

**STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21**

UNIT	CONTENT	PAGE NO
I	DEFINITION OF HUMAN RIGHTS	02
II	UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948	08
III	CONSTITUTIONAL PROVISIONS	18
IV	CORE PROBLEMS	25
V	SPECIAL LAWS VIOLATE OF HUMAN RIGHTS	30

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

UNIT - I
DEFINITION OF HUMAN RIGHTS

Human rights are the rights that everyone has equally by virtue of their humanity. It is grounded in an appeal to our human nature. Christian Bay defined human rights as any claims that ought to have legal and moral protection to make sure that basic needs will be met. Human rights can be defined as those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of the human family.

According to S. Kim, human rights are "claims and demands essential to the protection of human life and the enhancement of human dignity, and should therefore enjoy full social and political sanctions".

Subhash C. Kashyap opined human rights are those "fundamental rights to which every man inhabiting any part of the world should be deemed entitled by virtue of having been born a human being".

Milne defined "human rights are simply what every human beings owes to every other human being and as such represent universal moral obligation".

According to Nickel, human rights are norms which are definite, high priority universal and existing and valid independently of recognition or implementation in the customs or legal system of particular countries.

P. P. Rao said human rights are the inherent dignity and inalienable rights of all members of the human family recognizing them as the foundation of freedom, justice and peace in the world.

D. D. Raphael, human rights in a general sense denote the rights of humans. However, in a more specific sense, human rights constitute those rights which one has precisely because of being a human.

Dr. Justice Durga Das Basu defines "Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a 'member of human family' irrespective of any consideration. Durga Das Basu's definition brings out the essence of human rights.

The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as "rights derived from the inherent dignity of the human person." Human rights when they are guaranteed by a written constitution are known as "Fundamental Rights" because a written constitution is the fundamental law of the state.

Human rights can be defined as those rights without which human beings cannot live with dignity, freedom (political, economic, social and cultural) and justice in any nation or state regardless of colour, place of birth, ethnicity, race, religion or sex or any other such considerations. These rights are inherent in human nature and therefore guaranteed and protected by the state without distinction of any sort.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

Origin and Development of Human Rights

The term 'human rights' came into usage after the Second World War particularly with the founding of the United Nations in 1945. It replaced the phrase natural rights, because it became a matter of great controversy and the later phrase the rights of man was not understood universally to include the rights of women.

Historical origins of human rights to ancient Greece and Rome, where it is closely tied to the pre modern natural law doctrines of Greek Stoicism. The Roman jurist Ulpian declared that according to the law of nature, all men are equal and born free. The present concept of human rights can also be identified with early Christian philosophy or with the advent of medieval constitutionalism. For instance, Thomas Aquinas in the Thirteenth Century revived and expounded the classical doctrine that human dignity sets moral limits to political rule.

For the idea of human (natural) rights to take hold as general social need and reality, certain basic changes in the beliefs and practices of society had to take place. These basic changes in beliefs and practices began from the Thirteenth Century and took place till the decline of feudalism. Further, when resistance to religious intolerance and political economic bondage began, the long transition to liberal notions of freedom and equality, particularly in relation to the use and ownership of property were the foundations of the modern concept of human rights.

Development of Human Rights

The human rights which we are enjoying today is developed through various stages. The important landmarks in the development of human rights are the following documents and struggles:

1. Magna Carta of 1215
2. Influence of Social Contract Theory
3. English Bill of Rights of 1689
4. American Declaration of Independence of 1776
5. American Bill of Rights of 1791
6. French Declaration of the Rights of Man of 1789
7. The Bolshevik Revolution of Russia of 1917
8. Universal Declaration of Human Rights of 1948
9. International Covenants on Human rights.

Each of these declarations and the movements referred to above, have made important contributions in advancing the concept of human rights. However, being products of their own time and specific circumstances, they lack totality of concept and were narrow in their scope and application. For instance in the Greek political system, rights existed only for the 'citizens' and not for the majority who were referred to as "aliens" and "slaves". Magna Carta yielded certain concessions only for the feudal lords (not for common man), though it set limitations to arbitrary rule and laid the foundation for the rule of law. The American Declaration followed by constitutional amendments or Bill of Rights contain fairly exhaustive guarantees for the rights of man. But in practice their application was largely confined to those who constituted what was abbreviated as WASP (white, Anglo-Saxon, and protestant). Slavery continued to be a part of the system; the blacks of African origin were referred to as "Negro" not as man. It was in 1864

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

that slavery in America was legally abolished after a bitter civil war which threatened the unity of the United States.

Theories of Human Rights

Human Rights is a 20th century term for what had been traditionally known as „Natural Rights“ or in a more appealing phase, the Rights of Man. The notion of Rights of Man and other such concepts of human rights are as old as humanity. These rights of men had a place almost in all the ancient societies of the world, through they were not referred to by that time. The term „Human Rights“ is comparatively of recent origin. But the idea of human rights is as old as the history of human civilization. Human Rights are deeply rooted in the historical past.

The history of mankind has been firmly associated with the struggle of individuals against injustice, exploitation and disdain. Broadly speaking, Human Rights means right to life, liberty, equality and the dignity of an individual irrespective of caste, creed or sex. Human rights are always natural. Universal Declaration of Human Rights states, this term signifies the rights which belongs equally to every individual. It envisages that all human beings are born free, equal in dignity and rights and are entitled to enjoy all rights. According to Prof. Herald Laski “rights are those conditions of social life without which no man can seek in general to be himself at his best”.

Kinds of Human Rights

Human rights can be classified and organized in a number of different ways. At an international level the most common categorization of human rights has been to split them into civil and political rights and economic, social and cultural rights. Civil and Political Rights are enshrined in Articles 3 to 21 of the „Universal Declaration of Human Rights“ (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR). Economic, social and cultural rights are enshrined in articles 22 to 28 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Karel Vasak was categorized the human rights into three generations.

- i) First – generation civil and political rights (right to life and political participation).
- ii) Second – generation economic, social and cultural rights (right to subsistence) and
- iii) Third – generation solidarity rights (right to peace, right to clean environment).

The Natural Rights Theory

It had origin in the doctrines of natural law and natural rights. Thomas Hobbes (1588 – 1679), John Locke (1632 – 1704) and Jean-Jacques Rousseau (1712 – 1778) are the three main thinkers who developed the Natural Rights theory.

Thomas Hobbes was the first champion of the theory of ‘natural rights’. In his celebrated book, ‘Leviathan’, he advocated that no individual could ever be deprived of the right to life, which he enjoyed in the state of nature. He asserted that all human beings are equal, without any consideration. John Locke developed the idea further in his book, ‘Two Treatises Government.’ He argued that every human being has a natural right to life, personal liberty, and property, and that no governmental authority has power to deprive individuals of these rights because they had enjoyed them even before the creation of the civil or political society.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

Rousseau is regarded as the greatest master of natural law school. In his celebrated book, 'The Social Contract', Rousseau states that "All men are born free but everywhere they are in chains." Rousseau proclaimed that men are bestowed with inalienable rights of liberty, equality and fraternity. These concepts became the basis for the French Declaration of the Rights of Man and of the Citizen. Paine an American revolutionary thinker developed the doctrine of natural rights without linking it to the social contract theory. He held that rights are natural, because they were bestowed upon man by God himself. These rights exist independently of the legal code of any country.

Moral Rights Theory

Moral rights are rights that, it is claimed, exist prior to and independently from their legal counterparts. The existence and validity of a moral right is not deemed to be dependent upon the actions of jurists and legislators. Many people argued, for example, that the black majority in apartheid South Africa possessed a moral right to full political participation in that country's political system, even though there existed no such legal right. Griffin continues by developing an approach that is based upon characteristics all human persons share. Further work on defining human rights is needed, according to Griffin, because the current usage of the term is not determinate enough.

