar



Vallabhbhai Patel as the chairman. The Advisory Committee, in turn, set up five sub-committees:

- the Subcommittee on Fundamental Rights;
- the Subcommittee on Minority Rights;
- the Subcommittee on Tribal and Excluded Areas in Assam;
- the Subcommittee on Tribal and Excluded Areas in the North-West Frontier; and
- the Subcommittee on Excluded and Partially Excluded areas other than Assam and North — West Frontier.

Of these the fourth sub-committee, that is, the one on the Tribal and Excluded Areas in North West Frontier, was separated from the Constituent Assembly of India after partition. The four other sub-committees submitted their report to the Advisory Committee. The Advisory Committee considered such reports and presented its own reports to the Constituent Assembly of India. The Constituent Assembly thoroughly debated these reports, modified them wherever necessary, and then sent the same to the Drafting Committee. The Drafting Committee, chaired by Dr. B.R. Ambedkar, considered them again and prepared draft articles and clauses for consideration of the Constituent Assembly. These articles and clauses were then debated again, sometimes repeatedly. They were finally passed with modifications wherever necessary. The drawing up of the fundamental rights was the most lively and complex exercise in the Constituent Assembly of India.

### Check Your Progress 3

1. How was the formation of the Constituent Assembly set in motion?  
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2. What steps did the Assembly take to ensure that rights of all sections of the people could be achieved?  
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## 6.5 FUNDAMENTAL RIGHTS AND THE CONSTITUENT ASSEMBLY

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As stated earlier, the moving force behind the freedom struggle was the idea that every individual possessed certain 'inherent rights' which could be exercised 'equally with others'. The freedom movement in India was predominantly a struggle for rights to equality, freedom and justice which were denied to the Indian people in colonial subjectivity. In this context, the framing of fundamental rights was a significant exercise. The rights embodied the aspirations of the people **and also the democratic ideals which the Constituent Assembly set itself in the Objectives Resolution**

### 6.5.1 Justice, Equality and Freedom

The Objectives Resolution moved by Jawaharlal Nehru in the Constituent Assembly on December

**Justice, social, economic and political;**

**Equality of status, of opportunity, and before the law; and**

**Freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality.**

The assurance of such rights in a differentiated society marked by differences of caste, religion etc., was undoubtedly complex. The idea was to take into consideration these differences while applying the ideals of equality, freedom and justice. To ensure that 'equal enjoyment of rights' was not merely a formal statement, steps were to be taken to assure rights in a manner that the disadvantaged sections could be given protective safeguards.

### **6.5.2 Circumstances of Constitution Making**

It may be pointed out, however, that constitution making took place under rather difficult circumstances. The country was reeling under the post-war depression. The creation of independent India was accompanied by partition, communal conflict, loss of lives and arrival of hundreds of thousands of refugees from the newly created state of Pakistan. A Communist revolutionary programme in West Bengal and the Andhra region raised basic questions regarding the class biases of the Indian state and its structures of governance. Amidst such apprehensions about communal and class relations, the Constituent Assembly addressed itself to the task of framing a constitution assuring the rights and dignity of the people.

### **6.5.3 Considerations Governing Fundamental Rights**

While laying down the specific details of the fundamental rights which were already outlined in the Objectives Resolution, there appeared to have been a general consensus that fundamental rights of citizens should be uniform, irrespective of race, religion, caste, sex and place of birth. There was at the same time a recognition that the minorities and weaker sections of the people needed some special safeguards. There was also a consensus that all laws prevalent in the British period and inconsistent with the rights to be sanctioned by the Constitution would be void. Nor would a future government be permitted to make a law in violation of such rights. The Fundamental Rights Subcommittee examined and debated several drafts of the proposed fundamental rights. It is significant that the Fundamental Rights Subcommittee worked in close association with the Minority Rights Subcommittee. The Advisory Committee to which the Fundamental Rights Subcommittee reported took into account both the final report of the Fundamental Rights Subcommittee as well as the comments of the Minority Rights Subcommittee.

### **6.5.4 Existing Precedents**

**In the process of formulation of** fundamental rights existing precedents were also taken into consideration. The secretariat of the Constituent Assembly compared the fundamental rights that had been granted in several democratic countries of the world and the United Nations Declaration on Human Rights adopted on 10 December 1948. Sir B.N. Rau, a senior civil servant and Constitutional Advisor to the Constituent Assembly of India, visited several countries. He consulted among others, Eamon de Valera, President of the Irish Republic and a great friend of India, as well as Justice Frankfurter of the Supreme Court of the U.S.A.

## Check Your Progress 4

1. What was the Objectives Resolution? How do you think it sought to embody the aspirations of all sections of the people?  
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2. What were the concerns at the time of the formation of the Fundamental Rights? How did the Constitution makers seek to address these concerns?  
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## 6.6 ISSUES RELATING TO FUNDAMENTAL RIGHTS: THE DILEMMAS AND THEIR RESOLUTIONS

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Thus, while framing the fundamental rights, the Constituent Assembly and its committees faced the challenging task of giving these rights a form and substance which would assure equality and justice for all.

### 6.6.1 The Form and Substance of Fundamental Rights

There was intense debate within the Fundamental Rights Subcommittee on the form or language of Fundamental Rights. It is important to note here that rights can be worded either negatively or positively. The manner in which rights are worded has important bearing on their legal nature and the role of the state in implementing them. A positively worded right places an obligation on the state to provide the conditions for the exercise of rights. In this case the rights are legally enforceable or justiciable. This essentially means that in case the government fails in its obligation to provide for a right, the courts can intervene and instruct the government to do so. The 1936 constitution of the USSR granted rights in a positive language. The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations also showed preference for positive formulation of rights.

A negatively worded right, on the other hand, sees rights as belonging naturally to the citizens and prohibits the state from taking away such rights. While providing for rights to the people, it does not put the state under a legal obligation to provide the conditions for their exercise. This was the practice followed by liberal democracies since the adoption of fundamental rights by the Constitution of the U.S.A. in 1791.

The dilemma was resolved by the Constituent Assembly in favour of wording the rights positively, giving the judiciary the role of an independent protector of the rights of the people. The people could turn to the courts for redemption if any of their rights was taken away. Members of the Constituent Assembly felt that a justiciable form of rights was necessary to instill a feeling of security among the minority groups and the disadvantaged sections.

## **6.6.2 Judicial Guarantee of Rights**

Arising directly from the above was the dilemma over the role of the judiciary in the guarantee of rights. Those in support of positive rights, notably K.M.Munshi, were in favour of placing fundamental rights under judicial review. Munshi, therefore, made elaborate provisions for constitutional remedies through the Supreme Court. This meant that the court had the power to issue a number of writs to safeguard the rights of citizens as laid down in the Constitution.

## **6.6.3 Socio-economic Dimension of Rights**

An important aspect of the discussions within the Fundamental Rights Subcommittee was the substance of the rights to be guaranteed. Would the Constitution of India, for example, give the people only political rights, as in the USA, or economic rights as well, as was the case in USSR? How would independent India deal with the problems of illiteracy, poverty and exploitation? How would India, for instance, implement land reforms or abolish untouchability? It is significant that in accepting justiciability as an essential aspect of Fundamental Rights, it was felt by members of the Subcommittee that certain rights like right to education, workers' rights, etc., could not be legally enforceable. These rights were seen as being part of social and economic planning. The Subcommittee agreed, therefore to dividing rights into two parts — justiciable rights which came to be incorporated as Fundamental Rights, and non-justiciable rights which were adopted as Directive Principles of State Policy.

## **6.6.4 How Much Freedom?**

The right to freedom was discussed broadly under three heads by the Fundamental Rights Subcommittee: (i) specific freedoms, like those pertaining to freedom of speech and expression etc., (ii) protection of personal liberty and property, and (iii) right to universal adult franchise. Several leading members of the Constituent Assembly were of the opinion that unlimited personal freedom might endanger the security and stability of the country. They pleaded therefore, for restricting the various rights to freedom to preserve law and order, security of the country, to control class and communal conflicts and to protect personal honour and morality. Provision for preventive detention was also made in the Constitution in the interest of law and order and security of the state.

It is interesting that the Karachi Declaration of fundamental rights by the Congress included provision for the right to property. At the same time the Congress, which dominated the Constituent Assembly, was also committed to land reforms and abolition of feudalism. A section of the party wanted to insert the socialist principles of economy into the Constitution. The big landholders and zamindars, however, wanted strict protection of their right to property and sought to ensure that no property could be taken over by the government without paying compensation. Finally, after heated debates, the Right to Property was adopted with certain restrictions.

The Fundamental Rights Committee also adopted the principle of universal adult franchise. Voting rights were given to all above the age of 21 years, irrespective of their caste, religion, gender, education etc. Elections were to be universal, free and secret and controlled by an independent commission. This right was an important manifestation of the citizens' sovereignty and equality.

## **6.6.5 Rights of Minorities and Religious Freedom**

Minority rights and religious freedom were significant issues discussed in the Minorities



Subcommittee and, thereafter, in the Fundamental Rights Subcommittee. Whereas the Constituent Assembly did not explicitly declare India a secular state, religious freedom was given recognition. Religious freedom included the freedom of conscience and the freedom to practice and profess any religion. A distinction was, however, made between freedom of religion pertaining to religious practice and faith on the one hand, and secular affairs like economic, financial and political activities connected with religion and religious institutions on the other. Such secular activities were made subject to state control. The state was permitted to carry out social reform of all sections of the people. Further, the state was allowed to throw open places of Hindu religious worship of public character to all sections of the Hindus (including the Sikhs, the Jains and the Buddhists). The Sikhs were allowed to carry kirpans within the limits of law. The opening up of places of Hindu religious worship was a part of the firm commitment of the Indian national movement to the abolition of untouchability. Since the 1920s, Gandhi had himself taken up the leadership of several temple entry movements. A dignified social existence of the so-called 'untouchables' among the Hindus, Sikhs, Jains and the Buddhists was assured through a separate article declaring untouchability an offence and its practice punishable by law.

It is important to point out here that some women members of the Subcommittee on Fundamental Rights opposed the form of religious freedom which gave independence to religious communities to govern their internal matters. Hansa Mehta and Amrit Kaur felt that such freedom would prevent the reform by the government of certain dehumanising practices against women like devdasi and child-marriage which had the backing of religion. Giving religious communities freedom to govern their internal matters has to a large extent limited the scope of intervention by the government to curb practices and norms which are unjust to women.

#### **6.6.6 Equality**

The chairman of the Drafting Committee, Dr.B.R. Ambedkar was well known for his passion for social and economic equality. It is important to note that there was an almost total agreement on the right to equality in the Constituent Assembly. There was an equal amount of agreement on the need of the backward classes for special treatment in order to enable them to overcome their backwardness.

Difference among members were confined to matters relating to identifying the backward classes, because of the wide variety of castes and tribes in India, and differences in their status. These problems were compounded by the fact that the British Indian provinces and the princely states followed different kinds of categorization. Eventually, the Constituent Assembly left it to the Union Government and the Parliament to identify the Scheduled Castes and the Scheduled Tribes from time to time. The states were permitted to identify other backward classes for special treatment.

#### **6.6.7 Minorities**

Religious and other minorities acquired special status in the British period. The system of separate electorates followed by the colonial government in India, affirmed their special identities. The Cabinet Mission Plan retained their separate identities through the provision for a sub-committee on minority rights. But the partition of British India altered the picture as the most vocal minority party, the Muslim League, got the Muslim-majority state of Pakistan. Though the partition left more Muslims in India than in Pakistan, the claim to a political status of the Muslim minority in post-partition India was lost. The other minorities did not insist on this status. The Constituent Assembly of India dropped the concept of political minorities but retained the status of cultural minorities. Religious minorities were thus granted cultural and educational rights. But the sys

of separate electorate as well as that of reservation was abolished. The Constituent Assembly, however, expanded the concept of minorities to include linguistic minorities.

### 6.6.8 Backward Classes

The Scheduled Castes and the Scheduled Tribes were granted reservation of seats in the Union and State legislatures because they constituted the most underprivileged classes of society. Provision was made allowing reservation of jobs in the governmental departments and undertakings. Provision was also made allowing reservation of jobs for such backward classes of citizens which, in the opinion of the Government, were not adequately represented in the services. The small Anglo-Indian Community was thus granted reservation in services for two years. Provision was also made for their nomination to the first chambers of the legislatures of the Union and states where, in the opinion of the Government, they were inadequately represented.

### 6.6.9 Backward Areas

The bulk of the Scheduled Tribes lived in what was generally known as the 'Backward Areas'. Mostly hilly, and containing large forests, they were governed, under the Government of India Act, 1935, as excluded and partially excluded areas. Such areas were exempted from ordinary laws of government and protected from intervention of outsiders to different degrees. The Constituent Assembly brought some of the areas under normal administration and provided for specialized administration of the rest under the Fifth and the Sixth Schedules.

#### **Check Your Progress 5**

1. How did the Constituent Assembly resolve the dilemma of the form of Fundamental Rights in the Constitution of India?

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2. How was a balance struck in the Constitution among the rights and aspirations of the various sections of the population?

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## 6.7 LET US SUM UP

Rights of the Indian citizens were framed in the Constituent Assembly of India after elaborate discussions and debates. The moving spirit behind the rights was the adherence to the principle of human equality and dignity which was denied to Indians during colonial rule. A commitment to ideas of equality, liberty and justice for all was endorsed in the Objectives Resolutions of the Constituent Assembly. The Fundamental Rights Subcommittee working in association with committees like the Minority Rights Subcommittee was entrusted with the important task of formulating the fundamental rights of the people of India. Through there were differences over the form of rights and their scope, in the final analysis consensus emerged on certain points. For instance, Rights were to be worded positively, and as such would lie legally enforceable or

justiciable. The judiciary would be entrusted with the power of judicial review and be the independent protector of the rights of the people. Certain rights like those relating to education and workers' rights were believed to be more in the nature of social and economic policy. These rights were seen as not amenable to legal enforcement. Thus, it turned out that the Fundamental Rights incorporated rights which were political in nature while the Directive Principles comprised the social and economic rights. Rights were granted to all Indians without any discrimination. A balance was, however, sought between the rights of various sections of the population. Religious minorities were given due consideration and special care was taken to provide for advancement of the weaker and backward sections of the society. Scheduled castes and tribes were thus given rights to overcome the disabilities they had suffered historically. Unlimited scope of rights was not preferred. Each right was hedged in with conditions which limited it for reasons of law and order, security and integrity, and public morality etc. of the country.

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## 6.8 KEY WORDS

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**Constitution:** Broadly speaking, constitutions are a set of rules which may be written or unwritten. These rules provide the framework for the powers and functions of the various institutions/organs of the government and the relationship between the state and the citizen.

**Constituent Assembly:** A group of people elected, or chosen on the basis of some other representative principle. This group is entrusted with the task of drawing/writing a constitution.

**Preamble (to the constitution):** An introduction setting out the aims and objectives of a Constitution.

**Satyagraha:** The term literally means demand for truth. In Gandhian terminology, the term acquires the significance of a moral force justifying resistance to forces of injustice.

**Sovereign:** Supreme; who does not derive power from any one else and is herself/himself the source of power.

**Swaraj:** The term literally means self-rule, freedom or self-determination.

**Hedged in:** bound

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## 6.9 SOME USEFUL BOOKS

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*S.K.Chaube, Constituent Assembly of India, PPH, New Delhi, 1973.*

*Granville Austin, The Indian Constitution: Cornerstone of a Nation, Oxford University Press, London, latest edition.*

*M.V.Pylee, Constitutional History of India, 1600-1950, Asia Publishing House, Bombay, 1957.*

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## 6.10 ANSWERS TO CHECK YUR PROGRESS EXERCISES

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### Check Your Progress 1

1. See Section 6.3. Your answer should focus on nature of people's resistance and role played by the Indian National Congress.

**Check Your Progress 2**

1. See subsection 6.3.2. Your answers should include references of the Simon Commission and the Nehru Report.
2. See subsection 6.3.3. Your answer should mention the failure of the government of India Act of 1935 to meet the people's aspirations.

**Check Your Progress 3**

1. See section 6.4 and subsection 6.4.1. Your answer should refer to the 'August Offer' and the Cripps Mission.
2. See subsection 6.4.2. Your answer should refer to the role of the Constituent Assembly's Advisory Committee and Subcommittees.

**Check Your Progress 4**

1. See Section 6.5 and subsection 6.5.1.
2. See subsections 6.5.3 and 6.5.4.

**Check Your Progress 5**

1. See section 6.6.
2. See section 6.6.



# UNIT 7 FUNDAMENTAL RIGHTS AND THE DIRECTIVE PRINCIPLES

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## Structure

- 7.0 Objectives
- 7.1 Introduction
- 7.2 The Constitution as the Source of Rights
- 7.3 Fundamental Rights as Human Rights
  - 7.3.1 Constitution and the Caste System
  - 7.3.2 Constitution and the Indian Women
  - 7.3.3 Liberty from All Types of Bondage
  - 7.3.4 Special Status of Fundamental Rights
  - 7.3.5 Right to Equality
  - 7.3.6 Right to Freedom
  - 7.3.7 Right against Exploitation
  - 7.3.8 Right to Constitutional Remedies
  - 7.3.9 Religious and Minority Rights
  - 7.3.10 Fundamental Rights to All 'Persons'
  - 7.3.11 Equality with Social Justice
- 7.4 Directive Principles of State Policy
  - 7.4.1 Commitment to the Individual and the Community
- 7.5 Fundamental Duties
  - 7.5.1 Implications of Inclusion of Fundamental Duties
  - 7.5.2 Concept of Duty as a part of Indian Political Tradition
  - 7.5.3 Recent Literature on the Importance of Duties
  - 7.5.4 Range and Type of Duties
- 7.6 Roads to a Human Existence
  - 7.6.1 Inadequacies of Fundamental Rights and Directive Principles
  - 7.6.2 Preventive Detention and Violation of Fundamental Rights
  - 7.6.3 Violation of the Rights of the Poor and the Disadvantaged
  - 7.6.4 Human Rights and People's Struggles
  - 7.6.5 Role played by an Activist Judiciary
  - 7.6.6 Role of the National Commission for Women
  - 7.6.7 National Human Rights Commission (NHRC)
- 7.7 Let Us Sum Up
- 7.8 Key Words
- 7.9 Some Useful Books
- 7.10 Answers to Check Your Progress Exercises

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## 7.0 OBJECTIVES

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In this Unit we shall:

- study the manner in which human rights are assured by the Constitution,
- explore Parts III and IV of the Constitution on Fundamental Rights and Directive Principles, respectively, to understand the *nature* of rights guaranteed,
- explore the section on Fundamental Duties to assess their *implications for the rights* guaranteed in the previous sections, and
- analyse the *extent* to which the right to human dignity sought by such constitutional guarantees has been achieved.

## 7.1 INTRODUCTION

Both the Fundamental Rights in Part III and the Directive Principles in Part IV of the Constitution seek to bring into practice the principles of human rights assuring to each individual a life of dignity. The idea of rights as a claim to a life of freedom and dignity, irrespective of one's caste, race, birth, class, gender etc, became influential in the struggle against the colonial rule. The colonial rule was based on the 'rule of difference'. This meant that while the rule of law and the rights to liberty and equality were assured within Britain, the same principles did not apply in the colonies. The struggle for national liberation upheld the principles of equality, and considered it rightful to resist an 'immoral' rule which denied the life of dignity to the colonised people. The movement for national liberation sought to bring in conditions where the Indian people could be assured rights by virtue of being human. The Fundamental Rights and Directive Principles are reflections of this aspiration. In the sections which follow, we shall elaborate on the manner in which human dignity and equality are sought in both these parts.

## 7.2 THE CONSTITUTION AS THE SOURCE OF RIGHTS

The principles of human dignity and equality in the Constitution have been enshrined in the provision of some fundamental rights to all Indians and the promise of ushering in conditions in which these rights can be effective. By assuring these basic conditions of dignified human existence within a framework of rights, protected by a democratic government working within the framework of the rule of law, the Constitution transformed the status of the people of India. Thus (a) Indians are no longer colonial subjects and as citizens of India are free and equal members of a sovereign nation, and (b) A large majority of Indians deprived of dignified human existence within oppressive caste and feudal structures became, for the first time, equal citizens of the nation.

It is frequently claimed that the Preamble, Fundamental Rights and Directive Principles embody the values of freedom, equality, and economic and social justice which are necessary for the effective exercise of rights. In the Preamble of the Constitution, for instance, the people of India 'give to themselves' the Constitution and make the 'solemn' declaration to 'secure to all its citizens', justice, liberty and equality, and fraternity 'assuring the dignity of the individual'. The people of India are made the source of all authority. The government derives the authority to rule from the people and governs to uphold the rule of law. The Constitution thus makes it amply clear that the emerging nation was to be characterised by democratic processes where the relationship among people, and between the people and the state was bound by mutual trust and the obligation to respect the rights of citizens.

### Check Your Progress 1

1. How does the Constitution assure dignity and rights to the people of India?

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## **7.3 FUNDAMENTAL RIGHTS AS HUMAN RIGHTS**

We pointed out in the previous section the difference which the Constitution made to the status of Indians by making them free and equal citizens of a sovereign nation. This implied that every member of the national community was equal in all respects. The status of citizen thus redefined in several ways the relationship among people, and that of the people with the state.

### **7.3.1 Constitution and the Caste System**

It assured first of all a 'horizontal' equality among people, ironing out the inequalities which had historically permeated the social structure in India: Historically, the caste system has determined social relations in India and contributed to the unequal distribution of privileges and power in society. It created a hierarchy of purity and pollution so that those at the bottom of this hierarchy of castes were forced to live a life of indignity and servility. These social inequalities were also reflected in the pattern of ownership of the means of production and livelihood. A feudal relationship of production thus permitted the exploitation of peasants and labourers by the owners of land who also belonged to the upper castes. Struggles against colonial rule frequently took the form of resistance against the combined repression of the brahmanical-feudal-colonial rulers. They focussed attention on freedom from the repressive caste and feudal system and a life of dignity where opportunities for education, occupation and improvement of economic status would be available to all.

### **7.3.2 Constitution and the Indian Women**

Apart from the injustices of an iniquitous caste system, the Constitution has also sought to erase injustices and inequalities suffered by women. Historically entrenched patriarchal structures have generated the belief that women have separate spheres of activity and their biological constitution and emotional qualities make them unsuitable for public life. Such beliefs have for innumerable years denied women access to economic, political and educational opportunities. The large scale participation by women in freedom struggle and their simultaneous struggle to break the barriers to educational opportunities and political rights from the latter half of the nineteenth century paved the ground for the explicit mention of gender equality in the Constitution.

### **7.3.3 Liberty from All Types of Bondage**

**We have since our school days been taught to think of India as a nation with a plurality of cultures and religious beliefs. The Constitution has sought to give due freedom to religious communities to preserve their ideas and culture**

**part III of the Constitution. Fundamental Rights aims to give liberty from bondage of caste and class, equality for all irrespective of caste, gender and religion, and social justice. It has sought to give effect to the promise which the citizens make in the Preamble i.e. to assure a life of liberty equality, justice and dignity**

### **7.3.4 Special Status of Fundamental Rights**

**It is important to point out that fundamental Rights' enumerated in the Constitution enjoy a very special status. They set the parameters of obligations and responsibilities which a modern state owes to its citizens. If the state fails in its obligation to assure these rights to its citizens the latter can appeal to the courts and they in turn can instruct the government to restore the**

rights. It is in this sense that the Fundamental Rights are 'justiciable' and here lies the difference in the ways in which Fundamental Rights and Directive Principles have been incorporated in the Constitution.

Further, Article 13 explicitly lays down that the Fundamental Rights intend to protect these inherent rights and freedom of individual from any arbitrary violations by the State. Clause 2 of Article 13 states that the 'State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause, shall to the extent of the contravention, be void.' Articles 12 to 35 which constitute the Chapter on Fundamental Rights have been categorised into six groups viz., (a) Right to Equality (Articles 14 to 18), (b) Right to Freedom (Articles 19 to 22), (c) Right against Exploitation (Articles 23 and 24), (d) Right to Freedom of Religion (Articles 25 to 28), (e) Cultural and Educational Rights, (Articles 29 and 30), and (f) Right to Constitutional Remedies (Articles 32 to 35). Let us take up each group separately.

### **7.3.5 Right to Equality**

The Right to Equality guaranteed by Articles 14 to 18 has two important elements: (a) it subscribes to the ideal of equality of all human beings, and (b) it also recognises that certain conditions viz a person's caste, restrict equality in real life. The Preamble declares that 'equality of status and opportunity' shall be given to every citizen. It implies that equality should not be merely formal but adequate and positive steps should be taken by the state to make it substantive. Thus, Article 14 promises to every citizen 'equality before the law or the equal protection of law'. Article 15 assures that 'the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth' and Article 16 likewise guarantees 'equality of opportunity in matters of public employment'. These articles, as we can see, assure a formal equality of status among individuals. In order to make this formal status effective, the articles carry clauses which aim at erasing inequalities which are brought about by circumstances of caste, gender, religion etc. Thus, Clause 3 in Article 15 reserves for the State the discretion to provide special provisions for women and children. Clause 4 added by the Constitution (First Amendment) Act, 1951 authorises the state to make special provisions for the advancement of the socially and educationally backward classes of citizens, i.e., for the Scheduled Castes and Scheduled Tribes. Article 17 abolishes 'untouchability', and forbids its practice in any form. The Untouchability (Offences) Act 1955 and its later form, Protection of Civil Rights Act, 1976, are the parliamentary laws which have sought to give effect to this principle in the Constitution.

### **7.3.6 Right to Freedom**

The Right to Freedom constituted by Articles 19 to 22 give six basic freedoms: (a) freedom of speech and expression; (b) freedom to assemble peaceably and without arms; (c) freedom to form associations or unions; (d) freedom to move freely throughout the territory of India; (e) freedom to reside and settle in any part of the territory of India; and (f) freedom to practice any profession, or carry on any occupation, trade or business. Clauses 2 to 6 of the Article, however, subject these freedoms to 'reasonable restrictions' by the state. The state is thus empowered to restrict these freedoms in the interest of the 'sovereignty and integrity of India', 'security of the state', 'public order', and 'general interest of the public'. Articles 20, 21 and 22 give to citizens 'protection in respect of conviction of offences', 'protection of life and personal liberty' and 'protection against arrests and detention in certain cases', respectively. It is important to point out here that Article 22 provides for certain 'protections' or rights of the arrested or detained persons viz., right to be informed of the grounds of arrest, right to consult and be defended by a lawyer, right to be presented before a magistrate within 24 hours etc. These rights are, however, withheld from



'enemy aliens' and persons who are 'arrested or detained under any law providing for preventive detention' [Article 22, Clause 3(b)]. It is thus ironical that the fundamental right to freedom carries within itself the conditions under which it can be dismantled. The history of the numerous laws of Preventive Detention in India from the Maintenance of Internal Security Act (MISA, 1971) through National Security Act (NSA, 1980) and Terrorist and Disruptive Activities (prevention) Act (TADA, 1985), has shown that more often than not these laws have been used by the ruling powers indiscriminately. Often they have been used to quell political opposition and for purposes other than those stated as the objects of the Acts.

