
UNIT 1 HISTORICAL AND PHILOSOPHICAL PERSPECTIVE

Structure

1.1 Introduction

Aims and Objectives

1.2 Human Rights : Evolution of the Idea

1.3 Human Rights : Theoretical/Philosophical Foundation

1.4 Human Rights: Different Perspectives (Natural Rights, Positivist, Libertarian and Marxist)

1.5 Human Rights : The Indian Perspective

1.6 Summary

1.7 Terminal Questions

Suggested Readings

1.1 INTRODUCTION

The 50th anniversary of the Universal Declaration of Human Rights has marked the human rights discourse with a plethora of publications both of the western and non-western scholars. Many of these publications highlight the nature and extent of “progress” made in championing and protecting human rights throughout the world. It is important to note that such ‘a progress’ as claimed has not been uniform all over the world. There are cases where human rights have been either neglected or denied to the common man by the ruling power. In many cases, one may notice that such rights are denied because of the vested interests of the dominating groups. Naturally, it is necessary to understand the notion of human rights both from theoretical perspective and operational methods.

Aims and Objectives

After reading this Unit, you would be able to understand

- The meaning and evolution of the concept of Human Rights;
- The theoretical and philosophical foundations of Human Rights;
- Different perspectives of Human Rights;
- Human Rights from the Indian perspective.

1.2 HUMAN RIGHTS: EVOLUTION OF THE IDEA

It is true that human rights as an international phenomenon is of comparatively recent origin. Although a number of treaties or international agreements affecting humanitarian issues before the Second World War is noticeable, it is only with the coming into force of the United Nations Charter in 1945, the systematic human rights protection within the international system has been formalised. A look into the historical perspective would

suggest that even before the process of institutionalisation through international mechanism, attempts were made to provide democratic legitimacy to the notion of human rights at different levels.

Religious Antecedents

The philosophical foundation of the modern and secular understanding of human rights may be traced to the religions humanism, stoicism and the natural rights theorists. Most religious texts of the world incorporate moral and humanistic principles, often phrased in terms of duties. Essentially the core area of such religious teachings was a sense of brotherhood. It has been taught that all humankind should be viewed as a unity and all are integrally linked up with that Almighty or God.

It is clear that the concept of human rights may be traced to religious texts of different religions of the world. But this does not mean that the reference of rights of man was exclusively for ensuring the human life of human beings. Rather in many cases, these references were made to justify, legitimise and endure the particular order of social and religious nature.

1.3 HUMAN RIGHTS: THEORETICAL AND PHILOSOPHICAL FOUNDATION

Philosophically viewed, the concept of human rights has been enriched by the contribution of many thinkers. Zero, the founder of the Stoic School of thought, propounded the theory of Natural Law which begins with the assertion that all human beings have natural rights. From this concept, they developed the notion of “Universal brotherhood” which is considered to be the foundation of the idea of human rights.

Reference to Greek Political ideas would reveal that both Plato and Aristotle developed their philosophical construction around two issues: common good and justice. Absolute justice can be achieved when an individual can perform the duties assigned to him in harmony with common good. Like Plato, Aristotle also laid emphasis on the concepts of justice, virtue and rights.

Medieval thinkers like Augustine had also emphasised the concept of human rights by highlighting the notions of natural law and natural rights although the primary aim was to safeguard the supremacy of the church. The age of Enlightenment tried to attach secular nature to entire discourse on human rights. Hobbes explained the nature of the state in secular perspective. Similarly, Locke and Rousseau assigned to the state or the political authority the duty to protect individual's right to property and equality before the law.

The notion of human rights was explained from a different perspective by Jeremy Bentham, the father of the Utilitarian School of thought. He rejected the idea of natural rights as singly non-sense and impractical. J.S. Mill also discarded the metaphysical concept of natural rights and school for fundamental freedom of man. The socialist view of human rights puts emphasis on some fundamental and core issues of human being as the right to health care and education, emancipation of women, the prohibition of child labour, universal voting rights and the like.

Contemporary philosophers like Robert Nozick, John Rawls, Michael Oakshott and others, while emphasizing the issue of human rights, have challenged both the liberal and the socialist visions of rights. Philosophically viewed, the notion of human rights, in a

general way, revolves round a number of principles. The first and foremost of them is the theory of natural law under which human beings were supposed to have natural rights.

Closely following this, comes the concept of common good and justice which actually formed the foundation of ancient Greek philosophy. The concepts of justice, virtue and rights of the individuals formed the backbone of the theory of human rights in the Greek political philosophy. It is found in Aristotle's *Politics* how the concepts like justice, virtue and rights change in accordance with different kinds of constitutions and circumstances. Aristotle advocated that rather than focusing on business, war or enslavement, states and laws should aim at encouraging leisure, peace and common good.

During the age of Enlightenment, the human rights discourse developed a new method of understanding and realisation through the notion of natural rights. In fact, Thomas Hobbes, while attempting to provide his political ideas, laid emphasis on the role of the state in terms of secular concepts. The entire philosophical and theoretical formulation by Hobbes aimed at protecting individual rights to life and security. Similarly Locke and Rousseau constructed the entire theory for securing individuals' natural rights to political representation, property and equality before the law. Others like Hugo Grotius, Abbe Charlesde, Saint-Pierre, Thomas Pains, and Immanuel Kant further developed the concept by giving an international dimension to it. It has been rightly observed by R.M. Ishay: "But despite Hobbes' minimal standard of what constitutes basic rights, he, by basing sovereignty on natural rights, leading to what was later called the first generation of civil and political rights."

On the other hand, to Locke, governments are legitimate only in so far as they preserve fundamental rights acquired in the state of Nature. These include the right to life, liberty and property. According to Michael Freedom, the modern conception of rights as moral constraints on governmental action which require institutional realisation thus owes much to Locke.

Rousseau went a step further by asserting that the right to control individual action belongs not to any individual or group of individuals but to the whole community. His idea of General Will symbolises the power of the people in general which has been created by the people themselves through their collective action.

1.4 HUMAN RIGHTS: DIFFERENT PERSPECTIVES

Commentators like Weissbrodt and Vasak have categorically stated that human rights have become 'a universal ideology'. But this proposition is also subject to criticism. Though there is virtually no disagreement among the scholars on the desirability of entitlements and empowerments of human beings, there are wide disagreements among them on the nature, extent, typology and dimension of human rights. All these issues are normative in nature and consequently these have been viewed and explained by the scholars from different subjective standpoints. Naturally, the central points of human rights have been analysed from a good number of ideological and philosophical perspectives.

Natural Rights Perspective

The natural rights paradigm of human rights views human rights from a somewhat abstract and metaphysical perspective. A product of Greek philosophy, the theory flourished in the seventeenth and eighteenth centuries as an antidote to the Divine Right of Kings. The

theory suggests that human beings are entitled to enjoy certain rights with which they are born.

It implies that human beings possess these rights which are essential parts of them, dependent of and logically prior to, their status as members of the civil society or the state. Thus, the society or the state can neither create them nor modify them. They are universal and hence, valid for all. The authority of the state is justified as legitimate only because, and so long as, it protects the natural rights of man.

A close look at the natural rights theory reveals some essential elements of the theory that require further elaboration. In the first place, the theory holds that human beings are born with the natural rights and as such, they are part of their initial equipment in the same way as their bodies are. Hence, these natural rights are thought to be innate and inalienable. Secondly, natural rights are pre-social. They are not the product of any social or political system. Rather, the society and polity came into being to ensure the recognition and enforcement of those natural rights. Thirdly, natural rights are thought to be absolute and hence cannot be negotiated, compromised or diminished. Finally, natural rights theory assumes that natural rights are universal.

It has been pointed out that such a notion of natural rights suffers from a good number of flaws. If social recognition is a necessary condition for the existence of human rights and if recognition means acceptance by morally and intellectually conscious and knowledgeable people, then, it is bound to be imposed on recognition by the privileged and thus influential section of the society over the disadvantaged, passive rest. That the privileged influential brought the idea of civil and political human rights does not mean that the disadvantaged, passive majority did not recognise the need for the second generation human rights – the social and economic rights of man. Similarly, the point that arranged protection of human rights is also necessary with social recognition leaves one into another dilemma onto how human rights are to be protected. Few questions are asked in this connection:

- a) Will it be possible to ensure universality in the process of protection?
- b) Will not the protection of human rights amount to violation of human rights for the sake of protection?
- c) Who is going to assume the responsibility for the protection?

Such questions are, however, very complex in nature and not a single answer can be given for these questions. Even the natural rights theorists like Hobbes, Locke and Rousseau could not offer specific answers to these questions.

Again, closely following this, the issue of inalienability of human rights also figures in the whole discourse on the subject. If the very existence of a right is questioned in the event of the absence of social recognition and protection and if recognition as well as protection is conditioned by a particular brand of socio-ideological order, a right cannot remain inalienable in the true sense.

The assumption on which the natural rights paradigm rests is not without limitation. By the very logic of human beings being social animals, pre-sociality of human rights is a misnomer. It is only in some form of society that rights acquire their true meaning. A right, in order to exist, requires recognition and protection and since the recognition and

protection are to come from the society, a right may justifiably be said to be the product of social interactions.

As regards the absoluteness of human rights in the natural rights paradigm, it again seems to be contradictory in nature. There may be clashes among different competing rights and the realisation of one may be attained at the expense of the other. So it is universally accepted that rights, for the sake of its enjoyment of all, should not and cannot be absolute. Even the notion of universality is not free from its limitation; not all the persons are equal in every respect – social, economic, political or even physical. So it is expected that some amount of flexibility should be there in the concept, idea and extent of rights so that people belonging to all segments of the society can enjoy human rights.

In the ultimate analysis, it is held that the natural rights paradigm suffers from some ideological preferences and seeks to defend and justify a socio-political order that is bound to exhibit contradictions both at the theoretical and operational levels.

Positivist Perspective

Under the influence of the “Enlightenment” of the eighteenth century, the positivist paradigm conceives of human rights as the ‘derivative’ of the laws of the state. The core of the argument of this paradigm is that the existence and content of human rights are derived from and hence, dependent on, the positive law of the state. The Benthamite ideas centre round the issue that human existence is dominated by pleasure and pain and that human conditions may be improved by increasing pleasure and diminishing pain. Bentham’s utilitarianism, therefore, takes a majoritarian approach to human rights.

A close look at the positivist paradigm suggests that its legal backing enables the individuals to point to concrete norms and principles that allow them to vindicate their rights. Thus, the positivist paradigm appears to be an improvement upon the abstract and moral natural rights paradigm.

Libertarian Perspective

Libertarian explanations of human rights strongly criticise the positivist-utilitarian paradigm and notable scholars in this group are Robert Nozick, R. Dworkin, John Rawls, Friedrich Hayek. In the opinion of Nozick, a group of men and women, in a state of nature, come together to form a minimal state. The minimal state is based on certain moral precepts and the role of the minimal state is limited to the enforcement of moral rights of the individuals. John Rawls argues that justice is a way of distributing rights, duties, benefits and burdens among individuals within a society. In his formulation, he starts with the familiar social contract theory in which all persons are in equal position of equality as regards the distribution of freedom and power. But he admits that each person is under the spell of a ‘veil of ignorance’ about his or her own personal qualities or attributes.

In Hayek’s theory, human freedom is regarded as pre-condition for order, virtue and progress of the society. To him, human freedom has been reduced by an activist state that has emerged under the ‘grab of deceptive popular constitutional government’. Hayek’s answer to the protection of the spheres of individual freedom is a ‘limited state’ based on spontaneous order in the society.

Marxist Perspective

The Marxist perspective looks at the issue of human rights from a different angle: the

foundations of class and class-conflict. Under this construction, rights are viewed simply to be bourgeois concepts and as such, a product of bourgeois capitalist society, designed to protect the interests of the bourgeois class.

In the Marxist paradigm, the essence of an individual is that of a social being using his abilities to satisfy his needs. The true potential of human rights can be realised only in a class-less situation. The Marxist paradigm, by adopting the materialistic interpretation of social development, seems to provide a scientific and logical explanation as to how rights could be enjoyed in a perfect socio-economic order.

1.5 HUMAN RIGHTS: THE INDIAN PERSPECTIVE

The Indian perspective of human rights calls for a greater and detailed discussion of the subject from the philosophical, historical and legal-constitutional framework. It will not be an exaggeration if one concludes that the basic ethos and spirit of the Indian freedom struggle movement had been directed towards the total emancipation of the nation which was under the subjugation of the foreign domination. In that way, the ultimate goal of our freedom struggle movement was to achieve independence of the country and through such attainment freedom of the people in general way.