The concept of human rights suffers from inflationary pressure because there is a tendency to bring everything that is morally valuable under the umbrella of human rights: 'It is a great mistake to think that, because we see rights as especially important in morality, we must make everything especially important in morality into a right. He argues that any theory of human rights must not only have a structural definition of rights, such as 'rights are side-constraints', but also substantive content. Furthermore, though Griffin acknowledges the limited scope of human rights, his conception is outspoken moral, not legal or political. This implies that human rights do not only constrain states but also govern behaviour in the personal sphere: although human rights are mainly concerned with state behaviour, they also apply to personal conduct.

Legal Rights Theory

A legal right is a right that enjoys the recognition and protection of the law. Questions as to its existence can be resolved by simply locating the relevant legal instrument or piece of legislation. A legal right cannot be said to exist prior to its passing into law and the limits of its validity are set by the jurisdiction of the body which passed the relevant legislation. Legal positivists argue that the only rights that can be said to legitimately exist are legal rights, rights that originate within a legal system. the 19th. Century legal philosopher Jeremy Bentham, there can be no such thing as human rights existing prior to, or independently from legal codification. A principal aim of advocates of human rights is for these rights to receive universal legal recognition.

Civil and Political Rights

These rights are familiar from historic bills of rights such as the French Declaration of the Rights of Man and the Citizen (1789) and the U.S. Bill of Rights (1791, with subsequent amendments). Contemporary sources include the first 21 Articles of the Universal Declaration, and such treaties as the European Convention, the International Covenant on Civil and Political Rights, the American Convention on Human Rights, and the African Charter on Human and People's Rights. Some representative formulations follow:

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. (American Convention on Human Rights, Article 13.1)

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests (European Convention, Article 11).

Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. Every citizen shall have the right of equal access to the public service of his country. Every individual shall have the right of access to public property and services in strict equality of all persons before the law (African Charter, Article 13).

Economic Rights

It is in the French Constitution of 1793 that the existence of such a thing as a human right to work, namely the right of an individual to a job that is freely chosen and 7 allowing a dignified existence, is explicitly recognized.

Half a century later the discussions that accompanied the drafting of the French Constitution of 1848 are probably amongst the best documented debates on this matter, displaying passionate speeches of both the defenders and the detractors of the existence of a constitutional right to work.

Although there are several references to the right to work from 1848 onwards, such as the US Employment Act of 1946, for example, which established full employment as being a right guaranteed to the American people and gave the federal government a mandate to do everything in its authority to achieve it, it was not until 1948, when the discussion about universal human rights arose in the recently created United Nations Organisation (UN), that the right to work achieved explicit general recognition as a human right. In article 23 of the Universal Declaration of Human Rights (UDHR) it is proclaimed that:

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Everyone who works has the right to just and favourable remuneration ensuring himself and his family an existence worthy of human dignity, and supplemented if necessary by other means of social protection.

This proclamation clearly states not only that people have the right to a job but also to a decent job, and therefore ensuring the right to work and favouring any kind of job are not synonymous. Furthermore, people have the right to protection against unemployment, which should be understood as a set of mechanisms protecting an individual from becoming unemployed and not simply from the consequences of being unemployed.

It is in the French Constitution of 1793 that the existence of such a thing as a human right to work, namely the right of an individual to a job that is freely chosen and 7 allowing a dignified existence, is explicitly recognized. Half a century later the discussions that

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

accompanied the drafting of the French Constitution of 1848 are probably amongst the best documented debates on this matter, displaying passionate speeches of both the defenders and the detractors of the existence of a constitutional right to work.

Although there are several references to the right to work from 1848 onwards, such as the US Employment Act of 1946, for example, which established full employment as being a right guaranteed to the American people and gave the federal government a mandate to do everything in its authority to achieve it, it was not until 1948, when the discussion about universal human rights arose in the recently created United Nations Organisation (UN), that the right to work achieved explicit general recognition as a human right. In article 23 of the Universal Declaration of Human Rights (UDHR) it is proclaimed that:

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment

2. Everyone who works has the right to just and favourable remuneration ensuring himself and his family an existence worthy of human dignity, and supplemented if necessary by other means of social protection. This proclamation clearly states not only that people have the right to a job but also to a decent job, and therefore ensuring the right to work and favouring any kind of job are not synonymous. Furthermore, people have the right to protection against unemployment, which should be understood as a set of mechanisms protecting an individual from becoming unemployed and not simply from the consequences of being unemployed.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

UNIT - II
UNIVERSAL DECLARATION OF HUMAN RIGHTS - 1948

The Universal Declaration of Human Rights (UDHR) was adopted on 10 December 1948. The UDHR is a comprehensive document detailing and articulating human rights. Being and declaration, it is not legally binding; however, it implores states to aspire towards moral obligations. The Declaration details all rights that are basic minimum and necessary to enjoy a dignified human life.

Universal Declaration of Human Rights (UDHR) is an important declaration adopted by the United Nations General Assembly on 10 Dec., 1948 at Paris. This announcement arose as a result of the bitter experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled. It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions and laws. The UDHR was adopted by the General Assembly of the United Nations by a vote of 48 in favour, zero against with eight absentees. The members who were absent from this historic declaration were all Soviet states, Yugoslavia, South Africa and Saudi Arabia.

Preamble

Like any important charter, constitution or the declaration, UDHR begins with a preamble. The following text clearly indicates the gist of things in the UDHR. Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas it is essential, if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, Now, Therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of member states.

1. Article 1 Right to Equality
2. Article 2 Freedom from Discrimination
3. Article 3 Right to Life, Liberty, Personal Security

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

4. Article 4 Freedom from Slavery
5. Article 5 Freedom from Torture and Degrading Treatment
6. Article 6 Right to Recognition as a Person before the Law
7. Article 7 Right to Equality before the Law
8. Article 8 Right to Remedy by Competent Tribunal
9. Article 9 Freedom from Arbitrary Arrest and Exile
10. Article 10 Right to Fair Public Hearing
11. Article 11 Right to be Considered Innocent until Proven Guilty
12. Article 12 Freedom from Interference with Privacy, Family, Home and Correspondence
13. Article 13 Right to Free Movement in and out of the Country
14. Article 14 Right to Asylum in other Countries from Persecution
15. Article 15 Right to a Nationality and the Freedom to Change It
16. Article 16 Right to Marriage and Family
17. Article 17 Right to Own Property
18. Article 18 Freedom of Belief and Religion
19. Article 19 Freedom of Opinion and Information
20. Article 20 Right of Peaceful Assembly and Association
21. Article 21 Right to Participate in Government and in Free Elections
22. Article 22 Right to Social Security
23. Article 23 Right to Desirable Work and to Join Trade Unions
24. Article 24 Right to Rest and Leisure
25. Article 25 Right to Adequate Living Standard
26. Article 26 Right to Education
27. Article 27 Right to Participate in the Cultural Life of Community
28. Article 28 Right to a Social Order that Articulates this Document
29. Article 29 Community Duties Essential to Free and Full Development
30. Article 30 Freedom from State or Personal Interference in the above Rights

International Covenant in Civil and Political Rights 1966

The General Assembly on 16 December 1966 adopted the International Covenant on Civil and Political Rights. The Covenant on Civil and Political Rights that consists of 53 Articles is divided into six parts.

Article 1 which refers to the right of peoples to self determination states that all people have the right to determine freely their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resource without prejudice to any obligations arising out of international economic co-operation, based upon the principles of mutual benefit and international law. The Article,

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

further states that in no case may a person be deprived of his own means of subsistence, and that the 'States Parties' shall promote the realization of the right of self determination and shall respect that right. The Covenant on Economic, Social and Cultural Rights also stipulated the above provisions under Article I Part II stipulated the rights and obligations of the 'States Parties' to the Covenant. It included the obligations of the States to take necessary steps to incorporate the provisions of the Covenant in the domestic laws and to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the Covenant. The States Parties ensure equal right of men and women to the enjoyment of all civil and political rights.