### **7.3.7 Right against Exploitation**

Articles 23 and 24 are categorised as Right against Exploitation and assure important guarantees against 'traffic in human beings' and 'forced labour'. Slavery and other forms of servitude like 'begar' and 'bonded labour' have violated the dignity of entire communities or groups of people held in servility for generations. Article 23 is significant since it protects the right of children below 14 years against employment in factories, mines or other hazardous workplaces. It is important to point out again that despite these Constitutional provisions, exploitation of child labour in life-threatening and debilitating conditions, like fireworks industry and carpet making industry, continues unabated.

### **7.3.8 Right to Constitutional Remedies**

Articles 32, 33, 34 and 35 titled Right to Constitutional Remedies give to the citizens the right to move the Supreme Court 'for the enforcement of the rights conferred' in Part III of the Constitution (Article 32). They also confer on the Parliament the power to modify the Fundamental Rights in their application to the Armed Forces, or in areas under Martial Law and also to enact laws to give effect to the Fundamental Rights.

### **7.3.9 Religious and Minority Rights**

Let us now turn to Articles 25 to 30. It is often said that Articles 14 to 24 cater to the rights of individuals while Articles 25 to 30 concern themselves with the special rights of religious-cultural communities. A closer reading of the articles would, however, show that there is in fact, no separation and the seemingly individual catering rights are interwoven with a commitment to community rights. If, for example, one looks at Articles 14 and 15, one sees that they assure equality before the law for every citizen and seek to substantiate this equality by prohibiting discrimination based on caste, religion, race etc, thus mitigating differences provided by social contexts. Articles 25 to 30 concern themselves with freedom of religion and minority rights assuring freedom of conscience, the freedom to religious communities to establish and maintain religious institutions and to 'manage their own affairs in matters of religion', to acquire and administer property, impart religious education, preserve their language, script, culture etc. This cluster of rights deals explicitly with the rights of religious and cultural communities and minority groups and also forms the basis of the rights of religious communities to administer themselves in civil matters, i.e., matters relating to marriage, divorce, property, custody, inheritance etc, by their own 'personal laws'.

### **7.3.10 Fundamental Rights to All 'Persons'**

It may be pointed out here, that in the tradition of international human rights, the Indian Constitution guarantees some Fundamental Rights to all 'persons' irrespective of whether they are Indian citizens or not. These rights pertain to equality before law and equal protection of all laws

(Article 14), protection in respect of conviction of offences (Article 21), protection against arrest and detention in certain cases (Article 22), freedom of religion (Articles 25-28) etc. Some rights, however, like those pertaining to protection against discrimination on grounds of religion, race, caste, sex or place of birth (Article 15), equality of opportunity in the matter of public employment (Article 16) and freedom of speech and expression, assembly, association, movement, residence and profession (Article 19), can be claimed only by citizens.

### 7.3.11 Equality with Social Justice

The Constitution has thus sought to supplement equality with social justice. Thus, social and religious communities were given the right to be culturally different. Caste communities were compensated for past discriminations and segregation by including them in the body politic as equal citizens. This equality was assured by giving them special provisions to overcome circumstantial disabilities. It was to ensure that communities (e.g. Scheduled Castes or Dalits) which had in the past been victims of social discrimination and continue to be disadvantaged, would be able to compete on equal terms with the rest of society.

#### Check Your Progress 2

1. Equality is an important principle underlying human rights. How has the Constitution sought to mitigate historically rooted inequalities for different sections of people?

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2. How have the Fundamental Rights in the Constitution assured a dignified human existence to all?

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## 7.4 DIRECTIVE PRINCIPLES OF STATE POLICY

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Articles 36 to 51 in Part IV of the Constitution constitute the Directive Principles of State Policy. The Directive Principles are different from Fundamental Rights in the sense that they are not, as Article 37 puts it, 'enforceable' by any Court. Unlike the Fundamental Rights which are addressed to the citizens who can appeal to the Supreme Court in case of violation of their rights, the Directive Principles are addressed to the State and do not automatically vest in the citizens as a matter of right. They are, 'nevertheless', as Article 37 says, 'fundamental, in the governance of the country' and the state is expected to 'apply these principles in making laws

The Directive Principles serve as reminders to future governments, to bring about conditions of equality and social justice. Article 38 enjoins the state 'to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all institutions of the national life'. By and large, the Directive Principles envisage an active role of the State in providing a range of socially ameliorative or welfare rights. These include access to adequate means of livelihood, equal pay for equal work, health and strength of workers, living wage for workers, provision of just and humane conditions

of work, right to work, to education, to public assistance, to equal justice and free legal aid, to adequate nutrition and health etc.

### 7.4.1 Commitment to the Individual and the Community

Like the rights in the previous section, the principles of governance in this section show a 'simultaneous commitment' to both the cultural community and the individual citizen. Article 38, for example, directs the State to commit itself to 'promote the welfare of the people' by promoting a 'social order' in which 'justice, social, economic and political, shall inform all the institutions of the national life'. To achieve this, the State is asked to 'strive to minimise inequalities of income' and also 'eliminate inequalities in status, facilities and opportunities'. The significant reminder, however, is that this justice and equality is to be achieved 'not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations'. Article 46 likewise instructs the State to 'promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled Castes and Tribes' and 'protect them from social injustice and all forms of exploitation'.

#### Check Your Progress 3

1. How do Directive Principles substantiate the rights already assured by the Fundamental Rights?

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## 7.5 FUNDAMENTAL DUTIES

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Following the recommendations of Swaran Singh Committee, a new section, Part IV A, on Fundamental Duties, was added to the Constitution. It consists of a single Article (51 A) containing a charter of ten Fundamental Duties for citizens. The legal status of Fundamental Duties is quite similar to Directive Principles, Which as we know, are instructions addressed to the State, and it is not legally bound to follow these instructions. The Fundamental Duties are also in the nature of instructions, but addressed to the citizens; they too have no legal sanction in the sense that the State is not expected to monitor the citizens to see if the duties are being carried out.

The underlying principle of Fundamental Duties appears to be that the individual exercising their rights must respect the rights of other members of the community. Thus, a person cannot injure the religious sentiments of another person by way of speech or writing and assert that they are protected by their right to freedom of expression under Article 19. Although there are no provisions in the Constitution for their enforcement, any law seeking to prohibit the violation of Fundamental Duties, can be upheld by the Courts, even if the law restricts a Fundamental Right. We may also point put here that under the provisions of Article 31 C, a law seeking to implement the Directive Principles, and imposing in the process a restriction on a Fundamental Right, would similarly be upheld by the Courts.

### 7.5.1 Implications of Inclusion of Fundamental Duties

Before coming to the specific duties listed in the section on Fundamental Duties, let us examine the implications of its inclusion. The insertion of a specific section on duties lays down some



obligations which a citizen is expected to fulfill while enjoying their Fundamental Rights. It also declares adherence to Article 29 (1) of the Universal Declaration of Human Rights which holds that 'Everyone has duties to the community in which alone the free and full development of his personality is possible'. The Constitutions of Japan, USSR and China have separate charters on Rights.

It may be mentioned, however, that irrespective of the specific duties added by Article 51 A, the Constitution shows an expectation of 'responsible' participation by the people. It inheres, for example, in the promise which the 'people of India' make in the Preamble, to each other and to the nation. Thus, the pledge to constitute India into a 'Sovereign, Socialist, Secular, Democratic Republic' involves 'securing to all its citizens' justice, liberty, equality and fraternity. This in turn is geared towards achieving the 'dignity of the individual' and 'national integrity'.

Most Fundamental Rights provided by the Constitution are an expression of this 'solemn resolve' of the people of India as declared in the Preamble. They include, therefore, a corresponding duty so that the aims of equality, liberty, justice etc. are secured in a manner that the dignity of the individual is not affronted and national integrity not compromised. The various rights to freedom in the Constitution would, for example, involve corresponding duties whereby the exercise of this right does not encroach on similar rights of others or endanger national security, public order, etc. Also, the Directive Principles which aim at building a just society also give expression to the promise which the people of India made to each other in the Preamble. Even before the insertion of Article 51 A, therefore, the Supreme Court observed that it was 'fallacy to think that under our Constitution there are only rights and no duties. The provisions in Part IV enable the Legislatures to impose various duties on the citizens. The mandate of our Constitution is to build a welfare society and that object may be achieved to the extent that Directive Principles are implemented by legislation' (*Chandra Bhavan vs. State of Mysore*, 1970, S.C., 2042).

### 7.5.2 Concept of Duty as a Part of Indian Political Tradition

The idea that duties and rights go together and that one cannot expect to enjoy rights without allowing oneself to be subject to obligations is part of the political tradition in India, where the notion of *dharma* (duty), whether *rajadharma* of the king or a reciprocal *dharma* of the *praja* took precedence over the notion of *adhiakar* (right). Gandhi, for example, asserted what he learned from his 'illiterate but wise mother', that 'all rights to be deserved and preserved come from duty well done'. 'Thus the very right to live accrues to us', expressed Gandhi, 'when we do the duty of citizenship to the world. From this one fundamental statement, perhaps it is easy enough to define duties of man and woman and correlate every right to some corresponding duty to be first performed.' (M.K.Gandhi *The Harijan*, 7 June 1948).

### 7.5.3 Recent Literature on the Importance of Duties

A strand in a growing body of literature on 'citizenship and rights' has also emphasised the importance of duties in the assurance of rights. These writings stress that 'active' and 'responsible' participation in public life is required to usher in conditions of social justice, equality and human dignity. Responsible participation would manifest itself in diverse social situations viz., how citizens view or act in the midst of competing forms of national, regional, ethnic, or religious identities; their ability to work with others who are different from themselves; their desire to participate in the political process to promote the public good and hold political authorities accountable; their willingness to show self-restraint and exercise personal responsibility in their economic demands and personal choices which affect their health and environment etc



## 7.5.4 Range and Type of Duties

The duties which are incorporated in the Indian Constitution by the Forty Second Amendment range from asking individuals to develop their personalities to seeking a meaningful role for the nation in the world order. Some of these duties enjoining individuals to strive towards 'excellence' and developing 'scientific temper' or safeguarding 'public property' appear generally to instill sincerity and responsibility. A general slant is, however, towards imbibing a sense of national commonality. It is thus a duty of every citizen of India to respect symbols of national unity like the national flag, the constitution and the National Anthem, and sources of common heritage like the 'national struggle for freedom' and the tradition of 'composite culture'. Citizens are also expected to preserve the 'sovereignty' and 'unity' of the country not only by pledging to 'defend' the country and offering 'national service' but also by spreading a feeling of 'common brotherhood'.

### Check Your Progress 4

1. '..... all rights to be deserved and preserved come from duty well done'. How has the notion of duties influenced the manner in which rights are understood?

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## 7.6 ROADS TO A HUMAN EXISTENCE

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A number of factors viz., inadequacies within the Constitution, and social-economic inequalities of caste, class, religion, gender etc, make a uniform application of human rights difficult. The State may also fail to provide the resources for the realisation of human rights and alternatively, it may, through its institutions become an aggressor and violator of rights. A number of scholars feel that the sections on Fundamental Rights and Directive Principles are inadequate in protecting human dignity.

### 7.6.1 Inadequacies of Fundamental Rights and Directive Principles

A.R.Desai emphasises that not only are rights not *reserved* to the people, there is no preservation of the Fundamental Rights already guaranteed to them. The Constitution itself provides the procedure for their amendment and over-riding by the State. Further, the Directive Principles are not addressed to the people. The people cannot, therefore, have the courts instruct the government to provide for humane conditions of life. Again, asserts Desai, while there is no explicit system of accountability for the State, the people are given some 'fundamental duties' which could be used by governments to abridge people's rights. Finally, the fact that certain rights such as rights to work, shelter, education and medical amenities are not made 'fundamental' denies the poor the essential conditions for a truly human existence. Large sections of 'toiling' masses i.e. the socially and economically underprivileged, including women, are forced thus to live in conditions in which their human rights remain unrealised.

### 7.6.2 Preventive Detention and Violation of Fundamental Rights

Coupled with this are the extraordinary powers of policing which the State acquires under the provision for preventive detention, ironically in Part III of the Constitution (Article 22).

Preventive detention is intended as a 'protective' measure whereby the government can arrest a person to prevent the commission of a crime. Experiences with preventive detention laws like MISA, NSA, and TADA, have shown that frequently these laws are used to bypass normal legal procedures and detain innocent persons, often political rivals, without trial, for long periods.

### **7.6.3 Violation of the Rights of the Poor and the Disadvantaged**

The rights of the poor and the disadvantaged, including women, children, dalits, tribals and minorities are frequently violated. Despite the existence of Commissions to look after the interests of specific groups, viz., the Minorities Commission, the National Commission for Women, etc, and the enactment of laws like the Prevention of Atrocities Act, 1989 to stop offences against dalits and tribals, and Prevention of Immoral Traffic Act, the Sati Prevention Act, Dowry Prohibition Act etc, crimes against dalits and women have not ceased. Similarly, despite the Bonded Labour (Regulation and Abolition) Act, 1979 banning bonded labour, and various labour laws (Regulation of Industrial Disputes Act and the Trade Union Act), and provisions against child labour, the exploitation of these sections has not abated.

### **7.6.4 Human Rights and People's Struggles**

This, however, does not mean that human rights is a static category. The history of human rights as a system of equality against hierarchical and ascriptive inequalities has shown that rights are substantiated by people's struggles. Workers movements worldwide have contributed towards the regulation of work hours, amelioration of work conditions and welfare measures for industrial workers. Popular movements and struggles to redefine and enlarge the frontiers of human rights have also occurred in India. The women's movement, the dalit movement, the environmental movement, the peasant movement etc have had important bearings on the definition of the nature and substance of rights. The struggles by the people of Narmada valley against the building of Sardar Sarovar Dam, for example, highlights the right of the people of the valley to protest against their displacement and their refusal to give up their identity, history, culture and means of livelihood.

### **7.6.5 Role played by an Activist Judiciary**

Over the years a number of governmental institutions have also contributed towards the broadening of the scope of citizens' rights, in recent years, the Supreme Court has positively responded to the Social Action Litigations (SALs) and Public Interest Litigations (PILs) brought by Non-Governmental Organisations (NGOs) or concerned individuals, adding new facets to human rights. From the late 1970s, for instance, the Supreme Court reversed the existing legal attitude towards prisoners to give them 'all rights enjoyed by free citizens except those which explicitly taken away by the terms of their sentence' (Charles Sobraj vs. Superintendent, Central Jail, Tihar, AIR. 1978. SC. 1514). It has similarly passed orders prohibiting child labour, sexual harassment of women and protection of environment.

### **7.6.6 Role of the National Commission for Women**

The National Commission for Women, set up in 1992, under a Parliamentary Act (The National Commission for Women Act, 1990) has concerned itself with women's rights under the Constitution and issues of women's socio-economic conditions, health and violence against them. Over the years, the Commission has taken up cases of violence, torture and harassment of women including molestation, rape, dowry related violence, custodial rape and death, torture and harassment within family, in the workplace, and issues of women's legal and political rights for investigation and redemption.

## 7.6.7 National Human Rights Commission (NHRC)

The *National Human Rights Commission* is another institution established by an Act of Parliament (The National Human Rights Act, 1993) to inquire into violations of people's rights. Institutions like the National Commission for Women and National Human Rights Commission, when effectively used or pressurised by the people, could contribute towards supplementing human rights.

### Check Your Progress 5

1. How can human rights as enshrined in the Constitution be made effective?

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## 7.7 LET US SUM UP

The Constitution of India laid down an elaborate set of rights for the people of India. The idea that there are certain basic rights essential for a human existence which inhere in the individual are manifested in Part III of the Constitution on Fundamental Rights. This part assures to the people equality and freedom. The Directive Principles seek to make these rights substantive by enjoining future governments to bring in conditions of social and economic justice. The Fundamental Duties attempt to instill among individuals a sense of responsibility towards fellow members of the community. It may, however, be noted that rights depend not only on sensitive exercise by individuals, but also on the will of the government to enforce them. For several people rights are not available owing to their circumstances of birth, class, gender etc. Frequently, the State may itself become the aggressor and restrict the rights of people. Rights, however, are not static and a long history of struggle has always accompanied their enhancement.

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## 7.8 KEYWORDS

**Ascriptive hierarchies:** refers to systems where conditions of birth would determine the hierarchical organisation of people. Caste system is an example of ascriptive hierarchy.

**Citizens:** Citizens are full and equal members of a political community living in a nation-state.

**Ethnicity:** Ethnicity is commonly understood as a form of distinctive cultural identity encompassing values and traditions. It involves a sentiment of loyalty towards a population, cultural group(s) or territorial area.

**Gender:** Unlike sex which is indicative of biological difference, gender refers to social and cultural distinction between men and women. According to feminists, gender discriminations take place when biological differences become the basis for different dependent and subservient social roles and positions for women.

**Preamble (to the Constitution):** A document setting out the ideals, aims and objects which the constitution makers intended to realise through the Constitution.

**Race:** A scientifically and politically controversial category, race, refers to biological (genetic) differences which supposedly distinguish one group of people from another. For long, race has been used to explain cultural differences among people, and the attribution of civilisational inferiority and backwardness to some and superiority to others.

**Suffrage:** The right to vote, or the exercising of that right.

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## 7.9 SOME USEFUL BOOKS

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D.D.Basu, *Introduction to the Constitution of India*, Wadhwa and Company, Nagpur, latest edition.

A.R.Desai, 'Empowering the Sovereign Citizens of India: Some Constitutional Obstacles' in Abha Avasthi ed. *Social and Cultural Diversities*, D.P. Mukerji in Memoriam, Rawat Publications, Jaipur, 1997.

Subhash Kashyap, *Citizens and the Constitution*, Publications Division, Government of India, Delhi, 1997.

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## 7.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. See Section 7.2. Your answer should make mention of the Preamble, the Fundamental Rights and Directive Principles of State Policy.

### Check Your Progress 2

1. See Section 7.3. Your answer should make special mention of relevant constitutional provisions for Scheduled Castes and Tribes.
2. See Section 7.3 and especially, subsection 7.3.10.

### Check Your Progress 3

1. See Section 7.4.

### Check Your Progress 4

1. See Section 7.5 and especially, subsections 7.5.2 and 7.5.3.

### Check Your Progress 5

1. See Section 7.6 and especially, subsections 7.6.4 - 7.6.7.



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# UNIT 8 MECHANISMS FOR HUMAN RIGHTS PROTECTION

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## Structure

- 8.0 Objectives
- 8.1 Introduction
- 8.2 Human Rights and the Law
- 8.3 Special Institutions to Protect Human Rights
  - 8.3.1 The National Human Rights Commission (NHRC)
    - (a) Powers and Functions
    - (b) The Functioning/ Role of NHRC
  - 8.3.2 The National Commission for Women (NCW)
    - (a) Functions of the NCW
    - (b) First Seven Years of NCW's Functioning
  - 8.3.3 The National Commission for Scheduled Castes and Scheduled Tribes
  - 8.3.4 The National Commission for Minorities (NCM)
  - 8.3.5 The National Commission for Backward Classes (NCBC)
- 8.4 International and Regional Machinery
  - 8.4.1 Human Rights Committee (HRC) on India's Reports
  - 8.4.2 How to Promote Human Rights
- 8.5 Let Us Sum Up
- 8.6 Key Words
- 8.7 Some Useful Books
- 8.8 Answers to Check Your Progress Exercises

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## 8.0 OBJECTIVES

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The main objectives of this unit are to familiarise you with:

- how human rights are being violated in everyday life,
- the reasons for establishing special statutory institutions for human rights protection,
- the powers, functions and the role of the National Commission for Women and the National Human Rights Commission, and
- the powers, functions and role of the National Commission for SCs and STs, the National Commission for Minorities and the National Commission for Backward Classes.

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## 8.1 INTRODUCTION

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The last two units have given you a fairly good idea about the evolution of the concept of human rights in India, especially in the context of the freedom struggle. You have learnt how this evolution has taken a concrete shape in the provisions of the Constitution. While the inclusion of a comprehensive bill of rights in the Constitution is a remarkable development, the human rights situation in India does not match with the precepts / standards laid down. The situation gives rise to a cause for concern.

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## 8.2 HUMAN RIGHTS AND THE LAW

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Under Article 32 of the Constitution, the individual has the right to move the Supreme Court of India for the enforcement of his / her rights. The apex court is vested with wide constitutional

powers in this regard. They include the power to issue directions, orders or writs for the enforcement of human rights. Under Article 226 of the constitution, the state high courts too have identical powers. Despite the right to constitutional remedies, all fundamental rights of all persons are not enforced for various reasons; such as high court fees (besides that of a lawyer) and huge backlog of pending cases. It should be mentioned that cases of gross violations of human rights do not end by mere incorporation of human rights provisions or the right to constitutional remedies in the Constitution or by enacting laws for their enforcement. The constitutional rights can be guaranteed only through special administrative or institutional measures. Rights can be enforced by the force of law. General training and education about the significance of human rights to law-enforcing agencies like the police and para-military personnel, also helps in improving human rights situation.

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## **8.3 SPECIAL INSTITUTIONS TO PROTECT HUMAN RIGHTS**

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During the last five decades, the Indian government has set up several special institutions under different acts of parliament to give effect to the constitutional provisions of human rights of all persons, including those of the disadvantaged and weaker sections of the society. Let us look at the powers, functions and working of these institutions.

### **8.3.1 The National Human Rights Commission (NHRC)**

Due to constant international criticism of human rights record in the country, specially in the terrorism or insurgency affected areas, the Indian Government established an NHRC, initially on 12 October, 1993, under the Protection of the Human Rights Ordinance of 28 September, 1993. The parliament subsequently passed an Act to replace the ordinance. The NHRC has more members, and broader powers compared to other commissions in the field of human rights. It has eight members a chairperson (a former chief justice of India), a present or former judge of the supreme court, a present or former chief justice of a high court, two members from among persons knowledgeable in the area of human rights, and the chairpersons of the NCW, National Commission for SCs and STs, and the NCM. Appointment of the chairperson and other members (except the last three) is made through a process of consultation encompassing even the leaders of opposition of both the Houses of Parliament. Another significant feature is that the NHRC chairperson and the first four categories of members are appointed for a period of five years.

#### **(a) Powers and Functions**

NHRC has been assigned broad powers and functions.

It can inquire, on its own or on a petition presented to it by a victim or any person on his behalf, into complaints of :

- i) Violation or abetment of human rights; or
  - ii) Negligence, in the prevention of such violation, by a public servant.
- It may intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.
  - It may visit, under intimation to a state government, any jail or any other institution under the control of the state government concerned, where persons are detained or lodged for purposes of treatment, reformation or protection, to study the living conditions of the inmates and make recommendations thereon.
  - It may review the safe guards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.

- It may review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- It may study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- It may undertake and promote research in the field of human rights; spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- It may encourage the efforts of non-governmental organizations and institutions working in the field of human rights. It may also undertake such other functions as it may consider necessary for the promotion of human rights.

#### **(b) The Functioning / Role of NHRC**

During the years 1993-98, the NHRC has made great progress in effectively enforcing human rights. It has had many accomplishments and made many significant recommendations for changes in the laws as well as the Protection of Human Rights Act, 1993. Let us look at them briefly.

Within a month of its inception on 1 November, 1993, the NHRC, on its own, took cognisance of newspaper reports of the killing of as many as 43 civilians in and around Bijbehara (near Srinagar) in Jammu and Kashmir (J&K) firing by the para-military force, the Border Security Force (BSF). It happened a few weeks earlier during siege of the sacred shrine of Hazratbal in Srinagar by the militants. These militants aimed at inflaming the religious passions of the people. In the resultant tension, the BSF had apparently ran berserk. After examining the findings of a magisterial inquiry by the state government and the Staff Court of Enquiry set up by the BSF, the Commission asked the government to launch prosecution against 14 BSF personnel against whom disciplinary proceedings had been launched. The government accepted the NHRC recommendations and took action against the offending personnel, including a few officers.

The J&K Government paid ex-gratia compensation to each of the dependants of the 31 killed in the firing. Compensation was also paid to 44 injured persons. In this regard, the Commission organised training courses for BSF in Human Rights and Humanitarian Law with participation of the International Committee of the Red Cross.

It was due to the constant campaigning by the NHRC against the Terrorist and Disruptive Activities (Prevention) Act (TADA) that the government decided not to revive it when its term expired in May 1995. It may be recalled that TADA, which was in force for ten years, was meant to deal with the insurgency situation in Punjab and J&K and was to be a temporary measure. But unfortunately it was invoked, rather misused, by most of the states, even by those which were not affected by terrorism. There are still hundreds of TADA cases pending in the courts and the NHRC is pursuing its campaign for their early disposal.

Custodial violence and death is another area which has caught the attention of the NHRC. The huge increase in the number of cases / complaints considered by it, from 276 in 1994-95 to 11,153 in 1995-96, only showed the awareness among the people of the human rights situation in the country and the willingness of the victims to approach the NHRC for relief. As many as 444 custodial deaths were examined by the NHRC during 1995-96, besides 39 cases of disappearance of persons arrested by the police. Quite a few fatalities, 308, were of persons in judicial custody. Other police 'excesses' probed by the NHRC included torture of the suspects during investigation to extract confessions.

Due to persistent goading by the NHRC, in October 1997, the government acceded to the UN Convention against Torture and other Forms of Cruel, Inhuman and Degrading Treatment of Punishment (though it is yet to be ratified).

Although the Commission has a statutory bar not to inquire into cases of incidents of violations of human rights that occurred more than a year ago, its inquiry of mass cremations of more than 2,000 bodies of persons killed by the Punjab police during 1991-93 in fake encounters is worth recording. When the matter was under investigation by the NHRC, the union government in fact, questioned its jurisdiction in view of the one-year time limit set by the Protection of Human Rights Act. When the commission rejected the objection, the government had got the inquiry stayed to enable it to appeal to the Supreme Court. The apex court subsequently ruled that the Commission had jurisdiction not only to deal with the matter, but also added that "any compensation awarded by the Commission (to the dependants of the victims) shall be binding and payable".

### **Check Your Progress 1**

1. List some of the major powers and functions of the NHRC.

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2. Identify three major accomplishments of the NHRC.

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### **8.3.2 The National Commission for Women (NCW)**

The NCW was constituted on 31 January, 1992 in pursuance of the National Commission for Women Act, 1990. It consists of a chairperson and five other members and holds office for three years. It performs multifarious functions.

#### **(a) Functions of NCW**

It may investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws. It does present to the central government, annually and at such other times as the Commission may deem fit, reports upon the working of these safeguards. It makes, in such reports, recommendations for the effective implementation of the safeguards for improving the conditions of women by the union or any state. It reviews, from time to time, the existing provisions of the Constitution and other laws affecting women and recommends legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations. It takes up the cases of violations of the provisions of the Constitution and of other laws relating to women with the appropriate authorities. It looks into complaints and takes notice of matters relating to—

- i) deprivation of women's rights;
- ii) non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development; and



- iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women.

NCW takes up the issues arising out of such matters with appropriate authorities. It calls for special studies or investigations into specific problems or situations arising out of discrimination and atrocities so as to recommend strategies for their removal. It undertakes promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity. It participates in and advises on the planning process of socio-economic development of women. It evaluates the progress of the development of women under the union and any state. It inspects or gets inspected a jail, remand home, women's institution or other places of custody, where women are kept as prisoners or otherwise, and takes up with the concerned authorities remedial actions, if found necessary. It funds litigation involving issues affecting a large body of women. It makes periodical reports to the government on any matter pertaining to women and in particular, various difficulties under which women toil.