A look into the religious aspect of the concept, one may notice that the country or for that matter, the attitude and value preferences of the people of this country, cutting across religious and other sentiments, always stood for equality of the individual in eyes of social recognition. One may point out that because of social stratification and strong regimentation, a section of the people did not have access to 'social equality' which is considered to be the founding-stone of the notion of human rights. It is equally true that such a differentiation was strongly objected to by the makers of modern India. Such social evils were sought to be removed through relentless struggle for social reconstruction by leaders like Mahatma Gandhi, Dr. B. R. Ambedkar, Jawaharlal Nehru, Maulana Abul Kalam Azad and many others.

Even going back, one recalls the contributions by Raja Rammohun Roy, Swami Vivekananda, Swami Dayananda and others. Such efforts establish the fact that the society in India had always been in a 'search' for a condition where 'people' would find a place of honour, dignity and value.

A land of Lord Buddha, Kabir and many other great souls, India always stood for equal position of men and women in the society because she believes that unless all persons are placed on an equal footing, society cannot make any progress, worth the name. The notions of progress and development in the Indian context have been all-inclusive and comprehensive in nature. Gandhi's call for an egalitarian society, Dr. Ambedkar's life-long struggle for the advancement of the down-trodden people, Nehru's vision of a socialist society or Azad's call for a secular face of the Indian society – all aimed at one particular objective: creation of society based on justice, equality and fraternity.

But mere theoretical and philosophical pronouncements will not be sufficient in a vast complex society as India is. That is why, it is felt and correctly so, that there should be proper institutionalisation and protection of such noble values relating to human dignity. That is why, the fundamental document of the country, i.e. the Constitution has been very carefully drafted so as to give these ideals a legal and constitutional sanction. In fact, the Constitution of India can be regarded as the finest piece of document which upholds the basic tenets of human rights, discussed so far.

The Constitution of India provides the ethical foundations of human rights in the Preamble while the legal expressions of these are in Parts III and IV of the Constitution. The ideals that are sought to be achieved for the fullest development of citizens are found in the Preamble that states in precise and lucid terms that the Constitution of India aims to secure to all its citizens justice, social, economic and political, liberty of thought, expression, belief, faith and worship; equality of status and opportunity and to promote among all fraternity assuring the dignity of the individual.

In line with the ethical foundations and under the influence of the ideals of the French Revolution that found their formal recognition in the Universal Declaration of Human Rights, the Constitution of India, as the fundamental and supreme law of the land, guarantees human rights to all its citizens without discrimination on any ground and these have been detailed out in Part III, dealing with Fundamental Rights and Part IV, dealing with Directive Principles of State Policy. It is true that the Fundamental Rights are justiciable, while the Directive Principles are not; but these two sets of rights are to be viewed in an integrated manner as political rights need to be supported by economic and social rights. An analysis of many important judicial pronouncements in India will show that the judiciary, in many leading cases, has taken a very liberal position in interpreting these rights for the sake of the greater need of the society. Moreover, with the emergence of the notion of judicial activism, the Indian judiciary is also taking very important position in establishing individual rights in many instances. The Human Rights Commission, as a principal organisation to oversee this issue, is also playing a very important role in this regard.

1.5 SUMMARY

Thus viewed, the notion of human rights occupies a central position in the whole discourse on man-state relationship. Opinions differed on the nature, extent and quantum of rights to be enjoyed by persons living in a particular political order. Since all these perspectives' underlying objective is to justify and legitimise a particular brand of socio-economic and political order, the entire human rights discourse has virtually been a dependent variable to the preferred order. The discussion on human rights has been all the more relevant in the context of globalisation with its thrust towards creating a new global order. It is held that globalisation is driven by the latest stage of capitalism wherein accumulation is taking place on global scale and that, in addition to accumulation of capital, there is the accumulation of power in other forms, e.g. knowledge, military-capability and regulatory capacity. So in the context of new emerging global order, the discussion and debate on human rights become much more relevant.

1.6 TERMINAL QUESTIONS

1. Make a critical review on the evolution of human rights.
2. What are the theoretical/philosophical bases of the concept of human rights?
3. Bring out the essential features of Natural Rights perspective of the notion of human rights.
4. On what ground does the libertarian should criticise the positivist – utilitarian concept of human rights?

5. Write short notes on the following:

- Rousseau's concept of General Will in relation to the concept of human rights.
- Bentham's Hedonism and individual rights.
- Marxian idea of a class-less society.

SUGGESTED READINGS

Green, T.H., *Lectures on the Principles of Political Obligation*, Longmans, London, 1941.

Gupta, Vijay K., "Judicial Activism and State Accountability in Human Rights Violations" in Gupta, Vijay K., (ed.), *Perspectives on Human Rights*, Vikas Publishing House, New Delhi, 1996.

Gupta, Vijay K., *Perspectives on Human Rights*, Vikas Publishing House, New Delhi, 1996.

Lukes, Steven., "Five Fables About Human Rights" in Stephen Shute and Susan Hurley (eds.), *On Human Rights*, Basic Books, Oxford, 1993.

MacCormick, N., *Legal Rights and Social Democracy*, Oxford University Press, Oxford, 1982.

Macpherson, C.B., *The Political Theory of Possessive Individualism, Hobbes to Locke*, Oxford University Press, Oxford, 1964.

Macpherson, C.B., "Natural Rights in Hobbes and Locke" in D.D. Raphael (ed.), *Political Theory and the Rights of Man*, Macmillan, London, 1967.

McCloskey, H.J., "Respect for Human Moral Rights Versus Maximising Good", in R.G. Frey (ed.), *Utility and Rights*, Blackwell, Oxford, 1985.

McDougal, Mires S., Lasswell, H.D. and Chen, L.C., *Human Rights and World Public Order*, Yale University Press, West Haven, 1980.

Mill, John Stuart., *On Liberty*, Oxford, London, 1963.

Nickel, J.W., *Making Sense of Human Rights*, University of California Press, Berkeley, 1987.

Nozick, Robert., *Anarchy, State and Utopia*, Basil Blackwell, Oxford, 1974.

Oakeshott, Michael., *Rationalism in Politics*, Methuen, London, 1962.

Paine, Thomas., *Rights of Man*, Penguin, Harmondsworth, 1969.

Pollis, A, and P. Schwab., "Human Rights: A Western Construct with Limited Applicability" in A. Pollis and P. Schwab., (eds.), *Human Rights: Cultural and Ideological Perspectives*, Praeger, New York, 1979.

Rawls, John., *A Theory of Justice*, The Belknap Press of Harvard University Press, Cambridge, 1971.

Richter, M., *The Politics of Conscience: T.H. Green and his Age*, Weidenfeld and Nicolson, London, 1964.

Rorty, Richard., “*Human Rights, Rationality and Sentimentality*” in Stephen Shut and Susan Hurley (eds.), *On Human Rights: Oxford Amnesty Lectures*, Basic Books, Oxford, 1993.

Vasak, K., “*Toward a Specific International Human Rights Law*”, in K. Vasak, Vol.2.

Vincent, J.R., *Human Rights and International Relations*, Cambridge: Cambridge University Press, 1986. Also Stammers, Neil., *A Critique of Social Approaches to Human Rights*” in *Human Rights Quarterly*, 17.3.1995.

UNIT 2 THE INDIAN TRADITIONS

Structure

2.1 Introduction

Aims and Objectives

2.2 Western and Non-Western Traditions: A Comparison

2.3 Indian Traditions of Human Rights

2.3.1 Buddhist Traditions of Rights

2.3.2 Hindu Traditions: The Vedic Concept

2.3.3 Hindu Politico-Religious Traditions: Post-Vedic Notion

2.3.4 Contribution of Asoka and Akbar

2.3.5 Sufi-Bhakti Traditions

2.3.6 Traditions of Sikhism

2.4 Constitutional Framework of Protective Discrimination

2.5 Summary

2.6 Terminal Questions

Suggested Readings

2.1 INTRODUCTION

The modern concept of human rights is the product of post-17th century Western liberal thought. Its origin can be traced to such pronounced landmarks as the English Petition of Rights (1627), the Habeas Corpus Act (1679), the American Declaration of Independence (1776), the American Bill of Rights (1791), and the French Declaration of Rights of Man and Citizen (1789), all of which institutionalised a standard of human rights and liberties. This modern Western notion has been epitomised in the UN system of protection of human rights. Though the UN has adopted many human rights instruments, the Universal Declaration of Human Rights (UDHR), 1948 and the two Covenants on Human Rights (1966) are the most significant as they are together known as the 'International Bill of Human Rights'. The catalogue of rights enshrined in the International Bill proclaims that it is *universally* applicable to all peoples and nations irrespective of their social, cultural, political, economic and ideological traditions. The Preamble of the UDHR states that these rights represent 'a common standard of achievement for all peoples and all nations'. Though the notion of human rights provided in the Bill is predominantly based on Western socio-political philosophy and liberal traditions and is the product of the experiences of peoples of England, France and the United States from the 17th to the 20th centuries, majority of Western scholars and nations consider that it is *valid* for all nations and peoples.

Notwithstanding the internationalisation of human rights by the United Nations, many scholars and nations, especially from the Third World, contest the claim of *universality* of human rights. The idea of human rights is not a Western discovery as human rights values and traditions have been part of their cultures/civilisations and politico-legal systems for centuries – much before the West evolved them during the last three centuries. They

argue that what should be *universal* is the idea or the concern for human rights in general and not a particular model of human rights. Human Rights are the product of historical, cultural and sociopolitical experiences of a given society. Different societies have formulated their conception of rights to suit their specific socio-cultural and political settings. Hence, cultural specificity has to be taken into cognizance while formulating and implementing human rights standards and norms. There cannot be a uniform standard of human rights or uniform meaning of a right. There can be different meanings attributed to a right even within a single tradition. This is a challenge posed by those who believe in cultural relativism as against universalism. Besides being culturally specific, the concept of rights, it is contended, also inheres dynamism that lends its meaning and interpretations to constant evolution and change.

India is a multi-cultural, multi-religious and pluralist society, where many faiths and belief systems regulate the lives of the people. Though the Hindus constitute the majority, religious traditions of minorities also have contributed to the Indian cultural values and human rights traditions. Each belief system, such as Buddhism, Sikhism, Bhakti cult, Sufi traditions as well as Islam and Christianity has moulded the thinking pattern and consciousness of Indians. The notion of rights and duties flowing from all these religious systems has enriched the Indian traditions and cultural values *vis-a-vis* human rights.

Aims and Objectives

This Unit will enable you to understand

- The major strands of politico-religious thoughts on the human rights and values;
- The Hindu-Buddhist traditions of human rights;
- The contribution of Asoka and Akbar to secularise the notion of rights, by ensuring religious freedom.
- The Constitutional framework of positive discrimination for weaker sections of society.

2.2 WESTERN AND NON-WESTERN TRADITIONS: A COMPARISON

The concept of human rights has evolved in the non-Western traditions like the Chinese, Indian, African and Islamic much before the Western notion of rights got crystallised. The non-Western perspectives provide a vantage point to critically look at the Western notion of human rights. Three common departures can be highlighted here. **First**, the Western model hinges upon ‘individual’ as the central point of reference in its human rights discourse, whereas ‘group’ as an entity for the realisation of both ‘individual’ and ‘collective rights’. Human beings have multiple and group identities as members of a family, tribe, community or society. **Second**, the Western doctrine lays increasing emphasis on ‘individualism’ and rights of the individual as against duties which are considered as important in non-Western traditions. One might ask a question: how can the State agree to assume obligations towards persons who, for their part, accept no obligation, no duty, in regard to the community and the State? It must be acknowledged that rights cannot be abstracted from duties; the two are correlated. In other words, human rights are not rights only. They are also duties and both are interdependent. In fact, every human right has a corresponding duty with regard to the rights of others. Moreover, emphasis on

unbridled individualism has led to most of the present day problems. Instead of talking of the rights of an individual (which is abstract) we should talk of the rights of persons, as according to R. Panikkar, a philosopher from Spain, ‘the individual is an isolated knot whereas a person is the entire fabric around the knot. ...Certainly without the knots the net would collapse; but without the net, the knots would not even exist’ (Panikkar, 1982, p.90). A person lives in the family, society, group and community. His / her rights and duties vary at different stages of their lives. Any serious discourse on human rights / duties would keep in mind these cross-cultural perspectives. It is worth recalling here Mahatma Gandhi’s opinion (sought by Julian Huxley, the then Director General of UNESCO) on the Universal Declaration of Human Rights. The Mahatma had said that ‘all rights to be deserved and preserved came from duty well done’. In his view, ‘if each one of us did our duties, our rights will automatically be taken care of’ (The text of Gandhi’s letter dated 25 May 1947 is reproduced in Human Rights Teaching (Paris: UNESCO), Vol. IV, 1985, p. 4). Thus the duty-first (rather than rights-first) approach is the hallmark of Indian traditions. A dictum of the *Gita* which has taken deep roots in the Indian mind is *karmany vadhikaraste ma phalesu kadachan* (i.e. one must go on performing one’s duties without being concerned about the fruits or results). **Third**, while *universality* of human rights was advocated in UN fora by the Western countries, some of these countries did not extend human rights to the people in their colonies for generations.