International Covenant on Economic, Social and Cultural Rights 1966

The General Assembly on 16 December 1966 adopted the International Covenant on Economic, Social and Cultural Rights. The International Covenant on Economic, Social and Cultural Rights consists of 31 Articles divide into five parts. Part I deals with rights of peoples to self-determination as provided in Article I of the Covenant on Civil and Political Rights. Other rights of the individuals are enumerated in Part III of the Covenant which include the following:

1. Right to work (Article 6)
2. Right to just and favourable conditions of work (Article 7)
3. Right to form and join trade unions (Article 8)
4. Right to social security (Article 9)
5. Right relating to motherhood and childhood, marriage and the family
6. (Article 10)
7. Right to adequate food, clothing, housing and standard of living and
8. freedom from hunger (Article 11)
9. Right to physical and mental health (Article 12)
10. Right to education including a plan for implementing compulsory primary education (Article 13)
11. Right relating to science and culture

Convention on Elimination of all forms of Racial Discrimination 1965

To make the provisions on racial discrimination binding on the States a Convention was adopted by the General Assembly on 21 December 1965, known as international Convention on the Elimination of all forms of Racial Discrimination.

Convention on Elimination of all forms of Racial Discrimination against Women 1979

The General Assembly on 7th November 1967 adopted a declaration on the Elimination of Discrimination Against Women and in order to implement the principles set forth in the Declaration, a Convention on the Elimination of all forms of Discrimination Against Women was adopted by the General Assembly on 18 December 1979.²⁷ In addition to the above Conventions three Conferences were held during the U.N. sponsored International Women's Decade (1976-1985), in Mexico City in 1975, in Copenhagen in 1980, and in Nairobi in 1985. The fourth World Conference on women held in 1995 (4-15 September 1995) in Beijing commonly called Beijing Conference stated that women's rights are human rights.

Convention on the Rights of the Child 1989

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

The Convention on the Rights of the Child was adopted by the General Assembly by consensus on the 30th Anniversary of the Declaration on 20th November 1989, which came in to force on 2nd September 1990.

The UN Convention on the Rights of the Child (CRC) provides an ideal approach for children to learn about their human rights. Because it specifies human rights especially relevant to children, everyone, but especially children, parents and adults who work with children, should be familiar with this important component of the international human rights framework. COMPASITO frames children's rights within the broader context of human rights as a whole and seeks to help children understand that along with all other members of the human family, they too are rights-holders.

The UN General Assembly adopted the Convention on the Rights of the Child in 1989 after nearly a decade of compromise and negotiation among member states and wide consultations with NGOs. Since then more countries have ratified the so called Children's Convention than any other human rights treaty and with fewer reservations, which are formal exceptions taken to parts with which a state may not agree. The Convention on the Rights of the Child (also called the Children's Convention) defines a child as anyone below the age of eighteen and affirms the child as fully possessed of human rights.

It contains 54 articles of children's rights that can be divided into three general categories, sometimes known as the 'three Ps':

- Protection; It is guaranteeing the safety of children and covering specific issues such as abuse, neglect, and exploitation;
- Provision; It is covering the special needs of children such as education and health care
- Participation; It is recognising the child's evolving capacity to make decisions and participate in society as he or she approaches maturity.

The Convention contains several groundbreaking approaches to human rights. Children's right to participation constitutes an area not previously addressed in the UDHR (1948) or the Declaration on the Rights of the Child (1959). Another innovation of the Convention is the use of the pronouns *he* and *she* rather than the generic *he* to include both males and females.

The Convention strongly emphasizes the primacy and importance of the role, authority and responsibility of the child's family. It affirms the child's right not only to the language and culture of the family, but also to have that language and culture respected.

The Convention also exhorts the state to support families are not able to provide an adequate standard of living for their children. While acknowledging the importance of family to a child's well-being, the Children's Convention also recognizes children as right-bearing individuals, guaranteeing them, as appropriate to their evolving capacity, the right to identity, to privacy, to information, to thought, conscience, and religion, to expression, and to association.

The Convention has had enormous worldwide impact. It has intensified the child-rights efforts of UN agencies such as UNICEF and the International Labour Organisation (ILO); it has

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

affected subsequent child-rights treaties (e.g. *Hague Convention on Inter country Adoption*, which speaks of a child's right to a family rather than a family's right to a child, and the *Convention on the Rights of Persons with Disabilities*); it has focused international movements to stamp out pervasive forms of child abuse such as child prostitution and child soldiers, both of which are now the subjects of optional protocols (amendments to the CRC).

General principles of the Children's Convention

Children's rights in the CRC reflect four general principles:

1. Non-discrimination (Article 2): All rights apply to all children without exception. The state has an obligation to protect children from any form of discrimination.
2. The child's best interest (Article 3): The determining factor in all actions dealing with any child should be his or her best interest. In all cases, the best interests of the child take precedence over the interests of the adults concerned (e.g. parents, teachers, guardians). However, the question of how to decide on the best interests of the child remains difficult to determine and open to discussion.
3. The rights to life, survival and development (Article 6): the right of the child to life is inherent, and it is the state's obligation to ensure the child's survival and development. This means that children cannot be subject to the death sentence or to termination of life.
4. Respect for the views of the child (Article 12): The child has the right to express an opinion and to have that opinion taken into account in any matter affecting him or her. The Children's Convention is a powerful instrument, which by its very nature engages young people in an examination of their own rights. It is also an effective tool to assist people of all ages in identifying the complex responsibilities that go with ensuring these rights for children. Using the convention in this way will teach children how to advocate on their own behalf.

Monitoring the Convention on the Rights of the Child

Like all human rights treaties, the Convention on the Rights of the Child contains articles that establish how governments' compliance with the treaty will be monitored. Part II, Articles 42-45, of the Convention sets up these procedures and requirements:

It requires that governments make the rights in the Convention widely known to both adults and children (Article 42);

It establishes the Committee on the Rights of the Child, an body of independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties (Article 43);

It requires states to report every five years on their efforts to implement the Convention (Article 44).

It encourages international cooperation in the implementation of the Convention, especially with specialized UN agencies such as UNICEF (Article 45).

These mandatory reports, usually prepared by a government agency specializing in children's issues, indicate who is not enjoying which rights, identify the constraints and obstacles to realising the rights and what the government intends to do to overcome these challenges. The report is presented to the Committee on the Rights of the Child in Geneva, where the Office of the United Nations' High Commissioner for Human Rights is based, which reviews it and makes recommendations for future action.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

U.N. Declaration on Duties and responsibilities of Individuals, 1997

On 30th July 1998, in which the Council recommended the draft declaration to the General Assembly for adoption, *Conscious* of the importance of the adoption of the draft declaration in the context of the fiftieth anniversary of the Universal Declaration of Human Rights. *Adopts* the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

Article 1:

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2:

Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

Article 3:

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4:

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5:

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

1. To meet or assemble peacefully;
2. To form, join and participate in non-governmental organizations, associations or groups;
3. To communicate with non-governmental or intergovernmental organizations.

Article 6:

Everyone has the right, individually and in association with others:

- a. To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

- b. As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- c. To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7:

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8:

Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

Article 9:

In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

Article 10:

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11:

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession.

Article 12:

Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

Article 13:

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14:

The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

Article 15:

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16:

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17:

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18:

Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

Article 19:

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20:

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

UN High commission for Human Rights and the Committees under the various conventions
UN COMMISSION ON HUMAN RIGHTS

The UN commission on human rights was established in 1946 and is a subsidiary body of the Economic and social council (ECOSOC). At present it consists of 53 member governments elected by ECOSOC for three year term.

The commission deals with the area of human rights more directly than any other charter based body. Its jurisdiction of human rights protection was expanded by ECOSOC in 1970'S to extend the entire world.

Since its incorporation the commission has influenced international human right standards. It made contribution to the Universal Declaration of Human Rights in 1948 as well as the International Covenant on Civil and Political Rights and the International Covenant on Civil and Political Rights. It has further, developed norms and standards relating to civil and political rights, the right to development, the rights of minorities and indigenous people and economic social and cultural rights. The commission also monitors the implementation of the standards

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

outlined. It has the authority to use any number of permanent or special procedures while examining a specific human rights issue.

