“Education is a liberating force, and in our age it is also a democratising force, cutting across the barriers of caste and class, smoothing out inequalities imposed by birth and other circumstances.”

- Indira Gandhi
## Block 1

### HUMAN RIGHTS: DEVELOPMENT IN INDIA

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Expert Committee

Prof. Srikrishna Deva Rao
Director
School of Law
IGNOU, New Delhi

Prof. Pandav Nayak
Professor of Political Science
School of Social Sciences
IGNOU, New Delhi.

Prof. Riaz Punjabi
Vice-Chancellor
Kashmir University, Srinagar.

Prof. G. Har Gopal
Professor of Political Science and Human Rights
Hyderabad Central University,
Hyderabad.

Prof. A.R. Vijapur
Professor of Political Science
Aligarh Muslim University, Aligarh

Dr. Ravi Nair
Director
South Asian Human Rights Documentation Centre, New Delhi

Prof. D. Gopal
Professor of Political Science
School of Social Sciences
IGNOU, New Delhi

Prof. A.S. Narang
Professor of Political Science
School of Social Sciences
IGNOU, New Delhi.

(Convenor)

Programme & Course Coordinator: Prof. A.S Narang

Block Preparation Team

Unit-1
Dr. Swaha Das, Sr. Lecturer
I.P. College for Women, University of Delhi, Delhi.
and Hari Nair, Research Scholar

Unit-2 & 3
Prof. S.K. Chaube
Professor of Political Sciences (Retd.)
University of Delhi, Delhi.

Units-4
Prof. A.P. Vijapur
Professor of Political Science
Aligarh Muslim University, Aligarh

Editor: Prof. A.S Narang

Print Production

Sh.Y.N. Sharma
Asst. Registrar
MPDD (Pub.)

Sh.Yashpal
Section Officer
MPDD (Pub.)

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CHR-12 HUMAN RIGHTS IN INDIA

In the first course CHR-11 of this programme you have learnt about the meaning, definitions, type and nature of Human Rights, as these have developed and recognized at the international level. You have also learnt that primary responsibility to implement and protect these rights is that of the states. As such every state has to take, executive and legal measures for their recognition and implementation. In general states do so keeping in view their historical and cultural traditions, nature of society and levels of development. In most states there also have emerged Non-Governmental Organizations and H.R. movements engaged in the task of promotion and protection of Human Rights. In India also there have been developing visions, movements and demands for recognition of rights. Indian state has accepted the idea of rights and included the same in Constitution of India. Laws have also been enacted for providing rights to special categories. Institutional mechanisms have been created for their protection and redressal of complaints about violation.

In this second course CHR-12 you will read in detail about all these. The block consists of 21 units in five blocks. These include, historical background of the development of the idea of human rights in India and its social and legal recognition, the Rights provided to citizens and special categories, enforcement machinery and emerging trends and challenged for Human Rights in India. The last block of the block is on various laws and instruments that citizens and different categories can use for better exercise of their rights and file complaints against violations or restrictions. This block is in the nature of a practical guide book to help you as individual and a human rights activist. We hope that after going through this course you will have a comprehensive knowledge about the rights available to you and your fellow citizens. You will be able to generate awareness among others and help the victims against violation of their rights.
As already mentioned this second course CHR-12 deals with Human Rights in India. The first block of this course is on the historical background of the development of the idea and visions about Human Rights in India and their formal recognition first by national movement and later in the Constitution of India. First two units deal with the historical context and the last two units deal with the process of adoption of rights in the Constitution.

In the first unit, you will read about the historical traditions pertaining to rights and duties in ancient Hindu order, Buddhism and Jainism, in the medieval period with special reference to Bhakti and Sufi movements and views about them in the modern period including those of Mahatma Gandhi. The unit thus gives you an overview of the concept of rights as present in different philosophical streams in India and contributions of the same in the development of the norms and values for human equality and freedoms along with individual’s duties towards community and others.

Unit 2 is on Freedom Struggle and Civil Liberties Movement. This unit introduces you to the emergence and development of Human Rights Movement as a part of freedom struggle. Here you will first read about the nature of colonial rule and denial of freedom in that. Thereafter you will be made aware of various struggles that emerged for the cause of civil liberties, especially for freedoms, equality and justice. The Unit also deals with the process of inclusion of human rights issues in the national movement and contribution of civil liberties movements in freedom struggle. You will thus understand how the gradual integration of human rights issue 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.