An understanding of the non-Western perspectives helps us to appreciate the limitations in the prevailing international human rights protection system and the difficulties experienced by the non-Western States in implementing human rights norms. Despite the evident cultural and regional diversities in the world we need to have a ‘common minimum standard of human rights’ agreeable to all. Therefore, knowledge of non-Western perspectives may help in enriching the content and concern of international human rights by incorporating these hitherto neglected aspects.

2.3 INDIAN TRADITIONS OF HUMAN RIGHTS

Indian civilisation’s contribution to the evolution of human rights norms is significant. Under the Indian traditions, we discuss in this Unit Hindu-Buddhist, Bhakti-Sufi, Sikh and Islamic traditions of human rights. This section essays all these traditions except the Islamic traditions of human rights, which are discussed in separate section.

2.3.1 Buddhist Traditions of Rights

India’s heritage with regard to human rights concern and education predates the Western history, philosophy and law. Its national values of tolerance, non-violence, friendship for all, equality, respect for the human persons, human dignity and rights confirms this. These values are legacy of Buddhism. Buddha’s messages of non-violence, non-hatred and friendliness to all were transformed into reality by Emperor Asoka. As a devout follower of Buddha, Asoka became a great champion of freedom and tolerance. He pleaded for universal tolerance. In Buddhism, he found useful guidelines for implementing justice throughout his kingdom. Believing that there was no ‘greater task than to strive for universal welfare’, he promoted toleration of religious ideas: ‘All sects receive honour from me, and I deem the essential point is fidelity to their doctrines and their practices’ (Cited in Ishay, 2003, p.30).

Buddha also believed in freedom of thought. He told his followers to think for themselves and to take responsibility for their own future: ‘Just as the experts test gold by burning

it, cutting and applying it on a touchstone, my statements should be accepted only after critical examination and not out of respect for me' (Cited in Ishay, p.30).

One of the most significant contributions of Buddhism was the introduction and spread of secular education – education for all. Organised Universities came to be established under the direct influence of Buddhism. Under Hinduism, the Law Books gave right to education only to the three upper castes. In practice, it was only the Brahmins and the aristocracy who received formal education. Caste discrimination kept the untouchables (*shudras*), the lower caste, away. Here the Buddhist tradition was in striking contrast. Not only were Buddhist monasteries open to persons of any caste, but also the syllabi had a wider range and included disciplines of more practical interest.

Buddhism began as one of a number of heterodox sects whose common feature was their breaking away from brahminical orthodoxy. The Buddhists and the Jains found their earliest supporters in the republican tribes of northern India. Absence of both monarchical authoritarianism and close association with the idea of divinity in the political sphere led to a stress on the rights of the individual in society. In the Buddhist theory the emphasis is on the quasi-contractual nature of the beginnings of government and on the sovereignty of the people. The latter idea remained central to Buddhist political thinking but it was never taken a step further and developed into a theory of rights of the people as Buddhism was gradually declining in India. Nonetheless, the republican background nurtured an individualistic tradition in Buddhism with a strong support for the kind of social and moral attitudes implicit in human rights. Moreover, the Buddhist tradition showed greater liberality to women in encouraging them to become nuns (See Thaper, 1966, pp.34-44). It is gratifying to note that Sanghamitra, the daughter of Asoka, established a nunnery in Sri Lanka and is remembered even today.

The texts in the Buddhist Pali Canon commanded followers of Buddha not to steal; hence the right to property. In later Buddhist literature, the sage Nagarjuna's advice to royalty depicted the functioning of a welfare state that limited the incomes of the rich people: 'To dispel the suffering of children, the elderly, and the sick, please fix farm revenues for doctors and barbers throughout the land' (Ishay, 2004, p.37). In certain circumstances, as the Buddhist scholar Robert Thurman has noted, Nagarjuna has urged the state 'to intervene in the realm of private affairs to forestall bankruptcy', (to guarantee universal health care, to set up 'hostels, parks, canals, irrigation, ponds, rest houses, wells, beds, food, grass, and firewood', to care for travelers, and to provide shelters for beggars, cripples, and wandering ascetics (Thurman, 1988, pp. 157-58).

2.3.2 Hindu Traditions: The Vedic Concept

In the Vedic period, equality of all human beings was reiterated with no one being superior or inferior. This can be better illustrated by citing the example of Valmiki and Vyasa, who belonged to the fourth and second *Varna* respectively. These two were the authors of the two great epics, the *Ramayana* and the *Mahabharata*, who are regarded as the greatest poets, writers and philosophers of the country and held in the highest esteem to this day by all.

Regarding the status of women in ancient India, it must be stated that they enjoyed equal status. Prof. P.V. Kane refers to specific hymns in *Rigveda* as composed by women, and cites *Bhadarnayak Upanishad* to show that women actively participated in philosophical discourses. Women were not discriminated in the field of education; they studied along with male students. Women sages and teachers were also not uncommon in ancient India.

During the *sutra* period (800 B.C. to 400 B.C.) women recited Vedic mantras routinely. But in later period their position became that of dependence on men. Women were not considered fit to study the Vedas and rituals for girls were performed without the recitation of Vedic mantras. However, family rituals required their equal participation with men (Nanda, p. 37).

During the early Vedic period women played an important role in religion and society. Both men and women were educated equally in religion and academia; women performed religious sacrifices alongside men, and women also received the sacred Hindu thread that is given today only to males. The *Haritasmriti* recounts the existence of a group of women called *brahmavacinis* (a Sanskrit term meaning speakers and revealers of Brahman) who remained unmarried and devoted their lives to Hindu religious study during this early Vedic period. A clear distinction in Vedic language is made between *acarya* (a female teacher) and *acaryani* (a teacher's wife) and *upadhyaya* (a female preceptor) and *upadhyayani* (a preceptor's wife) clearly showing that women in fact carried out religious education of others and were communicators as well as students of sacred Hindu scripture. In the Upanishads, women philosophers such as Vacaknavi challenged the ideas of Yajnavalka, her male counterpart. Women, such as Queen Bispala, engaged in warfare in the Rig Veda revealing that women also played a role in protecting and participating in state affairs (Polisi, 2003, p.2).

Hindu gods and goddesses personify manifestations of Hindu religious concepts and nature. Interestingly, Hindu goddesses, rather than gods, are most often used to represent abstract fundamental principles such as power, strength, education, and wealth as well as important natural phenomena such as the mountains, the dawn, the earth, and the rivers. For example, Hinduism personifies divine strength and power in the form of a female figure referred to as *Shakti*, *Saraswati*, the Goddess of Learning, Music and Fine Arts, is portrayed as a female in Hindu texts and paintings. Likewise, *Lakshmi* is the Goddess of Wealth, a female personification. *Parvati*, the mountain goddess, is the consort to Shiva, one of the most important Hindu gods. The Goddess of Dawn is *Usha*, the Goddess of Rivers is *Ganga*, and the Goddess of Earth is *Prithvi* – all female personifications of incredibly important aspects of nature on which humanity depends.

Vedic literature clearly exhibits the high respect given to women. Romesh C. Dutt wrote in *The Civilization of India*: 'Women were held in higher respect in India than in other ancient countries, and the Epics and old literature of India assign a higher position to them than the epics and literature of ancient Greece. Hindu women enjoyed some rights of property from the Vedic Age, took share in social and religious rights, and were sometimes distinguished by their learning. The absolute seclusion of women in India was unknown in ancient times' (Cited in Polisi, 2003, p. 3).

Following the growth and increasing rigidity of caste system in India, the earlier values of human dignity, equality of all men, and equal status of women, the ideal of universal brotherhood were allowed to press into oblivion. The introduction of the concept of untouchability gave a big blow to the concept of human rights. In the words of Barnett R. Rubin, "untouchability is probably the biggest obstacle to human rights..., which while outlawed, is still widely practiced and relegates a whole section of the community to 'unclean' status" (Rubin, 1987, p.137).

2.3.3 Hindu Politico-Religious Traditions: Post-Vedic Notion

Contrary to the Buddhist and Vedic traditions, the Hindu religious and law books hardly

had any concept of rights, as its *Varnadharma* (i.e. the Caste system) had established unequal privileges or rights. The *Dharma* prescribed the duties of the four social orders, namely, duties of citizenship, the duties peculiar to one's caste, the eternal family duties, and the duties of those persons who follow the scriptures other than the *Vedas*, (i.e. Pashandas). It also laid down the household duties, the duties of wives, the duties of kings, the duties of men and women.

The idea of rights is not directly visible in the Hindu culture. However, the holy books and political treatises provided many general and moral exhortations concerning rights and duties. One of the Chapters in the *Gita* is dedicated to **Karmayoga**, i.e., the Yoga of Works, which 'expounds the necessity for the performance of work [duty: that which ought to be done] without any selfish attachment to results, with a view to securing the welfare of the world...' If inter-individual and social relations are expressed in terms of a comprehensive web of duties, rights cease to be privileges to be specifically claimed, but a condition that would promote human, and hence social, welfare. Therefore, Kautilya prescribed not powers, but 'duties of a king'. One of the duties of the king was: 'When in court he shall never cause his petitioners to wait at the door.' One of the ground rules for the king was: 'In the happiness of his subjects lies his happiness; in their welfare, his welfare; whatever pleases himself he shall not consider as good, but whatever pleases his subjects he shall consider as good' (Kautilya, 1901, pp.38-39). And, 'Harmlessness, truthfulness, purity, freedom from spite, abstinence from cruelty, and forgiveness are duties common to all' (Kautilya, p.7).

In Kautilya's book, the idea of a welfare state is repeated with great force. He enjoins that the king must provide for the orphans, the aged, the helpless and the afflicted. Helpless women must be provided subsistence by the state when they are pregnant. The king is also required to construct dams, rivers, and road, to maintain forests, and provide help and superintendence to places of pilgrimage. He is also to supervise the reservoirs constructed by cooperative enterprises of the people and to ensure that those who do not work do not gain for them. The king must protect agriculturists from molestation and other kinds of oppression, forced labour and oppressive taxes (Kautilya, pp.51-52). During famines, the king is asked to help the people by providing seed and provision. He declares, 'A wise king can make the poor and miserable elements of his society happy and prosperous, but a wicked king will surely destroy the most prosperous of loyal elements of his kingdom' (Kautilya, pp. 309-11).

As an exponent of *real politik*, Kautilya accepts the importance of keeping people happy. He adds, 'When people are impoverished, they become greedy, when they are greedy, they become disaffected, they voluntarily go to the side of the enemy and destroy their own master'. He further adds, hence no king should give room to such causes as would bring about impoverishment, greed or disaffection among his people' (Kautilya, 1901).

Notwithstanding the duty-based approach to rights prevailing in Hinduism, and the *Varnadharma* (caste system), certain universal principles propounded in *Bhagvad Gita* and *Upanishads* represent human rights values. An important axiom of Hinduism states that God is omnipresent and immanent in all that exists in the universe (*Bhagvad Gita*, Ch VI, verse 31; Ch. VII, Verse 19; Ch. VIII, Verse 61; Ch. XI, Verse 38). Thus, according to Hinduism, this universal spirit or soul (Brahman) manifests itself in all human beings and indeed pervades all creation, as the very first verse of the Isa Upanishad declares: 'God covers all that moves in the Universe' (Cited in Nanda, 1997, p.32).

What follows from this fundamental belief in the omnipotent presence of God is pertinent for our discussion of international human rights. As a first corollary, Hinduism firmly believes in universal brotherhood. Since God permeates every being, there is unity and equality in diversity, which *Bhagvad Gita* describes in the following words:

A seer is he
Who sees the immutable
In the body of all mortals;
And, realising that the same Being
Equally exists everywhere,
He attains salvation
And he does not slay others
Bringing death to his own Self.

Similarly, *Isa Upanishad* describes it thus:

He moves and is yet Immovable.
He is at once far off and near.
He is within all and also
On the face of all that exist.
Seeing this Supreme Being
As the beginning and end of
All beings and pervading all,
One can have hatred towards none. (Nanda, p.32).