HUMAN RIGHTS COMMITTEE

Human rights committee was established in 1976 to supervise state compliance with the International Covenant on Civil and Political Rights. The functions of HRC include considering the periodic reports submitted by state parties to assess compliance by making concluding observations' and developing General Comments which address specific rules of issues of the ICCPR. State parties may recognize the competence of the committee to hear interstate complaints. The optional Protocol to the civil and Political rights, Covenant has extended the power of the HRC the competence to receive and consider individual complaints. The HRC has adopted General Comments on the Rights of the Child, discrimination and other such issues.

COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

In 1986, the United Nations Economic and Social Council established committee on Economic, Social and Cultural Rights for the purpose of monitoring the implementation of the Covenant.

The functions of the CESCR includes considering the periodic reports submitted by state parties to assess compliance and providing 'concluding observations', developing general comments in order to interpret rights and compliance standards and holding discussions to promote improved implementation of CESCR obligations. In the General Comments of the CESCR, diverse issue have been address , ranging from issues relating to non-discrimination and inadequate housing to issues concerning the rights of the people with disabilities and economic, social and cultural rights of the people.

COMMITTEE ON THE ELIMINATION OF RACIAL DISCREMINATION

The Committee on the Elimination of Racial Discrimination (CERD) was established in 1969 to monitor state compliance to the Convention on the Elimination of All Forms of Racial Discrimination. The functions of the CERD include considering the periodic reports submitted by the state parties to assess compliance and making 'concluding observations'. CERD may also consider interstate communications and individual complaints. The committee also develops 'General Recommendations'

THE COMMITTEE ON THE ELIMINATION OF THE DISCRIMINATION AGAINST WOMEN

The Committee on the Elimination of Discrimination against Women was established to monitor the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) The functions include considering the periodic reports submitted by State Parties to assess compliance and making 'concluding observations'. Under the optional protocol which entered in to force on 22 December 2000, the committee considers the complaints of individuals or groups of individuals arising under CEDAW. Under the protocol, the committee has been empowered to make confidential inquiries into grave or systematic violations of those rights by a state party. It also issues General Recommendations, observations and suggestions.

THE COMMITTEE AGAINST TORTURE

The committee against torture was established in 1987 to monitor the implication of the convention against Torture or Punishment .The functions of the committee include examining state parties reports and making concluding observations, receiving and considering individual

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

communications concerning violations of the convention and enquiring into allied systematic torture in states that have accepted the procedure under Article 20.

COMMMIITTEE ON THE RIGHT OF THE CHILD

The committee on the Rights of the Child has been monitoring the convention on the right of the Child since 1991. The functions of the committee includes, examinations of state reports submitted and the making of concluding observations , the issuing of general recommendations and conducting general discussions on a particular article of the Children's Convention or f a specific issue The committee on the protection of the rights of all Migrant Workers and Members of their Families. The international convention on the Protection of the Rights of All Migrant Workers and Members of their Families was adopted in1990 and entered into force on 1stJuly 2003. The functions of the committee include examine state reports submitted and making concluding observations and also issuing general recommendations.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

UNIT - III
CONSTITUTIONAL PROVISIONS

The framers of the Indian Constitution were very much influenced by the concept of human rights contained in the Universal Declaration of Human Rights and guaranteed many of those rights in our constitution part III and part IV, though separate, carry the common theme of human rights. When Human rights are guaranteed by a written constitution they are known as fundamental rights. Fundamental rights are the modern name for what has been traditionally known as natural rights. They are fundamental because an ordinary legal right is enforced by the ordinary law of the land and may be changed by the legislature of the country, but the fundamental rights cannot be altered in the same way. It can be changed only by amending the constitution itself. Fundamental rights are enforceable against the state.

Difference between Human rights and Fundamental rights

In general, 'rights' refers to the moral or legal entitlement over something. As per law, rights are considered as the reasonable claim of the individuals which are accepted by the society and approved by statute. It can be fundamental rights or human rights. The rights which are fundamental to the life of the citizens of a country are known as fundamental rights.

On the other hand, human rights imply the rights that belong to all the human beings irrespective of their nationality, race, caste, creed, gender, etc. The main difference between fundamental rights and human rights is that the fundamental rights are specific to a particular country, whereas human rights have worldwide acceptance.

- The elemental rights of the citizens of a country, which are mentioned in the constitution and enforceable under the law is known as fundamental rights. On the other extreme, human rights are the rights that a human being needs to survive with respect and freedom.
- Fundamental rights include only those rights which are basic to a normal life. On the contrary, human rights include those rights which are basic to a real life and are absolute, i.e. it cannot be taken away.
- While fundamental rights are country specific, i.e. these rights may vary from country to country, human rights have a global acceptance, meaning that all the human beings enjoy these rights.
- The fundamental rights rely on the basic principle of the right of freedom. As against, the human rights are based on the right of life with dignity.
- Fundamental rights are guaranteed under the constitution of the country, whereas the human rights are recognised at international level.
- Both fundamental and human rights are enforceable in nature, but the former is enforced by the law court, and the latter is enforced by the United Nation Organization.
- Fundamental rights are derived from the views of a democratic society. Conversely, human rights emerge from the ideas of civilised nations.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

Human Rights Organizations

National Human Rights Commission

The Government of India, to ensure a free and fair Redressal of human rights violation, enacted the Human Rights Protection Act, 1993. It thus made efforts to fulfil its Constitutional obligation to protect each and every citizen and in consonance with the said Act, the National Human Rights Commission, henceforth addressed as NHRC, came into existence. The Commission has a Chairman (usually a retired Chief Justice of Supreme Court) and seven other members belonging to the judiciary branch. The members are appointed by the President of India and could be removed only on grounds that are serious in nature like convicted or adjudged as insolvent. The Commission is assisted by a Secretary General, Police, Administrative, Technical and Scientific staff.

All these appointments are made by the President after getting the recommendation from a committee which is headed by the Prime Minister. The terms and condition meant for all the members

- A member who is appointed as chairman will cease to be a member after the period of five years from the date of his appointment or the attainment of the age of 75 years of age whichever is earlier.
- A member after the completion of five years can be reappointed again unless and until he is less than 75 years of age.
- When a person is not reappointed as a member he/she will not be eligible to be employed for any post under the central 51 govt. or the state govt.

Action against chairman / Member

- Any member or chairman can be removed only after the order of president in conditions such as misbehavior or incompetence, only after reference is made to the Supreme Court.
- There are some further conditions on which the chairman/ member can be removed. Y if it is found that they are insolvent. y Engaged in an office as a paid employee y Not able to do his work because of infirmity of mind or body. y He/she is a person of unsound mind. Y If anyone is convicted and sentenced for any offence that involves moral turpitude.

Procedure adopted and regulated by the commission a) The chairman shall decide the venue and date of the meetings. b) The commission is free to adopt its own procedures.' All the decisions of the commission in all events will be authorized by the Secretary General or any other officer of the chairperson.

The Commission's functions include the following:

- To inquire into the violation of human rights or abetment thereof either on its own or on a petition submitted by an affected party or on his behalf by any person, or negligence shown by a public servant in the prevention of such a violation.
- To intervene in any of the proceedings pending before a court with the permission of such court on any complaint of violation of human rights.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

- To visit any jail, or any institution where persons are detained or lodged for purposes of treatment, reformation or protection under the control of a state government with an advance notice to study the living conditions of the inmates and to make recommendations.
- To review the safeguards for the protection of human rights provided by the Constitution or any of the existing law and to suggest measures to Central and State Governments for their effective implementation.
- To review all the aspects that inhibit the enjoyment of human rights including acts of terrorism and recommend the remedial measures to the Government.
- To study the treaties and other international instruments on human rights and make recommendations to the central government for their effective implementation
- To undertake and promote research in the field of human rights
- To propagate the concept of human rights and to promote the awareness for their protection among various sections of the society, it can undertake publication of books or pamphlets or conduct seminars, or use the media or any other means available to it.
- To promote and support the non-governmental organizations and institutions working in the field of human rights

Powers of the Commission

- The Commission exercises the same powers of a civil court under the Civil Procedure Code, can give summons, enforce or request any public record examination of witnesses, etc.,
- It can direct any person to submit such information as required by it; the person is bound legally to furnish the same.
- It can seize any document or enter any building concerning any matter of inquiry subject to the provisions of Criminal Procedure Code.
- In case of accused persons, the Commission is empowered to record facts, as specified under the Criminal Procedure Court and can also transmit the case to a Magistrate for conducting the trial.
- The Commission may adopt different procedures such as calling for information or report either from central or state government concerned within a time frame or if it deems needs immediate action, it need not even consult relevant government or authority.
- The Commission may authorise Central Government to submit any required report; the government is bound to inform the Commission about the action taken; and the Commission has to publish related report giving its recommendations.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

- The Commission also exercises investigative powers, utilise services of any officer or investigative agency and examine their statements.