#### **(b) First Seven Years of NCW's Functioning**

During the first seven years (1992-98) of its existence, the NCW has been actively striving to achieve equity, equality and justice. It has been pursuing gender justice through intervention in cases of violation of equality laws, denial of opportunities and deprivation of women's rights. It arranges counselling and assistance to women victims of atrocities and women in distress all over the country.

In order to deal with various complaints and cases that are brought to the commission from time to time, it has established a Counselling and Pre-Litigation Cell. During the said period about 3000 cases have been dealt with successfully. These complaints generally relate to cases pertaining to dowry harassment/ atrocity, torture/cruelty, rape, bigamy, gender discrimination, right to property, harassment at workplace, maintenance and divorce petitions.

It has launched specific initiatives to amend laws inadequate to women's interests in different areas such as dowry, rape, custody, property rights, marriage, divorce, maintenance, etc. It organises its endeavours through NGOs, **Parivarik Mahila Lok Adalats and Legal Awareness Campaigns**. It has a special mandate to solve the problems of the girl child, prostitutes, widows and women in custody as also to counter obscenity in the media. Transfer of technology to rural women is another of its thrust areas.

The NCW is also concerned with political issues relating to women. It supported the nation-wide campaign for political empowerment of women through representation in all legislative and decision-making bodies from grassroots level (panchayat) to the parliament. In this regard, it organised Panchayat Level Legal Literacy and Awareness Programmes to educate grassroots women in Panchayati Raj. Also, it sponsored research studies to examine the impact of women in panchayats and their problems.

On economic issues, its activities include, among others, conducting study on employment of women, employment equality and impact of economic reforms. The Commission also probes employment opportunities for women in export-oriented industries and unorganised sectors. It strives to generate employment for slum women. Its concerns include assisting in organising vocational training and starting Grain Banks to provide credit to women to make them economically self-reliant.

### 8.3.3 The National Commission for Scheduled Castes (SCs) and Scheduled Tribes (STs)

Though the Constitution establishes right to equality and prohibits discrimination based on caste, race, religion, sex or birth besides outlawing the age-old practice of untouchability, the ex-untouchables/ SCs/ Dalits have not been fully integrated into the social mainstream. Their rights are being violated every day. To bring social equality / justice, constitutional and administrative safeguards were provided through the preferential policies commonly known as 'Reservation Policy' (in jobs, educational places and legislatures). The parliament passed three acts with a view to effectively enforce Article 17 of the Constitution, which abolishes untouchability. These acts are the Untouchability (Offences) Act of 1955, as amended by the Protection of Civil Rights Act, 1976, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. These Acts prescribe penalty for offences / atrocities against dalits.

In 1950, a special officer designated as the Commissioner for SCs and STs was appointed under Article 338 of the Constitution to investigate all matters relating to the safeguards provided for these disadvantaged and weaker sections of the society. Subsequently, it was felt that, instead of a single special officer, a high-level five-member commission would be a more effective arrangement. Accordingly, in 1990, the National Commission for SCs and STs was constituted for the protection, welfare, socio-economic development and advancement of the SCs and STs and to evaluate the working of such safeguards. It is empowered to inquire into specific complaints of deprivation of rights of these people. It presents to the President of India annual reports upon the working of these safeguards and makes recommendations for undertaking measures necessary for the effective implementation of the safeguards.

#### Check Your Progress 2

1. What are the concrete measures initiated by the NCW ?

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2. List the functions of the National Commission for Scheduled Castes Tribes

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### 8.3.4 The National Commission For Minorities (NCM)

With a view to ensuring effective enforcement of the implementation of constitutional provisions relating to minorities, a National Commission for Minorities was created in 1978, which was given statutory status in 1992. According to the government notification, these minorities include the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis). Presently, the NCM consists of a chairperson, a vice-chairperson and five members—belonging mostly to the minority communities. The chairperson and members hold office for three years. The commission performs, among others, the following functions:

- evaluate the progress of the development of minorities under the union and states;
- monitor the working of the safeguards provided in the Constitution and in laws enacted by

- the parliament and the state legislatures;
- make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the central government or the state governments;
- look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;
- studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;
- conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;
- suggest appropriate measures in respect of any minority to be undertaken by the central government or the state government; and
- make periodical or special reports to the central government on any matter pertaining to minorities and in particular, difficulties confronted by them.

### **8.3.5 The National Commission for Backward Classes (NCBC)**

The NCBC was created under The National Commission for Backward Classes Act, 1993. This commission was established upon the implementation of the Mandal Commission recommendations reserving 27% of jobs in central services to the persons belonging to other backward classes (OBCs). According to the 1993 Act, 'Backward Classes' means such backward classes of citizens other than the SCs and the STs as may be specified by the central government in the lists drawn from time to time.

The NCBC consists of a chairperson (a sitting or former judge of the supreme court or of a high court) a social scientist and two persons having special knowledge in matters relating to BCs and a member-secretary who is, or has been, a secretary-level civil servant with the union government. These members hold office for a term of three years.

The Commission's main function includes the examination of requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists prepared by the central government and tender advice on the matter. Such advice of the Commission is ordinarily binding upon the government. The central government is mandated to revise these lists at the interval of every ten years with a view to excluding or including new backward classes. While undertaking such revisions, the government shall consult the Commission.

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## **3.4 INTERNATIONAL AND REGIONAL MACHINERY**

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India has ratified international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention Against Torture in 1979, 1992 and 1997 respectively. The Indian Government is required to submit periodically reports to the treaty monitoring bodies under these UN Covenants / Conventions.

### **8.4.1 Human Rights Committee (HRC) on India's Reports**

Under Article 40 of the ICCPR, the ratifying states of the covenant are obliged to submit periodic reports to the HRC. These reports are expected to describe measures adopted to give effect to the rights recognised in the covenant and on the progress made in the enjoyment of these rights.



So far India has submitted three reports under ICCPR, though it has been a regular defaulter in submitting them on time. It submitted its first report in 1983. The second and the third reports were submitted in 1989 and 1995. India's third report was considered by the HRC in July 1997. The committee's comments and observations on the third report indicate that the human rights situation is far from satisfactory in India.

The Committee noted with concern the continued severe social discrimination against SCs, STs, OBCs and ethnic and national minorities. It regretted the de-facto perpetuation of the caste system entrenching social differences. In this regard, the Committee recommended measures to be adopted including education programmes to combat all forms of discrimination against these vulnerable groups.

Discussing the status of women in India, the committee noted: (i) under-representation of women in public life, and (ii) religion-based personal laws violating rights of women to equality. It recommended enactment of personal laws fully compatible with the covenant. Given the human rights norms of cultural pluralism, reforming community based personal laws is imperative to ensure gender justice.

The Committee expressed its continued concern at the reliance on special powers under laws like the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in disturbed areas. It also showed concern at the severe human rights violations by the security forces acting under these laws as well as by the paramilitary and insurgent groups.

The Committee recommended removal of restrictions on the NHRC from investigating direct complaints against the armed forces and the limitation of one-year period within which complaints must be lodged. It also recommended encouraging all states to establish Human Rights Commissions.

Concern was expressed at allegations that security forces do not always respect the rule of law in general, and particularly in the context of custodial deaths, rape and torture. Among the recommendations were mandatory judicial inquiry into cases of disappearance, death or rape in police custody and "training and education in the field of human rights to law-enforcement officers, custodial officers, members of security and armed forces, as well as judges and lawyers".

The committee noted with concern the continued detention of 1600 people under the provision of the lapsed TADA.

In the concluding para, India's attention was drawn to the requirement, according to rules, that the "next periodic report, due on 31 December 2001, should contain material which responds to all these concluding observations". The Committee further requested that "these concluding observations be widely disseminated among the public at large in all parts of India".

#### **8.4.2 How to Promote Human Rights**

In the absence of a regional machinery and not so effective international bodies, especially the UN Human Rights Committee, the responsibility of national institutions becomes all the more important for protecting human rights of their citizens. Moreover, the regional and international mechanisms merely stimulate the national governments, as the primary responsibility of implementing human rights provisions lies with the states concerned as per the international conventions. The international / regional efforts supplement the national endeavours through dialogue, discourses, networking, education and exchange of information etc.



All reports of the national and international bodies should be placed in the country's legislatures and properly discussed.

### Check Your Progress 3

1. Discuss the Human Rights Committee recommendations on India's human rights situation.

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## 8.5 LET US SUM UP

In this unit, you have read about the various mechanisms for the protection of human rights in our country. You have also learnt about such mechanisms existing at the regional and international levels. After going through this unit, you should be in a position to explain the role, power and functions of certain special institutions that are there in India for protecting human rights. For instance, the National Human Rights Commission (NHRC), the National Commission for Women (NCW), the National Commission for Scheduled Castes and Tribes etc. This unit is designed to help you develop an awareness about protection of your basic rights granted by the country's Constitution and guaranteed under international human rights instruments which India is a signatory to.

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## 8.6 KEY WORDS

**Bigamy:** The act of going through a marriage ceremony with a person when one is already lawfully married to another person

**Equity:** A set of legal principles designed to provide more satisfactory justice when an adequate remedy was not available under law

**Litigation:** The taking of legal action by a litigant. The field of law that is concerned with all contentious matters

**Statute:** A law enacted by a parliament or legislative body

**Writ:** A written command of the state, usually issued by a court, to an official or other person

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## 8.7 SOME USEFUL BOOKS

India and Human Rights (New Delhi: Lok Sabha Secretariat, 1998).

K.P. Saksena (ed.), *Human Rights: Fifty Years of India's Independence* (New Delhi : Gyan Publishing House, 1999).

*Human Rights in India – The Updated Amnesty International Report* (New Delhi: Vistaar Publications, 1993).

Annual Reports of NHRC, NCW, NCSC & STs.

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## **8.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES**

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### **Check Your Progress 1**

1. See subsection 8.3.1 (A).
2. See subsection 8.3.2 (B).

### **Check Your Progress 2**

1. See subsection 8.3.2.
2. See subsection 8.3.3.

### **Check Your Progress 3**

1. See subsection 8.4.1.



Block

# 4

## **RIGHTS OF SPECIAL CATEGORIES**

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### **UNIT 9**

**Women and Children**

**3**

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### **UNIT 10**

**Minorities, Dalits and the Tribals**

**15**

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### **UNIT 11**

**The Old, the Disabled and the Refugees**

**26**

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# UNIT 9 THE VULNERABLE GROUPS: WOMEN AND CHILDREN

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## Structure

- 9.0 Objectives
- 9.1 Introduction
- 9.2 Rights of Women: Women's Rights are Human Rights
  - 9.2.1 Laws on Women in India
  - 9.2.2 National Policies on Women
- 9.3 The Girl Child : Status and Policies
  - 9.3.1 The Right to Life
  - 9.3.2 The Right to Protection
  - 9.3.3 The Right to Development
  - 9.3.4 The Right to Participation
- 9.4 Policies of the Government
  - 9.4.1 Role of Citizens and Society
- 9.5 Child Labour : The Problem
  - 9.5.1 Brief History of Child Labour
  - 9.5.2 What is Child Labour?
  - 9.5.3 How Many Child Workers?
  - 9.5.4 What are the Main Causes of Child Labour?
  - 9.5.5 Laws on Child Labour : National and International
  - 9.5.6 International Responses
- 9.6 Protection of Human Rights of Vulnerable Groups
- 9.7 Let Us Sum Up
- 9.8 Key Words
- 9.9 Some Useful Books
- 9.10 Answers to Check Your Progress Exercises

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## 9.0 OBJECTIVES

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After studying this unit, you should be able to:

- explain the rights of women and the relevant provisions in the Indian Constitution,
- discuss the situation and various policies of girl child,
- comprehend the policies and programmes of child labour, and
- evaluate protection of human rights of vulnerable groups.

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## 9.1 INTRODUCTION

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Human rights for vulnerable groups implies identifying and obviating the social, cultural and structural constraints which have inhibited their growth in society. Law has a significant role to play in this process. Without debating whether social demand for changes in law is at all mandatory or whether law brings about change, it is sufficient to understand that there is a close interaction between law and society and that this interaction can be viewed both as a reflection of social patterns as well as a vehicle of social change. The multiplex traditions, however, converge on the one issue of subordination of women in society. Besides women there are a number of other vulnerable groups, such as refugees, migrant workers, people affected by Aids, child labourer and so on. The girl child and the child labourer are two sub-groups within the vulnerable sections of society which face severe suppression and whose rights are implicitly violated. In this unit, we will particularly concentrate on the **girl child** and the **child worker**.

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## **9.2 RIGHTS OF WOMEN: WOMEN'S RIGHTS ARE HUMAN RIGHTS**

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Aung Sen Suu Kui has been under house arrest in Myanmar (Burma) for years because she dared to oppose the military junta. The party she founded in 1988, the National Front for Democracy, posted a landslide victory in May 1990 elections when she was already in detention. The military government refused to recognize the results and arrested most of her party leaders. Her name and detention became internationally known in 1991 when she was awarded the Nobel Peace Prize.

Sumati is a Scheduled Caste woman (popularly called Dalit) living in a remote village of Madhya Pradesh. Despite the opposition by the powerful interest group she contested the Panchayat elections and became a Sarpanch (head of the village council). This was not to the liking of the dominant group in the village, so they attacked Sumati. They did not allow her to conduct meetings. But she fought for her rights. Eventually, the Madhya Pradesh Chief Minister intervened and Sumati not only hoisted the national flag on the Republic Day at the district kendra but also took the police salute. But not all Scheduled Caste and Scheduled Tribe women are so lucky.

### **Does this happen only to illiterate village women?**

Let us consider Rekha, 26, who is a graduate. After her marriage to a bank employee, Rekha started working in a small firm. She gets up early morning to finish her household work and goes to sleep very late at night. Despite such hard work, she is constantly taunted by her in-laws for not bringing in enough dowry.

Things worsened all the more for her when she gave birth to a baby girl. Her in-laws have also warned her to go for a sex determination test next time. Why? "It is better to pay rupees five hundred now than five lakhs later," they say, hinting that dowry would have to be paid for the girl. Rekha's father-in-law is a good man and had agreed to marry his son with Rekha without demanding any dowry. What will Rekha do now? Can you recall any such cases in your neighbourhood?

These three women from three different backgrounds represent the woman of the present phase. They symbolize the section of women who suffer from various reasons and whose human rights are violated because they belong to a particular group. Perhaps the recognition of a certain group is essential for the acceptance of an individual as a social being. Perhaps, it is also essential for the achievement of an effective and genuine universality of human rights as rights of each and every individual without exception.

Today what unites women globally – transcending class, culture, religion, nationality, ethnic origin – is their vulnerability to the denial and violation of the fundamental human rights, and their dedicated effort to claim those rights. In today's world, most of the refugees and displaced persons as well as the poor are women and children. Most of the violations against women are not known partly because they pass on untold.

**In December 1993, the United Nations Convention on Elimination of Discrimination Against Women (CEDAW) was adopted and is now a guiding force behind action programmes all around the world.**

## **But are only governments responsible for violence on women?**

In fact, responsibility of abusing women goes beyond government. The nationalist, the separatist and the ethnic groups adopt similar methods of violence against women. Women have been killed, raped and ill-treated or taken hostage by the armed opposition groups in all regions of the world. Women are in double jeopardy. Few countries treat their women as decently and fairly they would their men.

The UN Declaration prohibiting violence against women calls for a universal application of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings. Some governments try to interpret 'Right' according to their own philosophy and circumstances. But what does the victim think? Would the woman, who is raped for standing up to her rights consider that it is a justifiable price to pay for the nation's right to interpret human rights according to local custom? Does the poor girl who is forced into flesh trade in the name of custom feel that this is a culturally acceptable practice?

The British who established themselves in India after the 'Battle of Plassey' showed some concern, but their main objective was trade. During this period, some well known social reformers such as Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Dayanand Saraswati and Vivekananda started reform movements for women. The British government introduced Sati Prohibition Act (1829), Widow Remarriage Act (1856), Civil Marriage Act (1872), Married Women's Property Act (1878), Anti child Marriage Act (1929) and so on. Due to the social reform movement, the situation started changing in the post World War era.

**After independence**, the founding fathers of the Constitution of India included several provisions for the improvement of the situation of women. A major breakthrough came in 1974 in the form of *'Towards Equality: Report of the Community on Status of Women in India'* prepared by the Government of India.

While the earlier stalwarts sought to secure equal social status for women, Mahatma Gandhi, with his uncanny foresight, invited the women of India to participate in India's struggle for freedom.

### **Mahatma Gandhi said:**

Woman is the companion of man, gifted with equal mental capacities. She has the right to participate in the minutest details of the activities of man, and she has the same right of freedom and liberty as he. She is entitled to a supreme place in her own sphere of activity as man is in his. Man and woman are equal in status, but are not identical. They are a peerless pair being complementary to one another; each helps the other, so that without the one, the existence of the other cannot be conceived; and, therefore, it follows as a necessary corollary from these facts that anything that will impair the status of either of them will involve the equal ruin of both.

### **9.2.1 Laws on Women in India**

The framers of the Constitution of India specifically included clauses regarding women's welfare. These provisions of the Constitution are guidelines for making laws.

Our Constitution came into force on **26 January, 1950**. One of the fundamental rights guaranteed by the Constitution is the right of equality under **Article 14**. The scheme of equality is basically spread over three domains of the constitutional fabric –

- The Preamble,
- The Fundamental Rights, and
- The Directive Principles of State Policy.

The Preamble of the Constitution speaks of “Equality of status and opportunity.” The Fundamental Rights provide equality under Article 14, 15 and 16. Article 14 contains general principles of equality.

The Directive Principles of State Policy deal with equality in its varied manner. This chapter of the Constitution emphasizes the egalitarian principle when it says that the State shall direct its policy towards securing that citizens, men and women equally have the right to an adequate means of livelihood [Article 39 (a)], or that there is equal pay for equal work for both men and women [Article 39 (d)], and that the health and strength of workers, men and women... are not abused [Article 39 (a)]. The State has also been enjoined to secure just and humane conditions of work and for maternity relief (Article 42).

Towards the end of the nineteenth century, a law was passed to establish a certain minimum age for marriage. There was severe opposition to a move for raising the marriage age for girls to 12 years. According to Hindu tradition, a Hindu girl had to be married before the onset of puberty. The *Child Marriage Restraint Act* was passed in 1929 and amended in 1949. Today the age limit has been raised to 18 years and yet child marriages continue to take place.

Yet another legislation protecting a woman’s basic right to life was passed in 1829 when the law prohibiting Sati was enacted. A new legislation prohibiting the barbaric ritual as well as propagating Sati known as *The Commission of Sati Prevention Act*, was passed in 1987.

The *Widow Remarriage Act* was passed in the year 1856 to give Hindu widows a right to remarry. Yet, after about a century and half, the situation has not substantially changed for widows.

Of all the legislations protecting women, perhaps the most difficult to execute are the anti-dowry laws. An act was first enacted in 1961 and amended in 1984. The cases of dowry-deaths and other forms of violence against a woman continue unabated even in the face of this legislation.

## 9.2.2 National Policies on Women

The provisions of the Constitution of India granting equality to women in various spheres create the legal framework within which policies have been framed. There have been various shifts in policy approaches in the last fifty years from the concept of ‘welfare’ till 1970s to development in 1980s and to empowerment in the 1990s. The various bodies dedicated to the welfare and development of women and endowed with the human rights perspective support services of various kinds to the women of vulnerable groups. Capacity-building, thorough training, awareness generation and gender sensitization now constitute the main thrust of the policies in India.

### Check Your Progress 1

1. Briefly explain with examples the rights of women.

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2. Explain the Government's laws and policies to bring about an improvement in women's status.

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## 9.3 THE GIRL CHILD: STATUS AND POLICIES

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The religious scriptures sanctified strong patriarchal control over the female child. She is considered a burden, a curse and a liability. Gender bias and deep rooted prejudice and discrimination against the girl child and preference for male children have led to female feticide and female infanticide. The graph of male-female ratio in India is indicative that the situation of the girl child has not improved even in independent India. Let us briefly examine the situation of the girl child in the light of four sets of rights based on the Convention on Child's Rights (CRC).

### 9.3.1 The Right to Life

First, the female child is denied her right to be born. Increasing incidences of abortions, female feticide and female infanticide is an indication that the first and the foremost right of the girl child is not ensured. Further, for every girl child, full preparation for her birth and the right of her mother to receive pre-natal, ante natal, and post natal care are essential. The girl child has a right to an environment conducive to her physical, mental and social development. Every socially, physically and mentally disabled girl child has a right to social justice and equality and such measures as early diagnosis and treatment. Social awareness regarding the rights of the girl child in India is needed to emphasize her plight. Let's consider the current scenario.

In our country, religious sanctions and traditional practices result in discriminatory treatment towards a girl child. Many socio-cultural variables influence the rights of the girl child from birth and restrict her role in primary groups such as the family. More girls than boys die in the same age group.

Female mortality is higher in the rural area compared to urban centres. The reason of the higher rate of infant mortality among rural girls is attributed to gender biases; girls get secondary position to male members of the family in terms of food resulting in nutritional deficiency in mother and infant. Among other reasons is the poor primary health care services particularly in rural areas.

The sex ratio in India has been on the decline continuously since 1901. In 1901, it was 972, in 1951, it declined to 946, and in 1991, it was reported to be 929. In the light of Article 21 of the Indian Constitution, the right to life implies her right to her body, right to her mind, right to her childhood, and right to family and home. The right to one's body includes protection from criminal assault and psychological violence inflicted on a girl child within and outside the family.

### 9.3.2 The Right to Protection

The right to body includes protection from marriage at a tender age. Currently, the legally permissible age for girls to marry is 18 years. The large number of child marriages performed in Rajasthan and elsewhere are too well known. Under the Child Marriage Restraint Act 1929, the guardian of the children given in marriage are liable to punishment, but the marriage remains

legal and binding. The Hindu Marriage Act and Muslim Personal law allow the girl to repudiate her marriage at puberty. Given the social circumstances, even if the girl is aware of the law, she is unlikely to exercise this right. In recent years the issue of child prostitution has become very important. According to a study, nearly 30 per cent of women in the flesh trade are below 16 years. A number of girls are pushed into the flesh trade in the name of customs such as the Devadasi system. The government has introduced strict laws against such practices but the problem persists.

### **9.3.3 The Right to Development**

The notion of equality of opportunity is the prime constituent of human rights accepted by all civilized societies. But there are groups in every society that are yet to gain meaningful access to education. The girl child category is one of them. The literacy rate is almost double for males as compared to females. Female participation ratio in education is a third of the total enrolment as against their population of 48 per cent out of the total. For every 100 boys who attend school there are only 55 girls. Enrolment of girls of 6-11 years is only 68 per cent at the primary level. In the group of 11-14 years, only 24 per cent girls attend school as against 54 per cent boys. In higher education, there are only 40 girls for every 100 boys, and in case of professional education the ratio is 15 girls for every 100 boys.

### **9.3.4 The Right to Participation**

Experience shows that there has been very little progress on this front. This right of the child is connected with the child's right to access to information and freedom of expression of views. We rarely listen to children or seek their opinion regarding the decisions that affect their lives. In case of education, training or marriage, the girl child is by and large ignored. This situation needs to be changed.

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## **9.4 POLICIES OF THE GOVERNMENT**

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The Government of India implemented the National Plan of Action for the South Asian Association for Regional Cooperation (SAARC) Decade of the Girl child (1991-2000 AD). It has aimed to assure equality of status for the girl child, laying down specific goals for the survival, protection and development of the girl child. Changing social attitudes and behavioural practices towards her was called for. The Adolescent Girls Scheme under the ICDS Programme and the Kasturba Gandhi Shiksha Yojana are some of the steps taken in this regard.

However, the need for an integrated core programme by the Government of India to raise the overall status of the girl child by ensuring her equal access to health, education and security is being urgently felt. A two-pronged approach to this problem will consist of:

- I. Intensified implementation of the National Plan of Action for the Girl Child, and
- II. Launching of an integrated scheme to raise the overall status of the Girl Child.

### **9.4.1 Role of Citizens and Society**

Our experience with children, especially the girl child, seems to suggest that one of the ways in which others recognize the dignity of the excluded groups is the pressure the outside groups can bring upon them. Some of the actions which citizens and NGOs can undertake to improve the situation of girl child could broadly be categorized as follows:

- Creating positive social attitudes towards the girl child. Efforts could be made through education and other measures to change the attitude of the community nurturing the centuries old bias against the girl child.
- Child marriages should be prevented with greater seriousness. NGOs and individuals could supply information to the authorities about child marriages, feticide, infanticide and other atrocities against the girl child so that appropriate steps can be taken. They can inform the National Human Rights Commission (NHRC) and National Commission on Women (NCW) regarding cases particularly in the category of child trafficking, child pornography and child prostitution that represent the extreme form of girl child exploitation. NGOs could help law enforcement machinery in carrying out their duties which aim at checking specific kinds of victimization of the girl child.
- NGOs could educate the people about laws regarding sex determination and other harmful cultural practices which violate the rights of the girl child.
- The distorted version of religion has contributed towards discriminating against women in our society. The NGOs could contribute greatly in removing such biases and educate the society about the true meaning of religion.

### Check Your Progress 2

1. Briefly explain the position of the girl child in the Indian society today.  
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2. Briefly explain policies of the Government of India for the upliftment of the position of the girl child.  
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## 9.5 CHILD LABOUR: THE PROBLEM

Abdul has never been to school. He gets up at five o'clock and goes out to look for work. He is often engaged on piece rate of work in bangle making units. Abdul earns Rs.10/- a day on contract basis. He puts in about ten hours of work. After six months of work he coughs badly. Abdul is only 11 years old.

Far away, Kalawati also gets up at 4 o'clock in the morning. A bus picks her up from her village. She works in fireworks units in Sivakasi. Recently, there was an explosion in a nearby fire cracker unit and five persons including three children died. Kalawati looks pale and sickly. She is only 10 years old. She returns home at about 8 o'clock in the night. Kalawati has never known what school or play is.

Abdul and Kalawati have something in common although they live thousands of kilometers away from each other. They both are child labourers and do not know what 'childhood' means. It has been stolen from them. There are millions of children like them in India. Let us understand what child labour is.

## 9.5.1 Brief History of Child Labour

The history of child labour dates back to the era of industrialization and cultural development of nations. It is related to our attitude towards children as human beings. The first International Labour Organisation (ILO) Convention on Child Labour was adopted in the year of its inception (1919). The ILO Convention of 1973 (No. 138) entitled “Minimum Age for Admission to Employment” is very important. Another important one is the Forced Labour Convention (No.29 of 1930) which condemns practices of child slavery. In recent years the issue of child labour has become a major concern of many UN agencies, especially the ILO and the United Nations Children’s Fund (UNICEF).

## 9.5.2 What is Child Labour?

There is no set definition of child labour. Earning some pocket money while in school or helping one or two hours in domestic work at home after attending school and in a manner that is not detrimental to the development of the child is not child labour.