Unit 3 is on Constitutional Vision of Human Rights in India. It deals with the Fundamental Rights. Directive Principles of state policy and fundamental duties as enshrined in the constitution of India. It provides the background that led to the acceptance of the idea of inclusion of rights in the constitution. It describes the type and nature of rights in the shape of Fundamental Rights and Directive Principles, their scope, importance and limitations.

Unit 4 deals with India’s International Human Rights Obligations. In this Unit you will read about international treaties that India has signed. The emphasis is on six treaties which are known as core treaties. It is to make you aware how India has been honouring its international obligation contained in these treaties and where it lacks in the commitments. Since, according to U.N. Covenants State is the guarantor and protector of human rights residing in it, it is important to understand how each state performs these functions. This unit will make you able to assess the extent to which international human rights obligations are complied with by the Indian Government and also understand the role Indian Judiciary has played in making the state fulfill these obligations even if these have not been incorporated in the domestic laws.
UNIT 1 HUMAN RIGHTS: HISTORICAL TRADITIONS

Structure

1.0 Objectives
1.1 Introduction
1.2 Ancient Indian Traditions
   1.2.1 Hinduism: Rights as Dharma
1.3. Buddhism
   1.3.1 Human Rights and War: Ashoka’s Rajdharma
   1.3.2 Janism
   1.3.3 Lokayata
1.4 The Idea of the Human Rights in Medieval India
   1.4.1 The Bhakti and Sufi Movements
1.5 The History of Human Rights in Modern India
1.6 Gandhian Concept of Rights
1.7 Environmentalist Traditions
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1.9 Answers to Check Your Progress Exercises

1.0 OBJECTIVES

This unit is aimed at introducing you to the idea of Human Rights as it has been emerging through Indian’s historical development. After going through this unit you will

• understand the idea and status of rights in ancient Hindu order;
• know about the contributions of Buddhism and Jainism in the development of equality and liberty;
• appreciate the contributions made by Bhakti and Sufi movements towards recognition of individual’s identity and his or her equality; and
• know the concerns for human rights that emerged during modern period.

1.1 INTRODUCTION

In the European tradition, human beings are entitled to certain rights that are essential for leading a meaningful and dignified life. Such entitlements are called Human Rights. Human rights refer to a special kind of moral entitlements that are applicable to everyone equally, by virtue of their human condition, irrespective of their ethnic origin, nationality, or membership of any particular social group. As human rights depend directly on the natural condition of being human, i.e., on their ontological condition, these rights are alternatively called Natural Rights. They are also natural in the sense that no authority, however superior or powerful, can bestow these rights because those are always naturally given, per se.
If we logically extend the idea mentioned in the previous paragraph, we could say that human rights are also independent of the rights provided by the State. The state cannot create or give human rights to the citizens because these rights are *a priori*. Infact, the state has the obligation to guarantee the fulfilment of the natural rights of its citizens. The Indian State is obliged to guarantee certain civil liberties, which are specified in Part III of the *Constitution of India*. These rights are called Fundamental Rights of the Indian citizen. These may be further subdivided into personal, social, cultural and economic rights. Such rights may also be called legal rights because it is guaranteed by the law of the land. As you have already read in course CHR-11, while modern concept of Human Rights is primarily a 20th Century idea and has been formulated after the end of Second World War with the establishment of United Nations, concerns and norms for Human Rights are traced back to the development of civilization. In India too there have been traditions of mention and concerns for rights and duties of citizens as individuals and groups. In this unit we will learn about such concerns and norms during periods of historical developments and different socio-religious cultures.

1.2 ANCIENT INDIAN TRADITIONS

In a substantial sense, The *Constitution of India* belongs to the European legal tradition. This does not mean that the various Indian traditions did not influence the members of the Constituent Assembly as they drafted this extremely important legal document. In fact, the Indian traditions did have a significant effect. For example, Sarvepalli Radhakrishnan had defended the republican nature of the Indian Constitution by arguing that the idea of the republic was not foreign to the genius of this country for we have had it from the beginning of our history. However, those parts of the Constitution that deal with human rights belong strictly to the European tradition of rights. How could we explain this?