Procedure for the enquiry

The Commission while inquiring into the complaints of violations of human rights may

- (i) call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto within such time as may be specified by it:-
- (ii) Provided that– (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own; (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly; (ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

Annual and special reports of the Commission

The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non acceptance of the recommendations, if any. According to G.P.Joshi there has been a definite increase in the number of complaints received by the Commission. From 6,987 in 1994-95, the number increased to 10,195 in 1995-96 and to 20,514 complaints in 1996-97. The Commission feels happy on this account, as it signifies, according to the Commission, an increase in awareness of human rights and a "reflection of the increasing confidence of people in the Commission.

The existence of NHRC clearly expresses the government's commitment to ensure human rights, international accountability and treaty obligations to the UDHR. The NHRC has different roles to fulfil, which are given as follows as an inquiry agency- where it can inquire into the incidence of human rights violations like custodial deaths, encounter killings, police atrocities, reports of starvation, and so on. As an agency of reform- it can also study the issue of overcrowding of prisons, recommend the introduction of vocational courses, provide medical care, and ensure humane and just conditions. As an agency of reviewing existing laws and international obligations- the Commission asked the Law Commission to review the Terrorist Disruptive Activities (Prevention) Act (TADA). It can also contribute significantly to issues relating to child labour and child prostitution. As an agency to promote Human Rights Education- the Commission plays a key role promoting human rights education and increase awareness among large sections of people about such rights. This would include groups like ministers, civil servants, Human Resource Development Ministry, NCERT, police, military, academicians, NGOs etc.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

State Human Rights Commission

The Protection of Human Rights Act, 1993, provides for the establishment of State Human Rights Commissions (SHRC). The composition of the SHRC is same as that of the NHRC. It is appointed by the Governor of the state concerned and the members' term could be terminated only by proven misbehaviour or incapacity. The responsibilities of the Chief Ministers are crucial if the SHRCs have to function effectively. In the Protection of Human Rights Act, 1993, Sec.21, the Constitution of State Human Rights Commission is clearly enumerated. "A State Government may constitute a body to be known as the name of the State.

Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission. The Chairperson and other members of the State Commission are appointed by the Governor by warrant under his hand and seal; provided that every appointment under the sub-section shall be made after obtaining the recommendation of a Committee consisting of (a) The Chief Minister (Chairperson); (b) Speaker of the Legislative Assembly (Member); (c) Minister in-charge of the department of Home in the State (Member); (d) Leader of the Opposition in the Legislative Assembly (Member).

Functions and powers of the SHRC

The functions and powers of the state commission are similar to those of National Human Rights Commission. The only difference is that the State commission cannot make a study of treaties. The state commission is empowered to study only those cases which are related to their particular state only. If a matter is with the State Commission then NHRC shall not deal with these matters.

At present, 14 states had set-up State Human Rights Commissions. These states are Assam, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal and Chhattisgarh. Andhra Pradesh and Karnataka too have notified their establishment. The State Human Rights Commissions too have taken up issues relating to people who are deprived of facilities like public health, sanitation, nutritional security, drinking water quality, prevention of child marriages; the commissions also address issues of rights violation faced by persons with disability.

Grievance Redressal Mechanism

The violation of human rights is a global phenomenon. Although many human rights have been adopted and are now in force, violations continue to occur. Under major human rights treaties and conventions, monitoring mechanisms are available to review the state compliance of international human rights norms and obligations. These are, Human Rights Committee (under International Covenant on Civil and Political Rights), Committee on Economic, Social and Cultural Rights (under International Covenant on Economic, Social and Cultural Rights), Committee on Torture (under Torture Convention), CEDAW Committee (under Convention on Elimination of All Forms of Discrimination against Women), Committee on Rights of the Child (under CRC), Committees on the rights of Migrant Workers, Enforced Disappearance, and Disabled Persons. All the State parties are required to submit periodic report on implementation of human rights obligations. These Committees review, criticise, and publicise the violations of human rights. National and international NGOs also participate in

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

these international forums to put pressure on state parties to improve their human rights record.

Non – Governmental organisations

Non government Organizations (NGO's) are voluntary organizations. They are formed by people who want to work for the welfare of people in general and the less privileged and help less in particular. The Government, central or state has its limitations in providing welfare measures like means of livelihood, education and health services to people who need them. Lack of funds, lack of manpower, public protest and pressure from political parties are some of the problems faced by the government in providing welfare measures to people. On the other hand, NGO's have better network of manpower. These organizations are financially supported by business organizations. And, above all, NGO's have personal contact at the grass root level. Activists in these organizations have health relations or rapport with general public. And, therefore, they can serve people better than government officials in the fields like educations, protection of human rights, health, Child welfare, environment a protection, rehabilitation of displaced people etc.

The NGOs play a crucial role in highlighting and working for human rights issues. In fact, it is the NGOs that often highlight the role of state as aggressor that violates the basic rights of the citizens. This, in a way, also acts as a check as the state becomes more vigilant in its conduct to ensure basic human rights. The NGOs help in creating awareness about the significance of rights; in getting the state initiate reforms in its policies and actions; and also apprise the marginalised groups such as women, backward sections and minorities about the necessity of human rights upliftment. The six major functions of human rights NGOs include:

- a. Gathering, evaluating and disseminating human rights
- b. Advocating human rights
- c. Lobbying and mobilizing public opinion
- d. Providing legal aid
- e. Providing humanitarian relief
- f. Developing human rights norms.

In a country like India, where different groups, cultures, traditions and languages exist, it is imperative that the tradition of human rights be upheld so as to live a life of dignity and respect. This also prevents arbitrary arrests and actions by government or its agencies; further, the marginalised groups too stand protected against untoward incidents.

In the beginning, the NGOs concentrated primarily on civil liberties issues; they have now come to encompass various issues like economic and social rights; poverty, hunger and malnutrition; environment and ecological issues; women's and children's issues and so on.

The NGOs have also been fighting against human rights violations in far-flung areas where the armed forces are usually at the centre of controversy. Unfortunately, most of the NGOs do not have a comprehensive approach and many of them are also isolated for their fight against important issues where there are vested interests. NGOs actively pursue human rights issues; create, implement and protect human rights; they play active role in extending legal assistance, literacy and awareness; and help in mobilising voluntary groups to work for legal aid and public interest litigation regarding human rights.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

Pressure Groups

Civil society is considered as a basic pillar of democracy. Its role is being viewed more positively and as requiring for a vibrant democracy. It facilitates and sustains participation by the citizens and its role goes beyond acting as a facilitating institution. The very basic idea behind civil society is to share interests, purposes and values, it is but natural that it is viewed as an important component in society and viewed with much respect. It consists of those organisations and groups that commonly work for the good of the society and is formally and legally independent from state but acts in consonance with state and its agencies.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

UNIT - IV
CORE PROBLEMS

Poverty

Poverty causes disability; on the other, disability and its consequences are increased by poverty. Vitamin deficiencies, lack of calcium and iodine in the diet, anaemia and malnutrition of both children and pregnant and nursing mothers, often the result of poverty, can be causally related to disability. Unsanitary living conditions and lack of basic amenities can cause diseases such as typhoid, tuberculosis, polio and meningitis, which can also lead to disabilities. Lack of appropriate information, access to primary healthcare and immunisation services also plays a role in causing disability.