The general minimum age for admission to employment or work, laid down by the ILO Convention No. 138 is set at 15 years or not less than the age of completion of compulsory schooling if this is higher. The convention also sets the minimum age as 18 years for hazardous work. Light work may be permitted at the age of 13 to 15. When a country formally agrees on the Minimum Age Convention, these age limits are written in the national legislation. Not even the word ‘work’ is interpreted similarly in all countries. And not all work done by a child can be defined as child labour. Child labour includes performing work that is ‘harmful to the physical or mental health, safety and development’ as declared in the UN Convention on the Rights of the Child.

The minimum age for child labour in the Indian Child Labour Act is 14 years and below. The ILO is now preparing a new Convention on worst forms of child labour in which a labourer below the age of 18 years will be classified as a child labourer.

### Check Your Progress 3

1. Explain the meaning of the term ‘Child Labour’.

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2. Write short notes on the following:  
a) Problems faced by the child labour.

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- b) Birth of a daughter

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- c) Child working at a motor garage.

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3. Expand the following abbreviations

- a. ILO
- b. UNICEF

### 9.5.3 How Many Child Workers?

There is no agreement between different agencies about the magnitude of child labour in India. However, both in terms of real numbers and as a proportion of total workers, India is characterized by a high incidence of child labour. The 1991 Census estimated the presence of 11.2 million full time and 10.7 million part time child workers in India. The NGOs say the number is much higher.

The carpet industry in Mirzapur, glass industry in Firozabad, match and fireworks industry in Sivakasi, gem-polishing in Jaipur and Surat, brassware units in Moradabad, carpet manufacturers in Kashmir and the lock industry in Aligarh are some sectors where the incidence of child labour is very high.

### 9.5.4 What Are the Main Causes of Child Labour?

No single cause can be isolated for the prevalence of child labour. Although most children work because their families are poor, yet it is not the only cause. **Justice P.N. Bhagwati** has said: "There is a myth that child labour is the result of widespread poverty... this myth has to be dispelled... Child Labour is one of the factors which perpetuate poverty and it is not right to condone it as a necessary concomitant of poverty."

Child labour is caused by an inequitable economic system which ensures that the benefits of economic growth are not shared by all.

### 9.5.5 Laws on Child Labour: National and International

Over the last hundred years or so, 24 laws have been passed in India regarding child labour. The first in this series was the **Factories Act of 1881**, which provided for a minimum age of seven years, and covered factories employing hundred or more workers. The **Child Labour Act** came into existence in 1938. The new laws raised the minimum age for employment to fourteen years and redefined a "factory" to mean a place where twenty or more persons worked.

As a result of recommendations by the **Gurupadswami Committee** in 1979, the government amended the 1938 Act and passed a new bill entitled **The Child Labour (Prohibition and Regulation) Act 1986**. The provisions of this Act overruled all the other acts relating to child labour. The **Government of India** formulated a national policy on child labour in 1987. The main objectives of the policy are: legislative, educational and health services to child labourer and awareness among the people.

### 9.5.6 International Responses

The UN programme of action for the elimination of child labour stresses on compulsory free education, widespread awareness of the perils of child labour, a stricter enforcement of national legislation in the field of child labour and widespread awareness of the international instruments dealing with child labour. The UN agencies such as UNICEF and ILO have taken up the issue

on priority basis. The ILO designed and launched a special action programme called International Programme Elimination of Child Labour (IPEC) to eliminate child labour and promote education.

### What can be done in this sphere?

NGOs and individuals may undertake the following activities:

- Public awareness on various national and international laws on the rights of the child.
- Protect the public policies and programmes hampering the interests of children.
- Advocacy and lobbying to defend the rights of the child.
- Rehabilitation and welfare activities for specific target groups of child labourers.

While citizens and non-governmental organisations may participate in above activities, the government has a crucial role in formulating suitable policies and programmes to protect children.

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## 9.6 PROTECTION OF HUMAN RIGHTS OF VULNERABLE GROUPS

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There are a number of ways through which an individual or NGO can help the victim or initiate such actions as may lead to the protection of human rights of the vulnerable groups. There are a large number of human rights Covenants and Conventions that are treaties between governments. National and local level NGOs may logically think whether and how these mechanisms can be useful to their work. Although the prospects of utilizing inter-governmental mechanisms can be appealing, submitting reports or using inter-governmental procedures can be very time and resource consuming and yield limited results. It is now considered advisable to try all national avenues before appealing to UN mechanisms. Thus, wherein an individual or NGO is considering engaging an inter-government mechanism, it is important that it begin with national instruments.

At the national level, litigation can be used for this purpose. NGOs or individuals may seek comments or a recommendation from the body which acknowledges that entitlement or obligation in question is, in fact, a part of the core content of the rights.

At the national level, we have some important human rights institutions supporting the vulnerable groups. Prominent among them is **National Human Rights Commission (NHRC)**. Any person or NGO can write a letter giving details of the incident of the human rights violation and the commission will take it up as a complaint. **National Commission for Women (NCW)** is another agency which is committed to protecting the rights of women with special focus on vulnerable groups such as girl child, child prostitute and women facing violence.

**Check Your Progress 4**

1. Describe three salient features of the National Policy on Child Labour.

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2. Briefly comment on the rights of the vulnerable groups.

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3. Expand the following abbreviations :

- a) IPEC
  - b) NHRC
  - c) NCW
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- .....
- .....
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## 9.7 LET US SUM UP

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We have seen in the preceding discussion that the vulnerable groups, particularly the girl child and the child labourer, suffer most. The path realizing human rights is not easy. But a beginning will have to be made. The study of the girl child and the child labourer has given us insight into the dynamics of the problem and how one can do something to ameliorate the situation. We have also learned about the international and national institutions which are working towards the protection of human rights of the vulnerable groups. This knowledge helps us in day-to-day interaction with the vulnerable groups.

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## 9.8 KEY WORDS

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**MDBs:** Multi-lateral Development Banks.

**Subservient:** Subordinate, inferior.

**Exploitative Conditions :** Conditions which take unfair advantage of a person.

**Deprivation:** Lack of something which an individual must have. It could mean lack of food, clothing and other material resources, of love and affection from care-givers or of opportunities of pursue education.

**Taboo:** forbidden or disapproved.

**IPEC:** International Programme for Elimination of Child Labour.

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## 9.9 SOME USEFUL BOOKS

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Baxi, Upendra, 1985, *Child Labour in India*, New Delhi, Indian Social Institute, 14 November (Mimco).

Burra, Necra, 1994. *Born to Work*. New Delhi, Oxford University Press.

Gathia, Joseph, 1992, *Analytical Study of Child Labour*", Centre of Concern for Child Labour, New Delhi.

National Human Rights Commission's *Annual Report, 1996*.

Saxena, K.P. (1999), *Human Rights: Fifty Years of India's Independence*, Gyan Publishing House, New Delhi.

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## 9.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. Rights of women may be written with case studies/ examples of international situation, example of Dalit women, and role of international agency.
2. Laws of women with reference to Article 14 and Directive policy. You may also explain Sati Prevention Act, etc.

### Check Your Progress 2

1. You may write your answer with some examples. See sub-sections 9.3.1 and 9.3.2.
2. Try to write your answer from Section 9.4 and Role of citizen and Society and sub-section 9.4.1.

### Check Your Progress 3

1. See Section 9.5 and bring out some more such examples.
2. See sub-sections 9.5.1 and 9.5.2.
3. ILO: International Labour Organisation.  
UNICEF: United Nations Children's Fund.

### Check Your Progress 4

1. See Section 9.6.
2. You may write in your own language the role of NGOS towards rights of vulnerable groups.
3. IPEC: International Programme on Elimination of Child Labour.  
NHRC: National Human Rights Commission.  
NCW: National Commission for Women.



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# UNIT 10 MINORITIES, DALITS AND THE TRIBALS

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## Structure

- 10.0 Objectives
- 10.1 Introduction
- 10.2 Minorities
  - 10.2.1 This is what they found
  - 10.2.2 The Situation in India
  - 10.2.3 What can be done?
- 10.3 Scheduled Castes (Dalits)
  - 10.3.1 The Situation Today
  - 10.3.2 What can be done?
- 10.4 Tribals (Adivasis)
  - 10.4.1 Who are the Tribals?
  - 10.4.2 Tribals in India
  - 10.4.3 Alienation from Land and Resources
  - 10.4.4 Alienation from Culture
  - 10.4.5 Mass Illiteracy
  - 10.4.6 Health
  - 10.4.7 What can be done?
  - 10.4.8 Role of NGOs
  - 10.4.9 Role of Individuals
- 10.5 Let Us Sum Up
- 10.6 Key Words
- 10.7 Some Useful Books
- 10.8 Answers to Check Your Progress Exercises

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## 10.0 OBJECTIVES

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After studying this unit, you should be able to

- describe the problems of the minorities,
- explain the meaning of minority rights and constitutional provisions for the better protection of these rights,
- learn about some more vulnerable groups such as Scheduled Castes, Scheduled Tribes, minorities, refugees and displaced persons, and
- relate the discussion in the Unit to your everyday experience and use this understanding to plan appropriate solidarity action for them.

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## 10.1 INTRODUCTION

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In the previous unit we tried to understand the meaning of vulnerable groups and obtained some knowledge about women and the child labourer as such groups. In this unit, we will further explore the subject by learning about often heard words such as minorities and Scheduled Caste (largely known as Dalit), Scheduled Tribes (often referred to as Adivasis).

We are going through a critical juncture. There is a general feeling that India will emerge as a super power in the 21<sup>st</sup> century and a bright future will inevitably salute it. However, future prospects must not blind us to today's realities. The violation of human rights of vulnerable groups must be examined in a broader perspective of Indian Society. Do you not think very often: "How can I do it, I am only a student?" We all have our share of rights and duties. As social

beings, it is our responsibility to exercise our own rights and avoid frustrating the others'. It is also our duty to actively promote these rights with and for others. Human solidarity demands action on behalf of justice. Solidarity means standing with the victims of injustice — the hungry, the unemployed, the imprisoned. It means joining them and others to change the political, economic and cultural structures and institutions that victimize them in the first place. Those of us who are materially well off can identify ourselves more fully with such people by changing our lives towards greater simplicity. This is not a matter of simulating poverty, but trying to let go some of the privileges that many of us enjoy at the expense of the poor. In order to be able to do something for our nation, our people, and to give them a better future, we need to know more about the vulnerable groups.

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## 10.2 MINORITIES

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Ahmed wears a different dress from Anand. One day Ahmed brought a packet of sweets for his friend Anand. "It is our festival Id," said Ahmed. After a few days, there was a discussion on the television on the problems of the minorities. Someone on the panel suggested that the minorities were creating problems while others opposed it. Next day, in the class, Anand asked his friend Ahmed, "Aren't you from the minority community?" Ahmed looked puzzled. "I don't know but I am a Muslim," he replied. Meanwhile Anthony joined them. Their discussion prompted one of their teachers to explain that in India both Muslims and Christians were counted as minority communities. Consequently, the three boys decided to gather more information on the subject.

### 10.2.1 This is what they found

To start with, 'minority' as such is a vague term. The **Permanent Court of International Justice** in 1930 said: "a minority is a group of persons living in a given country or locality, having a race, religion, language and tradition of their own and united by this tradition of race, religion, language and sentiments of solidarity, with a view to preserving their traditions, maintaining their forms of worship, ensuring the instructions and upbringing their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other." This judgement of PCIJ became the starting point for the definition of a minority put forward by Prof. Capotorti in his report on the protection of minorities in 1977.

Prof. Capotorti established certain subjective and objective criteria for determining a minority. He pointed out that at the objective level a minority is not only numerically inferior to the rest of the population of the state, it must also be in a non dominant position. At the subjective level, according to Capotorti, the minorities show a sense of solidarity towards preserving their culture, traditions, religion or language. It is this subjective dimension of a minority, which distinguishes it from people willing to integrate. However, Deschenes, while defining "minority" for the UN Sub Commission for Minority Rights, pointed towards three basic characteristics: (i) numerical inferiority, (ii) non dominant status, and (iii) ethnic, religious and linguistic characteristics different from those of the majority population. Deschenes did not feel that preservation of identity constituted an essential attribute of the minority situation.

Article 25 of the Constitution of India provides for freedom of conscience and free profession, practice and propagation of religion: "subject to public order, morality and health and other provisions.." of course. The word 'minority' in India is most often used in the context of religious communities – Muslims, Christians, Sikhs, Parsees and Jews. Now Jains have also joined the line. Prof. Imtiaz Ahmed, among many others, questions such a narrowed down connotation of minorities. He argues that "minorities are not based on religious difference alone. They are based

on social disadvantage and deprivation.” Ahmed arrived at the following list of minority communities in India:

- Non Hindu religious communities;
- Scheduled Castes and Scheduled Tribes;
- Refugees and migrants; and
- Communities whose languages are either not recognized and listed under the Eight Schedule of the Constitution or these are listed but no facilities are provided for their use in education and administration because of the discriminatory policies of the administration.

Obviously, grappling with the problem of India’s minorities is no simple task. The focus of the present Unit is on India’s religious minorities.

### 10.2.2 The Situation in India

The Constitution of India has recognized religious minorities. Out of the total population the percentage of minorities is: Muslims 12.10, Christians 2.30, Sikhs 1.95, Buddhists 0.71, Jains 0.48, and others 0.42 percent. India has the world’s largest Muslim population, estimated to be 112 million. This speaks of its tolerant and secular nature.

Today, most of the minority communities are in tension with the majority. It is for various reasons. However, the Indian Constitution offers equal opportunities for education, employment, and political representation. The Punjab situation in the early nineties, the Babri Mosque-Ram Janam-bhumi dispute, and the bashing of Christian missionaries are unfortunate events of our times. Majority of Indians are tolerant and wish to live with their other fellow-citizens in peace.

Why are the minorities having problems not only in India but in the entire South Asia: Bangladesh with Chakamas of Buddhist origin; Pakistan with Hindu and Christian minorities; Sri Lanka with Tamil minorities; and Bhutan with Nepalese? Kashmir has become a source of turbulence in the region. Terrorism is on the rise. Pakistan is also having problems with the Mohajiris or the Urdu-speaking Muslims who migrated to Pakistan from India soon after the partition in 1947. The minorities issue in South Asia is becoming further problematic because of the increasingly violent dimension that it is acquiring in certain parts of the sub-continent.

The facts responsible for the denial of minority rights could be divided into four categories: the ideological foundations of the states that promoted and maintained ethnic, linguistic or religious superiority of the majority groups; the communalisation of politics and politicization of religion; lack of awareness among the minorities about human rights and democracy; and the ideology of assimilation at political and social level.

### 10.2.3 What can be done?

In order to counter the impact of the above mentioned factors, concerted efforts should be made at four levels – **the civil society, the state, region, and international community** – **for better protection of minority rights**. The Non-Government Organisations and other civil society actors should try to influence the political parties to incorporate provisions for protection of minority rights in their manifestoes and to put up adequate number of candidates belonging to minority communities in the elections.

**Promotion of education** among minority communities is very important. For example, the low level of literacy rate among Muslims is causing concern to everybody. Today there is a greater realization among the Muslim leaders that an effort for literacy among the Muslims in general

and, particularly among women, is badly needed. Similarly, the minority communities ought to use the **democratic institutions** to defend themselves. Above all, the **media** and the **government** must educate the people, and enhancing awareness about the complexities of such an agenda must be their priority. The goal ought to be a democratic negotiation of the problem.

### Check Your Progress 1

1. What do you understand by the term "minority"? Explain.  
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2. What are the protections the Constitution of India provides to minorities? Explain.  
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## 10.3 SCHEDULED CASTES (DALITS)

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"Socially they are lepers, economically they are worse than slaves, religiously they are denied entrance to places we miscall 'houses of God'."

Mahatma Gandhi

The word **Dalit** is Sanskrit for the oppressed, broken, downtrodden. The word is used today to identify untouchables or Harijans or what Constitution of India calls – the Scheduled Castes. In this unit, we will call them "Dalit".

Conceptually, the Dalits have pre-Dravidian and Dravidian origins and cultures. The beginning of the Caste system dates back to the centuries old Aryans. The people of the land were divided into four castes: Brahmin, Kshatriya, Vaishya and Sudra. At first, these categories were mere functional, based on jobs people did, but by the time of **Manu**, they become hereditary or fixed by birth. In the 6<sup>th</sup> Century BC, Buddha and Mahavir built their religion against such divisions. The Muslim rulers, at first, disregarded the caste system but later on took the advantage of the cleavages existing in the Indian society. In the 15<sup>th</sup> Century the populist **Bhakti movement**, led by low caste men, attacked the system. The leaders of the Bhakti movement were influenced in part by **Islam's emphasis on human equality**. So was **Guru Nanak**, the 16<sup>th</sup> Century founder of Sikhism.

The **British** followed the policy of rejecting the system, on the one hand, but using it to their advantage whenever possible, on the other. Later on, the Christian missionaries railed at caste and had considerable influence on the 19<sup>th</sup> century Hindu reformers, most of whom, like **Keshab Chandra Sen** considered caste 'the greatest evil of our social custom'.

After independence, the **Constitution of India** made special provisions for safeguarding the Scheduled Castes and did not recognize the caste structure. The principle of equality of all before the laws was upheld in **Article 14**. **Article 15(1)** prohibits discrimination on the basis of religion, race, caste or place of birth. **Article 17** prohibits the practice of untouchability in any form. A number of legislative measures have also been enacted. The Untouchability (Offence) Act was first enacted in 1955, only to be replaced by the Protection of Civil Rights Act in 1976, which



provides penalties for preventing a person, on the grounds of untouchability, from entering a place of public worship and offering prayers or taking water from a sacred tank, well or a spring. To compel anybody on the grounds of untouchability to do scavenging or sweeping or to remove any carcass or do jobs of such nature is deemed to be an offence under the Act. A public servant, who willfully neglects the investigation of such an offence, is deemed to have committed an offence under the Act. State governments are authorized to impose collective fines on the inhabitants where people in an area are involved in offences of untouchability.

### 10.3.1 The Situation Today

Even in the face of the reform movements, constitutional guarantees and legislative measures, caste prejudices, the practice of untouchability and discrimination on the basis of caste continue.

- **Practice of Untouchability:** At tea canteens, they have separate tea tumblers and are made to wash and handle their own tumblers so that glasses reserved for caste Hindus are not "polluted". Dalits are not allowed to use upper-caste water taps. They have to go one kilometer away to get water.
- **Torture of Women by Police (Custodial Violence):** Once the police start raiding a place, the men-folk run away. The police, then, victimize the women. The procedure they adopt is to take the child or wife away so that the men come back. They feel that they are the masters of the situation. It has resulted in mass rapes. (Source *HR Watch*, New York, 1999, pp.116).

**Bloody outbursts against Dalits have become increasingly common.**

The injustices perpetuated against Dalits are not merely social but also economical. Dalits have been victims of discrimination in the field of education and employment for centuries. Even where they get educational and job opportunities, they have to face of discrimination of all sorts. To counter these tendencies, the concept of reservations had been tried. In 1921, Krishna Raj Wodeyar, the Prince of Mysore, introduced reservation in government jobs for non-Brahmins in his state. Shortly afterwards, the militant anti-Brahmin movement, Dravida Kazhgham, successfully demanded similar quotas in Tamil Nadu. The reservation approach became enshrined in the Constitution of India. The concept of reserving seats for the disadvantaged is certainly a morally defensible concept. What factors do you think are responsible for the continuing plight of the Dalits?

**First** and foremost is the socio-economic structure. **Secondly**, the various legal measures, though they represent a move in the right direction. **Thirdly**, the lack of political will. Directions given by the SC/ST Commission to various implementing agencies have certainly been one of the central planks in the government's efforts to bring justice to Dalits. The main purpose of the reservation is social, not economic. Reservation is not meant to merely tackle the inequalities that arise from the present state of economic development, but largely to set right inequalities that are the result of the past social deprivations. It is important to note here that there have been a number of persons from high castes who have fought for the abolition of untouchability and for the rights of the Dalits.

### 10.3.2 What can be done?

**"Equality may be a fiction but nonetheless one must accept it as the governing principle".**  
**Baba Saheb Ambedkar**

The caste system is a **social bane**. The National Human Rights Commission has termed it a 'historic wrong'. How can we all correct this 'wrong'? The caste is primarily a social problem. An all-out effort must be made to educate the people to grow up and think according to current imperatives, not according to past customs. Educational and religious institutions must take-up the task as a priority and sensitize the general public about the rights of Dalit people.

The government must also act, particularly in the field of **educational opportunities**. **Legal measures** must also be strengthened. The implementation of PCR can go a long way in checking the social exploitation of persons belonging to Scheduled Castes. Spreading legal literacy and providing legal aid will also be useful. The role of **para-legal personnel** must be stressed.

The NGOs have an important role in fighting against this social evil. They could undertake legal literacy campaigns, para legal training, legal advice, socio-legal surveys and spread education among the Dalits.

You can help by adopting humane behaviour towards the Dalit children and supporting the education of these children. Education is the key for social change in the long run.

### Check Your Progress 2

1. Define "dalit" in 200 words.  
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2. Could you explain some incidents of the practice of untouchability which are either happening even today or had happened before?  
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## 10.4 TRIBALS (ADIVASIS)

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Manjhi and his family left their place in Jarsuguda, Mayurbhanj district in Orissa and came to Calcutta in the early sixties. Manjhi owned five acres of land and used to live in peace with nature. Today, he is a rickshaw puller in Calcutta. He lost his land to mining. The monetary compensation was not enough to restore the environment and the social setting he was living in. Dhania is working as a construction labourer in Bhopal, the capital of Madhya Pradesh. She was forced to leave her ancestral domain due to the construction of a huge dam. Yesterday's smiling Dhania of tribal areas has become a faceless day labourer with back breaking work. The location of these events may be different, but variants of this scenario can be found in practically every region where tribal peoples still survive.

### 10.4.1 Who are the Tribals?

There is no generally accepted definition of the tribal. However, there are core elements of such a definition which are probably acceptable to all. There are four major elements in the definition of tribal people: pre-existence (i.e. the population is descendent of those inhabiting an area prior to the arrival of another population); non-dominance; cultural differences; and self-identification

as tribal. The most undisputed criteria is that tribal people are the descendants of the original inhabitants of a territory taken over through conquest or settlement by aliens. Thus, the native people of America or Australia and New Zealand are indigenous or tribal people. In Asia, however, where European occupation was the last in a succession of colonial experiences and where there was no major foreign settlement, the question of indigenous is more complex. In the Indian sub-continent, to be specific the continual immigration of people during the past thousand years has made the question of antecedence too complex to resolve.

At the **international level**, the United Nations uses a working definition of tribal people which is developed on the basis of the report of a special rapporteur for the United Nations sub-commission on Prevention of Discrimination and Protection of Minorities.

According to the **United Nations**, Document NUE/CNH/SUB2/L566 of June 29, 1972, **indigenous** populations are the existing descendants of the people who inhabited the present territory of a country at the time when persons of the world overcame them and anyhow reduced them to a non-dominant or colonial situation; who today look more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form a part.

#### **10.4.2 Tribals in India**

The **Indian Constitution** has placed **tribal** people under the special protection of the **President**, and by an order in 1956 some 414 tribes were declared as scheduled tribes. According to the 1991 census, there are 1091 SC and 573 ST's in India consisting of 16 and 8% of population respectively. Article 19(5) spoke of curtailment by law in the interest of any scheduled tribes of the general rights of all citizens to move about freely, settle in and acquire property. **Articles 164 and 338** and the **fifth schedule** authorized the setting up of tribes advisory councils and separate departments in the States. **Article 244** and the fifth and sixth schedules make special provisions for the administration and control of scheduled and tribal areas.

The **tribals** in India are 8% of the total population. In the 1991 figures, percentage of tribal population in different States is as under:

Andhra Pradesh 6%; Assam 13%; Bihar 8%; Gujarat 15%; Madhya Pradesh 23%; Maharashtra 9%; Orissa 22%; Rajasthan 12%; and West Bengal 6%.

The area where they live in different States has within it 70% of the country's mineral water and hydel power resources and the bulk of the forest. The government has launched a number of welfare and development programmes for the tribal welfare and development. Among these, the Multi-purpose Tribal Development Project (MTDP) and the Integrated Tribal Development Approach (ITDA) are important. There has been a quantum jump in financial investment from the Fifth Five Year Plan onwards but due to multiple reasons the impact on the socio economic conditions of the tribals has not been significant.

Consequently, the tribals still suffer from a number of major problems. Among them the following are the most serious:

#### **10.4.3 Alienation from Land and Resources**

Do you remember Manjhi? Why did he leave his ancestral land? And Dhaniya too? It is an irony that the rich natural resources and mineral wealth of the tribal areas is the prime cause of land alienation among tribal people. The process of modernization by acquiring the tribal land for

building industrial infrastructure, irrigation dams and roads, etc. is displacing forest dwellers. The forest dwelling tribals have not only lost their land, but also their livelihood. They depend on the forest for food, fuel, fodder and consumption materials. Since the availability of these resources has been severely restricted, starvation has become a reality in some tribal areas like Sarguja in Madhya Pradesh, Kalahandi in Orissa, Palamu in Bihar, Sonbhadra in Uttar Pradesh, Dhulia in Maharashtra to name a few. Because of the destitution and indebtedness, tribal societies are falling apart.

#### **10.4.4 Alienation from Culture**

In the name of modern development, tribal culture has been battered and bruised. Their tradition of constructive dependence on forest has been destroyed. The tribal religious myths, rituals and social control mechanism—geared to maintaining a balance between human and ecological needs—have been disturbed. Myths were developed around some trees that were considered their gods and the felling of these trees was forbidden. Today community sharing and sacredness attached to person is eroding and pseudo values of materialism and consumption are coming in.

#### **10.4.5 Mass Illiteracy**

The literacy rate is still extremely low among the tribals. The Tribal females tend to be the worst sufferers. The type of education given is not relevant to their needs and context. Even those who receive education are so alienated from their own roots that they prefer to identify themselves with the mainstream society than with their own people.

#### **10.4.6 Health**

The unhygienic conditions of their huts, malnutrition and lack of safe drinking water are the major cause of various diseases among the tribals. Reduction in the availability of food due to access denied to forest areas is cited as a major factor by the tribal themselves. Experts indicate that this has also reduced the availability of herbal and traditional medicines. There is high infant mortality rate among several tribal communities. Now AIDS is also affecting the young women in such tribal areas as fall along the highways.

#### **10.4.7 What can be done?**

Tribal people would face continued loss of land, culture and language if the present trend continues. Without effective guarantees by the governments, these peoples will be overrun by mining, reserve forest or sanctuaries and dams, etc. Indeed, it is no exaggeration to suggest that the survival of certain tribal communities and the well-being of most others will depend upon a dramatic change in government policies and practices. Based on the analysis of various recommendations both of UN and Indian experts, there are three areas which government could seriously consider : **raise public awareness of tribal people's perspective and situation; enhance the legal and political position of tribal people; invest in programmes of social action to benefit tribal people ; and curb private interests which seek to exploit tribal labour and land.** NGOs have done remarkable work and the government should consider them as an ally in mitigating the problem of tribal people.

The **International Labour Organisation** has been the pioneer among international bodies taking specific measures for the protection of tribal people. It made its first study as early as 1921. Later in 1957 it adopted a Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi Tribal Population. There was a revision of this Convention in 1989. Other



UN Agencies such as WHO, UNESCO and UNICEF have also been undertaking special programmes for the development of tribal people.