The idea of human rights as entitlements or claims to an extent was alien to the ancient Indian traditions. This was so because these traditions were predominantly non-anthropocentric. Although the human life was believed to be more evolved, other forms of life enjoyed equal respect. The human being was conceived of as yet another of the many creatures that inhabited the world. In fact, certain traditions like Jainism maintained the belief that even non-living matter possessed a soul. Therefore, ancient Indian thought laid emphasis on the performance of one’s *dharma* (duty, obligation) and this makes duty taking precedence over the ‘claims or entitlements’ (rights) of the individual human being. However, these duties also in some ways are related to concerns for the rights of others. In the next few paragraphs, we will look at various systems of thought that incorporated the broad traditions of ancient Indian world views.

1.2.1 Hinduism: Rights as *Dharma*

Hinduism is one of the oldest religious traditions that have survived to our days. However, it is neither a monolithic tradition nor is it an organized religion. Instead, it has many contrasting currents contained within itself. The principal texts of ancient Hinduism are the *Vedas*, which contain polytheistic hymns, monistic tendencies, ethical guidelines and even a ridicule of the gods. The Vedic age was followed by a period which witnessed a systematization of philosophical thought, enshrined in the *Upanishads*. The problems that worried the Hindu mind during the later-Vedic or *Vedantic* period were the nature of reality, the meaning of human life and the possibility
of true knowledge. Thereafter, the theistic tendencies resurfaced as is evident from
the popularity of the Bhagavad-Gītā. In the various phases of the history of ancient
Hinduism, the idea of the “self” was important and much debated. Consequently, a
discourse of rights of an individual failed to concretise within this tradition. Rather,
it was a sense of duty or dharma located within the social structure that gained
ground.

Dharma and karma are the two most important ethical principles of Hindu philosophy.
While the former implied doing certain things and avoiding certain other acts, the
latter was not always conceived of as fatalistic, instead it was also considered as a
naturalistic law of causation. In the Āīg veda, virtue is in conformity with the cosmic
law, atā; where fidelity and rectitude in human relationships are the goals. Besides
the Vedas, there were a group of texts dedicated entirely to various duties and these
are called the Dharmaśāstras. They emphasise the adherence to established norms
of ancient Indian social order by stressing the renunciation of one’s familial and social
obligations for the sake of attaining enlightenment or liberation from the cycle of
rebirth. The most famous of the Dharmaśāstras was the Mānavadharmashastra
(Laws of Manu).

The ancient Hindu social order was organized on the basis of labour, thus forming
groups of priests, warriors, tradesmen and servants. This organization of work
 crystallized into a near endogamic-system of castes. Since then, duties depended on
one’s relation to the caste-structure. Consequently, such an idea of duty came to be
described as varnāśrama dharma. A human life was divided into four stages:
bhramacharya, grīhasthāshrama, vanaprastha, sanyasa. The first two stages were
viewed as seen in terms of duties of a student and that of a house-holder, while the
latter two were considered as phases seeking liberation from the mundane world.
However, it was impossible to accede the third and the fourth stages without having
passed through the first two stages. The unjust nature of the caste-system was
evident because such a way of leading the life was prescribed only for the first three
varnas. Nonetheless, the Dharmaśāstras also dealt with moral duties or virtues to
be sought after by all individuals, sarvāśrama dharma, like patience, compassion,
non-violence, non-stealing, non-lying etc. In another way some of these values are
connected with the spirit of human rights. Two statements in the Rig Veda contain vital
clues to any enquiry into the nature of truth and justice to be pursued by anyone:
“Truth is one. Wise men interpret it differently” and “Let noble thoughts come from
everywhere”. These two might well represent the oldest philosophical
acknowledgement of the plurality of ways in which the universal truth can be interpreted
and understood. The second statement in addition attempts to create a pool of
wisdom to which everybody should contribute and which is in the end beneficial to
all. Any human right activist would do well to begin his enquiry from these twin
concerns laid down in the Rig Veda.