Extreme poverty is measured by economists as the number of people living on an income below a certain threshold, called the 'poverty headcount ratio' and set by the World Bank in 2015 at US\$1.90 per day, in 2011 PPP terms. This threshold is the average of the national poverty lines in the poorest 15 countries. According to 2016 estimates, this number declined from 1.851 billion people (35 per cent of the world population) in 1990 to 767 million (10.7 per cent) in 2013. The World Bank estimates that 'global extreme poverty continues to fall rapidly', considering that 'around 100 million people moved out of extreme poverty from 2012 to 2013, and since 1990, nearly 1.1 billion people have escaped extreme poverty. Relative poverty lines measure, for example, the bottom 10 per cent of the income distribution or a certain fraction of median income, such as the 40th percentile. The Human Poverty Index ranks countries according to an index of several factors, which differ between developing and developed countries.

The basic idea that poverty and underdevelopment are human rights concerns has been part of the rhetoric of human rights since the founding of the contemporary human rights movement and even before. The UN High Commissioner for Human Rights declared in 1998 that extreme poverty was the worst violation of human rights. The issue had already been raised by the Commission on Human Rights, which in 1990 requested its Sub-Commission to consider the relationship between human rights and poverty. The Sub-Commission appointed a Special Rapporteur on human rights and extreme poverty, whose report was published in 1996. In a related development, the High Commissioner published in 2001 a document setting out basic principles of a human rights approach to: (1) the process of formulating a poverty reduction strategy; (2) determining the content of a poverty reduction strategy; and (3) guiding the monitoring and accountability aspects of poverty reduction strategies

Unemployment and Illiteracy

The human right to work recognizes work as something to which each and every individual is entitled. The right to work means, first of all, the right to participate in the producing and servicing activities of human society and the right to participate in the benefits accrued through these joint activities to an extent that guarantees an adequate standard of living.

The right to work is the first of the specific rights recognized in the ICESCR. After part II of the Covenant, on determining the nature of states' obligations, part III on specific rights immediately starts with the right to work (art. 6) Article 6 of the ICESCR states that the right to work includes "the right of everyone to the opportunity to gain his living by work." This identifies for us the crucial element in these human rights standard, which is the opportunity to earn one's living.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

Illiteracy is a major obstacle to the effective enjoyment of human rights. The right of everyone to education is universally recognized. It was proclaimed by the Universal Declaration of 1948; it is guaranteed by the law or the Constitution in many countries. To promote literacy is to change man's conscience by changing his relation to his environment. Literacy as well as enriching individual freedoms and rights is an integral part of the emancipation of communities and nations.

On the International Day of Literacy in 2010, the general manager of UNESCO Koïchiro Matsuura emphasized, that the majority of illiterate adults is in the most countries represented by the people who are usually pushed to the periphery of the society – often women and girls, people who nomadize, handicapped people. He emphasized that there is a narrow connection between the poverty and illiteracy.

Class and Caste discrimination and Human Rights

Caste discrimination, which results from the hierarchical division of a society placing inherent privileges and restrictions by birth, runs contrary to the belief that "all human beings are free and equal in dignity and rights" as stated in Article 1 of the Universal Declaration of Human Rights. Caste discrimination is a chronic human rights condition, which involves massive violations of civil, political, economic, social and cultural rights. Caste-affected communities are denied a life in dignity and equality. According to the United Nations Sub-Commission study on discrimination based on work and descent, a number of human rights violations occur in relation to caste discrimination including violations of:

- The right to physical security and life and the right to be free from violence
- The right to equal political participation and access to justice
- The right to own land
- The right to equal access to public and social services
- The right to freedom of religion
- The right to marriage on free will
- The right to education and cultural identity
- The right to equal opportunity and free choice of employment and equal, just and favorable conditions of work
- The right to be free from forced or bonded labour
- The right to be free from cruel, inhumane or degrading treatment
- The right to health, adequate food, water, sanitation, clothing and housing.

Those who fall outside the caste system are considered "lesser human beings", "impure" and thus "polluting" to other caste groups. Dalits are known to be "untouchable" and subjected to so-called "untouchability practices" in both public and private spheres.

"Untouchables" are often forcibly assigned the most dirty, menial and hazardous jobs, such as cleaning human waste. The work they do adds to the stigmatization they face from the surrounding society. The exclusion of 'caste-affected communities' by other groups in society and the inherent structural inequality in these social relationships lead to high levels of poverty among affected population groups and exclusion from development processes, and generally precludes their involvement in decision making and meaningful participation in public and civil life.

The United Nations Committee on the Elimination of Racial Discrimination has in General Recommendation on descent-based discrimination recommended that all states "take

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

the necessary steps to ensure equal access to the justice system for all members of descent based communities as well as ensure the prosecution of persons who commit crimes against members of descent-based communities and the provision of adequate compensation for the victims of such crimes.”

The issue of caste-based discrimination has also been addressed by UN treaty bodies, Special Rapporteurs and the Universal Periodic Review mechanism.

Custodial violence

The investigating agency can have access to such convict in the judicial custody only with the special orders of the court only. There are other kinds of custody as well such as protective custody, deportation camps for foreigners whose presence has been declared to be illegal and military custody. The juveniles are housed by a special order in protection homes. For destitute women also, protection homes have been established. Under the Mental Health Act, persons may be committed to mental hospitals.

The protection against abuse however extends to all custodial situations flowing as it does from the constitutional right to life and due process. Apart from the problem of custody, there is a perennial problem of illegal detention in lockups and in undisclosed locations or safe-houses.

Custodial violence means any kind of violence occurring in the custody whether legal or not, which is not warranted by the law of the land. Violence may be subtle or extreme like abusing, emotional or physical violence, thrashing and beating, rape or even death. The nature of custody may be judicial, police or under any institution obliged to take care of the inmates like hospitals, homes etc. or may be in the hands of terrorist organizations or armed groups or insurgents etc. Custodial violence means torture in police or other kind of custody.

Custodial violence and deaths is another area that has caught the serious attention of NHRC. It may be noted that the huge increase of the number of cases/complaints considered by it from 276 in 1994-95 to 11,153 in 1995-96 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. Around 444 custodial deaths were examined by the NHRC during 1995-96, excluding 39 cases of disappearance of persons arrested by the police.

Problems of health and environmental protection

Violations or lack of attention to human rights can have serious health consequences (inhuman and degrading treatment, abuse and violence, torture, harmful practices, poor living conditions, lack of information, lack of health services);

Respecting, protecting and fulfilling human rights can reduce the vulnerability to and impact of ill health (health, nutrition, living standard and education, adequate environmental and working conditions).

The health system can promote or violate human rights in the way it is designed and implemented (accessibility to service, provision of information, respect for integrity and privacy, cultural sensitivity, gender and age sensitivity). It is referred to as “the right to health.” It is affirmed in several human rights instruments.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

The Universal Declaration of Human Rights of 1948, article 25(1) states that “everyone has a right to a standard of living adequate for the health of himself and his family, including food, clothing, housing, and medical care and necessary social services.”

The International Covenant on Economic, Social and Cultural Rights 1966 (CESCR) Article 12 (1) of the Covenant recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and elaborates in article 12 (2) steps that need to be taken by state parties to achieve full realization: (a) The right to maternal, child and reproductive health; (b) The right to healthy natural and work environments; (c) The right to prevention, treatment and control of diseases; (d) The right to health facilities, goods and services. Other relevant articles are: article 2 which urges the convention states to use their available resources to the utmost to fulfill all the rights of the convention and when needed within international co-operation. article 7 which recognizes the right of everyone to work under just and favorable working conditions; article 11 which recognizes the right of everyone to an adequate standard of living, including food, clothing and housing; article 15 which specifies the right of everyone to enjoy the benefits of scientific progress and its applications; The CESCR has been ratified by 145 states (February 2002), among them all countries with Swedish co-operation in the health field except Mozambique and Laos. In 2000, the committee on the CESCR in collaboration with WHO has developed the General Comment on the right to health

The Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW) includes several of the rights included in CESCR and underlines especially in article 12 the abolishment of all discrimination against women in relation to healthcare.