The early Hindu teachings, before the introduction of stratified caste system, reiterate the human goal of the realisation of the Divine in everything, which means unity of all faiths. This means not only freedom from any hatred or malice to other human beings, but also an affirmative duty and obligation to serve God's creation if one is to reach the highest level of spiritual attainment in being identified with the Divinity. The well-known Hindu saying, '*Vasudhaiva Kutumbakam* (All humanity is one family)', aptly captures this sentiment (Nanda, pp. 32-33).

The Second corollary is in Hinduism's belief in oneness of all religions and hence its advocacy of the rejoicing in difference. *Bhagvad Gita* states it eloquently:

Whoever approaches me
In whatever manner,
I accept him.
All paths men are struggling through head unto Me.

What better expression of human rights, human dignity and catholicity can be found in Hinduism than the following verse in the *Bhagvad Gita*:

Impartial and equal am I to all beings.
None do I despise not love more than any other. (Nanda, p. 33).

It is true that the caste system with different rights / duties to people of different castes and lower status to women and sudras was legalised by Manu; he had some positive laws for women, as he writes: 'where women are honoured, there the very Gods are pleased, but where they are dishonoured no sacred rite even could yield rewards'.

These universal ethical principles of Hinduism are reiterated by Indian scholar in UNESCO

Conference. In 1947, UNESCO organised an international conference on the eve of the adoption of the UDHR in which eminent scholars from different religions, cultures, socio-legal systems across continents were invited to participate. These scholars were given a questionnaire to prepare their papers. From India S.V. Puntambekar, a political scientist, was to speak on 'Hindu Concept of Human Rights'. As he was aware of the universal principles of Hinduism and Buddhism, he wrote in his paper that Hinduism offered important 'spiritual aims and values for mankind'. 'Both Manu and Buddha', he claimed, 'propounded a code as it were of ten essential human freedoms and controls or virtues of good life'. They are not only basic, but also comprehensive in their scope than those mentioned by any other modern thinker. They emphasize five freedoms or social assurances and five individual possessions or virtues. The five social freedoms included: 'freedom from violence (Ahimsa), freedom from want (*Asteya*), freedom from exploitation (*Aparigraha*), freedom from violation or dishonour (*Avyabhichara*), and freedom from early death and disease (*Armritatva* and *Arogya*)'. The five individual possessions or virtues are: 'absence of intolerance (*Akrodha*), compassion (*Bhutadaya*, *Adroha*), knowledge (*Jnana*, *Vidya*), freedom of thought and conscience (*Satya*, *Suntra*), and freedom from fear, frustration and despair (*Pravrtti*, *Abhaya*, *Dhrti*)' (Puntambekar, p. 20).

2.3.4 Contribution of Asoka and Akbar

It must be acknowledged that the two great emperors of India – Asoka and Akbar - laid the foundations of their empires on the principle of religious tolerance and non-discrimination. Asoka's rock pillar introduced the finest human rights principles. Let us quote here Asoka's Rock Edict XII which states:

The faiths of others all deserve to be honoured for one reason or another; by honouring them, one exalts one's own faith and at the same time performs a service to the faith of others. By acting otherwise, one injured one's faith and also does disservice to the faith of others. If a man extols his own faith and disparages another because of devotion to his own faith, because he wants to glorify it, he seriously injures his own faith (Cited in Krishna Iyer, 1999, p.30).

Eminent historian, H. G. Wells, writes of him

Amidst the tens of thousands of names of monarchs that crowd the columns of history, their majesties and graciousness and serenities and royal highnesses and the like, the name of Asoka shines, and shines almost alone, a star. From the Volga to Japan his name is still honoured. China, Tibet, and even India, though it has left his doctrine, preserve the tradition of his greatness. More living men cherish his memory today than have ever heard the names of Constantine or Charlemagne (Wells, 1961, p.402).

King Asoka's regime sowed the seeds of a humanitarian society or the welfare State. The Law of Piety, which was the moving spirit of that time, had in fact all the elements of modern welfare law. Asoka's legal regime proscribed war propaganda. His twenty-eight year rule, after initial wars, was mainly dedicated to instituting peace. His regime also made provisions for freedom from hunger, health care, educational facilities and certain other social amenities in Asoka's empire which were initial efforts in the direction of the realisation of social, economic and cultural rights. As far as civil liberties were concerned, Asoka observed a policy of tolerance. In this connection the renowned historian Smith observed:

Should anyone do him (King Asoka) wrong, that too must be borne with by His Sacred Majesty, so far as it can possibly be borne with. Even upon the forest folk in his dominions His Sacred Majesty looks kindly and he seeks to make them think aright, for, if he did not, repentance would come upon His Sacred Majesty. They are bidden to turn from evil ways so that they be not chastised. For His Sacred Majesty desires that all animate beings should have security, self-control, peace of mind, and joyousness (Smith, 1976, p.119).

Asoka's administration prohibited torture and inhuman treatment of prisoners. History records as follows:

He (Asoka) laments that some servants of the state, failing to realize his personal sentiments, had at times gone so far as to inflict unjust imprisonment or torture. He warns his officers that they must beware of yielding to the vices of 'envy, lack of perseverance, harshness, impatience, want of application, laziness and indolence', threatening them with his displeasure if they should fail in their duty (Smith, p.120).

It is quite clear that Hindu civilisation had a well-developed system which guaranteed both the civil and political as well as the economic, social and cultural rights of the human beings. These rights were considered as the basic minimum necessary for the dignity of the individual.

Akbar and other Muslim rulers of India too followed similar policies of religious tolerance. The onset of Muslim rule in India during the medieval period led to a greater degree of socio-cultural interactions between the Hindu majority and the ruling Muslim minority. Freedom of religion or belief of Hindus was ensured. The general policy and attitude of Muslim polity was one of the accommodation, religious tolerance and respect to the religions and cultures of the Hindus. Regarding the religious policy of the Mughals, S.R. Sharma, a noted historian, commented that 'the position of Hindus in India was generally much better than that of many communities in Europe whose faith differed from that of their rulers' during medieval times (Sharma, 1988, p.7). It is worth recalling here the various enactments issued by Akbar on the occasion of Muslim Hijr calendar reaching the year 1000 (which occurred in 1591-92 AD). Some of these enactments focused on religious tolerance, including the following:

No man should be interfered with on account of religion, and anyone [is] to be allowed to go over to a religion he pleased.
If a Hindu, when a child or otherwise, had been made a Muslim against his will, he is to be allowed, if he pleased, to go back to the religion of his fathers.
(Sen in Falk: 2008, pp. 395-96).

Also, there was no discrimination against Hindus for appointment to important imperial posts. Great Sufi prince, Dara Shikoh, translated the *Upanishads* and declared them to be the heavenly book referred to in the *Quran*. In fact, only Torah and Bible are explicitly mentioned in the *Quran* though it indicates that prophets and Holy books have been sent in every community and nation in the world.

Against this background it is worth noting here the objection of C.H. Alexandrowicz, who objects to the prevailing notion that the idea of 'universal concept of human rights' is Western. According to him it was the Asian civilisations that had a profound contribution on the development of International Law until they came under colonial domination. For

instance, explaining the contribution of Asian States during the early and pre-colonisation period of the sixteenth, seventeenth, and eighteenth centuries, Alexandrowicz states: '[T]he European agencies in the East learned the lesson of co-existence of Hinduism, Islam, and Christianity in India (particularly on the west coast) and transplanted their experience to the West, which had been so long incapable of extricating itself from the obsession of religious wars' (Alexandrowicz, 1965-66, p. 312).

2.3.5 Bhakti- Sufi Traditions

In medieval India, the *Bhakti* movement challenged the brahminical orthodoxy and opposed the unequal caste system and caste segregation. *Bhakti*, the path of devotion, implies a belief in the supreme person not in supreme abstraction. The propounders of *Bhakti* emphasized the devotion to a personal God as a means of attaining salvation (*moksha*) as opposed to the pathways of action (*karma*) or knowledge (*gyana*). The preachers of *bhakti* gave the utmost importance to human equality, communal harmony (especially Kabir) and universal tolerance.

The Sufis of medieval India also opposed caste hierarchies and social discrimination. Sufi-poets founded the doctrine of *Wahdat al- wujud*, oneness of being. This doctrine was developed primarily by Muhiyudin Ibn- Arabi, the great Sufi saint. This doctrine had many far reaching implications. It considered all human beings as manifestations of God. Ibn Arabi used to say: 'My heart is a mosque, a church, a synagogue and a temple'.

The Sufi-saints practiced full equality between the sexes. Among the women saints, the universally revered Rabi'a al-Adawiyya was a Sufi par excellence. It is said that the Sufis value women as much as they do men because they believe in nothing less than the unity of God. 'In this unity', Fariduddin Attar asks: 'What remains of the existence of "I" or "thou"? So how can "man" or "woman" continue to be?' (Asghar Ali Engineer, *Times of India*, February 5, 1997).

2.3.6 Traditions of Sikhism

Sikhism was founded by Guru Nanak who was a brilliant product of the Bhakti movement in northern India. Kabir's teachings had a deep impact on Nanak as also the Islamic and Sufi ideas. Like Kabir, Nanak found a common link between Hinduism and Islam. The term "*Sikh*" has been derived from the Sanskrit word "*Sishya*", which means disciple. Sikhism is also a religion of the common person. It is known for its simplicity. Nanak conceived of God as formless Nirakara and rejected idol worship and superstitious beliefs. Nanak wanted to found a new religion which could combine the teachings of Hinduism and Islam.

From the perspective of human rights, what is important is the fact that Nanak spoke of, and believed in, the equality of all human beings and rejected discrimination or distinction on any ground – religion, social standing, colour or even sex. He was the harbinger of Hindu-Muslim unity. He initiated the tradition of community kitchen or *Guru ka langar* to highlight the egalitarian philosophy of Sikhism.

2.4 CONSTITUTIONAL FRAMEWORK OF PROTECTIVE DISCRIMINATION

By enacting the Indian Constitution with a "bill of rights" and many other secular laws to abolish discriminatory treatment of untouchables and Hindu women (whose rights were

extremely limited compared to their male counterparts) the Indian political system is striving to replace the traditional unjust and stratified social order (which granted privileges and rights to only higher castes) with an egalitarian and socialist system. Independent India has been following vigorously a system of preferential treatment, commonly known as protective discrimination, towards the people belonging to historically disadvantaged groups such as untouchables, tribals and other backward classes. This policy is unprecedented in scope and extent and has no parallels in any part of the world. Under this policy, 49.5 per cent of jobs and seats in educational institutions are reserved for these groups besides reserving 22.5 per cent of membership in the Parliament and Assemblies for dalits and tribals. Also in local and urban bodies, women have been given 50 per cent reservation of seats. Thus, the concepts of social justice and empowerment of women are at the centre-stage of contemporary socio-political life.

2.5 SUMMARY

The non-Western nations challenged the Western notion of human rights, as reflected in the UDHR and other international human rights documents. They contested the prevailing beliefs that human rights are a Western discovery and the Western model is *universally* valid for all nations and peoples. All cultures/civilisations have their own framework of human rights embedded in their culture, traditions, and socio-political and legal systems suiting their societies. India has a rich mosaic of human rights traditions. All the major religions (and their practices) and political and legal treatises contained many principles/precepts of human rights and human dignity. Asoka and Akbar's policies of religious tolerance were exceptionally much ahead of their times.

Hinduism emphasised equality of all human beings, equality of men and women in all fields, the idea of universal brotherhood and oneness (unity) of all religions. Buddhism opposed caste system, believed in universal brotherhood, *ahimsa* / non-violence, education for all people, rights of women. Similarly, during medieval period the preachers of Bhakti movement gave utmost importance to human equality, communal harmony and universal tolerance. The Bhakti-Sufi influences gave birth to Sikhism, which tried to combine the teachings of Hinduism and Islam. Sikhism also believed in the equality of all human beings and by initiating the tradition of *Langar* highlighted its egalitarian philosophy. In the post-independent India, the Constitution not only rechristened the secular traditions of human rights values and duties of yester years, but also pioneered the doctrine of positive discrimination to help the weaker sections of society.

2.6 TERMINAL QUESTIONS

1. Distinguish between the Western and non-Western concept of human rights.
2. Compare and contrast the Buddhist traditions of human rights with the Hindu traditions.
3. Examine the contribution of Asoka and Akbar in developing secular values and notions of human rights.
4. Explain the distinct contribution of Sikhism and Bhakti-Sufi movement to enrich Indian traditions of human rights.