#### 10.4.8 Role of NGOs

NGOs have been instrumental in raising public consciousness about the plight of tribal people. They have forced the international community to take account of the tribals' demands. Very often the efforts by the NGOs are misinterpreted as being separatist. This is wrong. Most tribal people are not claiming the right to land illegally nor is the majority seeking formal independence for the State they live in. But what they are demanding is self-management of their own remaining land and resources.

It is incumbent upon the citizens to rise to the humanitarian challenge posed by the problems of tribal people. Their rights as human beings need to be protected if India has to get a place in the community of nations.

#### 10.4.9 Role of Individuals

It is not that one has to be an expert to help the tribals. You could offer to work as a volunteer to **teach tribal children** during the summers by approaching some NGOs. You could plan a study-cum-exposure trip during the holidays. You could also plan to collect information on herbal medicines. Girls can make a group and talk to tribal girls and tell them about AIDS and other **modern sanitary practices**. One can also save some pocket money and donate to some good NGO for a good cause. Even if you cannot do any of these things you need not feel disappointed. Well, you can always write a **letter** to the Chief Minister of a State or an editor of a newspaper or the Chairman of the National Human Rights Commission, National Commission of Women or SC/ST Commission.

Yes, even a small step by you will go a long way.

#### Check Your Progress 3

1. Define 'tribal' in 200 words.  
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2. Write a letter to the Editor of a local newspaper raising the problem of the tribals' displacement in your area.  
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3. What protection the Constitution of India provides to the tribals?  
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## 10.5 LET US SUM UP

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We have seen and discussed in the preceding units that the vulnerable groups are women and children. You have benefitted by studying day-to-day examples with reference to the rights of the women and the children. The study of minorities, dalits and adivasis has given us an insight into the dynamics, problems and amelioration of dalits and minorities. We have also learnt about the minorities' and adivasis' peculiar human rights problems. This discussion helps you to take up with your friends and counsellors the issue of protecting the rights of the vulnerable groups.

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## 10.6 KEY WORDS

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**Dalits:** Literally meaning "down-trodden" a term employed by rights activist's to refer to the untouchables.

**PCR:** Protection of Civil Rights Act, 1955.

**Scheduled Caste:** A list of socially deprived "Untouchable" caste prepared by the British Government in 1935. The Scheduled Caste was intended to increase representation of Scheduled Caste members in the legislature, in government employment and in University placement. The term is also used in the Constitution and various laws.

**Scheduled Tribes:** A list of indigenous tribal populations who are entitled to much of the same compensatory treatment as Scheduled Castes.

**Untouchables:** Those at the bottom of or falling outside the caste system. Administrative parlance now employs the term "Scheduled Castes" while rights activists and the population more generally employ the term "Dalits".

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## 10.7 SOME USEFUL BOOKS

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Arvind Sharma (1997), *Minority versus Majority Rights in Subhash Kashyap (ed.) perspectives on the Constitution* (Published by IICS, Shimla).

A.S. Narang (1997), *Justice for Minorities in Ajit Bhattacharya (ed.) Social Justice and Indian Constitution*, IIAS, Shimla.

B.R. Abluwalla and Shashi, B.R. (1981), *Ambedkar And Human Rights*, K.K. Pubs., New Delhi.

Marc Galanter (1983), *Competing Equalities : Law and the Backward Classes in India*, Berkeley, University of California Press.

Susane E. Chaplin, "Scavengers: Still Marginalised", *The Administrator*, Vol. XL11 January – March 1977, pp. 123-151.

*Human Rights : A Source Book*, NCERT.

*Human Rights in India*, Amnesty International, 1993.

*Changing India* by Robert W. Stern, Cambridge University Press, 1993.

Annual Report of National Commission for Women.

Reports of Scheduled Castes and Scheduled Tribe Commission.

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## **10.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES**

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### **Check Your Progress 1**

1. Your answer should cover the following points :
  - (a) Term 'minority' from Section 10.2, and
  - (b) Some case study/example you may like to add such as national/international.
2. Constitutional Provisions mentioned is sub-section 10.2.2; you may cite some examples in the context of South Asian countries.

### **Check Your Progress 2**

1. See Section 10.3.
2. See Sub-section 10.3.1.

### **Check Your Progress 3**

1. See Section 10.4.
2. You may see Sub-section 10.4.2 and write letter raising the problems of tribals' education, health and land resources, etc.
3. See Sub-section 10.4.2.

# **UNIT 11: THE OLD, THE DISABLED AND THE REFUGEES**

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## **Structure**

- 11.0 Objectives
- 11.1 Introduction
- 11.2 The Old People
  - 11.2.1 The State of Neglect
- 11.3 Need for State Intervention
  - 11.3.1 Some State Initiatives
  - 11.3.2 National Policy on Older People
  - 11.3.3 Rights of the Elderly
- 11.4 Who are the Disabled?
  - 11.4.1 The Term 'Disability'
- 11.5 Social Action
  - 11.5.1 Initiatives in India
- 11.6 The Plight of Refugees
- 11.7 International Initiatives on the Problems of Refugees
  - 11.7.1 Who is a Refugee?
  - 11.7.2 UNHRC
  - 11.7.3 UNHRC in India
- 11.8 Let Us Sum Up
- 11.9 Key Words
- 11.10 Answers to Check Your Progress Exercises

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## **11.0 Objectives**

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After studying this unit, you should be able to:

- Recall the problems of the aged, the disabled and the refugees;
- Know about the rights of these vulnerable groups;
- critically relate the information on rights of these groups to our surroundings and for an appropriate action; and
- explain the role of the UNHRC.

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## **11.1 Introduction**

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In our previous units of this block on various vulnerable groups, we attempted to understand the situation of women, children and minority groups. In this unit, we shall learn about the rights of the old, the disabled and the refugees.

These people, as you know, are often neglected. Very often, their disadvantaged position is not even taken note of as though they are destined to be so. It is not surprising, therefore, that many people do not even seem to realise that old people or disabled people have as much right to lead a life of dignity as the rest of the community.

To take an example, an aged (though not so old) Ram Nath fell ill and the doctor advised him to go to a hospital. After few days, the treatment was over, but Ram Nath nearing 60, did not want to go back home. "Don't send me home," he pleaded with his doctor at the Kem hospital.



He told that his son had taken away all his money and was now harassing him.  
Ram Nath is one of the 70 million people facing the problem of aging in the country.

And take another example. There is Kuldip, an 11 year old handicapped boy, who can barely walk. He is polio afflicted. He is standing by the playground. He cannot play cricket. He longingly follows the movement of the ball.

In this unit, we would be talking about the aged, the disabled and the refugees, and their rights. You will agree that these people have a right to live a life of dignity like any able-bodied person in the society.

The unit is in three main sections, each dealing with one of the above mentioned marginalised groups.

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## 11.2 THE OLD PEOPLE

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United Nations declared the period from October 1, 1998 to December 3, 1999 as the international year of the older persons. Occasionally one reads a report or an item in the newspaper or magazine, but otherwise there has hardly been any discussion on the problems faced by old people. In fact most people do not realise that old persons have serious grievances and that they too need care. We like to believe that in India we have a strong tradition of family values, and that we respect our elders and take care of them.

Do we really? We only have to look around to see in what kind of miserable state they are in. They neither have the old family structures to fall back upon nor the State initiated welfare support to meet their daily needs.

Let us look at the old people's situation a little more in detail, in terms of the societal situation they are placed in.

### 11.2.1 The State of Neglect

There are several socio-economic reasons for the growing number of neglected old people.

With increasing industrialization and urbanisation, there has been a break up in the traditional family system. Now children move out of their parent's house and have their own houses. The old parents are often left behind in the villages. Some choose to go and stay in cities with their children in spite of the strangeness of situation and become dependent and unhappy. In an urban situation, with both son and daughter-in-law working outside home, the elderly staying with their children find themselves uncared for. Things are no longer the same for the old people. When it is felt that someone is not useful enough, that person is cast off. This often is the case with the senior citizens. *Old people not only suffer an aging process in the physical and chronological sense but also suffer from acute feeling of worthlessness.*

Apart from the changing social structures and the value systems, there have been major advances in science and technology, which have contributed to longer life span. It is said that in a twenty five year period starting from 1991, the population of those above 60 will nearly double itself (Draft National Policy on Old People).

Among them, men outnumber women as they have longer life expectancy. The incidence of widowhood is much higher among females. There are four times as many widows as widowed

males. The position of old women is more vulnerable as few persons are willing to take care of them. *Older women, thus become victims of triple neglect and discrimination, on account of gender, widowhood and age.*

#### **The ageing scenario in India :**

##### **Some statistics**

- 70 million 60+ today; to be 177 million by 2025.
- 90% from the unorganised sector, which means no pension, provident fund or gratuity or a medical insurance when one crosses 60.
- 80% in rural areas.
- 40% living below poverty line without adequate food, clothing and shelter.
- 55% of the 60+ women are widows, 70% of the 60+ are illiterate.

Source: 'The Elderly: A Society in Abeyance – Neelam Makhijani in *Swagat* 59, February, 1999.

The situation being this grave, and with increasing graying population, there has been some semblance of realisation that efforts have to be made to improve the neglect of old people. Much of these efforts have been from the community of old persons themselves and their organisation. Among the notable organisations are **Help Age India**.

#### **Help Age India**

Help Age India has been a pioneering voluntary organisation dedicated to the cause of the elderly.

Help Age India was set up in 1978 and has been involved in over 1300 projects constituting a wide spectrum of services. Their care and service have made a difference to the lives of over 2 million elderly.

Following are some of the areas in which Help Age India is involved:

- **Old Age Homes** – Over 250, catering to poor and the underprivileged.
- **Day Care Centres** – Around 123, where the old can gather for companionship and small income activities.
- **Adopt – A Gram Programme** – Under this scheme, food, clothing and medical care are provided to the poor and the destitute elderly.
- **Mobile Medicare Unit** – 12 units in remote rural areas and urban slums for the elderly.
- **Income Generation Programme** – to provide the elderly with some financial independence.
- **Eye Care** – over 57,000 cataract operations were undertaken in 1997 alone.
- **Special Programme** – Relief is reached to the needy of during natural calamities such as flood, cyclone, etc.

Individual efforts or community organisational efforts are not enough. Though they have been chiefly responsible for lobbying for old people, the State has a responsibility towards deprived sections.

### **11.3 NEED FOR STATE INTERVENTION**

As we can clearly see, household alone cannot handle the problem of demographic aging with all its implications. This means that the State has to intervene in a way that they provide a crutch to the vulnerable old people. Let us look at some of these initiatives.

### **11.3.1 Some State Initiatives**

Well-being of older persons has been mandated in the Constitution of India. **Article 41** dealing with Directive Principles of State Policy has directed that the State shall, within the limits of its economic capacity and development, make effective provisions for securing the rights to public assistance in case of old age.

Nothing tangible has been done so far. However, following attempts have been made:

- Old age pension for employed people, initiated in 1950s and 1960s.
- Maintenance for elderly people – in reference to section 125 (1)(a) of the Code of Criminal Procedure, 1973 and section 20(3) of the Hindu Adoption and Maintenance Act 1956.

These legislations have remained ineffective, and are available only on paper as most old people fight shy of litigation against their kith and kin.

Let us look at some of the later developments, as for instance The National Policy on Older People.

### **11.3.2 National Policy on Older People**

“Through the National Policy, the State seeks to assure older people that their concerns are national concerns, and they will not live unprotected, ignored or marginalised” (Draft-National Policy on Older People, 1999).

One of the salient points of this policy is that it does not view older people as dependent. It recognizes that older people too are resources and they are useful to the society.

The policy feels that opportunities and facilities need to be provided so that they can continue to contribute more effectively. The policy also feels that the State should allocate a large budget for the old people. At the same time it feels that civil society with its various avenues must join in securing a life of dignity for the older people.

### **11.3.3 Rights of the Elderly**

On December 16th 1991, The United Nations General Assembly adopted a resolution (46/91) containing the United Nations principles for older people. The governments were encouraged to incorporate the principles into their national programmes whenever possible. There are five basic principles namely:

- Independence
- Participation
- Care
- Self Fulfillment
- Dignity

#### **Independence**

Older persons should:

- have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self -help;
- have the opportunity to work or to have access to other income generating opportunities;
- have access to appropriate educational and training programs;
- be able to participate in determining when and at what pace withdrawal from the labour

- force takes place;
- be able to live in environments that are safe and adaptable to personal preferences and changing practices;
- be able to reside at home for as long as possible.

### **Participation**

- Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations;
- Be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities;

### **Care**

Older persons should:

- benefit from family and community care and protection in accordance with each society's system of cultural values;
- have access to health care to help them to maintain or gain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness;
- have access to social and legal services to enhance their autonomy, protection and care;
- be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment;
- be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.

### **Self fulfillment**

Older persons should:

- be able to pursue opportunities for the full development of their potential in the older age;
- have access to the educational, cultural, spiritual and recreational resources of society.

### **Dignity**

Older persons should:

- be able to live in dignity and security and be free of exploitation and physical and mental abuse;
- be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution

Before we go on to our next section which deals with human rights of the disabled, let us try and see how much you have understood.

### **Check Your Progress 1**

**Note:** (ii) Use the space below for your answer

(ii) Check your progress with the model answers given at the end of the unit.

1. Give a few instances of neglect of old people, form your observation from the surroundings.

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2. Do you think the elderly people contribute in any way to the society, in what ways?  
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.....
3. Can you say that older people are better taken care of in rural areas?  
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## 11.4 WHO ARE THE DISABLED?

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Before we begin to talk about the rights of disabled people, let us first know who the disabled are and the nature of the disabilities they suffer from.

Take for instance, this man who had to go to the hospital for a check up, in a premier hospital in Delhi- viz. the Apollo Hospital which like many other hospitals does not have a ramp for a person on wheel chair) "The doctor asked me to give urine sample. The nurse on duty customarily handed him the bottle and suggested 'go to the toilet'. Ideally there should have been facilities within that section for a paraplegic to be able to take my urine specimen. The real shock came when I discovered that the hospital toilet door was even narrower than the normal toilet doors. It became obvious that it was meant only for normal patients and not the disabled. None of our hospitals have a system where a wheel chair user can take his or her weight " (Javed Abidi in Folio section of the *Hindu*, June 29,1998).

This is just one instance and a very simple instance of how disabled people are invisible as far as the normal people are considered.

Do you know that about 5 to 6 percent of our population is affected by some disability or the other. This includes people with blindness, low vision, leprosy, hearing impaired, locomotor disability, mental retardation and mental illness. There is a wide range of disabilities people suffer from.

### 11.4.1 Disability-the term

Let us look at the term 'disability', for a better understanding of the problem It could be, broadly, analysed in the following five ways.

Firstly, there is *anatomical, physiological or psychological abnormality or loss*. The disabled may be regarded as people who have lost a limb or part of the nervous system through surgery or in an accident become blind, deaf or paralysed or physically damaged or handicapped, or abnormal in some way or paralyzed in usually observable respect.

Secondly, there is *chronic clinical condition* altering or interrupting normal physiological or psychological process such as bronchitis, arthritis, tuberculosis, epilepsy, schizophrenia and mental (manic) depression. These two concepts of loss or abnormality and of chronic diseases tend in fact to overlap for even though a loss may be sustained without disease, prolonged disease has usually some physiological or anatomical effect.

**Thirdly**, disability is generally taken for granted as the *functional limitation of ordinary activity*, whether that activity is performed alone or along with others. The simplest illustration is incapacity for self-care and management, in the sense of being unable or difficult to move about, negotiate stairs, wash and dress. This principle of limitation, however, can be applied to other aspects of ordinary life also. By reference to the average person of the same sex, an assessment can be made of the relative incapacity of the individual in management of household affairs and performance of both normal social roles as husband, wife, father or mother, neighbour or church member as well as of particular occupational roles.

**Fourthly**, disability can be viewed as a *pattern of behaviour, which has particular elements of a 'socially deviant kind'*. This pattern of behaviour can be, in part, directly attributed to the impairment or pathological condition -such as, a regular physical tremor or limp, or an occasional fit. Thus, activity may be not only restricted but also dissimilar. And the dissimilarity of disabling situations depends as much on how it is perceived by the individual, and others, as on its physiological determination. Sociologists have, recently, sought to focus attention on the concepts of 'sick role' and of 'illness behaviour'. Society expects the blind or the deaf or the physically disabled to behave in certain approved or stereotyped manner which is so unfortunate.

**Finally**, disability means a *'socially defined position or status'*. The person concerned not only just acts differently but also occupies a status, thereby attracting a mixture of deference, condescension, consideration and indifference. The disabled attract certain kinds of attention from the rest of the society because of the 'position' that he/she occupies in that particular society. There are societies where mild forms of sub-normality, schizophrenia or infirmity are not identified as disability.

People are normally noted as disabled when they fall outside an accepted norm of function or behaviour. Thus, the concept of disability in some sense is guided by social judgement.

In real terms, *disability denotes loss or limitation of opportunities as a result of social, physical and attitudinal barriers*. Thus, an inability to walk is impairment, while an inability to enter a building because the entrance is a flight of steps is a disability. Disability, therefore, refers to the oppression which a person with physical, sensory or intellectual impairment experiences as a result of prejudices attitudes and discriminatory action. In short, a handicap is not determined by an individual's physical limitations, but instead reflects the social consequences of that disability.

As you can see, the disability that a physically or mentally impaired person feels greatly is the *discriminatory attitude of the people*. This attitude gets translated into concrete action, the lack of infrastructure facility, a simple thing like a ramp is one example. Probably the biggest challenge lies in making efforts to integrate the disabled to a normal course of life activities. Disabled persons are first and foremost human beings: with the same basic human needs as the rest of the humanity. Physiological needs of food and warmth, shelter, sex, and those needs that contribute to self fulfillment: safety, security, love, a sense of belonging, self-esteem, social esteem, opportunity for new experiences, personal growth creativity. Do you think that in the present scenario, the disabled get any of these needs fulfilled? Far from it, we have a lot of ground to cover to even meet some of the basic needs of life sustenance.

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## 11.5 SOCIAL ACTION

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The rights of persons with disabilities to participate in their societies can only be achieved primarily through political and social action. Legislation has been enacted to guarantee to the disabled persons the right to, and opportunities for schooling, employment and access to

community facilities, to remove cultural and physical barriers and to ensure that discrimination against disabled persons is discouraged and ended.

The emergence of *disability rights movement* brought with some change, including strong cross-disability unity and major legal redefinition of disability. During the 1980s, the disability movement received a big boost with the UN General Assembly designating 1981 as the International Year of the Disabled. This has brought focus on three relatively new areas; (1) "The progressive awakening of persons with disabilities to their status as a disadvantaged minority, and to the need for them to assert for this rightful place in the community; (2) the growing realisation that in the past, the disabled have been relegated to the role of little more than "objects of condescension and charity"; and (3) the emerging global resolve to protect the rights of such disadvantaged people as potentially productive and contributing citizens.

### 11.5.1 Initiatives In India

Since independence India has promoted welfare of the disabled persons which include:

- Opening of special employment exchanges,
- Setting up of vocational rehabilitation centers
- Establishment of sheltered workshops
- Job reservation in certain identified positions; and
- Provision of financial assistance.

The disability act, **Persons with Disabilities (Equal Opportunities protection of rights and full participation) Act, 1995** is a progressive and path breaking legislation. While institutional and State support seems to be necessary, in no way it compensates for a community action, which is real test of the disabled being integrated into the society.

The voluntary agencies to a large extent also pursue a traditional approach. Nearly 25% of the voluntary NGOs have no programme to offer. They merely supply aids to disabled persons using government funds, and they are rooted in charity. Others, who are concerned with rehabilitation, organize special educational programmes and vocational training. Most of the skills that are given are not profit generating and usually involve carpentry, tailoring etc. and rarely in electronic or computer application or other such useful areas.

The government and the non-government programmes do not have adequate systems of evaluating the programmes, and monitoring them to ascertain their efficacy.

It is not a little wonder that individuals with determination and sensitization to reach out to differently abled people seem to make all the difference.

Uma Shanker Pandey of Jhakni village in Badaun District of Uttar Pradesh, could hardly manage to walk the distance from his house to school. He was lame and had to suffer the jibes and cruel jokes of the people in the village. So, when he was seven, he went away to his grandmother's house, never to enter school again.

This is a story that never stops repeating itself, in every village, every town and city. Who do these children grow up to be? Does anybody care? Some of course do. For example, 32 years old Pandey who returned to Banda with a zeal to change the village. His contribution was the setting up of the Vikalang Awasi Vidyalaya Evam Prasikshan Kendra(VAVEPK). "I did not complete school but I never stopped learning and sharing my lessons in self-help with others" says Pandey.

It has been uphill task for the man who can walk only with the help of crutches. After repeated knocking on State welfare doors with even simple requests like a loan for, or the donation of, a crutch failed (he paid Rs.125 as bribe for a Rs.45 crutch). Pandey resolved to do it alone spearheaded a movement for the physically challenged in Banda (U.P.) in the early 1990s. He says wryly: "There are 12,200 disabled in Banda district alone. The UP Government has nothing to show after its RS.50 crore budget for them. Pandey says, "With my meager resources, if I can set up even 50 children, I'll be happy".

Enthused by his spirit, the educated but disabled youth of his village joined him and the foundation of the school was laid in 1997. Today (2000) there are about 100 children in the school, and a staff of 14, all whom work without remuneration.

Recognising the nobility behind the purpose, a Banda jeweller donated 5 bighas of land and part of an unused tiles factory, that stood on the land. The villagers and the chief development officer of the area helped him out. People contributed in as many ways as possible; some gave vegetables, atta, fruits, pencils, paper etc Pandey also enlisted the support of 20 doctors who help out with medical check ups and medicines.

It is still a long haul ahead for Pandey and his dedicated volunteers. He says: I am not in the business of just getting degrees for my children. I want to instill self-confidence in them, encourage their inherent talents and set them on the path of self-reliance. If I succeed with even four children, they in turn will do the same for ten more. "My mission is not to let any handicapped person cry."

### Check Your Progress 2

Note: (i) Use the space below for your answers.

(ii) Check your progress with the model answers given at the end of the unit.

1. Given the kind of discriminatory attitude that people have towards the disabled, Do you think that they should have special schools, exclusively for them?

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2. List few simple ways that a common citizen can be of help to the disabled in securing a life of dignity.

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3. Recount an incident from your life experience when you happen to witness a disabled person being humiliated.

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## 11.6 THE PLIGHT OF REFUGEES

There are communities all over the world who are forced to leave their countries and seek asylum in some other countries. Most of them are escaping the repressive policies of the ruling State, or genocide by an ethnic group, a situation of war, or famine. The problem of refugees is not merely an international phenomenon. It can well be a domestic one caused by internal disturbances. The involuntary migration of large number of Kashmiri Pandits to Jammu and Delhi is one example of such domestic forced migration.

To be displaced from one's place of birth, growth and the family is traumatic enough. Once the refugees reach the country of refuge seeking asylum, what right do they enjoy? Well, of course there is also the question of the rights that they have been denied, which is the cause for their fleeing home and seeking asylum elsewhere. We will be examining these issues, in this section of this unit.

Soon after India's independence (1947) very large number of people who were subjected to various forms of violence and torture in the newly born Pakistan, fled to India as refugees or displaced person. India made all out efforts both at governmental and non-governmental levels to rehabilitate them. They were soon absorbed as part of Indian society without any discrimination, and with full dignity and respect. But all refugees are not that lucky. The Urdu speaking people who migrated to Pakistan are still treated differently as Muhajirs.

After the occupation of Afghanistan by the Soviet army in the end of 1979, a large number of people fled into Iran, Pakistan and even India. The UNHRC provided them all assistance.

In 1933, when Hitler came to power in Germany, a large number of Jews were persecuted and some of them could flee and seek refuge elsewhere.

Sonam Dolma 12, and Dekyi Dolma 10, braved the mountainous escape one spring. For these sisters from south-east Tibet it was a desire not to remain a burden on their mother and to distance themselves from the local bullies which made them to head towards Dharmasala in India.

Convinced that her children would be better off in Dharmasala, their mother accompanied them till Lhasa where for two months they offered prayers and then they set off with a relative who had been to India before. Their first journey was a two-day bus trip from Lhasa to Dram, Tibet's border with Nepal.

From Dram the girls were on their own except for a Nepalese guide. Their relative meanwhile, went ahead by bus, armed with a Chinese travel visa. The two followed the paid escort in the pitch darkness. The three figures walked mostly at night, resting by day lest they should bump into armed Chinese patrols. At times the guide, and at other times, Sonam Dolma carried exhausted Dekyi on their backs through the insect infested forest, wind swept valleys, snow covered passes, and treacherous narrow tracks.

They eventually reached India, and went to Dharamsala after several months. Dekyi is sitting despondently, on the steps of the Tibetan Reception Centre, eyeing with envy, other kids cuddling up to their mother.

(Source: *Tibetan Bulletin*, July-September 1998)

Several nations of the world have been experiencing the phenomenon of refugees. To some extent or other, a need has been felt to have a global approach to the problem. As a result several international conventions and protocols on the problem of refugees have been adopted such as the: 1951 and 1967 UN conventions, in the 1969 by the Organisation of African Unity, and 1984 at Cartagena. On the question of stateless persons there is the 1954 UN Convention. Let us have a brief look at them and see how far they have been able to help the refugees, in securing their human rights.

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## 11.7 INTERNATIONAL INITIATIVES ON THE PROBLEM OF REFUGEES

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The rights accorded to the refugees stem from the Universal Declaration on Human Rights—which lays down that....”the UDHR is a common standard of achievement for all peoples and all nations, to the end every individual and every organ of the society, keeping these declarations constantly in mind, shall strive by teaching and education to promote respect for these rights and freedom by progressive measures, national and international, to secure their universal and effective compliance.”

These right are derived from the inherent dignity of the human beings and they can be achieved if suitable conditions are created and provided to the members.

### 11.7.1 Who is a Refugee?

In this context of inherent dignity, a refugee is one who is denied this and the freedoms which underlie it. The various UN conventions define the refugee as:

- *a person who is outside his/her/ country of nationality*
- *and has well-founded fear of persecution*
- *for reasons of, race, religion, nationality, membership of a particular social group or social opinion and,*
- *because of that fear he/she cannot return to his/her country.*

### 11.7.2 The UNHRC

In January 1951 The General Assembly established the United Nations High Commission for Refugees as non-political humanitarian organization. Their first task was to help more than one billion people who were displaced in two global wars.

UNHRC's primary purpose is to safeguard the rights and well being of the refugees. It ensures that everyone can exercise the right to seek asylum and find safe refuge in another State, and to return home voluntarily. By assisting refugees to return to their own country, UNHRC seeks durable solutions to their plight. By virtue of its activities UNHRC also promotes peace and security, developing friendly relations among nations, and encouraging respect for human rights and fundamental freedoms. Thus, UNHRC's approach towards refugee problem is two-fold (i) to provide international protection to refugees and alleviate their plight in a practical and effective manner, and (ii) provide durable, long term solutions to the problem of refugees through a proactive role in solving refugee problems in cooperation with various governments.