The Convention on the Rights of the Child 1989 (CRC) includes the same rights related to health as CESCR, but also several articles on protection against abuse and exploitation. It confirms in article 24 the right to highest attainable standard of health and to facilities for treatment of illness and rehabilitation of health. It elaborates what this means in relation to health services, maternal and child health, information, living conditions etc. in subsequent paragraphs.

In providing adequate living conditions, access to potable water, necessary nutrition and accessible and acceptable health services governments fulfill their human rights obligations and contribute to the dignity and well being of the population. A healthy population contributes to productivity, development and economic growth. And this in turn increases the possibility to improve living-conditions and underlying determinants for health as well as creating funds for health services. Health and well being are basic to the enjoyment of other human rights such as education, freedom of speech, free movement, work etc. Access to health services and rehabilitation is especially important for people who without the input of health promoting activities would not be able to enjoy their basic rights in society, such as people with disabilities, people who have been abused and people with chronic disease.

Problems of Aged and Physically Challenged

Traditionally, persons with disability are seen as ‘objects of pity’, charity, ‘as a burden on their societies and families’, and as persons requiring treatment to cure and restore ‘normalcy’. Disability is perceived as a ‘personal tragedy’ and disabled persons ‘either passively come to terms with a condition’ or bravely overcome their ‘limitations by great mental or physical effort. Discrimination based on impairment creates physical and social barriers, structures, and

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

practices that impede full participation of disabled persons in society. The need for rights of the persons with disability stems from the fact that formal equality, available in human rights treaties, is difference-blind in that it requires that everyone be treated same and thus strengthens the existing patterns of social disadvantage.

Discrimination against Women and Children

The status of woman is unjust and inhuman, For instance female foeticide and female infanticide are widespread and the practice of sati and *pardah* system has also not disappeared. Women are frequently tortured in the broad day light because of insufficient dowry. Hundreds of women commit suicide either due to humiliating sexual atrocities on them or because of unbearable tortures by the husband or in –laws. Women face grave human right violations in every society. As per UN records the human right violation in the case of women not only include physical violence but also include deprivation of denial of basic amenities and means of livelihood like health education etc.

The violation of human rights occurs in different levels viz., the public sphere, private sphere and religious sphere. Women are victims of evil practices like *sati*, *devdasi*, *pardah*, female genital mutilation etc. The major forms of human right violations faced by women are include sexual assault, rape, female foeticide and infanticide , forced prostitution , denial of education, denial of participation in decision making.

A child means every human being below the age of 18. Child in India is a victim of different types of abused like physical, emotional, sexual and commercial abuses. An abuse means, causing or permitting any harmful or offensive contact on a child's body or any communication of transaction of any kind that humiliates shames or frightens the child. While a physical abuse indicates a physical injury, the emotional abuse is a kind of psychological maltreatment. The other important problem faced by children includes discrimination especially in the case of girl child, Infanticide, foeticid, child marriage, physical, emotional educational neglect etc.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

UNIT - V
SPECIAL LAWS VIOLATE OF HUMAN RIGHTS

The violation of human rights is a global phenomenon. Although many human rights have been adopted and are now in force, violations continue to occur. Under major human rights treaties and conventions, monitoring mechanisms are available to review the state compliance of international human rights norms and obligations. These are, Human Rights Committee (under International Covenant on Civil and Political Rights), Committee on Economic, Social and Cultural Rights (under International Covenant on Economic, Social and Cultural Rights), Committee on Torture (under Torture Convention), CEDAW Committee (under Convention on Elimination of All Forms of Discrimination against Women), Committee on Rights of the Child (under CRC), Committees on the rights of Migrant Workers, Enforced Disappearance, and Disabled Persons (under respective Conventions).

It is also necessary that these rights are ensured through certain institutional mechanisms through which grievances could be addressed and justice rendered. Some of these institutions are listed in this Unit for the information of the learner. These institutions act as checks on the violations of human rights. In case of violations, the citizens and communities concerned could approach these institutions and present their case so that their rights are restored. These institutions are statutory bodies that help the citizens to live a life of dignity and respect. These also ensure accountability on the part of various bodies and help in discharging the statutory obligation of promoting human rights. Various efforts have been made at the international level to protect human rights.

The Prevention of Terrorist Activities Act (POTA)

POTA was an anti-terrorism legislation enacted by the Parliament of India in 2002. The act replaced the Prevention of Terrorism Ordinance (POTO) of 2001 and the Terrorist and Disruptive Activities (Prevention) Act (1985-95) and was supported by the governing National Democratic Alliance. The act provided the legal framework to strengthen administrative rights to fight terrorism within the country of India and was to be applied against any persons and acts covered by the provisions within the act. It was not meant as a substitute for action under ordinary criminal laws. The act defined what a terrorist act and a terrorist is and grants special powers to the investigating authorities described under the act.

To ensure certain powers were not misused and human rights violations would not take place, specific safeguards were built into the act. The prominent of them are: Investigation of an accused can be done by an officer of the rank of Deputy Superintendent of police or higher. Confessions made to the police must be recorded within 48 hours before a magistrate, who will send the accused for a medical examination if there is a complaint of torture. Under the new law detention of a suspect for up to 180 days without the filing of charges in court was permitted. It also allowed law enforcement agencies to withhold the identities of witnesses and treat a confession made to the police as an admission of guilt. Under regular Indian law, a person can deny such confessions in court, but not under POTA. The act was repealed in 2004 by the United Progressive Alliance coalition.

Prominent POTA cases

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

Vaiko, a prominent Tamil politician, was controversially arrested under the POTA for his support to the Liberation Tigers of Tamil Eelam. After the Mumbai Blasts of August 2003, three suspects were arrested under the POTA act. The act was repealed the following year in 2004.

The Terrorist and Disruptive Activities (Prevention) Act,-TADA

The Terrorist and Disruptive Activities (Prevention) Act, commonly known as **TADA**, was a law active between 1985 and 1995 (modified in 1987) for the prevention of terrorist activities in Punjab. The TADA was meant to be a temporary provision with a life of two years but it was extended every year. It was renewed in 1989, 1991 and 1993 before being allowed to lapse in 1995 due to increasing unpopularity. This act was the first and the only legislative effort by the Union Government to define and counterterrorist activities. The Act's third paragraph gives a very thorough definition of "terrorism": "Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any actor thing by using bombs, dynamite or other explosive substances or inflammable substances or lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act."

The Act established special courts or "designated courts" to try those arrested for terrorist acts and disruptive activities. It conferred broad discretion upon the authorities to arrest persons and to try them. A special court known as TADA court was set up to hear the cases and deliver judgements pertaining to 1993 Bombay bombings. TADA is not a preventive detention but it is a substantive criminal law. The main difference between TADA and ordinary law is that under ordinary law a detainee may be held in police custody for a maximum period of 15 days before being transferred to judicial custody whereas under TADA this period is up to 60 days. The TADA has curtailed the provision of anticipatory bail contained in Section 438 of the Criminal Procedure Code. It extends to the whole of India, and it applies also, -

- a. To citizens of India outside India;
- b. To persons in the service of the Government, wherever they may be
- c. To persons on ships and aircraft registered in India, wherever they may be.

The main provisions of the TADA are as follows.

Whoever commits a terrorist act, shall, -

- i. If such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;
- ii. In any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Section 4 Punishment for disruptive activities:

Whoever commits or conspires or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Section 5- Possession of certain unauthorised arms, etc. In specified areas:

Where any person is in possession of any arms and ammunition specified in Columns 2 and 3 of Category I or Category III (a) of Schedule I to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorised in a notified area, he shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, Where any shares in a company stand forfeited to the Government under this sub-section, then, the company shall, notwithstanding anything contained in the Companies Act, 1956, or the articles of association the company, forthwith register the Government as the transferee of such shares.