SUGGESTED READINGS

- Alexandrowicz., "Kautilyan Principles and the Law of Nations", *British Yearbook of International Law*, Vol. 41, 1965-66.
- Swarupananda, Swami., *Bhagvad Gita: Text and Commentary*, Advaita Ashram, Calcutta, 1989
- Ishay, Micheline R., *The History of Human Rights – From Ancient Times to the Globalization Era*, Orient Longman, New Delhi, 2008
- Kane, P.V., 1930-1962. *History of Dharmasastra*, Vol. III, Bhandarkar Oriental Research Institute, Poona.
- Kautilya. 1901. *Arthsastra*, edited by R. Shamasastri, Mysore: Mysore Government Oriental Series.
- Krishna Iyer, V. R., *The Dialectics and Dynamics of Human Rights in India (Yesterday, Today and Tomorrow)*, Eastern Law House, New Delhi/Calcutta, 1999.
- Mitra, Kana., 'Human Rights in Hinduism', in Arlene Swindler (ed.), *Hinduism in Religious Traditions*, Pilgrim Press, New York, 1982, pp. 77-84.
- Nanda, Ved P., 'Hinduism and Human Rights', in Daniel Warner (ed.), *Human Rights and Humanitarian Law*, Kluwer Law International, The Hague, 1997, pp. 29-41.
- Panikkar, R., 'Is the Notion of Human Rights a Western Concept', *Diogenes* (Paris), 1982, No.2, pp. 75-102.
- Polisi, Catherine E., 2003, 'Universal Rights and Cultural Relativism: Hinduism and Islam Deconstructed', *BC Journal of International affairs*. Available at URL: <<http://www.jhubc.it/bcjournal/articles/polisi.cmf>> (accessed on 9 August 2010).
- Puntambekar, S.V., 1947. 'The Hindu Concept of Human Rights', in UNESCO (ed.), *Human Rights – Comments and Interpretations, A Symposium*. London: Allan Wingate, 1949. Reprinted in *Human Rights Teaching* (Paris), Vol. IV, 1985, pp.19-20.
- Rubin, Barnet R., 'India', in Jack Donnelly and Rhoda E. Howard (ed.), *International Handbook of Human Rights*, Greenwood Press, New York, 1987.
- Sen, Amartya., 'Human Rights and Asian Values', *The New Republic*, July 14 & 21, 1997, pp.33-40.
- Sharma, Arvind., *Hinduism and Human Rights: A Conceptual Approach*, Oxford University Press, New Delhi, 2003.
- Sharma, S. R., *The Religious Policy of Mughal Emperors*, 3rd edition, Munshiram Manoharlal Publishers, New Delhi, 1988.
- Smith, Vincent A., *The Oxford History of India*, Oxford University Press, Delhi, 1976.
- Thapar, Romila., 'The Problem of Human Rights in the Hindu and Buddhist Traditions', *International Social Science Journal* (Paris), Vol. 18, No. 1, 1966, pp. 34-44.
- Thurman, Robert., 'Social and Cultural Rights in Buddhism', in Leroy S. Rouner (ed.), *Human Rights and World's Religions*, University of Notre Dame Press, Notre Dame, Ind., 1988.
- Wells, H. G., *The Outline of History – Being a Plain History of Life and Mankind from Primordial Life to Nineteen Sixty*, 8th edition, Cassel, London, 1961.

UNIT 3 FREEDOM STRUGGLE AND HUMAN RIGHTS

Structure

- 3.1 Introduction
 - Aims and Objectives
- 3.2 Background
- 3.3 The Beginnings
- 3.4 National Movement and Human Rights
 - 3.4.1 Programmatic Content
 - 3.4.2 Making Demands from the Government
 - 3.4.3 Struggling for Human Rights
 - 3.4.4 Practising Human Rights
- 3.5 Struggles for Social Transformation
 - 3.5.1 Struggle Against Caste Oppression
 - 3.5.2 Rural Reorganisation
- 3.6 Spread
- 3.7 Implications
- 3.8 Summary
- 3.9 Terminal Questions
 - Suggested Readings

3.1 INTRODUCTION

In the previous Unit, you were made familiar with some of the essential and positive features of Indian tradition. The purpose of this Unit is to inform you about some of the basic characteristics of the India's Freedom Struggle. In particular the focus of the Unit will be to demonstrate how Indian freedom struggle sought to build the foundations of a modern Indian society along democratic and civil libertarian lines, by incorporating some of the positive features of Indian tradition. We would look at some of the sources that provided inspiration and a framework to the leaders of the national movement in their quest for a just and humane social order. It will focus on the activities of the early nationalist leaders and on how they gradually acquired a human right perspective. We would also discuss the programmatic content of the national movement that evolved during the popular phase of the national movement vis-à-vis the question of human rights; concentrate on the different ways in which this perspective was operationalised by the leaders of the national movement during the course of the freedom struggle; and finally the implications of this civil libertarian perspective for politics and society in independent India.

The Indian National Movement has commonly been understood as mainly a struggle against British imperialism. This however is a limited view of the national movement. It is

essential to see the freedom struggle as a grand project aimed at the transformation of Indian society from pre-modern to modern. The end of British imperialism was seen as an important *part* of this transformation. The entire movement should therefore not be reduced to its anti-imperialist content. Welding the diverse people of India into a nation was an important component as also the building of modern India without destroying or eradicating some of the positive features of Indian traditions. A modern polity was to be built on democratic and civil libertarian foundations. The British colonial rule was seen as a major obstacle in this transformation. It was in this manner and for this reason that the various components of the freedom struggle were integrally and organically linked to one another.

As the colonial state frequently trampled upon people's human rights and civil liberties, the Indian National Movement constantly strove to defend and uphold these rights. Many anti-imperialist campaigns were also at the same time struggles for people's human rights. A strong human right perspective was integrated to the freedom struggle almost from its beginning. This would become amply clear if we compare India's record of civil liberties and human rights with other developing post-colonial societies. Evidently, the human rights that the people of India enjoy, in however limited a measure, is primarily a legacy of our national movement.

If you look at the records and documents of the national movement, speeches and writings of its leaders, you may not find the term human rights anywhere. You should not assume that this concern did not exist during the national movement. The term human rights is of a latter origin and came into vogue only in 1948. The experience of fascist politics and horrors of the world war gave birth to a renewed concern for a man's right to live with freedom from want and fear and enjoy some basic economic and cultural rights along with the political ones. The common expression used before the Second World War was civil liberties. The concept of civil liberties was about 200 years old and could be dated back to the French Revolution of 1789. It was this understanding that was inherited by the leaders of the national movement and made an integral part of their struggle against the British imperialism. It is, therefore, important to look at the sources that inspired our national movement in its struggle for civil liberties and human rights.

Aims and Objectives

This Unit would help you understand

- The course of our freedom struggle;
- The insistence on civil liberties for a life of dignity; and
- The quest for a just and humane social order.

3.2 BACKGROUND

The leaders of the freedom struggle derived their inspiration for a human right perspective from diverse sources. The Indian tradition was an important, though not the only, source of this inspiration. The Indian traditions were seen as an important resource by the nationalist leadership. At no point did they envisage a complete break from these traditions in the making of a modern democratic Indian society. Two important books written by nationalist leaders – *Hind Swaraj* by Mahatma Gandhi (1909) and *The Discovery of India* by Jawaharlal Nehru (written in 1944 in prison) – amply demonstrate

this point. Gandhi invoked 'Indian civilisation' as a solution for the problems created by modern industrial life. Jawaharlal Nehru in his *Discovery* explored Indian history in pre-modern times and found the prevalence of many relevant and useful practices that could serve as a guide in modern independent India. Nehru was impressed by the plurality and syncretism of traditional Indian culture. He extolled emperor Ashoka for his emphasis on non-violence and Akbar for the practice of social toleration and religious harmony.

But there is no doubt that a major source of inspiration came from the ideas and values of the Enlightenment. In particular, the American Declaration of Independence and the French Revolution constituted the important sources in the development of a human right perspective.

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

In this context, it is necessary to point out that in their attitude towards enlightened modernity, the leaders of the national movement refrained from either a total endorsement or a total rejection. They made a crucial distinction between the universalistic ideas of the Enlightenment (rationalism, reason, universalism, secularism, egalitarianism) and the domination of the world by a few European countries. They accepted the ideas of Enlightenment but not imperialism and colonialism. In other words they made a distinction between the 'baby and the bathwater' of modernity. They fully accepted the 'baby' but threw away the 'bathwater' (European domination). Many political and intellectual movements of the 20th century have not been able to maintain this distinction. Either they have indulged in a *carte blanche* acceptance of modernity, or they have thrown the baby along with the bathwater, by rejecting it completely. Viewed in this context the practices evolved by the leaders of the national movement appear quite significant.

The values of the Enlightenment were not followed mechanically but creatively applied to the Indian situation and according to Indian realities. As a result, when these ideas were sought to be applied to the Indian society at the beginning of the 19th century, well before the start of the national movement, they acquired a uniquely Indian character. During the course of the social reforms various human rights came to be looked at as *individual rights*, rights of the *community* and those of the *nation*. All the three were expressed and upheld throughout the 19th century. The campaigns for the removal of Sati and the advocacy of widow remarriage were projected as important individual rights. Leaders like Rammohan Roy, Ishwarchandra Vidyasagar and others championed these issues as part of an individual's basic rights. Similarly, low caste leaders like Jyotiba Phule fought for the rights of community as a whole. Leaders like Bankim Chandra and Vivekananda took the initiative in projecting rights of the nation. All the three concerns were incorporated in the 20th century during the course of the national movement in concrete

struggle around these issues. Thus, the national movement derived its inspiration from the classical European doctrine of 'rights' and also its creative application during the social reform movements in the 19th century India.

3.3 THE BEGINNINGS

During the initial stages of the national movement, the masses of the people were not mobilised for political action. The mass phase of the national movement started only after the advent of Mahatma Gandhi. But the early leaders did bring to the fore the issue of the rights of the common people. Whenever they found the colonial state taking measures to deny people their rights, they protested against those measures. Upholding the freedom of the Press and fighting for it became the principal nationalist activity during the early phase of the national movement. The colonial government tried on many occasions to curtail this freedom.

From the beginning the early nationalists were powerfully attracted to modern civil liberties, namely, the freedom of the Press, speech, thought and association. They made civil liberties an integral part of the Indian national movement. There was a major reason why the nationalist leadership gave so much of importance to the freedom of the Press. The initial political activities of the nationalist leadership were conducted mainly through the Press. They did not have the support of the masses, nor did they have a mass of political workers to do political work for them in the cities, towns and villages. Therefore the nationalist ideology could be taken to the people only with the help of the Press. The Press was their chief instrument for waging ideological struggle against imperialism. It is therefore not a surprise that a large number of the initial leaders of Indian National Congress were journalists.

The early nationalists were committed to building a republican democratic, civil libertarian political order in India. They prepared the soil and climate in which the concepts of democracy and civil liberties could dig deep roots in India. They based their politics on the doctrine of the sovereignty of the people. Dadabhai Naoroji put it beautifully in his Presidential Address to the National Congress that the new lesson of modern times was "that Kings are made for the people not people for the Kings."

Almost from the beginning of the 19th century, politically conscious Indians were attracted to modern civil rights, especially the freedom of the Press. As early as 1824 Raja Rammohan Roy had protested against a regulation restricting the freedom of the Press and asked instead for "the unrestricted liberty of publication." Powerful newspapers emerged during these years under distinguished and fearless journalists.

Nearly all the major political controversies of the day were conducted through the Press. It also played the institutional role of opposition to the government. Almost every act and every policy of the Government was subjected to sharp criticism, in many cases with great care and vast learning to back it up. Regarding the role of the nationalist Press, Lord Dufferin, the Viceroy, wrote in 1886: "Day after day, hundreds of sharp-witted *babus* put forth their indignation against their English oppressors in very pungent and effective diatribe.... In this way there can be no doubt there is generated in the minds of those who read these papers... a sincere conviction that we are all of us the enemies of mankind in general and of India in particular."

The Government made continuous attempts to curtail civil rights, especially after 1878. In

that year the Vernacular Press Act was passed which sought to gag Indian language newspapers. The Act provided for the confiscation of the printing press, paper and other materials of a newspaper if the Government believed that it was publishing seditious materials.