**Various International Instruments Relating to Refugees are:**

- **International Bill of Rights**

- Convention Relating to the Status of Refugees
- Protocol Relating to the Status of Refugees
- Agreement relating to Refugee Seamen
- Protocol Relating to Agreement Relating to Refugee Seamen
- United Nations Declaration on Territorial Asylum
- Convention Relating to Status of Stateless Persons
- Convention on the Reduction of Statelessness
- Geneva Convention Relating to the Protection of Civilian Persons During war-time
- Convention on the Rights of a Child
- Convention on Elimination of all Forms of Discrimination Against Women

### 11.7.3 UNHRC in India

India is not a signatory to the 1951 Geneva Convention on Refugees. Neither does India have any refugee specific legislation in its existing legal system. In such circumstances, the UNHRC has a pivotal role to play in assisting and protecting refugees who seek asylum in India.

The refugees are dealt with under the **Registration of Foreigners Act (1939)**, the **Foreigners Act (1946)** and the **Passport Act (1967)**. They are dealt with through ad-hoc administrative decisions and related domestic law concerning passports, entry, stay and exit from Indian territory. India has signed other protocols and ratified some of the other instruments of human rights. Yet it does not have a comprehensive policy and guide line on the issue of refugees.

As we mentioned earlier, UNHRC performs important functions in protecting and securing the rights of refugees specially, given the lack of clear guidelines in India. It performs this role with active cooperation and involvement of local implementing partners such as **YMCA, VHAI** (Voluntary Health Association of India) **PILSARC** (Public Interest and Legal Studies Research Centre) It interacts closely with the Ministry of Home Affairs (MHA) and The Foreigners Regional Registration Office (FRRO). It also works in close cooperation with statutory bodies like the NHRC (National Human Rights Commission).

#### Check Your Progress 3

**Note:** (i) Use the space below for your answers.  
(ii) Check your progress with the model answers given at the end of the unit.

1. What are the various solutions offered by UNHRC for the refugees?

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2. What is the source of mandate given to UNHRC?

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3. What are the implementing partners of UNHRC in India?

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## 11.8 LET US SUM UP

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In this unit we have discussed the situation of such vulnerable groups as the aged, the disabled and the refugees. These people also have a right to lead a life of dignity.

In the first section, we talked about the elderly. The 21<sup>st</sup> century has been characterised as the 'graying dawn' which means that there is going to be an increasing number of older people comparatively speaking. You can easily guess that with these increasing graying population and dwindling support systems, the situation is likely to grow alarming very soon. There have been various attempts by the State and other civil bodies to attend to these problems. In this unit we have attempted to look at some of the provisions, policy measures and rights of the older people in India.

Our next section deals with the problems of the disabled. Disability can be experienced in various ways, not only is it strictly anatomic or physical but mental as well. In this section, the term 'disability' itself has been discussed since it covers a whole range of disabilities.

Depending on the specific disabilities that a person suffers from, specific measures can be taken to help them to lead a normal life.

In the last section, we discussed about the growing problem of refugees. Refugees have been forced to leave their homelands and suffer, for no fault of theirs. They too have a right to live a life of dignity. We examined some of the declarations, conventions and bodies which address the problems of displacement.

We hope that as an individual seeking information on human rights, you analyse the situation of these vulnerable groups in their respective contexts and critically evolve strategies to help them fight for their rights. This is possible wherever you may be if you have concern for fellow human beings and an interest to help.

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## 11.9 KEY WORDS

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<b>Asylum</b>	: Sanctuary or protection provided, for those who are pursued out of their state.
<b>Chronic</b>	: Habitual and persisting over time, like in an illness.
<b>Convention</b>	: A formal agreement and reflecting between nations.
<b>Demographic</b>	: Statistical data which show compositions and indications such as age, birth, death, life expectancy, etc. of huge populations.
<b>Genocide</b>	: Deliberate extermination of a group of people – an ethnic, religious group or a nation, etc.
<b>Impairment and Enabling:</b>	Something which damages or weakens someone. Not having a leg, for instance is an impairment for walking, providing a crutch, an artificial leg or a wheel chair can be enabling for walking.
<b>Vulnerable</b>	: Someone or something that is exposed and easily prone to harm. Helpless people like children or old people, for instance.
<b>Condescension</b>	: Patronizing attitude
<b>Psychosomatic</b>	: Mental, not physical, in origin.



## 10.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

### Check Your Progress 1

1. Given below are a couple of examples. You must add to these examples from your own observation of surroundings. In cities, where sometimes you find working couple, you will often find that the old person, a grandfather or grandmother is not taken to the hospital, despite growing illnesses.
2. Elderly people do contribute enormously to the societies, in ways which may not be easily discernible or noticeable. For instance, they provide counselling and advise, which because of their vast experience can be valuable in learning process. They are repository of variety of old knowledge, like home and herbal remedies for ailments etc. Think of other ways in which old people contribute to society.
3. To some extent, we can say that older people are better taken care of in rural areas. The traditional extended family is still operational and in that, the old people enjoy a certain stature and dignity. People have more time than in the cities. Communities have face to face closer interactions and so there is less of the anonymity, unlike in the cities.

### Check Your Progress 2

1. To some extent it can be argued that by excluding and segregating the disabled people, one is marginalising these people and that they are not part of the mainstream, and, therefore, will never be treated as normal. At the same time, special schools will give them an opportunity to be one with their own kind. It also may help in attending to special learning needs of people with specific disabilities. Like we have blind schools, etc.

Why don't you do a small survey?, talk to the people with certain disabilities and others as to whether there should be special schools or not.

2. If you are working in an institution, ensure that there are ramps, instead of only steps, so that a person with wheelchair can be mobile.

The above is one example. Think of several such possible ways in which disabled people can be helped and write them down as your answer.

3. We are sure, you have encountered at least once when you saw someone who is disabled is also being humiliated. So write what you have witnessed as your answer.

### Check Your Progress 3

1. The solutions offered by UNHRC to the problem of refugees are:
  - (i) to provide international protection to refugees in a practical and effective manner. There are various instruments which relate to refugees (See text)
  - (ii) to provide durable long term solutions by involving cooperation of different nations and governments in a practical way.
2. The rights accorded to refugees stem from the Universal Declaration of Human Rights. The rights are derived from the inherent dignity of human beings which can be realized only if suitable conditions are created. This gave the mandate for establishment of UNHRC.
3. In India, the UNHRC works with active cooperation of such bodies as : YMCA, VHAD (Voluntary Health Association of India), PILSARC (Public Interest and Legal Studies

Research Centre). It also interacts with Ministry of Home Affairs, Foreign Regional Registration Office, and such statutory bodies like NHRC (National Human Rights Commission).



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Block

# 5

## THREATS TO HUMAN RIGHTS

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## UNIT 12 HUMAN RIGHTS AND THE STATE

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  - 12.1 Introduction
  - 12.2 Anecdote
    - 12.2.1 Inferences from the anecdote
  - 12.3 Fundamental Rights and Directive Principles of the Indian Constitution
  - 12.4 Violation of Individual Rights: Acts of the Executive
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  - 12.5 Democratic Rights
  - 12.6 Judicial Activism and Violation of Rights
  - 12.7 Understanding Human Rights in a Wider Perspective
  - 12.8 Let Us Sum Up
  - 12.9 Key Words
  - 12.10 Answers to Check Your Progress Exercises
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### 12.0 OBJECTIVES

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We have been studying that protection of human rights is one of the prime duties of a liberal welfare state. Besides knowing in what ways the State can protect the rights, we have also observed instances of violation of human rights by the agencies of the State.

In this Unit, we will most importantly be:

- analyzing a recent real episode of human rights violation in Delhi.
- looking at ways which give the rule of law power over the executive.

After reading this unit you would be able to:

- know how the State violates individual's human rights
  - recognize the expanding interpretation of Human Rights
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### 12.1 INTRODUCTION

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Human Rights constitute the foundation for men and women to lead a civilized life. Liberal democracies all over the world have guaranteed a variety of rights so that their citizens lead a healthy life. In India, demand for fundamental rights had been voiced during the nationalist struggle itself. So, after 1947, the Constituent Assembly took upon itself the responsibility of framing chapters on Fundamental Rights and made it a pivotal point for the life of its citizens. It was accorded so much importance that all other provisions and activities came to be either directly or indirectly influenced by it. However, over the years, the succeeding governments both at the Centres and in the States began to curtail the citizens' freedoms because through various legislations. Many of such acts became harmful to the very personhood of individuals. We will study in this unit how individual freedoms become abridged. We will also be looking at which agencies curtail the human freedom and civil rights. At the same time; we come to know about gradually expanding meaning and interpretation of Human Rights.

## 12.2 ANECDOTE

Ramzan lived and died in the jhuggis of New Seemapuri in Delhi. He was a rag picker who hailed from Bangladesh and came here as a refugee - maybe even an illegal immigrant. Ramzan did not only have to fill his own stomach, he had to support his family back home. On top of that fact his very citizenship was in doubt, he was also a resident of what is officially designated as an unauthorized settlement - a jhuggi jhonpri (hutment) cluster. Caught gambling one day, he was picked up by the police and died in custody. The Sub-Divisional Magistrate's inquiry established it as a case of accidental death. Despite public protest, there was no investigation ordered into Ramzan's death in March 1992. [*Capital Crimes: Deaths in Police Custody, Delhi 1980-1997, People's Union for Democratic Rights (PUDR) Delhi, March 1998*]

### 12.2.1 Inferences from the Anecdote

There are a number of strands in this little story that will help us to understand the overpowering role of the machine called State in the violation of rights. Human rights, or rights in general, are in classical liberal political theory, attributes of the human individual. They are considered to be therefore, an inalienable part of the individual's person. Protecting these rights as the guarantor and executor, is the state. It is the state and the law that is supposed to ensure that the right of every person is protected from violation by others or by the state itself.

And yet, we see here a series of violations - all committed by the long arm of the state:

1. An individual who is probably a refugee of the Bangladesh war and came to live in this country for safety and livelihood, and whose stay here was sanctioned as a consequence of a formal understanding between the two governments, suddenly becomes "an illegal immigrant". There is no proof required. There can be no proof - if at all the person held a piece of identification paper at any time in the past it was probably nibbled away by mice or washed away or lost in the jhuggi - who knows! In the days when this drama was enacted there was a big campaign ongoing to turn the refugees into "infiltrators". This drama was already acquiring a different form - that of common sense. In this "common sense", a combination of being Bengali (not necessarily Bangladeshi!) and Muslim readily makes one into an infiltrator. (Today that common sense is in place and the fate of the Ramzan's is much more seriously threatened today than it ever was.)

2. The individual concerned was picked up for a petty offence - and it is not even clear why gambling is an offence when it involves petty sums whereas it becomes a respectable profession while dealing in crores in the financial markets. For this offence, the individual was beaten to death. The state - the guarantor of his rights - itself turned to be the enemy of his very person. Was it because Ramzan was a non-citizen, an illegal "infiltrator", who had to be deprived of his life - or that his death simply did not matter as a consequence? Would the state and its personnel have been any bit more respectful of Ramzan's right to life, had he been a *bona fide* citizen? Considering the record, the number and the ways in which the apparatus of the state deprives individuals of their lives - this is not a guesswork that can be sustained. Human rights groups in Andhra Pradesh, for instance, have recorded nearly 900 killings by police encounters during 1990 and 1996. (*In Search of Democratic Space*, Committee of Concerned Citizens, Hyderabad, August 1998.) We shall see below the reality of the phenomenon of "encounters" as exposed by the Tarkunde Commission many years ago. The fact is that it really does not differentiate between its citizen and non-citizen victims beyond a point.

3. Ramzan could well have been Ram Chander, but as long as he was a jhuggi dweller this is an aspect that does not matter. The jhuggi jhonpri is an "unauthorized" settlement - beyond and

outside the law and hence punishable. We shall also see below how the question of human rights denial to the residents of urban slums and squatter settlements happens in a more generalized form.

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## 12.3 FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF THE INDIAN CONSTITUTION

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There are seven freedoms provided as fundamental rights in the Indian Constitution that form the basis of all human rights available to the Indian citizen. They are encoded in Articles 14 to 22 as you would have already seen in the earlier block. You may also have read in the earlier block that there are, apart from these, certain other rights like those against exploitation, of freedom of religion and belief, of cultural and education that are available to individual citizens and groups of citizens. There are also the Directive Principles of State Policy whose provisions are, of course, non-justiciable (that which can not be challenged in a court of law.) However, even the justiciable fundamental rights enshrined in it can be abridged and contravened in a number of ways - legal and illegal. We shall see some of the ways in which these happen.

### Check Your Progress 1

1. When was the Bangladesh Liberation war fought?

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2. What did the Tarkunde Commission Enquire into?

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3. Are the Directive Principles of State Policy justiciable?

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## 12.4 VIOLATION OF INDIVIDUAL RIGHTS: ACTS OF THE EXECUTIVE

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The Constitution itself gives the Executive and the Legislature enough opportunities to limit, suspend and annul them in spite of the existence of Fundamental Rights. Rule by ordinances can be carried on by extending these term after term. Emergency can be imposed either under the pretext of external threat or of internal disorder.

One of the major ways in which rights of individuals may be annulled is through the provision of Preventive Detention. According to the *State of Human Rights in India, 1996* (Legal Resources for Social Action, Chengalpattu, undated), about forty preventive detention laws exist in the statute books in India. The first of these was *The Preventive Detention Act, 1950*, which

was in force till 1969. *The Armed Forces (Special Powers) Act 1958* has been used extensively in the seven states of the North-East. *The Maintenance of Internal Security Act, 1971* was in force till 1978 and was used extensively against the political opponents of the then existing regime. Laws like the *Defence of India Act* were enacted after the promulgation of internal Emergency in June 1975. *The Jammu and Kashmir Public Safety Act* came into force in 1978, the *Assam Preventive Detention Act* and the *National Security Act, 1980* were both instituted in 1980 and the latter still continues to exist in the statute book. *The Armed Forces (Punjab and Chandigarh) Special Powers Act* and the *Punjab Disturbed Areas Act* were passed in 1983, followed by the *Terrorist and Affected Areas (Special Courts) Act, 1984*. A full decade after the Emergency, probably the most notorious of them all - the TADA or the *Terrorist and Disruptive Activities (Prevention) Act, 1985* came into force. The last mentioned law created new procedures, new hierarchies, new restrictions on the life and liberties of the people, according to the Report. An individual can be kept under detention for two years and this period can be indefinitely extended on the same grounds, any number of times. It shifted the onus of proof on to the accused completely upturning the fundamental norms of justice. Ordinary courts were barred to individuals arrested under the Act. *The Jammu and Kashmir Disturbed Areas Act, 1990* also vests the armed forces with huge arbitrary powers to arrest and abrogate the civil liberties of individuals.

It may in fact, be useful to remember that in the years since it came into force, over 400 writ petitions, special leave petitions and appeals challenging the constitutionality of the TADA were filed in the Supreme Court. The National Commission on Human Rights also actively campaigned for the repeal of this law. The appeals were finally heard by a constitution bench of the SC in February/ March 1994 after what has been termed as "nine years of legislated violence" (*Striking Terror- The Tamil Nadu Prevention of Terrorist Activities Bill and Its Implications*, PUDDR, Delhi, July 1998) and three judgements were delivered - the majority judgements by three judges and two minority ones. The main judgement noted that the business of notifying entire states as 'terrorist-affected' areas and of never denotifying was wrong and could only be done on the recommendations of a review committee. It also noted that the definition of 'abetment' was too wide and could include anyone who had no knowledge that s/he was assisting terrorists. A later judgement also ruled that the entitlement to bail was an 'indefeasible and absolute right' of an accused if the chargesheet was not filed within 180 days of arrest. These aspects of the judgement of the highest court of the land will give you an indication of how the preventive detention provisions are used or misused. How without filing of charge sheets, the accused are kept in detention, refused bail and how definitions of 'abetment' are so wide there may actually be more people behind bars who may have nothing to do with terrorist activities. If areas are notified arbitrarily and without any compulsion to denotify within a specific period, the area of operation of such a law can be extended at will. The latest in the series of such preventive detention laws is *The Tamil Nadu Prevention of Terrorist Activities Bill (POTA)* that actually flouts all the recommendations of the above-mentioned TADA judgement. In fact, the same TADA judgement states that 'terrorism' only falls in the ambit of 'Defence of India' and therefore is the sole jurisdiction of Parliament. Yet, the POTA is introduced by a state government which is legally not competent to do so. An indication of the arbitrariness of the preventive detention laws can be had from the fact that in nine years, of the 76,166 persons arrested only 843, that is 1.11 percent could be convicted. Let us bear in mind that in these convictions, 'confessions' made to police officers were also considered as evidence - a matter on which subsequently the Constitution Bench of the SC was divided 3:2. Despite this, no evidence could be brought against over 38,000 who were either discharged or acquitted.

#### 12.4.1 Encounters and Custodial Deaths, Torture

We have referred to 'encounters' above in connection with the 900 killings in AP in the first six years of the 1990s. It was during the Janata Government's rule in April 1977, that a commission



headed by Justice V.M. Tarkunde was set up by Jaya Prakash Narayan as the head of the Citizens for Democracy, to inquire into over a hundred such cases reported in which naxalite activists were killed during the Emergency. In the course of its painstaking investigations, the Tarkunde Commission reached the conclusion that the 'encounters' were stage-managed and that all of them were cold blooded murders. It was actually discovered that the police themselves picked up political activists, took them to the jungles, tied them to the trees and shot them dead and then issue statements that they had to open fire in self-defense. The dead bodies were cremated or buried and never handed over to the relatives. (P. A. Sebastian, "The Shifting Modalities of Struggle - The Setting up of the Human Rights Tribunal" in S. Kothari and H. Sethi (ed.) *Rethinking Human Rights*; New Horizons Press, New York and Lokayan, New Delhi 1989). In the two reports submitted by the commission, it was made clear that while the victims were killed in cold blood, in none of the cases did the state administration hold an inquest as stipulated under Section 174 of the Criminal Procedure Code. This was pretty much the pattern of political killings in the urban setting of West Bengal in the period after 1969 especially after 1972, and the art was perfected later by the AP police. After 1980, this practice has been widely used in Tamil Nadu also. It was in the aftermath of a bomb explosion in August 1980 near Tirupattur of North Arcot district. "In the thirteen months that followed, 18 young men joined the ranks of liquidated 'extremists'. Half of them were dalits, the rest of them belonged to the most backward castes. All of them came from peasant and artisan stock. Thirteen of them were killed in 'encounters'...; one succumbed to brutal attack of the police; another was tortured to death in broad daylight; one was pushed down from a running vehicle and two persons 'disappeared' from police custody." (K. Manoharan, "Encounter Deaths in Tamil Nadu" in A.R. Desai ed. *Violation of Democratic Rights in India*, Popular Prakashan, Bombay 1986).

Already in the above descriptions you can see the lurking phenomena of custodial deaths and Torture. The very act of being lodged in jail is one of a series of deprivations of various human rights - of fundamental rights guaranteed by the Constitution. Prisoners do not lose their human/fundamental rights simply because they are held in incarceration as their "rights are inherent in them and inalienable". "Human rights are to be associated with life not with liberty." (LRSA report) This is the profound meaning of the philosophy of human rights. The Supreme Court of India in the *Charles Shobraj vs. Tihar* has affirmed that prisoners have all the rights of any free citizen *except to the extent that the situation of incarceration truncates his ability to enjoy them to the fullest*. Apart from the various international conventions against torture and regarding the treatment of prisoners, there are rights enshrined in Part III of the Constitution, the Prisoners Act, 1894 and the Jail Manual. Apart from solitary confinement, fettering, keeping prisoners hungry, abusing women prisoners and such like, there are extreme cases of perversity. In one shocking incident that came before the Delhi High Court, a jail superintendent had engraved his name with red hot iron on the body of a prisoner when the latter refused to pay a bribe. So the 'institution' of torture is not meant for the political opponents of the regime alone but exists at a more quotidian and generalized level. Many of the deaths which take place as a result of such torture and third degree methods, occur after the victims are released because the police knows that after the merciless beatings it is hazardous to keep them in lock-up, that they can die any moment. In some investigations conducted in the post-Emergency period, it was discovered how torture has actually been institutionalized, especially in Punjab and Haryana in the form of the Central Interrogation Agencies (CIA) - who true to their name specialized in interrogation and not investigation. (Sudip Mazumdar, "Deaths In Police Custody" in A.R. Desai, *Op.Cit.*) Since many of those are simply picked up and the arrests were not even on record, when the victim died, the CIA simply denied having seen him/her. Nor, therefore, is torture something that exists only in the stories of the nazi concentration camps or of Stalinist labour camps. Normal democratic societies like India have as much claim to it as anybody else.

It may also be interesting to note that the overwhelming majority of prison inmates are under trials - the figure sometimes going up to as high as 90 percent, but on the average remaining near 60 to 70 percent. It has been estimated that although most of them are there for petty offences, they are lodged in jails as under trials for periods longer than would be their maximum punishment under the law for that particular crime. In the case of 30 under trials who were held in Bombay jails for over 7 years, the legal punishment for their offences were far less. This incident came to light in October 1995 and the High Court ordered their release following the publication of an article in the press. Many of them are in jails because, says the LRSA report, they could not purchase their freedom with bail - the procedure for which is highly unsatisfactory and suffers from a property-oriented approach. Overcrowding in these jails is the norm and the conditions are therefore unhygienic and simply unlivable. The **Mulla Committee**, headed by former justice A.N. Mulla appointed in 1980, noted in its reports submitted in 1983, that the majority of the people lodged in jails were people belonging to the underprivileged sections - and mainly from rural and agricultural backgrounds.

Even as India ratified the international convention against torture in June 1997, after dithering for 13 years, the number of custodial deaths countrywide rose sharply. According to the Home Ministry figures, as compared to 444 deaths in 1995-96, there were 889 deaths in 1996-97 government (these figures include those in judicial custody). Of these 889, 700 hundred deaths occurred in judicial custody alone. The PUDR has documented 93 cases of custodial deaths between 1980 and 1997, in the capital city itself. In the case of women, the abuses often take the form of **custodial rape**. There have been a number of cases that have come to light in recent years and some of them such as the notorious Rameeza Bee and Mathura rape cases which eventually became landmark events in the growth of the women's movement in the country. These were issues that provided a crucial mobilizational impetus, along with questions of dowry deaths, in the early 1980s, for the emergence of a strong and politically vigorous women's movement.

In the cases of such deaths/torture/rape, we get a glimpse of a dimension of Ramzan's story. Most of them live precarious lives as migrants struggling for adequate livelihood. Any attempt to find a livelihood, or create one, says the report, involves the violation of one rule or another - and failure to do so pushes some of them in to the world of petty crimes. In the ten cases of custodial rape investigated by the PUDR between 1989 and 1994, too, we can see the same socio-economic profile of the victims - wife of autorikshaw driver, Bangladeshi immigrant, wife of DTC driver, wife of factory worker, Nepali migrant, Himachali migrant in resettlement colony and so on. (*Custodial Rape - A Report on the Aftermath*, PUDR, Delhi, May 1994). In this connection, certain amendments to the Criminal procedure Code that have been hanging fire are now seen to be in urgent need to be pushed. For over a decade, these have not been considered but now some of them are being segregated and considered. These are ones that specially relate to the **rights of women prisoners**. They relate to prohibition of arrest of a woman after sunset and before sunrise except in exceptional circumstances, casting obligation on the police to give intimation of the arrest of the person and the place where s/he is being held to anyone nominated by him/her and medical examination of a person accused of rape. Occasionally the urgency of the situation is recognized and adhoc decisions are taken to rectify the situation as in the case of the Madhya Pradesh government's decision in 1995 to release all undertrial women who had spent more than five years in jail.

1. What were the distinguishing features of the TADA?  
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2. What important findings have been made by the LRSA Report?  
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3. When did India ratify the International Convention against Torture?  
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**What is "Torture"?**

According to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment of the UN General Assembly Resolution 39/46 of December, 10, 1984, "Torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing or is suspected of having committed, or intimidating or coercing him or a third person, for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

*Supreme Court's interpretation of immunity from cruel and unusual punishment.* As there is no specific provision in the constitution of India against cruel and unusual punishment, the Supreme Court has given immunity after a combined reading of Articles 14, 19, and 21. The Supreme Court is for using torture and cruelty to suit a matured, advanced and progressive society with standards of decency in vogue.

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**12.5 DEMOCRATIC RIGHTS**

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But let us now look beyond these specifically civil liberties issues - issues that are framed in the Fundamental Rights section of the Indian Constitution and are therefore justiciable - to the more general democratic rights issues. There may or may not be a direct contravention of fundamental rights involved here but they are affected nevertheless, howsoever indirectly. Here we cannot catalogue all such legalized attacks but only indicatively refer to the more notorious central legislations/ordinances.

It was in the beginning of the 1980s, especially after the fall of the Janata Government, that some of the most stringent news laws were enacted. We have already mentioned the NSA being enacted in December 1980. Close on its heels, came the *Essential Services Maintenance Act (ESMA)* in



September 1981. It was meant to check labour unrest particularly in the so-called essential services - fourteen of which were listed in the act. As a matter of fact, in a couple of months before it became an act, it had already been promulgated as an ordinance. Strike, the Labour Minister had proclaimed, is a luxury in a poor country! And what were the essential services? Any service connected with post & telegraphs, telephones, railways, airports, shipping, customs, armed forces, hospitals, public conservancy and sanitation, banking, oilfields, mint-security-press and elections to the parliament and state legislatures were all pronounced to be essential. One could of course stretch the meaning of "any service connected to" in any way convenient. Strike, of course was defined as "cessation of work", "refusal to continue to work" or even "refusal to accept employment", worse, also 'refusal to work overtime'. More importantly, it included any other conduct "which is likely to result in cessation or substantial retardation of work in any essential service." As was rightly remarked by a scholar, a farmer in Bengal refusing to sell paddy at unremunerative prices, a labourer working on Asiad refusing to work unless paid minimum wages or a tribal in Chhattisgarh refusing to fell timber for a pittance, a teacher refusing to accept employment as a police informer, a journalist refusing to write government handouts - all could be charged under this act with either obstructing production or the normal work of the government. (Suresh Sharma, "Strike-ban Ordinance: A Lawless Law" in A.R. Desai, Op. Cit.). Shortly after that, the government proposed to drastically amend the *Industrial Disputes Act 1947* and the *Indian Trade Unions Act 1926*, and to introduce *The Hospital and Other Institutions (Settlement of Disputes) Bill*. The amendment to the ID Act sought to remove hospital, educational institutions and such others from the purview of the Act, which were sought to be covered by the separate Act mentioned above. It also made strikes and other form of protest illegal and punishable under the law. The amendment to the TU Act gave wide powers to the Registrar of Trade unions in terms of granting recognition. The Hospital and Other Institutions Bill sought to introduce a separate bureaucracy to deal with and arbitrate disputes within these institutions - appeals against whose decisions were not to be allowed. Many of these proposals eventually fell through in the face of stiff resistance and opposition from parties, trade unions and the public at large. Some other local ones like the *Bihar Press Bill* which sought to place severe restrictions on the freedom of the press - an extension of the freedom of expression - had also be withdrawn due to public outcry and large-scale protests.