Where a person has been convicted to any offence punishable under this Act or any rule made there under, the Designated Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Government free from all encumbrances. Section 15 of the article states that confession made by a person before a police officer not below the rank of Superintendent of Police is considered as admissible evidence.

The legislation was ultimately succeeded by the controversial Prevention of Terrorist Activities Act (2002-04). The majority of those detained under TADA were released on bail on the orders of the Supreme Court and cases were reviewed by the "Review Committees" which often recommended release. According to official figures, as of December 1999 TADA charges against almost 24,000 people had been dropped as a result of such reviews.

Although TADA lapsed in May 1995 after immense international pressure from the organs of the United Nations and nongovernmental organisations, it has been given retroactive effect and people are still being charged and held according to its provisions. People in Punjab and other States of India continue to be charged under TADA retrospectively and continue to be harassed under it. In addition, the position is that those wanted in connection with offences committed whilst TADA was in operation are subject to its provisions.

Tamilnadu Essential Service Maintenance Act - 2002

The Government has passed an Act called Tamil Nadu Essential Services Maintenance Act, 2002 on 1.10.2002. The Act provides for strike enforcement of discipline among certain essential services and to provide for matter connected thereon.

1. This Act may be called the Tamil Nadu Essential Services Maintenance Act, short title, extent and commence-
2. It extends to the whole of the State of Tamil Nadu.
3. It shall come into force at once.

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

In this Act, unless the context otherwise requires,

Definitions (a) "essential service" means

- i. any service connected with the supply of water or electricity;
- ii. any transport service for the carriage of passengers or goods by motor vehicles;
Explanation.- For the purpose of this sub-clause and sub-clause
- iii. the expire;%on "motor vehicle" shall have the same meaning assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988; (iii) any service connected with workshop for the maintenance or repair of the motor vehicles of any transport service referred to in sub-clause (ii);
- iv. Any service connected with public health and sanitation, including hospitals and dispensaries anti public conservancy: Power to prohibit strikes in certain essential services.
- v. any service connected with a Municipal Corporation, Municipal Council or other Local Authorities;
- vi. any Fire Brigade Service;
- vii. any public services and posts in connection with the affairs of the State, and also persons appointed to the Secretarial staff of the State Legislative Assembly and the officers and servants of the High Court;
- viii. any other service or employment or class thereof connected with any matter with respect to which the State Legislature power to make laws under List-I1 in the Seventh Schedule to the Constitution and which the Government, being of opinion that strikes therein would prejudicially affect the maintenance of my public utility service, the public safety or the maintenance of supplies and services necessary for the life of the community or would result in the infliction of grave hardship on the community, may, by notification, declare to be an essential service for the purpose of this Act;

(b) "Government" means the State Government;

(c) "Strike"

It means the cessation of work by a body of persons while employed in any essential service acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept work assigned, and includes:

Refusal to work overtime where such work is necessary for the maintenance of any essential service

No person employed in any essential service to which the order relates shall go or remain on, or otherwise take part in, strike;

Any strike declared or commenced, whether before or after the issue of the order, by person; employed in any such service, shall be illegal. Any person who commences a strike which is illegal under this Act goes or Penalty for illegal strike. remains on, or otherwise takes part in, any such strike, shall, on conviction, be punished 6 with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Any person, who instigates, or incites other persons to take part in, or otherwise , instigation, 1 acts in furtherance of, a strike which is illegal under this Act, shall, on conviction,

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both. ,

Any person who knowingly expends or supplies any money in furtherance or Penalty for giving support of a strike which is illegal under this Act, shall, on conviction, be punished with financial aid imprisonment for a term which may extend to three years, or with fine which may extend to illegal to five thousand rupees, or with both. 7. Any action taken against any person under sections 4,5 or 6 shall not affect, and Action under shall be in addition to, any other action of a disciplinary nature or any consequence which may ensue, and to which the person may be liable, by or under the terms and conditions to other of his service or employment.

Lack of accountability and transparency in Government functioning

The integration of human rights into the work of development cooperation also includes greater emphasis on the principle of accountability. This sets out the rights of discriminated groups (and with that the target group of development cooperation) in relation to duty bearers, usually the government and its representatives, but also enterprises. Of crucial importance therefore is that all rights holders, particularly the most severely discriminated and disadvantaged persons and groups are informed about their rights and can claim these from the relevant duty bearers. Similarly, the duty bearers must evaluate their capacities for implementing the respective duties and support the relevant institutions to be able to meet their obligations.

The international treaties, resolutions and declarations are the normative reference system. Accordingly rights have to be defined in an enforceable manner. States and their institutions have the duty to meet their international and national legal obligations and take the necessary steps to respect, protect and fulfil the rights of all persons under their jurisdiction, for example through legislation, policies and programmes. Without accountability, any right would be devoid of content. Duty bearers must therefore be made legally, financially and politically accountable to rights holders.

Similarly, the duty bearers must evaluate their capacities for implementing the respective duties and support the relevant institutions to be able to meet their obligations. The international treaties, resolutions and declarations are the normative reference system.

Accordingly rights have to be defined in an enforceable manner. States and their institutions have the duty to meet their international and national legal obligations and take the necessary steps to respect, protect and fulfil the rights of all persons under their jurisdiction, for example through legislation, policies and programmes. Without accountability, any right would be devoid of content. Duty bearers must therefore be made legally, financially and politically accountable to rights holders.

Right to Information

Article 55 of the U.N. Charter stipulates that the United Nations 'shall promote respect for, and observance of, human rights and 'fundamental freedoms' and according to Article 56 'all members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.1. In tune with this, several international and United National documents have pledged for granting right to information. However, in the international human rights instruments, right to information was not set out as a distinct human right but as part and parcel of the freedom of speech and expression. In his 2000 annual report, the United Nations Rapporteur came up in detail with the

STUDY MATERIAL FOR B.A HISTORY
HUMAN RIGHTS
SEMESTER - III, ACADEMIC YEAR 2020-21

specific content of right to information. The report listed several recommendations as to right to information legislations. It recognized that the governments have a duty to disclose information, publish documents of significant public interest; cost of gaining information should not be excessive, etc.

In 2002, the Supreme Court held that the 'freedom of speech and expression includes the right to impart and receives information and the freedom to hold opinions' and that 'a democracy cannot survive without free and fair election, without free and fairly informed voters'. The supreme court reaffirmed that the right to information about the financial , educational and criminal backgrounds of candidates contesting elections, promoted freedom of expression and therefore the right to information forms and integral part of the Article 19(1) (a) i.e right to speech and expression. Later, Right to Information Act was passed in 2005 by the Government of India. It is one of the most revolutionary laws in India. It enables the citizens to get all information. Tamil Nadu and Goa became the first states to enact laws on Right to Information. Maharashtra and Karnataka also enacted their respective RTI law in 2000. The most recent entrant in this league has been the National Capital Territory of Delhi, which enforced the Delhi RTI Act in 2001.

Inadequate functioning of democratic institutions

As a rule, treaties under international law are concluded among states and contain mutual rights and duties that are binding under international law and are overseen by the **states parties** themselves as a matter of principle.

This generally also holds true for human rights treaties, although the beneficiaries, i.e. the rights holders are in this case not states but individuals. Governments are not only responsible for ensuring those human rights are respected and ensured on their sovereign territory but that other states parties do this as well through appropriate monitoring measures.

For this purpose, the State Department of the United States even publishes annual reports, which precisely analyse the human rights situation in all countries in the world. The EU also issues internal reports to assess compliance with human rights from its partner countries as part of its external and development policy geared to human rights. Generally, however, this monitoring by certain states is not enough, because many countries are not seriously interested in human rights compliance by other member states and governments subjected to this kind of criticism still consider it as inadmissible interference in their internal affairs.