Already since 1870 there existed a Section 124 A of the Indian Penal Code, according to which "Whoever attempts to excite feelings of disaffection to the Government established by law in British India was to be punished with transportation for life or for any term or with imprisonment up to three years." During the 1890s, the Government enacted new laws to curb the freedom of speech and the Press and to increase the powers of the police. In 1898, the Government amended section 124A and added a new Section 153A to the Penal Code making it a criminal offence for anyone to attempt "to bring into contempt" the Government of India or to create hatred among different classes, that is *vis a vis* Englishmen in India. After 1906 fresh laws for controlling the Press were enacted and the Press was almost completely suppressed.

From the beginning the national movement fought every inch of the way against these attacks by the colonial authorities on the freedom of speech and the Press and other civil liberties.

The first great political demonstration in India was organised in Calcutta against the Vernacular Press Act when a large public meeting was organised in the Town Hall. Various public bodies and the Press carried on a campaign against the Act till it was repealed by Lord Ripon in 1881.

Surendranath Banerjea was the first Indian to go to jail in performance of his duty as a journalist. Banerjea had written a strong editorial against Justice Norris of the Calcutta High Court for ordering the idol of Saligram to be produced in the Court. Banerjea made a fierce criticism of Norris and called him unworthy of his high office. He suggested that "some public steps should be taken to put quietus to the wild eccentricities of the young and raw Dispenser of Justice." Consequently the Calcutta High Court charged him with contempt of court and sentenced him to two months in jail. There was a spontaneous hartal in Calcutta. Students demonstrated outside the court smashing windows and pelting the police with stones. Demonstrations were held in many cities of Bengal and also in Lahore, Amritsar, Agra, Fyzabad, Poona and other cities.

But it is Bal Gangadhar Tilak whose name is most frequently associated with the struggle for the freedom of the Press during the nationalist movement. Angry with Tilak's strident criticism of the Government, it arrested him in July 1897 under Section 124A of the Indian Penal Code on the charge of sedition, that is spreading disaffection and hatred against the Government through his writings in the Press.

The Judge passed a barbarous sentence of rigorous imprisonment for 18 months and this when Tilak was a member of the Bombay Legislative Council. Simultaneously, several other editors of Bombay Presidency were tried and given similar harsh sentences. Overnight, Tilak became a popular all-India leader and the title of Lokamanya was popularly conferred on him. At this time, another democratic tradition was evoked by Indians: Defending freedom means defending freedom of even those with whom you disagree.

Tilak's imprisonment led to wide spread protests all over the country against this attack on civil liberties. The movement was usually organised by the Moderate leaders who

differed from Tilak's extremist views. Addressing the Indian residents in London, Dadabhai Naoroji accused the Government of initiating Russian (Tsarist) methods of administration and said that gagging the Press was simply suicidal.

Similarly at the annual session of the Congress in December 1897, Surendranath Banerjee, the foremost Moderate leader of the time, made a touching reference to Tilak and said that 'a whole nation is in tears', the entire audience stood up and enthusiastically cheered. Leaders of the Congress were to continue this tradition of defending those who differed from them later when Motilal Nehru and others defended the Communists at the Meerut Conspiracy Trial in spite of their differences. The Congress leaders like Asaf Ali were in the forefront of those defending Bhagat Singh and his comrades in the Delhi and Lahore Conspiracy Cases.

The Swadeshi movement (1905) led to a fresh wave of repression in the country. Once again newspapers became a major target. Fresh laws for control of the Press were enacted, prosecution against a large number of newspapers and their editors were launched and the Press was almost completely suppressed. Once again the axe fell on Lokamanya Tilak, the mainstay of the Boycott movement and militant politics outside Bengal. Once again in June 1908, he was arrested and tried on the charge of sedition and awarded the sentence of six years' transportation. He was sent to a prison in Mandalay in Burma, then a British colony. The public reaction was massive. All markets in Bombay remained closed for a week. The workers of all the textile mills and railway workshops went on strike for six days. The army was called out and at the end of the battle sixteen workers lay dead in the streets and nearly fifty others seriously injured.

It is important to recognise that democracy and civil liberty were not a gift of the British. In fact the British constantly suppressed them. These values were upheld by the leaders of the national movement. The British often maintained that democracy was unsuitable to India because of its history, culture and climate. The British statesmen, scholars and administrators openly declared that their rule was based on despotism albeit benevolent. It was the early nationalists, deeply influenced by British and European thinkers, such as Tom Paine, Rousseau and John Stuart Mill, who adopted democracy and civil liberties as their goals and fought every effort of the British administrators to deny these to them. Later in the 20th century during the popular phase of the national movement, it was the Gandhian grass-roots political workers who spread their message among the mass of illiterate Indian people. It was because of the faith of the nationalist leaders in the Indian people that they made democracy based on adult franchise and fundamental rights part of the Indian Constitution and a basic part of the framework of Indian polity.

3.4 NATIONAL MOVEMENT AND HUMAN RIGHTS

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

- giving these issues top priority in its programme,
- constantly making demands from the government specially at the initial stage of the movement,
- educating the people regarding their rights and conducting struggles around these issues, and

- demonstrated through practice, whenever they could, their utmost concern for civil liberties and human rights.

3.4.1 Programmatic Content

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

Merely passing of a resolution may seem simple but it was not always easy to stand by it. Often it became difficult for the organisation to carry together different ideals. For instance, from the early days, Congress had committed itself to the establishment of national unity or unity among different groups and communities. The Congress also resolved that it would not impose unity on any groups against its wishes. Thus when the Muslim League, under the leadership of M.A. Jinnah, began demanding a political separation between Hindu and Muslims after 1940, Congress leadership opposed it but conceded that any group, if it so desired, could opt for separatism. Gandhi put it beautifully: “We are at present a joint family. Any member can seek a separation.” It was thus that while pure nationalism was to be maintained and upheld as a desirable principle, it was not to be done by violating groups’ rights of self-determination. Throughout its life the national movement upheld the idea of national unity but refrained from imposing this idea coercively. The ideas of democracy, or the empowerment of the people, were put forward *along with* the ideas of nationalism.

Let us take another example. When in 1938, World War II broke out between forces of democracy (Britain, France and Poland) and those of fascism (Germany, Italy and Japan), it became imperative that the national movement would side with the forces of democracy. But whereas in the global context, Britain represented the forces of independence and democracy, in the Indian context, Britain was the imperial power denying independence and democracy to the people of India. There was clearly a contradiction between the global context and the national context. Should the national movement support Britain as a democratic force engaged in a war against fascism, or oppose it as an imperial power? Should the national movement focus only on the Indian reality (and fight the British) or express solidarity with the people of the world in their struggle against fascism? This was a serious dilemma. But the mainstream leadership of the Congress managed to resolve it. Jawaharlal Nehru wrote:

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

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

3.4.2 Making Demands from the Government

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

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

3.4.3 Struggling for Human Rights

Apart from making demands on the British government to enlarge the space available for exercise of human rights, the national movement, from 1920 onwards, actually conducted popular struggle around this issue. The first all India mass movement against the British was organised on the question of violation, by British, of a crucial aspect of human rights. In 1919, the British government brought forth the notorious Rowlatt Bill (known after its author Sir Sidney A.T. Rowlatt) which would authorise the government to imprison any person without trial and any other legal procedure. This move by the British government was received with unprecedented and fierce opposition by Indian leaders of all shades of opinions. All the Indian members of the Legislative Council – from Srinivasa Shastri to

Mohammad Ali Jinnah – opposed the Bill (yet it was passed). The national press was indignant calling it “monstrous” (*New India* from Madras), “a gigantic blunder” (*Amrita Bazar Patrika* from Calcutta), “Repression in exelsus” (*Bombay Chronicle* from Bombay) and a matter of “shame, indignation and disgust” (The *Hindu* from Madras). An all-India Hartal was organised and the entire country rose in protest against what it considered a blatant violation of human rights. Throughout its life, Indian National Movement upheld human rights and was not ready to compromise on this issue.

3.4.4 Practising Human Rights

The Indian National Movement also contributed to the enlargement of space for human rights by actually practising it when the opportunity came. The Government of India Act of 1935 provided fully elected popular governments in the provinces. As a result, the Indian National Congress formed a government in seven provinces and successfully practised what it has preached for many years in the past. All the emergency powers exercised by the previous provincial government were repealed. Ban on illegal political organisations was lifted. All restrictions on the press were removed and securities taken from them were returned. Confiscated arms were returned and forfeited arms licenses were restored. But the most important achievement was the release of thousands of political prisoners who had been languishing in various prisons for many years. During its brief stay of twenty-eight months in office, the Congress was able to demonstrate its serious concern for the issue of civil liberties and human rights.

3.5 STRUGGLES FOR SOCIAL TRANSFORMATION

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

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

3.5.1 Struggle Against Caste Oppression

The struggle against caste oppression was in some ways more complex than the fight against the British. The battle against the caste system was against attitudes and prejudices, which were thousands of years old and could take centuries to overcome. Moreover, it was not a battle against the alien rule but against oneself and one's own people. It was therefore easier to throw out the British but very difficult to eradicate caste oppressions. Since it was not a straight problem it also did not have a straight solution. Different leaders therefore adopted different approaches to the problem. Gandhi and B.R. Ambedkar looked at the question very differently from each other. They also adopted different methods but in the end, their efforts rather complemented each other. Gandhi thought that the practice of untouchability was at the core of the caste oppression (and not caste system *per se*) and had to be eradicated from the caste system. Ambedkar, on the other hand, thought that problem of untouchability was inherent in the caste system and was integral to it. Therefore, according to Ambedkar, the struggle against untouchability was essentially a struggle against the caste system. Gandhi argued that social work and social reforms in the villages would help in imparting social respect to lower caste people and make living more honourable for them. He, therefore, undertook extensive campaigns for making village temples and wells accessible to the

lower caste people. He even coined a new word for them – Harijan. Gandhi looked at the issue as a social and not a political problem.

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

While pointing out the difference between the two approaches, it is important to remember that the two approaches were not contradictory in nature but rather like two different routes to arrive at the same destination. In the long run, both the leaders, through their efforts, succeeded in initiating a process in which the low caste people have been able to fight for social justice as well as a share in the political power. Gandhi and Ambedkar, and many others too, helped in shaping the dalit question as a powerful human right issue. The problem however is far from over and social discriminations still continue. The struggle for the making of a socially egalitarian society has to be a long haul. But the leaders of the freedom struggle provided perspectives that continue to be relevant even today.

3.5.2 Rural Reorganisation

In the 19th and 20th centuries, 85% of India's population lived in about 700,000 villages. A majority of them were steeped in utter poverty, exploited not only by the British government but also the rural and urban elite. Industrialisation of the country had rendered them unemployed; the colonial economic system did not create alternative sources of employment. In the late 19th and the early 20th centuries many people from towns and villages came to live in the cities, thereby accentuating the already heavy pressures on them. No scheme or system existed for the amelioration of their condition. The Indian villages were centres of poverty, disease and ignorance. Gandhi took the initiative in this regard and drew the attention of the country to this violation of some basic human rights of 85% of Indians. Immediately after his entry into Indian politics in 1915, he formed the All India Spinners Association with a purpose to create employment for the villagers by insisting on the city dwelling population to use hand spun cloth only. The spinners association soon reached 5300 villages and provided employment to 220,000 spinners, 20,000 weavers and 230,000 carders. Within ten years of its formation, it succeeded in disbursing over two crore rupees in those villages. In 1934, after his temporary retirement from politics, Gandhi settled in Segacon, a village in then Bombay presidency. He formed an Ashram there and helped in the formation of an All India Village Industries Association, the purpose of which was to support and develop industries in villages with little capital and without any help from outside. The Association also set up a school to train village workers in various crafts.

The focus of Gandhian initiative was to make the village self-sufficient and self-supportive. This, thought Gandhi, was the best way of restoring prestige and dignity to villages and villagers. A good example of this was given in Harijan, a weekly journal started by Gandhi: Chandranath, a man without any higher education but with all commitment to constructive work, enlisted the voluntary labour of about 15,000 villagers and completed a canal, three miles long and a roadway of the same length. The official estimate for this work was Rs. 50,000. Largely at Gandhi's initiatives, the annual sessions of the Congress began to be held in villages. The canvass of the human rights was thus enlarged to include the pressing problems that had ripped rural India.

3.6 SPREAD

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

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

The constitution of the Indian Civil Liberties Union (ICLU) was drafted along the lines of the Civil Liberties Union of America and the National Civil Liberties Union of Great Britain. Rabindranath Tagore was its honorary president and Sarojini Naidu was its chairperson. The task of the Union was to gather information about the suppression of civil liberties in the provinces, collect facts, publish them, mobilise public opinion, keep in touch with other foreign Unions and reach out to world opinion through them.