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## 12.6 JUDICIAL ACTIVISM AND THE VIOLATION OF RIGHTS

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Strange though it may sound, some of the more recent attacks on the human rights - defined in the wider sense - of sections of the people have come from orders from the hyperactive judiciary, the very institution entrusted with the task of protecting them. The most well-known cases are those where there has been recently, an open conflict between two different sets of rights: say, the right of the people of Delhi to a clean environment and the right of the workers to their livelihood. Though the apparent conflict between the demands for a clean environment and the rights of workers or the poor has emerged as a more generalized one in recent years, it was in Delhi that it recently acquired a dimension that forced it onto the arena of public debate. The Supreme Court in its order in July 1996 order the closure of 168 hazardous and noxious industries. Immediately the result was that close to 50,000 workers were on the streets without jobs. Many starved, some attempted/committed suicide and one of them committed public self-immolation. The question was: why did the court, in the eleven years of the case proceedings not once ask the workers' side of the story; why did it not try to work out any other method in any serious way; why did it not make any explicit demand from the offending, profit-making owners, to submit a detailed plan for relocation stating clearly what they would do with the workforce? It was felt therefore, that the conflict between two sets of rights was not all that real - that the real conflict was between two different interests, namely, that of profit and wages.



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## 12.7 UNDERSTANDING HUMAN RIGHTS IN A WIDER PERSPECTIVE

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In subsequent times, the increased awareness of human rights has led to many other important issues being framed as human rights questions. So the refusal to hold elections to various representative bodies, attempts to gag the freedom of press and expression, the specific attacks on women's rights, the question of dalits' struggle for dignity and self-respect have all been seen as constituting the wider field of human rights violations. The displacement of tribal and other rural populations from their land by mega-development projects have also increasingly been articulated in the language of human rights - of the right over their land and resources and the right, therefore to be consulted in the overall orientation of development. The right to peaceful and dignified life of people of various communities is also widely seen as threatened by endemic communal and sectarian violence under the benign eye of the state. The massacres of Muslims in Maliana perpetrated by the notorious Provincial Armed Constabulary of UP, or the massacres of the Sikhs in Delhi in 1984, under the watchful eye of the police have been cited as important indicators of the fact that communal strife is no longer about a clash between two otherwise equal communities - that the state is implicated in every one of these.

### Check Your Progress 3

1. State whether the following are true or false:

(a) The ESMA came into force in 1981,

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.....  
.....  
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(b) The National Security Act came into force in December 1977.

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## 12.8 LET US SUM UP

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We had seen through a real incident, how a poor slum dweller became a target for the police and how he was killed after being victimized. We had also studied the extent of deaths in police custody and the number of tragedies suffered by women prisoners in jails. Added to these human rights violations committed by the Executive against the codes of manuals and recommendations of different committees, we also witness to Judiciary's expanding role which reflects elitism more than concern for the poor. All these have a common thread - that is, in the name of protecting the interests of the State or a group of people, larger interests of people, mostly of the poorer sections and the under privileged have become compromised. On the one hand, we have the civil liberties organizations expanding but on the other there is an increasing violation of rights by the State and its agencies. Although such a development is only expected of democracy with an active Civil Society, yet, with globalization, the sphere of citizens' rights also needs to be enlarged. Good and responsible governance in today's world ensures that both the state and the citizen - groups constantly engage in mutual consultation to arrive at consensus. To ensure this, larger number of citizens should become educated of their rights and duties. An enlightened citizenship is the best guarantee of the Fundamental Rights enshrined in the Indian Constitution.

Fruits of such a project will come in the form of more political space (than hitherto enjoyed) to the people.

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## 12.9 KEY WORDS

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**Detenue:** A person who is detained for arrest.

### Work exercises

Carefully note the arguments of the Supreme Court of India and the State governments of M.P. and Gujarat and those of the Narmada Bachao Andolan. (NBA) about the need for Big Dams in the country.

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## 12.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your progress 1

1. 1970-1
2. Tarkunde Commission enquired into 'encounters' and deaths
3. No, they are non-justiciable.

### Check Your Progress 2

1. The distinguishing features of TADA were: its new features and characteristics, setting up of new hierarchies, and imposing new restrictions on the life and liberties of the people like detention of an arrested person upto 2 years and grounds for expansion of his/her imprisonment. The arrested were also prevented from approaching ordinary courts to seek justice.
2. It recommended that human rights be associated with life and not necessarily with liberty. Thus the meaning of the philosophy of Human Rights was defined.
3. India acceded to the Convention against Torture in June 1997; it remains to be ratified however.

### Check Your Progress 3

1. (a) True      (b) False

# UNIT 13 THREATS TO HUMAN RIGHTS FROM SOCIAL INSTITUTIONS

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## Structure

- 13.0 Objectives
- 13.1 Introduction
- 13.2 Denial of Rights to Women Within Their Families
- 13.3 Violence Within the Family: Responses from Women's Activists
- 13.4 Problems of Realising Legal Safeguards
- 13.5 Communalisation of Domestic Violence Against Women
- 13.6 Muslim Single Women's Difficulties
- 13.7 Result of Communalisation of Laws and Politics
- 13.8 Let Us Sum Up
- 13.9 Keywords
- 13.10 Answers to Check Your Progress Exercises

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## 13.0 OBJECTIVES

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After reading this Unit, you would be able to:

- identify which institutions violate women's rights,
- understand how women's rights are violated within the confines of their homes,
- find out why the police refuses to register cases regarding domestic violence,
- appreciate difficulties faced by women's,
- activists in getting women speak up, inspite of launching mass movements,
- understand how communal politics affects women's personal lives in Mumbai city,
- figure out the specific social problems of Muslim single women in Mumbai city, and
- understand what common difficulties women and children are often faced with.

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## 13.1 INTRODUCTION

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By now you may be aware that the very idea of rights is meant to mark out a sphere where the individual is protected from violation by others. In other words, it is meant to delimit the ways in which the individual can be subjected to various violations by others - other individuals, the state, or other social institutions. This means that the individual is not in the first place autonomous, s/he does not *have rights* to begin with; they are meant to demarcate a desirable sphere of individual freedom or autonomy. It has been the contention of the women's movement in India that the family as a social institution forms a major source of human rights violation, especially in relation to the rights of women. In addition, social institutions including the community, form a major source of violation of justice and equality. The oppression that women face within these structures is often made **invisible**, as the **family** and the **community** remain outside the realm of focus, being consigned to the '**private**' domain. Now, there can be a myriad ways in which the rights of individuals maybe violated within either the family or the community (here this term includes caste, religious, or any other form of community). For instance, denial

of children's rights against sexual abuse or of the rights of individual males within a community to, say, marry a woman of their own choice could be some commonplace instances.

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## 13.2 DENIAL OF HUMAN RIGHTS TO WOMEN INSIDE THEIR FAMILIES

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A human rights group notes:

"It is relatively easy to document the exploitation and oppression that women face in our country, particularly women of the labouring class, are subjected to outside the home. But it is a very difficult task to attempt to document their condition within the home. The reason is that here the oppression is **invisible** for the most part; it takes place within the four walls of the home, and is treated as a "family" or "private" matter. *The negligence of the rights of women inside the family is due to the fact that the problems of women within the family get personalised...* This individualisation of a social problem is not an accidental outcome of social ignorance, but part of the social values that govern contemporary society." (*Inside the Family: A Report on Democratic Rights of Women*. People's Union for Democratic Rights, (PUDR) Delhi. 1987).

At a general, conversational level, rights are seen as inalienable, and universally applicable. These include the right to life, the right to life with dignity, the right to work; among others. However, for women (and children), the concept of human rights remain somewhat elusive, as they remain embedded within given notions of the private. Violence against women is also a manifestation of unequal power relations between men and women and is reflected in many fields of life. For Indian women, violence takes the form of foeticide, infanticide, dowry-related murders, battering, among others. What escalates the violence is the widespread sanction for violence against women, common in many societies. Through such sanctions, women are controlled and subjugated.

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## 13.3 VIOLENCE WITHIN THE FAMILY: RESPONSES FROM WOMEN'S ACTIVISTS

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Let us begin by looking at some voices of women themselves and from the women's movement on issues seen as private matters. The following extract from a poem talks of violence against them:

"I am Chandrika  
I am Gayatri  
I am Fatima, Banu, Uma,  
I am Jayalakshmi, I am Saraswati.  
I am one of those faceless women who die everyday in your  
morning newspapers and go on to become a crime number in the Police Station  
and then a file to be pushed around in the courts..." (Poem published in *"I cry for help, no one's there..." A Community Campaign to Safeguard a Woman's Right to Live*. Pamphlet by Vimochana, Bangalore.)

Sanction for violence is high when it comes to domestic violence. In India, **domestic violence is defined legally and socially as physical and mental violence perpetuated against a married woman by the members of her marital family, with or without accompanying demands of dowry.** Domestic violence is sanctioned because the family is idealised as a unit where the members get love, support and status. However, this definition of domestic violence



misses out the fact that violence against women within the family is not confined to married women alone, but is experienced by single women on a routine manner. The power of the law relegates such violence to the realm of the unspoken, that is , it invisibilises it. It fails to acknowledge that the family is also often a site of oppression for those vulnerable, in this case women and that a number of crimes against women are committed in the home including assault, harassment, rapes and murders.

In many cases, women struggle against domestic violence (as they do against other forms of violence) in their own ways. Often individual struggles waged within the family are not enough. At this point, the role of interventions by outsider agencies assume some relevance. These may take the form of formal and informal structures. The latter include women's organisations, shelter homes, rehabilitation centres, hospitals and doctors. Formal structures comprise of the Criminal Justice System (henceforth CJS), namely the police and the judiciary.

The issue of domestic violence has been one of the major campaigns of the Indian Women's Movement(IWM), in many cities. Here we will cite the campaigns undertaken more specifically in the city of Mumbai. Even within the women's movement, domestic violence has been understood to include violence perpetuated against a married woman by members of her marital family with or without accompanying demands of dowry. It was during the early 1980s that the issues relating to the violations of women's rights within the family came into public focus and big campaigns grew around them, especially around issues of dowry deaths.

During the course of the 1980's, various women's groups in Mumbai, Delhi and other cities launched a legal and social campaign around the issue of domestic violence.

The response of the Indian State and the then government, in the 1980's, was to strengthen laws that prohibited dowry and to pass a new law that criminalised domestic violence.<sup>1</sup> Section 498 A of the Indian Penal Code made domestic violence a criminal offence.

Then, in the early 1980's, the efforts around the anti-rape campaigns in different parts of the country gathered momentum. Most of the initial cases taken up were those of custodial rape - important among them being the Mathura rape case and the Rameeza Bee rape case. The campaigns yielded some results in terms of generating publicity and the creation of a public debate around the issue. It was in the course of these public debates that even questions of marital rape, that is rape or forced intercourse within marriage, started coming into focus. In Mumbai and Delhi, this campaign was accompanied by the exposure of domestic violence as a reality in the lives of several hundreds and thousands of women. *The Forum Against Oppression of Women* in Mumbai discovered, for instance, in its report *Moving, But Not Quite There...* that protests against marital violence and death exceeded those against rape.

There are several reasons for this. The above publication, for example, noted that this may have been because the sheer number of women who were getting murdered or beaten within their own homes was far more than the women who were getting raped or at least those who were willing to press legal charges. The stigma attached to a rape victim is also, of course, far more than the stigma attached to a battered woman. In addition, there is a greater sense of identification with victims of domestic violence than with rape victims. This perhaps, also had to do, with the experience of violence suffered individually by activists, or a closeness with women who had done so. Their own mothers, sisters, friends had also been facing violence within marriage.

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1. These laws are amendments to the Dowry Prohibition Act, 1961 and the introduction of Section 498A, Indian Penal Code and 113A and B, Criminal Procedure Code. See Appendix for more details.

The experience of Women's Centre, a feminist support centre, aimed primarily at working with women in distress also underlines the fact that violence at home is a "reality cutting across class/ community/ religion/ linguistic lines." In other words, the understanding is that domestic violence is a shared destiny of women within marriage. (Ammu Abraham, Case Studies from the Women's Centre, Mumbai, in Maitreyi Krishna Raj ed., *Women and Violence. A Country Report. A Study Sponsored by UNESCO*. ROWS/SNDT. Mumbai. 1991.)

The focus of the campaigns in the 1980's was to break the silence around domestic violations and violence. Some women came forward, sharing the pain of the violence suffered by them with other women. There was a conscious effort to do so, and through this process, to forge links between all women, those who had suffered and those who had escaped.

You will need to understand that since this entire domain of violence within the family was such sensitive and therefore a forbidden one that most of our information on this issue comes only through the voices of women who were finding their new community by sharing their pain among themselves. There are no academic tracts that make available any kind of 'disinterested' and 'objective' information. One woman wrote about this process:

"I was sharing my deep and painful experiences with a group of women I hardly knew. But I had a feeling that they would understand since they were committed to fighting against the oppression of women. The issues that we were involved with at that time - rape and wife murders - did not affect us directly. I felt that sharing our own personal experiences, problems and struggles would strengthen the group and the bond would become stronger... I thought, 'If I am ashamed to share my personal experience at a broader political level, then I would be a hypocrite.'" (Flavia Agnes, *My Story...Our Story of Rebuilding Broken Lives*. Majlis, Mumbai. 1990 )

The process of breaking the silence was no doubt painful for the survivors of violence, but the newly created groups tried to create a space within which the women could articulate their anguish and regain strength. Support took on several forms. It meant giving battered women shelter, sometimes in the homes of the activists, and helping them find employment. It sometimes took the form of extra-legal action - confronting the husband at his workplace or retrieving the woman's belongings.

The women's movement did not always make a distinction between domestic violence and dowry demands. The demand made by the IWM at a national level was that a law be passed that prevented dowry related deaths and violence. Some sections of feminists have, however, begun to feel that this reflects a myopic vision as placing dowry victims in a special category ends up denying legitimacy and recognition to the need for protection against violence on women generally, under all circumstances.

This critique is aimed as a corrective towards evolving a larger understanding of violence against women than the feminist campaign seem to possess. It encompasses a distinction between violence suffered by married women at a general level and dowry related violence. It also includes a perception that violence against women in the home is not restricted to these two categories. As stated before, single women in the home also suffer violence at the hands of other family members.

## Check Your Progress 1

- 1) Why is the domestic violence against women difficult to document?  
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.....
- 2) What are the forms of violence committed on womanhood?  
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.....
- 3) What was the message of the poem published in "I Cry for Help, No one of there ?  
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.....
- 4) Name the two custodial rape cases against women that caught the nation's attention  
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## 13.4 PROBLEMS OF REALISING LEGAL SAFEGUARDS

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In spite of an enactment of Section 498A IPC, which criminalises domestic violence, women have found that the police refuse to enter cases of domestic violence until they are linked to dowry demands and property disputes. This, in the view of the police, increases the credibility of the case, leading to a number of assault cases to be linked to fictitious dowry demands. What it does is to weaken the case, based as it is partly on falsehoods, leading to acquittals of the accused in court.

A reason put forward for the reluctance of the police to enter cases under Sec. 498A is their stand that most women withdraw such cases. There are several reasons that coerce women into doing so. In many instances, neighbours and family members don't give evidence against the offender, as the matter is seen as a personal issue between the couple. The natal family pressurizes the woman into withdrawing the case with the hope of 'saving' the marriage. There are other considerations as well. Women find that while imprisoning the husband - a potential outcome, if the case is decided in the woman's favor - might serve the ends of abstract 'justice', it may well deny her and the children access to material support from the husband and his family. In other words, the economic vulnerability of women within the household leads to a more general denial of the viability of the law.

The police echoes the social attitude that the marital family should be preserved. The general reluctance to enter cases of violence against women in the home is based at least partly on the desire to preserve the family. This can have different manifestations while dealing with women of different classes. While poorer women are often turned away summarily, middle class women



are advised to return home and not break up the home. The police also threatens clients that they will lose the custody of their children if they leave their house, forcing them into retreat. An activist with a feminist intervention centre points out that not only do the police fail to inform women about their rights, but they also resent the confidence of women who might know the law.

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### **13.5 COMMUNALISATION OF DOMESTIC VIOLENCE AGAINST WOMEN**

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In many cases, generally and especially in Mumbai, the situation in the 1990s had acquired a communal overtone. On the one hand, the general communalisation and violence against Muslims, especially following the violence in communal riots in 1992-3, following the demolition of the Babri Masjid has increased the feeling of isolation and fear. The communalisation has another impact, that has direct relevance to minority women in Mumbai. It might be important to explain at this point that the incidence of domestic violence has no direct link with religious identity. Evidence shows that minority women are as victimized by violence in the house as are Hindu women. [Study by *Majlis* on Section 498A.(Unpublished)]. However, the manner in which minority women suffer violence may well be different due to political conditions.

An important aspect of this is brought out in the partisan role played by the police in the communal riots in 1992-1993 in Mumbai. Muslim women have witnessed and experienced police brutality during and after the riots. The complicity of the State in condoning violence against Muslims further isolates the community. According to an activist of Awaaz-e-Niswan, a feminist organization working among Muslim women, the reality of being Muslim in Mumbai places serious constraints on the women. While the police is generally not keen to take cases of domestic violence, if the complainant is a Muslim woman, they rush to arrest the man. Women naturally feel that their problems multiply after going to the police. The police, as a part of the procedure, question the neighbors, who are terrified after having been subjected to torture during the riots which did not spare even innocent ones among them. This is another reason why Muslim women do not report even after being beaten by their husbands.

Some minority women approach women's organisations for support, counseling and legal aid in order to increase their options. In such cases, Muslim women have experienced alienation while narrating their experiences of violence. There are several reasons for this. One, that there are few feminist women's groups that have Muslim women in significant positions or roles. Most women's groups in India are controlled by upper caste Hindu women. Furthermore, women lawyers belong to the upper caste Hindu families. This creates a context wherein Hindu idioms, language and rhetoric are universalised.

Even among many social activists there is a general perception that Muslim women are more oppressed and vulnerable because it is sanctioned by Islam - that they can be given 'talaq' at will by their husbands. Due to a perception of Muslim men as being rapacious, bigamous and violent, there is a belief that Muslim women are fated to suffer. Apathy towards women suffering from domestic violence is thus also couched in communal terms.

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### **13.6 MUSLIM SINGLE WOMEN'S DIFFICULTIES**

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While the Muslim married women suffer indignities within the marriage, the situation is exacerbated by the lack of real options in civil society for single women. While the situation for poor and single women in India is dismal, for Muslim women on the verge of singlehood, things



are worse. For instance, finding accommodation is a very real problem in Mumbai, as in other metropolitan-cities. To add to the high costs of real estate, after the riots in Mumbai in 1992-93, when Muslim families were targeted, several have relocated to "Muslim" areas. Muslim families find it very difficult to get accommodation in middle class housing societies, even if they are able to pay the prices. These factors have led to a virtual ghettoisation.

Community pressures in such a situation would make it even more difficult for single Muslim women to find accommodation. Given this, many battered single women don't approach police stations to file a case against their spouses, as this step would render them homeless.

In addition, the leaders of the Muslim community push their women in general, into docility and traditional roles, following the riots, community leaders in Muslim dominated areas made speeches where they held the single women of the community particularly responsible for the riots. They were accused of lowering the prestige of the community by not wearing the hijab (purdah or veil) and not praying, according to the Awaaz-e-Niswan.

Thus, the generalised bias and oppression Muslims face as a community also influence the decisions of women not to register cases of domestic violence. Activists working with Muslim women complain that the Muslim women are even denied access to government hospitals, are not given ration cards and that their children are often not able to get admissions in schools. These factors have specific implications for women filing a criminal case, as medical reports are essential for filing a case of violence and a ration card is a proof of identity in such cases. In addition, these factors increase the vulnerability of women who suffer oppression inside the homes, as they are pitted against hostile larger legal structures.

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## 13.7 RESULT OF COMMUNALISATION OF LAWS AND POLITICS

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The communalisation of this criminal law has grave implications for Muslim women, as they are systematically pushed into a system of control by their families and the community. Communal politics and the economic marginalisation of the community closes options for women, especially those trapped in violent situations.

**Check Your Progress 2**

- 1 Say True or False
- 2 Section 498A of Indian Penal Code presents illegal traffic in women
- 3 What conditions force a women to withdraw cases against their family members?  
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.....  
.....
- 4 What is the feminist organisation involved in work among the Muslim women of Mumbai  
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## 13.8 LET US SUM UP

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In the light of our discussion above, we should note that within social institutions, especially within the family, human rights violations, against those most vulnerable, is invisible. It is made invisible because the violations are sanctioned by prevalent social norms. While here we have focused only on violations against women, it is important to point out that women are not the only socially vulnerable category. Both women and children share a common plight – that is any violence against them within the family is understood to be private falling outside the scope of law-enforcing agencies. Children, we have earlier mentioned, form a significant section who potentially and actually face violence - sexual, physical and emotional - either from their parents themselves or the other members of their family or from outsiders.

However, matters like child prostitution as sanctioned by families and communities ('Devdasi' system in Karnataka and among the Baudi tribe in Nepal are a few instances) child sexual abuses, homosexuality and neglect, concern about the well-being of women family members also. An unhappy child and a disfigured childhood seriously affect the mother's psychological health. Though we would study about this subject in another Unit, we should necessarily understand that the welfare and Rights of both the women and children are as closely integrated as are their psyche and emotions. Such an attitude becomes an answer to gender injustice perpetrated on women.

### How social norms and sanctions justify the violation of rights of women?

As an example of how social norms sanction the violation of rights, we may here recall some recent instances of caste panchayats executing / beheading in cold blood, the newly wed couples because they defied endogamous caste norms. You can recall that in all these instances the community remained unrepentant and defended the actions undertaken by the panchayats. There have also been the instances of women being stripped and paraded naked through the village, once again by the sanctioned panchayats. During the infamous case of *Sati* in Deorala a decade ago, there were many people who defended the right of the community to follow their customs by actually instigating the woman to sit on the burning pyre of the husband.

### Work Exercises

Find out some such cases from the newspapers when you read them everyday and try to list out the arguments put forward in support of these violations. Do you find the violations also not being articulated as rights? In that case, is there some mismatch between the rights of individuals and those of the community?

List out some other ways in which the family or the community may be directly responsible for the violation of the rights of its members - men, women and children. If such be the case of families, don't you think, the larger communities like the nation also violate the rights of its members?

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## 13.9 KEYWORDS

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**Natal Family :** Parental family or family in which a person is born.

**Marital Family :** Family where a married person enters. This family consists of one's in-laws.

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## 13.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

- 1) Because domestic violence is considered to be invisible and takes place within the four walls of a family. It is private and even women themselves think that it comprises their family's prestige if they publicly speak out.
- 2) Foeticide, infanticide, dowry-related murders, rapes, custodial deaths, and battering are physical abuses against women. Women are also subjected to emotional and psychological tortures.
- 3) The message is that violence against women are most often forgotten and neglected. Invisibility of crimes against women is due to peoples' apathy and unconcern regarding women's plight.
- 4) The Rameeza Bee rape case of Hyderabad and the Mathura rape case.

### Check Your Progress 2

- 1) (a) False.
- 2) Refusal of neighbours and family members to give evidence, consideration of a crime as of personal and family matter compulsions to save their marriage, fear of losing a bread winner in their husbands and of inviting uncertainty to themselves and their children and the possibility of social sanctions from the community.
- 3) Awaaz-e-Niswan.
- 4) Yes, they share problems of high costs in real estate prices, and compulsions confining to the Muslim-dominated areas. Their other difficulty is the constant compulsions by their community leaders to adhere to orthodox practices. They are often blamed for being one of the reasons for the communal riots in Mumbai city in 1992-93.

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# UNIT 14 PARA STATAL GROUPS (Terrorists, Fundamentalists, Political Extremists)

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## Structure

- 14.1 Objectives
- 14.2 Introduction
- 14.3 Meaning of Terrorism, Fundamentalism and Extremism
  - 14.3.1 Terrorism/ Terrorist Groups
  - 14.3.2 Distinction between Militancy, Insurgency and Terrorism
  - 14.3.3 Kinds of Terrorist Groups
- 14.4 Fundamentalism: Key Features
  - 14.4.1 Causes and Reasons for the Rise of Fundamentalism and Terrorism
  - 14.4.2 Causes: Preconditions and Precipitants
  - 14.4.3 Reasons
- 14.5 Nature of Threats to Human Rights
  - 14.5.1 Threats from the Terrorist Groups
  - 14.5.2 Threats from the Fundamentalist Groups
  - 14.5.3 Threats from the Anti - Terrorist Forces
- 14.6 Let us Sum Up
- 14.7 Key Words
- 14.8 Some Useful Books
- 14.9 Answers to Check Your Progress Exercises

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## 14.1 OBJECTIVES

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At the outset, we should understand the meaning of 'Para Statal', Groups other than the State but whose effectiveness poses a challenge to the State are called 'Para Statal Groups'. The objective of this unit is to recognize and understand the threats to human rights posed by the groups of terrorists and religious fundamentalists, both directly and indirectly. Directly, they carry out their activities through violence and intimidation, and indirectly, by promoting reactive violence or promoting violence to counterterrorism of the state, i.e., extraordinary measures adopted by the state. After going through this unit, you will be able to:

- define the meaning of terrorism and fundamentalism and identify the difference between the two while spotting out their interconnections.
- comprehend the cause of the escalation of terrorism
- examine the nature of threats posed to human rights by the two kinds of groups separately and together.
- evaluate the threats to human rights posed by counter terrorism (or what is described as state-sponsored terrorism) at the national and international levels; and  
analyse problems of dealing with terrorism and fundamentalism.

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## 14.2 INTRODUCTION

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Until recently the focus of concern for human rights was mainly on violation of these rights by the State and its agencies. Indeed the very origin of international interest in protection of human rights was related to Nazi atrocities in Germany before and during World War II. In fact the most extreme type of terrorism in the twentieth century has been carried out by authoritarian states and



military regimes against their own people. Prominent examples are the regimes under Hitler in Germany, Stalin in Soviet Union, General Franco in Spain, General Pinochet in Chile, Pol Pot in Cambodia and Gen. Yahya Khan in Pakistan. We have discussed in Unit 12 in what manner the state has been a prominent violator of human rights. Most human rights organizations such as the Amnesty International, Human Rights Watch, People's Union for Civil Liberties (PUCL) and People's Union for Democratic Rights (PUDR) focused almost exclusively on excesses by the state. However, the logic and scale of atrocities against innocent people by a variety of terrorist groups in many parts of the world during the last decade has made such groups also the focus of international attention. Therefore, the Vienna Declaration and Programme of Action on Human Rights 1993 included "acts, methods and practices of terrorism" as a serious threat, calling for action to prevent and combat terrorism.

The bombing of US embassies in Kenya and Tanzania in August 1998 which killed 224 people impelled the Western countries to organize international collaboration against the terrorist groups. Recently the UN Security Council called for an international effort to combat terrorism.

Many of the **terrorist groups** at present happen to be **religious fundamentalists** also. Osama bin Laden, the Saudi Arabian billionaire who is reported to have masterminded and financed the bombings in Kenya and Tanzania, for example, believes such actions to be in accordance with the Shariat and they have been carried out by those who love Allah. Those opposed to it consider resorting to extraordinary counter terrorist measures necessary for dealing with the problem. You may recall in this context, the US Cruise missile attack on Laden's hideout in Afghanistan.

The violation of human rights by the terrorist groups in Indian parts of Kashmir and Punjab and the North East is well known. So is the threat posed by religious fundamentalist groups such as Jamaat-a-Islami and the Taliban or leaders like Sant Bhindranwale in Punjab. It is not easy to pin down, arrest, and prosecute the terrorists according to law. But far more important is the mindset of the functionaries of state. Security forces are not equipped to distinguish between civilians and terrorists because suspicion of the local people is intrinsic to their operations. In dealing with terrorism, they may develop a rationale which is intrinsically blind to human rights. We will discuss the related issues in the course of this lesson.