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

3.7 IMPLICATIONS

The gradual integration of human rights issues into the struggle for independence had important implications not only for the national movement but also for politics and society after the attainment of independence in 1947. For one, it imparted many new dimensions to the national movement and turned it into a very dynamic phenomenon. The early 20th

century notion of political independence gave way to a new and a vibrant notion of economic independence in which people would determine their own destiny. At the same time, it created a space for a range of other struggles by specific groups for their rights. A healthy respect shown by the national movement for democracy and other social struggles resulted in the creation of a political climate after independence that was conducive for the growth of democracy.

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

3.8 SUMMARY

This Unit has focused on the perspective and the activities undertaken during the course of India's freedom struggle on the issues related to human rights. The inspiration for the human right perspective developed during the national movement, came from diverse sources that included some of the positive elements of Indian traditions as well as the ideas of the Enlightenment. In particular, the ideals of the French Revolution and the classical European doctrine of 'rights' of both the individual and the nation, provided the framework for the human right perspective. The 19th century social reform movement transformed this understanding into 'rights' for the individual, community and the nation. This triple concern for human rights fed into the major concerns of national movement from its very inception. The organised national movement gradually took up issue of democracy, universal franchise, freedom of the press, compulsory education etc., and took these issues to the people and educated them regarding their political and economic rights. It increasingly incorporated these issues into its central agenda, made constant demands from the British government for their implementation, conducted struggles around some of these issues and actually practised the principles of human rights whenever the opportunity came. It also created space for other social struggles which took up the issues of peoples' human rights. This transformed the national movement from a mere fight against the British government into a vibrant multi-dimensional phenomenon with respect for democracy, civil liberties and people's urge for self-determination.

Gandhi, in 1922, wrote in *Young India*: "We must first make good the right of free speech and free association. We must defend these elementary rights with our lives." His definition of these rights was: "Liberty of speech means that it is unassailed even when the speech hurts; liberty of the Press can be said to be truly respected when the Press can comment in the severest terms upon and even misrepresent matters. Freedom of association is truly respected when assemblies of people can discuss even revolutionary projects." In 1939 he wrote: "Civil liberty consistent with the observance of non-violence is the first step towards Swaraj. It is the breath of social and political life. It is the foundation of freedom. There is no room there for dilution or compromise. *It is the water of life. I have never heard of water being diluted*" (emphasis added).

3.9 TERMINAL QUESTIONS

1. What were the major sources of inspiration for the human rights perspective developed during the course of the national movement?
2. In what ways did the early nationalist leadership fight for the civil liberties of the people?

3. How did the national movement take up the question of civil liberties during its mass phase?
4. How was the concern for civil liberties extended to non-political areas of peoples' social life?

SUGGESTED READINGS

Chandra, Bipan., *Essays on Indian Nationalism*, New Delhi, 1993.

Chandra, Bipan., *Pre-Gandhian Roots of Gandhain Politics* (Annual Sardar Patel Lecture, 2007).

Dev, Arjun., (ed.), *Handbook of Human Rights*

Gopal, Sarvepalli., *Jawaharlal Nehru: A Political Biography*, New Delhi, 1976.

Nanda, B.R., *Mahatma Gandhi: A Political Biography*, New Delhi, 1958.

UNIT 4 CONSTITUTIONAL PROVISIONS ON HUMAN RIGHTS AND DUTIES

Structure

- 4.1 Introduction
 - Aims and Objectives
- 4.2 Human Rights in India
 - 4.2.1 The Constituent Assembly
- 4.3 Fundamental Rights
 - 4.3.1 Right to Equality
 - 4.3.2 Right to Freedom
 - 4.3.3 Right Against Exploitation
 - 4.3.4 Right to Freedom of Religion
 - 4.3.5 Cultural and Educational Rights
 - 4.3.6 Right to Constitutional Remedies
- 4.4 Directive Principles of State Policy
 - 4.4.1 Socio-Economic Rights
 - 4.4.2 Gandhian Principles
 - 4.4.3 Directives for General Welfare and Governance
- 4.5 Fundamental Duties
- 4.6 Summary
- 4.7 Terminal Questions
 - Suggested Readings

4.1 INTRODUCTION

You have already studied about the meaning and importance of Human Rights and the struggle for achieving these rights in India during the Colonial period. As the concern for rights and civil liberties had become a part of the national movement, the framers of the Constitution were committed to provide these in the Constitution that guaranteed Liberty, Equality and Justice. They provided in the Constitution two types of rights- one Justifiable and other non-justifiable: the first in Chapter III on Fundamental Rights and the second in Chapter IV as Directive Principles of State Policy. These are more or less similar to Civil and Political Rights and Economic, Social and Cultural Rights provided in the Universal Declaration of Human Rights which you have already read. In this Unit, you will study in detail the types, nature and importance of these rights. You will also read about the types and nature of Human Rights as provided by the Indian Constitution and learn about the methods for enforcement of these rights.

Aims and Objectives

After going through this Unit, you will be able to understand

- the rights provided to citizens and other persons in India by the Constitution of India;

- the nature of rights and limitations attached to these rights;
- the importance of Directive Principles of States Policy;
- the Fundamental duties contained in the Constitution; and
- the mechanisms provided by the Constitution for effective implementation of rights.

4.2 HUMAN RIGHTS IN INDIA

India's struggle for freedom basically was a struggle for self-determination, for freedom of equality, liberty and justice. These are the core values of the vision of Human Rights. In fact even earlier social reformers have emphasised the values of civil liberties. Western liberal education, growing repressive character of the colonial power and consciousness in various social groups further added to the evolution of demand for rights. The Indian National Congress which spearheaded the National movement throughout emphasised the idea of rights. The struggle against the Rowlatt Act in 1919 was a landmark in the history of civil liberties movement in India.

In 1930 at the time of civil disobedience movement there also emerged the idea of an organised civil rights movement. This took the shape of "Indian Civil Liberties Union" (ICLU) formed in August 1936. Rabindranath Tagore and Sarojni Naidu became the Honorary President and president respectively on the request of Jawaharlal Nehru, who had mooted the idea of 'ICLU'. During freedom struggle, the defence of civil liberties was not narrowly conceived in terms of one political group or party. It was extended to the defence of all groups without concern about ideological or strategic differences.

4.2.1 The Constituent Assembly

The idea that every individual possessed certain inherent rights was one of the prominent moving spirits of freedom struggle and therefore, the inclusion of rights was considered as an essential part of the Constitution to be framed by the Constituent Assembly of India. This was made amply clear in the objectives resolution moved by Jawaharlal Nehru on 13 December 1946. The resolution promised to all citizens of India:

Justice: Social, economic and political,;

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

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

The objectives Contained in the above resolution were later adopted as part of the Preamble of the Constitution.

You will appreciate that in a society full of divisions of caste, religions, tribes, languages etc, as also having a large population of poor, such promises were revolutionary. At the same time mere political legal equality was not sufficient for the deprived sections of society. Therefore, apart from granting freedoms and equality, provisions for providing protective safeguards were also necessary. The Constituent Assembly therefore made provisions for both negative and positive rights as also special provisions for vulnerable sections of the society within rights.

Negative rights refer to freedoms and equality that the State must not encroach upon.

That is State is prohibited from exercising power. Positive rights require State to take active steps towards their realisation. The Constituent Assembly divided the rights into two parts. In chapter III of the Constitution- under Fundamental rights- were guaranteed primarily negative rights and in chapter IV under Directive Principles of State Policy were provided positive rights. The Preamble, Fundamental Rights and Directive Principles combined the values of freedom, equality and economic and social justice.

4.3 FUNDAMENTAL RIGHTS

The fundamental rights have been provided in part III of the Constitution. These are primarily in the nature of civil and political rights. There are two kinds of rights, some available to all persons living in India and some available only to citizens of India. These rights are justiciable, which means in case of violation of these rights, the citizens can go to courts for enforcement of these rights. The rights as such are Constitutional guarantees. These can be infringed only to the extent provided by the Constitution itself or under conditions of emergency. Originally, the Fundamental rights were provided under seven categories. In 1978, through 44th amendment of the Constitution, one right that is right to property, was deleted from the chapter on rights. As such there are now six categories of Fundamental Rights. These are discussed as below:

4.3.1 Right to Equality

Through Articles 14 to 18, the Constitution provides equality before law, of opportunity, dignity and status.

Article 14 provides that the state shall not deny to any person equality before law or the equal protection of the law within the territory of India. Article 15 prohibits the state to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Prohibition of discrimination is placed also on society as no citizen on any of the above mentioned grounds can be denied access to shops, restaurants, hotels, places of public entertainment, and use of wells, tanks, bathing ghats, roads and places of use of the general public.

The State, however, can make special provisions for women and children. For example men can be denied access to places of bath for women, or adults from entry to parks for children. Article 15 also allows state to make special provisions for the advancement of backward classes of citizens and for Scheduled castes and tribes.

Article 16 provides equality of opportunity for all citizens in respect of public employment. They cannot be deprived of this on grounds only of religion, race, caste, sex, descent, place of birth, residence etc. The State can, however, make special provisions for reservations of jobs for the Scheduled Castes and Tribes as also promotions in jobs. It means denial of opportunity to others in jobs reserved for Scheduled Castes and Tribes. This is known as affirmative action for the welfare of deprived sections.

Article 17 abolishes practice of untouchability in any form. It declares practice of untouchability as a crime punishable in accordance with law. Thus equality of dignity is assured. To provide equality of status Article 18 provides that the state shall not confer any title other than military or academic. No citizen of India shall accept any title from any foreign state. No person other than a citizen, while holding an office of profit, under the state shall, without the consent of the president, accept title from a foreign state.

It thus becomes clear that in India all citizens are equal in all respects. State can discriminate only for welfare of Scheduled castes, Scheduled Tribes and Backward Classes of citizens to provide them justice that was denied to them for centuries.

4.3.2 Right to Freedom

Articles 19 to 22 of the Constitution grant various types of freedoms to persons.

Basic Freedoms

Article 19 guarantees six basic freedoms. These are (i) freedom of speech and expression, (ii) Freedom to assemble peacefully without arms, (iii) Freedom to form associations and unions, (iv) Freedom of movement, (v) Freedom to reside and settle in any part of India, and (vi) Freedom to practice any profession or carry on any occupation, trade or business.

These freedoms, however, are not absolute; clauses 2 to 6 of the Article 19 provide for conditions under which the state can put reasonable restrictions on these freedoms under certain conditions. These are: security of the state, public order, foreign relations, defamation, contempt of court, sovereignty and integrity of India, public morality or incitement to commit an offence.

Protection in respect of Conviction of offences

Article 20 gives to citizens, protection against conviction for offences except for the violation of the law in force, against punishment for the same offence more than once and against forcing a person to be a witness against one self.

Right to Life and Personal Liberty

Article 21 guarantees all persons right to life. According to this, no person shall be deprived of his life or personal liberty except according to procedure established by law. Right to life has been expended by the Supreme Court declaring that right to life means a dignified life. The Government of India has also agreed with it and through an amendment of the Constitution, it added Article 21 A guaranteeing the right to education to all children between the age of six and fourteen years. Issues of pollution have also been taken up as affecting the right to life.

Protection in cases of Arrest and Detention

Article 22 provides for right to be informed of the grounds of arrest, right to consult and be defended by a lawyer, right to be presented before a magistrate within 24 hours etc. These rights are, however, withheld from enemy, aliens and persons who are arrested or detained under any law providing for preventive detention.

4.3.3 Right against Exploitation

Articles 23 and 24 provide Right against Exploitation. This right assures guarantee against 'traffic in human beings', forced labour, begging etc. Article 24 protects children below the age of 14 from employment in factories, mines, and other hazardous jobs.

4.3.4 Right to Freedom of Religion

Articles 25 and 26 guarantee freedom of Conscience and free profession; practice and propagation of religion, establishment and maintenance of institutions for religious and charitable purposes. These freedoms, however, are subject to public order, morality and

health. It means all individuals and religious groups are free to practice their faith without endangering public order and health.

Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denominations. Article 28 forbids the imparting of religious instructions in educational institutions funded by state. In institutions aided by state, students cannot be forced to attend religious instructions.

The above provisions of Article 25 to 28 make it clear that while all individuals are free to adopt and practice any religion, and all religions are free to flourish according to their established traditions, the state will not promote or favour any particular religion nor will it discriminate against any. It is these provisions that make India a secular country.

4.3.5 Cultural and Educational Rights

Articles 29 and 30 protect the interest of minorities in terms of their traditions and languages. Any section of the citizens, residing in the territory of India having a distinct language, script or culture, has the right to conserve the same. No citizen can be denied admission to a State owned or State-aided educational institution on grounds of religion, race, caste or language. Article 30 gives minorities the right to establish and administer educational institutions. This Article also provides that the State cannot discriminate against any educational institution on the ground that it is under the management of a minority.

4.3.6 Right to Constitutional Remedies

As you have read in the beginning, the Fundamental Rights are justiciable. For this Article 32 gives right to persons to appeal to courts- both Supreme Court and High Court- in cases of violation of any right. The Courts have been given powers to enforce Rights by appropriate remedies. They can issue writs of *habeas corpus* (asking the detaining authority to bring a detained person to the court for trial); *mandamus* (ordering a government to do its duty); *prohibition* (stopping an authority from violating someone's right); *quo warrant* (asking an official body of the authority under which power has been exercised), and *certiorari* (taking over of a case from a lower court by a higher court).

From the above discussion, you might have understood that Fundamental Rights basically protect individuals against violation of their freedom, liberty and equality by state. These are called negative because the state has been asked not to violate these rights. The Articles 15 and 16 empower the state to initiate positive action also for the welfare of Scheduled Castes, Scheduled Tribes and Backward Classes. In general, Chapter III primarily provides Civil and Political Rights. Chapter IV of the Constitution provides the rights that are positive in nature as State has to provide these through its policies and actions.

4.4 DIRECTIVE PRINCIPLES OF STATE POLICY

As already mentioned, the framers of the Constitution were eager to provide both Civil and Political Rights and Economic, Social and Cultural Rights. The second category of rights is provided in chapter IV of the Constitution through Articles 36 to 51. The Directive Principles are special feature of the Indian Constitution. They are essentially aimed at social welfare, especially of the weaker sections of the society. They are different from Fundamental Rights in the sense that they are not enforceable by any court. In fact these are not granted to citizens as rights but are directives to the state, as Article

37 says 'fundamental in the governance' and the state is expected to apply these principles in making laws. In spite of non-enforceability by courts, the state is responsible and accountable for implementation of these principles. Even courts have taken notice of these and at times asked the state for enforcement of these principles as rights.

In terms of rights or policy frameworks, the Directive Principles can be divided into three categories:

- (i) Socio-Economic Rights
- (ii) The Gandhian principles
- (iii) Directives for General Welfare and Governance

4.4.1 Socio-Economic Rights

These principles for Socio-Economic rights and welfare have been provided in Articles 38, 39, 39A, 41 and 42.

Article 38 provides that "The state shall strive to promote the welfare of the people by protecting, as effectively as it may, a social order in which justice, social-economic and political shall inform all the institutions of the national life. It also directs the state to eliminate inequalities in income, status, and opportunity not only among individuals but also among groups of people".

Article 39 provides that the state shall, in particular, direct its policies for securing the citizens both men and women:

- i) Equal right to an adequate means of livelihood;
- ii) Equal pay for equal work;
- iii) Fair distribution and control of resources so as to serve the common good;
- iv) To check that operation of the economic system is in a way that it does not result in the concentration of wealth and means of production to the common detriment.
- v) Prevention of health and strength of workers, men and women, and the tender age of children against abuse; and
- vi) Opportunities and facilities for children and youth to develop in healthy manner and not to be exploited.

Article 39A provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, so that justice is not denied to any citizen by reason of economic or other disabilities.

Article 41 states that within the limits of its resources the state will make provision for the right to work, to education, and to public assistance to the unemployed, sick, old and disabled; secure just and humane conditions of work and maternity relief; and decent living, wage; raise level of education, standard of living and public health, early childhood care and education of children below the age of six.

Article 43 directs the State to ensure to all workers agricultural, industrial or otherwise, Right to work, right to a living wage and right to such conditions of work as would

ensure a decent standard of life and full enjoyment of social and cultural opportunities. A new Article 43A introduced in 1976, directs the state to ensure the participation of workers in the management of industry and other undertakings.

4.4.2 The Gandhian Principles

Mahatma Gandhi, as a thinker, had a perspective of state, nation and rule. He had vision about the government of state from common man, particularly, villagers' needs. In the Constitutional Assembly, there were members who considered these views quite relevant for society in India. Some of these were included in the state for implementation. These are as follows:

Article 40 directs the state to organise village Panchayats and to vest them with such powers and authority as may be necessary to enable them to function as units of self-government. This means establishment of Gandhi's idea of Panchayati Raj. You may be aware that through 73rd Amendment of the Constitution, the Panchayati Raj system has been implemented as a Constitutional provision.

Article 46 provides for the state to promote the educational and economic interests of the Scheduled Castes, Tribes and other weaker sections of the society. It also directs the State to protect these sections from social injustice and from all forms of exploitation.

Article 47 states that the state shall raise the level of nutrition and standard of living of people. It also directs the state to bring about prohibition of intoxicating drinks and drugs, which are injurious to health.

Article 48 is concerned with the preservation and improvement of cattle and prohibition of cow-slaughter. State is also asked to endeavour to organise agriculture and animal husbandry on modern and scientific lines. A new Article 48A introduced in 1976 directs the state to protect and improve the environment and to safeguard the forests and wildlife of the country.

4.4.3 Directives for General Welfare and Governance

The Directive Principles also direct the State to adopt and implement policies for basic education, uniform civil code, independence of judiciary, protection of heritage and promotion of international peace.

Article 44 prescribes for a uniform civil code and directs the State to endeavour to secure to all citizens a uniform code throughout the territory of India.

Article 45 provides that the state shall endeavour to provide, within a period of ten years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of fourteen years. You have already read that with the introduction of Article 21A in Chapter III on Fundamental Rights, this provision of Directive Principles now has been made a Fundamental Right.

Article 49 directs the state to protect, preserve and maintain monuments, places or objects of artistic or historic interest or of national importance. The State is to ensure that these monuments and objects are not spoiled, disfigured, destroyed, removed or exported.

Article 50 directs the state to take steps to separate judiciary from the executive in public service or the state. This has been a colonial legacy for District Magistrates to exercise both executive and judicial powers. This concentration of powers goes against the theory

of checks. Therefore the framers of the Constitution desired the separation of the two. This has been now achieved to an extent.

Article 51 directs the state to formulate its foreign policy keeping in view the principle of world peace and harmonious coexistences of nations. The Article directs the State to shape its foreign policy as to attain the following objectives:

- I) Promote international peace and security;
- II) Maintain just and honourable relations between nations;
- III) Respect for international law and treaty obligations in the dealings of organised people with one another; and
- IV) Encourage settlement of international disputes by arbitration.

In the above description of Directive Principles of State Policy, you might have observed that makers of the Constitution wanted to direct the future governments to work for improvement of conditions of masses, provide equality and social justice by formulating and implementing positive actions. You might have also seen that a number of principles are quite similar to Economic, Social and Cultural Rights contained in the Universal Declaration of Human Rights. The Assembly members were conscious of the limitations of the resources available with the government in the early years of independence. Therefore, they did not make Directive Principles as justiceable rights. However, these provisions serve as to inform citizens that they are entitled to these rights. They can, therefore, assess the performance of the governments on the basis of sincerity towards these rights. In recent years even Judiciary has taken a view that in some ways the Directive Principles are as fundamental as Fundamental Rights and therefore need serious attention of the government. The governments have also taken significant measures for effective implementation of these principles. It can be said that Fundamental Rights and Directive Principles are complimentary and supplementary to each other.

4.5 FUNDAMENTAL DUTIES

You have read that rights and duties are closely related. These in fact are considered two sides of the same coin. Gandhi, in particular, on the basis of his belief that every human being was dependent on other human beings, argued that rights flow from duty towards others. He went to the extent of observing that the right to perform one's duties is the only right that is worth living for and dying for it. It covers all legitimate rights. The framers of the Constitution perhaps thought that the duties of citizens were implied in their being citizens and to some extent, in the restrictions contained on rights in the chapter on Fundamental Rights. In 1975 a committee, under the chairmanship of Swaran Singh to suggest comprehensive changes in the Constitution for better governance of State and welfare of the masses, recommended the inclusion of Fundamental Duties in the Constitution. On the basis of these recommendations through 42nd Amendment, Section 51A of the Constitution in 1976, a new Section Part IV A on Fundamental Duties, has been added in the Constitution.

This Article prescribes the following duties for every citizen of India:

- (a) To abide by the Constitution and respect the National Flag and National Anthem;
- (b) To cherish and follow the noble ideas, which inspired our national freedom struggle;

- (c) To protect sovereignty, unity and integrity of India;
- (d) To defend the country;
- (e) To promote the spirit of common brotherhood amongst the people of India transcending religious, linguistic, regional, or sectional diversities and laws to renounce practices derogatory to women;
- (f) To preserve the rich heritage of our composite culture;
- (g) To protect and improve the natural environment;
- (h) To develop the scientific temper and spirit of enquiry;
- (i) To safeguard public property;
- (j) To strive towards excellence in all spheres of individual and collective activity; and
- (k) As a parent or guardian to provide opportunities for education to child or ward between the age of six and fourteen years. (This duty was included in Article 51A in 2002 through 86th Amendment of the Constitution as a provision for right to education).

The above-mentioned duties, just like Directive Principles of State Policy, are not justiciable, that is, not enforceable by courts. The Fundamental Duties are in the nature of instructions to citizens. As in the case of Directive Principles, these duties, being part of the Constitution, cannot be ignored. Therefore, while interpreting laws or delivering judgements on concerned issues, the judiciary is expected to keep these duties in view. As far as citizens are concerned, the inclusion of duties in the Constitution reaffirms the principle that a citizen is expected to fulfill certain obligations while enjoying rights. You might have read that Article 29(1) of the Universal Declaration of Human Rights also provides that “Every one has duties to the community in which alone the free and full development of his personality is possible.” As such it is important to keep in mind that the duties and rights go together.

4.6 SUMMARY

In this unit you have read that Indians facing repression under colonial rule were much concerned about human rights as a part of freedom struggle. Therefore the makers of the Constitution committed themselves to provide rights for citizens as guarantees for freedom, equality and liberty. In the Constitution of India two types of rights are provided in chapters III and IV. Chapter III contains Fundamental Rights and chapter IV Directive Principles of State Policy. While Fundamental Rights are justiciable and therefore can be enforced by courts, the Directive Principles are not justiciable. Some of the rights are available to all persons living in India, while some are available only to the citizens of India. Both the chapters on Fundamental Rights and Directive Principles reflect the rights contained in the Universal Declaration of Human Rights. In 1976, through the 42nd Amendment of the Constitution, the provision for Fundamental Duties has also been included in the Constitution to emphasise the idea that citizens have to fulfill certain obligations to claim rights. The provisions for Fundamental Rights and Directive Principles suggest the vision of the Constitution of India for respect for human dignity, equality and justice.

4.7 TERMINAL QUESTIONS

1. How has right to equality been provided in the Constitution of India?
2. Describe the freedoms provided in the chapter on Fundamental Rights.
3. What is the importance of Freedom of Religion? How has this been guaranteed by the Constitution?
4. How can a citizen get his / her Fundamental Rights enforced in case of violation by state?
5. How do the Directive Principles of State Policy reflect the provisions of Economic, Social and Cultural Rights?
6. What is the importance of including Gandhian principles as directives in chapter III of the Constitution?
7. Describe in brief the relationship between Fundamental Rights and Directive Principles.
8. Describe the relevance of inclusion of provision for Fundamental Duties in the Constitution.

SUGGESTED READINGS

1. Adawal, Shankar, (2009) *"Human Rights" The Reality and Challenges* (Delhi: Academic Excellence India).
2. Austin, Granville, (1999) *The Indian Constitution: Corner Stone of Nation*, Delhi Oxford University Press.
3. Basu, D.C. *Introduction to the Constitution of India*. New Delhi: Prentice-Hall.
4. Chaube, Kinkar, Shibani (2009), *"The Making and Working of the Indian Constitution"*, New Delhi: National Book Trust, India.
5. Chiranjivi, (1999), Nirmal J., *"Human Rights in India, Historical, Social and Political Perspectives"*, published by Oxford University Press, New Delhi.
6. Iyer, V.R. Krishna (1990) *Human Rights and Human Wrongs*, Delhi: B.R. Publishing Group.
7. Nirmal, C.J., ed., (1999) *Human Rights of India: Historical, Social and Political Perspectives* (New Delhi: Oxford University Press).
8. Shankar, A, (2009), *Human Rights the Reality and Challenges*, published by Academic Excellence, New Delhi-110031 India.
9. Vijapur, A Abdulrahim P. and Kumar Suresh (1999) *Perspectives on Human Rights*, New Delhi: Manak Publisher.