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### 14.3 MEANING OF TERRORISM, FUNDAMENTALISM, AND EXTREMISM

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Terrorism and fundamentalism are not very clear concepts. Description of a group or an individual as terrorist or fundamentalist involves **not merely a categorization**, but also a **moral judgment**. Such a person is assumed to be irrational and criminal, fanatic and inhuman. Terrorism shows a political bias and forecloses negotiation. One who is labeled a terrorist by one set of people may often be regarded as a freedom fighter or a patriot by another set of people. Shaheed Bhagat Singh was, for example, a deeply respected freedom fighter and revolutionary for most Indians. On the contrary, the British government in India labeled him a dangerous terrorist. Nelson Mandela was treated and imprisoned as a terrorist by the white rulers of South Africa. Yasser Arafat was until recently regarded by the whole western world as a Palestinian terrorist leader. Today most of them have come to recognize that they were legitimate and popular leaders of their people who fought for independence as well as social and political justice. We must be cautious in using this label. Many writers therefore avoid using the term "terrorists" and prefer terms like 'militants', 'extremists' or 'armed fighters'. The Amnesty International chose to describe them as "Oppositional Groups". Similarly the term 'fundamentalist' was considered to be more accusatory than descriptive. It is, therefore, necessary to understand which individuals

and groups could be correctly described as "terrorist", "extremist" and "fundamentalist," i.e., the sense in which we will use the terms in our discussion.

### 14.3.1 Terrorism/Terrorist Groups

Terrorism is a form of violence to create terror for a political purpose. Examining the actors and their actions may be the best available method for distinguishing terrorism and the terrorist from the other extremists. "The crucial element" of a terrorist activity, as a famous Scottish scholar, Paul Wilkinson underlined, is "the deliberate attempt to create fear, intensive fear, in order to coerce the wider target into giving in to what the terrorist wants". It involves:

- (a) deliberate targeting of civilians
- (b) creating intensive fear in the general public with a view to
  - (i) secure unquestioning obedience to the group's commands and desires
  - (ii) stimulate friends and supporters and
  - (iii) provoke counter action by the state.

As against accidental killing of innocent people in an action, a key element of terrorism is a deliberate policy of hurting the non-combatants, i.e., the civilians. It is propaganda by violent action, "making a point by murdering defenseless non-combatants" — low cost and big effect. "Kill one and frighten 10,000," as they say in the Chinese folklore. Blowing up of an aero plane or a bomb blast as in Bombay or killing of bus passengers of a particular community by separating them from the others, are examples of such actions.

Two illustrations of terrorist actions in Punjab from the Amnesty International Report may be useful.

1. The Panthic Committee issues a 13-point programme which included a specific dress for school children. Mrs. Nirmal Kanta, principal of a Government Girls Secondary School at Rajpura, could not implement the order immediately because most pupils came from poor families who could not afford to immediately make new dresses. She appealed for two weeks' time to do so. She was killed at prayer time at school, in the presence of all students. The Babbar Khalsa terrorist group announced that she was killed for "disobeying their orders".
2. "Operation mother tongue", i.e., every work to be done in Punjabi language alone was another of such orders. Principal O.P. Vij of Modi College, Patiala, was killed in his office. The Khalistan Commando force (Panjwar) claiming the responsibility for the killing stated that "though he implemented Punjabi, it was only a show...he was allowing Hindi newspapers in the library."

The two principals were killed not because of personal enmity but as a symbolic reminder of the price of not obeying the orders. Mark Juergensmeyer, a well known American scholar on religious terrorism described it as "performance violence" which invokes the idea of the theatre, that is organizing "dramatic shows".

The terrorist is not a crazy person, but a calculating person. He understands the power of symbolic action for the public and the government on the one hand and for supporters of an ideology, on the other.

Most terrorist groups claim to be fighting for azadi or freedom justice against an unjust state. A legitimizing ideology is necessary to give their actions a purpose and meaning in the eyes of the beholders. It is appropriate, however, to see their actions, rather than proclamations. So long as the targets are exclusively the agents of the state such as the Army and the Police, many in the public may not like to call them "terrorists" but "armed fighters", "guerrilla warriors", or insurgents. However, when innocent civilians are the main targets, there would arise problem in calling them "armed fighters".

A sudden attack and a conspiratorial style are the other characteristics of the terrorist groups. However, their central weapon is creation of fear among the innocent civilian population.

Terrorism may be adopted as a method of action for political objectives when a group of people come to believe that the democratic collective action cannot be effective. But this method may become the very logic of action. What a terrorist fears most is a situation in which the public is no more afraid of him. For example, a terrorist shot an unknown person, a school teacher, going on a bicycle in Rayya town in Punjab. When a friend enquired why was that person killed, the reply was: "the newspaper reports were creating an impression that the Police had gained an upper hand, that the militants were on the run. This is to give the message that we are in the field and are active."

#### **14.3.2 Distinction Between Militancy, Insurgency and Terrorism**

**Militancy** refers to violent protests and propaganda, or incitement to violent actions, civil disobedience, sabotage, subversion etc. It may lead to insurgency or terrorism, but may not in itself be labeled as either of the other two.

**Insurgency** is the term used for a largely public-supported regional rebellion, generally including violent action. It is accompanied by a demand for autonomy or a declaration of independence, and subversion or crippling of the law and order machinery and the judiciary. Its distinguishing features are large scale public support for militant resistance against the perceived oppressive state or a government's discrimination against the people of a community or a region.

**Terrorism**, on the other hand, is centered on creation of terror among the common people, bureaucracy and judiciary through deliberate killing of common people. It includes actions like kidnapping and sabotage of public utilities. It generally lacks the voluntary support of the public. In fact, terrorism is the method of desperate elements who have no faith in, or lack the capability to win, public support for their cause. It is observed that groups practicing terrorism end up fighting each other and ultimately harming even that section of the population which they claim to represent.

N.S. Saksena drew another distinction between an insurgent and a terrorist. According to him an insurgent is the national of a country who is in revolt against the constitutional government of his country through guerrilla warfare. A terrorist, as against it, may or may not be a national of the country in which he operates. A number of terrorist groups operating in Kashmir are outsiders. They, therefore, cannot be termed as insurgents. Yesterday's insurgents may become today's terrorists. Most terrorists who seem initially to voice the people's anguish and anger against the regime tend to lose sympathy when people notice the inhumanity of their actions or they themselves become the victims. It is less likely, however, for the terrorists to become insurgents.

### 14.3.3 Kinds of Terrorist Groups

#### Ideological Terrorists Groups:

- (a) Groups which resort to terrorist violence for effecting revolutionary change, such as the Naxalite groups in Andhra Pradesh and Bihar.
- (b) Groups fighting for political autonomy or self-determination or secession such as United Liberation Front of Assam (ULFA), the former Mizo National Front (MNF) the two National Social Council of Nagaland (NSCN) groups, and the Jammu and Kashmir Liberation Front (JKLF).
- (c) Groups which claim to be fighting for a religious cause, a holy war in the name of God. They may be religious fundamentalists or religious nationalists. The Taliban, the Harkat-ul-Ansar, the Bhindranwale Tiger Force are prominent examples.
- (d) International or Cross Border Terrorist Groups.

USA and Pakistan, for example, sponsored terrorist groups such as the Taliban to fight the domination of Soviet Union in Afghanistan. A number of Pakistan sponsored terrorist groups have been operating in Jammu and Kashmir (J & K) state in India. It is a variety of international politics by other means. Members of such groups may simply be mercenary fighters or persons fired by religious or other passions.

#### State Sponsored Terrorist Groups

The states may sometimes create clandestine groups composed of the surrendered and defected terrorists and other criminal elements to fight against anti-state terrorists. SULFA [(comprising the surrendered cadres of the United Liberation Front of Assam (ULFA)] in Assam and Kuka Parry's group in J&K, mainly aimed at targeting the other terrorists - their former fellows.

#### Local Interest Terrorist Group

The political assertion of the Dalits and landless labourers for their legal rights to minimum wages, under CPI (ML), prompted the landlords in Bihar to constitute armed gangs. Such caste militias as Ranbir Sena, Lorik Sena, Bhoomi Sena and Sunlight Sena targeted Dalits to maintain dominance of the Bhoomihar Thakurs or Yadav and Kurmi landlords.

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## 14.4 FUNDAMENTALISM: KEY FEATURES

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Fundamentalism literally means absolute adherence to the "fundamentals". The term came to be used for the belief and command system of a group of conservative Protestants who tended to define the "fundamentals" of Christianity and the eternal correctness of the scripture - the Bible. Such a group or leader is called fundamentalist. Its key features are as under:

### 1. Anti - modernism .

Fundamentalism rises as a revolt against the believed deviation from or dilution of the original God-given norms of thought and behaviour. The Islamic fundamentalists such as the Wahabis, for instance, insisted on the restoration of those features of Islam which were followed during the life time of the Prophet i.e., Sunna based on Arabic customs during 7<sup>th</sup> century. Modern, particularly



western, ideas or secular ideology are viewed as a serious threat to the religious faith. These had to be countered. John H. Hawley, therefore, described fundamentalism as "militant anti-modern religious activism."

## 2. Authoritarianism

A fundamentalist group holds its specific interpretation of the scripture and code of conduct as the only authentic interpretation and thus sacred. So there may be many competing fundamentalist groups within one religion. Many sects and sub sects of Christianity or Islam tend to be in sharp conflict on fundamentals. M.S. Agwani points to a variety of fundamentalist groups among Indian Muslims, e.g. Deoband, Nadwah, Tablighi Jamaat, and Jamaat-e-Islami. However, each one self-righteously tends to impose its own interpretation and its revival.

## 3. Totalitarianism

Fundamentalist commands tend to cover most aspects of daily life of the followers including dress and food, profession and property, marriage and divorce, permitted and prohibited human relations. It prescribes such punishments for deviation as were practiced according to existing customs in the distant past. A woman may, for example, be publicly stoned 101 times by the order of a local Imam for what he considered to be an "illegal marriage."

## 4. Revivalism and Reconstruction

Fundamentalism involves not merely revival of the past glory and practices but also a fresh construction through imagination because in fact its purpose is to deal with modern ideas and issues. Asghar Ali Engineer shows that many of the fundamentalist commands are not only different from but also opposed to the teachings of the Prophet.

## 5. Less Religious and More Political Motive

Whereas all religions preach love, care of the weak and helpless, toleration and peace, the essence of the agenda of fundamentalist groups is not tolerance of diversity but unflinching obedience. Most fundamentalists recommend not persuasion but coercion. Their purpose is political domination. Jihad, capture of state power and maintenance of sectarian domination become the primary objectives, not humanitarianism or spirit of religion.

The commands and punishments by the fundamentalist groups are terrorizing in essence. Even when technically they are not a part of terrorist group they pose a threat to human freedom and dignity. At present, however, most of the terrorists groups are also religious fundamentalists. When terrorist violence is believed to be a holy war in the service of God, the threat to human rights becomes far more formidable.

### Check Your Progress 1

Note: Use the space below for your answer

Distinguish between militancy, insurgency and terrorism?

2. Name a few terrorist groups operating in India and distinguish between them.

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#### 14.4.1 Causes and Reasons for the Rise of Fundamentalism and Terrorism

The Emergence of the terrorist and the fundamentalist groups is related to a complex network of causes and reasons. These may be different in each case according to history, culture and contemporary social and political situation. By causes, we mean the circumstances which, over a period, create the conditions for terrorist activities, reasons refer to subjective (psychological) factors of why particular individuals or groups opt for terrorist strategy and action. While many may share the objectives or goals for which the terrorists fight, all of them do not join a terrorist group or even approve of the terrorist actions.

#### 14.2.2 Causes: Preconditions and precipitants

Martha Crenshaw distinguishes between preconditions which set the stage for terrorism over the long run and precipitants, i.e., specific immediate factors or situations leading directly to violent resistance and terrorist actions.

Preconditions include factors such as state oppression, economic exploitation, widespread unemployment, discrimination against minorities, corruption and self-serving politicians, loss of faith in the bureaucracy and courts of justice i.e., factors which create deep anxiety and helplessness of the people. These exist over a period of time we will consider a few examples. (a) King Reza Shah's efforts to rebuild Iran in the image of the West created, for example, the environment in which religious revival and fundamentalism of Ayatollah Khomeini acquired the attraction of a special appeal. This became a strong cause or to use Martha Crenshaw's term, 'precondition' for the outbreak of the Revolution in Iran led by the Ayatollah.

(b) Another Contemporary example is the ongoing process of Globalization. Globalization makes society an adjunct of the international market. It tends to delink economy and politics from society. The poor countries tend to submit to the power of Multi-National Corporations (MNCs). This creates a sense of disempowerment and a particular helplessness among small communities and less developed countries. It is not difficult to see therefore why these developing countries, more particularly the marginalized groups, in those countries, are taking rebellious stands against globalization. The violent incidents that occurred at the venue of the world Economic leaders' conference at Seattle (Canada) and at Prague during the World Trade organization conference in mid-2000 was an outcome of the feeling of deprivation felt the marginalized groups.

Precipitants are incidents, such as police firing on peaceful protesters, death in custody or custodial rape, or adverse court judgement on a matter affecting people, that spark off violence.

#### Permissive Causes

These relate to social factors which make terrorism or violence morally and politically justifiable.

- (i) "Cultures of Violence": Mark Juergensmeyer considers such cultures or world which views, recommend or approve violence for purposes of personal and community honour as

an important factor. One's inclination for terrorism may be related to social myths and tradition of holy wars and martyrdom in a community, as for example among Shia'h Muslims and in the Sikh community. **Ted Gurr** described habits and beliefs about religious sanctions of violence as "social facilitation".

- (ii) Ideologies of violent struggle may perform a similar function. Separatist nationalism can be a powerful permissive cause. "Annihilation of class enemies" as advocated by factions of CPI (ML) is an example of this.
- (iii) Government's inability or unwillingness to prevent terrorism may in itself be a contributory factor. **Martha Crenshaw**, one of the well-known scholars on terrorist violence regarded this as "the most salient factor in the category of permissive causes."
- (iv) Disaffection of the elite in a community or region is often a more significant cause as against suffering of the masses. As **Crenshaw** observed, "Terrorism is most likely to occur precisely where mass passivity and elite disaffection coincide."
- (v) Direct abetment and support from outside i.e. cross border support for anti-state violence and financial support from immigrants settled in foreign countries may also be a significant permissive cause.
- (vi) State sponsorship of clandestine groups to combat militant/ terrorist opposition to its authority is another kind of permissive cause.
- (vii) Availability of sophisticated weapons. The manufacturers and traders of weapons have to increase their sale. The easy availability of sophisticated arms with the support of the financiers and the international drug mafia create a permissive cause of terrorism. **Frederick Forsyth's** best seller, Dogs of War, is an excellent fictionalized version of such permissiveness.

**Precipitant causes** refer to incidents such as "Operation Blue Star" and demolition of Babri Mosque, which may provoke immediate violent reaction.

#### 14.4.2 Reasons

1. These relate to a group's "rational choice" of terrorist method. This may be based on the assumption that:
  - (i) given the shared objectives and beliefs in the community, it is bound to succeed.
  - (ii) given the relative political weakness of opposition, there is no other choice,
  - (iii) it is a less expensive strategy.
  - (iv) it is necessary for internal discipline of the organization and for gaining the support of the public.
2. Individual motivation for vengeance because of a variety of personal or psychological factors. Case studies show that many young boys doing nothing, having high level of energy, seeking excitement out of a dull life took to terrorism for reasons other than political or religious.

1. Identify the general causes and reasons of terrorism.

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2. Name of the thinkers who had written about Insurgency and terrorism.

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## **14.5 The Nature of Threat to Human Rights**

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### **14.5.1 Threats from the Terrorist Groups**

1. Threat to life, and security. This threat is inherent in the terrorist method and logic, which involves surprise targeting of mostly the innocent people. The well known incidents of the killing of 110 passengers of a train in Punjab by gunfire, spraying of bullets on sleeping immigrant labourers, and the people watching a Ram Lila performance or a bomb blast such as in Bombay in 1993 are examples which cause widespread insecurity.
2. The terrorist groups also identify the "other", as the hated enemy, not only the agents of the state but also a community or groups of people. The ULFA targeted Muslims as "foreigners", Bodos killed Chakmas in particular, the Khalistani terrorists targeted the people belonging to the Hindu community. As a result the people of one community may be forced to migrate to other areas leaving behind their lands, homes and jobs. It is estimated that more than 70,000 Kashmiri Pandits fled Kashmir. Freedom of religion and cultural group rights are also directly threatened.
3. Kidnapping for ransom, torture of suspected informers, extortion of money and rape of women are other known activities of the terrorist groups. There is therefore a threat to the property, privacy of family, and home and above all the honour of persons.
4. Threats to freedom of speech and expression is central to the phenomenon of terrorism. "Words" as Wittgenstein observed, "are deeds". Silencing oppositional opinion as also reporting and propaganda in its favour are the oxygen for the terrorist groups. The murder of Lala Jagat Narain, Chief Editor of Hind Samachar group of papers, was indeed the first categorical message of Khalistani terrorists in Punjab. Warnings and killings of Station Directors of All India Radio, journalists and even newspaper hawkers were powerful ways of imposing their "Press Code". As a consequence the media lost its freedom and as VN Narayanan (Chief Editor, The Tribune) observed "Rule by militant press note had replaced the rule of law" in Punjab during 1989-90.

### **14.5.2 Threats from the Fundamentalist Groups**

The threat to human rights from the fundamentalist groups cover a wide range of intimate personal and family issues such as food and dress, marriage and divorce, property and profession,



belief and worship and speech and expression among the followers of the religion and larger issues of democracy and world peace. Since the thrust is on absolute conformity to sacred norms and social customs of the distant past, the most severe onslaught is faced by women. In Afghanistan, under the Taliban, for example, a woman was recently stoned to death, in full view of the public, for trying to leave the country with a man who was not her relative. Another was beaten to death for exposing her arm in the public. In Saudi Arabia driving by women is legally prohibited. Patriarchal value framework is central to religious fundamentalism.

Forced imposition of sectarian values of one sect of a religion holds a direct threat to the value system and practices of those who belong to other sects and sub-sects of that religion. Accordingly, under a Sunni fundamentalist group in Pakistan, Ahmadiya, Shia's and Ismaili Muslims are the target of violent attacks.

People belonging to other religions and cultures - the minority groups in a state — are denied the right to equality of treatment and opportunity as citizens.

International dimension of fundamentalist terrorism in our age poses a threat to human rights on a much wider scale.

To sum up, the terrorist and fundamentalist groups pose a direct threat to the following Rights contained in the Universal Declaration of Human Rights which are also guaranteed by the Constitution of India.

1. Right to life, liberty and security of person. (Art.3)
2. Right against torture and cruel, inhuman or degrading treatment or punishment (Art.5).
3. Equal protection of law (Art. 7).
4. Right to an effective remedy by national tribunals (Art. 8).
5. Right against arbitrary arrest and detention (Art.9).
6. Right against punishment without proven guilt (Art. 11).
7. Right against arbitrary interference with a person's privacy, family, home and attack on a person's honour (Art.12).
8. Right to freedom of movement and residence (Art.13).
9. Right to own property (Art.17).
10. Right to freedom of thought, conscience, and religion (Art.19).
11. Right to freedom of peaceful assembly and association (Art.22).
12. Economic, social and cultural rights (Art.22).
13. Right to freely participate in cultural life of the community.

#### **14.5.3 Threats to Human Rights from Anti-Terrorist Forces**

In combating terrorist crimes, democratic governments face a dilemma whether it can be controlled through the normal legal system of checking crime. Intimidation of the police, the judge and the witnesses makes it difficult to apprehend the culprits and to present hard evidence required by the courts for punishment. Let us take one illustration.

In February 1988 four Khalistani terrorists led by Malkiat Singh of Anjala took Dalip Singh and his son Avtar Singh of the same village out and killed Avtar Singh in the presence of his father. The father, Dalip Singh, lodged an FIR. Malkiat Singh was arrested during Operation Black Thunder in June 1988. His confession was recorded on a video tape. Some other evidence was also collected. When Dalip Singh was summoned to the court for recording his evidence, he told the advocate firmly "with tears in his eyes" that he will not give the evidence. Why? "Because they have warned me that if I do, my other two sons would also be killed." Malkiat Singh was

soon after reported killed in a crossfire when a gang of terrorists attacked the police jeep, driving him to the court. Of course, you understand what it means.

Most governments made special laws such as the Terrorist and Disruptive Activities (Prevention) Act (TADA) and set up special courts to deal with terrorism. You may remember that the Rowlatt Act of the British government was this kind of law against which Mahatma Gandhi had launched a big agitation. All such provisions for extraordinary powers to the police and the courts restrict human rights by law. But more serious threats are posed in practice by the contempt which the police officers develop for law. That is why Stansfield Turner, former Director of CIA cautioned US Task Force on Combating Terrorism that in the name of defeating terrorism "we may not become terrorists (ourselves)".

Let us see the nature of threats to human rights both of the suspected and detained culprits and the common people.

1. Liquidation of Suspected Terrorists: Apprehending the perceived terrorists and shooting them in reported (fake) encounters is the most horrible alternative to long and difficult judicial process for punishment. Even making distinction between an actual culprit and an innocent person becomes irrelevant. One human rights organization claimed to have collected evidence of cremation of around 2000 unidentified dead bodies in Punjab. In fact the person who was collecting the evidence was himself picked up by the police and shot dead. In Kashmir an organization of mothers has been agitating for information regarding their "disappeared" sons. Even if someone was actually involved in terrorist activity, liquidation without charging the person for crime, investigation and trial is a serious violation of human rights.
2. Torture of detainees. Third degree torture of suspected and detained culprits and supporters to elicit evidence and confessions is another kind of serious violation of human rights. The international human rights organizations have reported about large scale incidents of torture in more than 80 countries of the world.
3. Detention without trial. More than 14000 people were officially reported in 1993 to be detained under TADA in Punjab alone for many years. Not more than 1 per cent of those were actually convicted after trial.
4. Combing Operations. Combing of whole villages for search operations tends to become no less than terror for the common people than the actual fear of the terrorists. During **Operation Woodrose** in Punjab, Sikhs youth in general passed through such terror.
5. Mistaken killings. Low level of tolerance of valid protests against police high handedness also poses a threat to human rights. The mowing down of over 60 unarmed protesters (including women and children) in Bij Behara (Kashmir) by security forces is a telling reminder of such a threat.

Such excesses by the security forces become the cause for escalation of terrorism. For example, a number of those who joined the terrorist groups in the Punjab were from among those young boys who had fled their villages because of atrocities and harassment by the security forces during "Operation Woodrose".

### Check Your Progress 3

1. Where was 'Operation Woodrose' conducted?  
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.....  
.....
2. In Pakistan, which are the Islamic sub-sects that exist under threat?  
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.....  
.....
3. In which States of India do the following groups operate?
  - a) ULFA
  - b) MCC
  - c) JKLF
  - d) Peoples' War Groups

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## 14.6 LET US SUM UP

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In this unit you have studied the meaning of terrorism and fundamentalism and the threats to human rights from the terrorist and fundamentalist groups as also from the counter terrorist measures adopted by the state. While it is not always easy to distinguish a terrorist from a militant, or a violent protester against a regime and a freedom fighter, yet we can certainly mark out a terrorist group from a group which takes to the street, against regime's policies. The **deliberate targeting of innocent people to create terror in the public at large distinguishes the terrorist group.** Insurgency refers to a situation of large scale violent resistance by a group of people belonging to a region of the country. They may or may not have widespread public support. The term Fundamentalist groups refers to such minority anti-modern religious groups which want to establish the domination of old scriptural norms of behaviour. These are essentially sectarian, authoritarian and totalitarian. Both kinds of groups that is fundamentalist and terrorist groups are becoming a serious threat to human rights, denying security of life, freedom of thought and expression, of religion, of property and others to the general public at large. No less a threat comes from extreme measures adopted by the states to combat terrorism and fundamentalism. Dealing with these forces requires large scale effort for prevention, and addressing seriously to the causes and conditions that provide a climate to the birth and growth of unrest in a society.

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## 14.7 KEY WORDS

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1. **Authoritarian:** An individual, a group, or a state which wants to influence and control other people's thoughts and actions rather than allowing them to choose and decide things themselves.
2. **Crazy:** An eccentric person; one who is mad with excitement who will be happy to do any action.
3. **Patriarchal:** A system of authority and control by father or the eldest male of the family, tribe or community; also refers to family or society so organized; Domination of male value system.

4. **Revivalism:** Tendency or desire to revive what has gone out of use or practices that were supposed to have been followed in the past.
5. **Totalitarian:** A system of government or a sect which tolerates the existence of only one political party or a sect of a religious group to which all other institutions in the country are subordinated.

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## 14.8 SOME USEFUL BOOKS

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1. Juergensmeyer Mark, *Terror in the Mind of God*, Oxford University Press, New Delhi (forthcoming)
2. Kakkar Sudhir, (1995) *The Colours of Violence*, Penguin Books, New Delhi.
3. Puri, Harish K. (1999) Paramjit Singh Judge and J.S.Sekhon, *Terrorism in Punjab: Understanding Grassroots Reality*, Har-Anand Publishers, Delhi.
4. Shukla K.S. (ed.) (1988) *Collective Violence: Genesis and Response*, Indian Institute of Public Administration, Delhi.

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## 14.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

1. **Militancy:** Refers to violent protests, or incitement to violent actions or civil disobedience, sabotage Militancy may lead to Insurgency and Terrorism.

**Insurgency:** Generally public supported militancy against a perceived oppression by a State or a social or political group. This is usually accompanied by calls for secession of a part of a country's territory or it may also be to establish a new province within the existing country.

**Terrorism:** Rests on an indiscriminate use of force against a section of the population or the agencies of the State which is perceived to be ruling over that section of the population which the terrorist groups/s claim to represent. Terrorist activities like kidnapping, killing, raping, arson and related crimes aim to create fear among the general population.

2. There are two types of terrorist groups operating in India. (a) Those members are Indians themselves such as groups operating in Tripura or Bihar. And (b) Those who are mercenaries, that is who receive funds, and support including members from abroad, particularly neighboring countries. Examples are Lashkar-e-Toiba, and factions of Hizbul Mujahideen of Jammu & Kashmir or the Deendar-e- Anjuman that planted bombs in Churches of South India.

### Check Your Progress 2

1. Social factors like acute poverty, and hunger, unemployment; prolonged indifference of government to the people's problems; ideologies that preach terrorism, disaffection of the elites, and direct or indirect support from outside the country. Some groups can also be sponsored by the State to apparently counter terrorism but they can themselves lead to the



growth of terrorism. There can also be events that contribute to the development of terrorism.

2. Mark Juergenismeyer, Tedd Gurr, Martha Crenshaw are important thinkers.

### **Check Your Progress 3**

1. Punjab
2. Ahmediya, Shia, Islamia sub-sects.
3. ULFA-Assam  
MCC- Bihar and Jharkand States  
JKLF - Jammu and Kashmir  
Peoples' War Groups- Andhra Pradesh.

## NOTES