The Hindu concepts of dharma, thus sets forth the responsibilities and rights of
individuals in terms of their membership in a human community for which individuals
are responsible and from which they derive much of their value as human beings. As
Harold Coward points out, there is no notion of rights of the individual alone. In
Hinduism the rights of the individual person are always the rights of individual in a
community and consequently cannot be discussed without reference to ones community,
duties and responsibilities (Dharma). For Hinduism, the dignity and worth of the
individual is safeguarded through the fulfilment of duties to the larger community of
which he or she is a part.
1.3 BUDDHISM

The thought of Siddhartha Gautama (Buddha) is an important element in the history of Indian ethical and politico-philosophical thought. Although, there are many Buddhist traditions and these reached their peak in the 11th century BC before its influence slowly waned within India. The principle teaching of the Buddha was regarding the role of desire as the cause of human discontent. To resolve the problem of frustration and sadness, Buddha returned to a study of human nature. His thought was critical of the existing social norms of caste, purity and hierarchy. Buddha concluded that discontent was the consequence of desires based on false beliefs like one’s own existence was more important than those of others’ as well as the belief that the right to acquire and possess property would bring security. The answer according to the Enlightened One was that all beings have the same nature and the idea of ownership was the root cause of all conflicts amongst living beings. The radical element of Buddhist thought lied in the ability to demonstrate that individuals do not have a permanent fixed identity.

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

Buddha rejected the infallibility of the Vedas as well as Brahman, without which no opposition to Brahmin-upanishidic domination was possible. His Nirvana (liberation from the cycle of life and death) was to be attained in this very world, and it could be attained by anyone, should he or she follow the right conduct. He came out strongly against elaborate Brahmanical rituals and rites involving animal sacrifices on the grounds of non-violence and compassion to all beings. The important philosophical contribution made by Buddhism that should inspire any human right activist is beautifully contained in the famous story about Buddha’s life that he narrated to his disciples in the following words:
I was born in Kapilvastu. My father, King Sudhodana brought me up in comfort and luxury. One day I was walking in the garden. Suddenly a white swan fell from the sky at my feet. An arrow had pierced its wing. It was gasping for breath. Its eyes were filled with tears and it was unsuccessfully flapping its wing. I was overcome with pity. I took him in my lap and carefully removed the arrow. As I was taking him for dressing, my cousin Devadutta came over. He said: “I have shot the swan. A prey belongs to the person who shoots it. Please give it to me”. I said: “This swan fell in front of me. I will look after him until his wounds heal so that he can fly again.” Devadutta was very angry. He complained to the king that I had stolen his swan. The king called both of us. I told the whole story. The king said: **One who saves a life is greater than the one who destroys it.** So, the swan shall stay with you. All the noble souls gathered here remember this story. Do not spill blood. Do no destroy life. Respect your elders and do not oppress your slaves. **Good conduct is more meaningful than any sacrifice.** Do not live in so much of a luxury that you lose fellow feelings with your friends and nature. At the same time do not unnecessarily punish your body by not eating and over-exertion. Follow the middle path.

### Conversations with the Buddha

Thus have I heard.

...Vaccha, the wandering ascetic, spoke to the Blessed One as follows:-

“How is it, Gautama? Do you hold that the world is eternal, and that this view alone is true, and every other false.”

“No, Vaccha. I do not hold that the world is eternal, and that this view alone is true, and every other false.”

“How is it, Gautama? Do you hold that the world is not eternal, and that this view alone is true, and every other false.”

“No, Vaccha. I do not hold that the world is not eternal, and that this view alone is true, and every other false.”

(...)

“But, Gautama, where is the priest reborn who has attained to this deliverance for his mind?”

“Vaccha, to say that he is reborn would not fit the case.”

“Then, Gautama, he is not reborn.”

“Vaccha, to say that he is not reborn would not fit the case.”

“Then, Gautama, he is both reborn and is not reborn.”

“Vaccha, to say that he is both reborn and not reborn would not fit the case.”

“Then, Gautama, he is neither reborn nor not reborn.”

“Vaccha, to say that he is neither reborn nor not reborn would not fit the case...”

“Gautama, I am at a loss what to think in this matter, and I have become greatly confused, and the faith in Gautama inspired by a former conversation has now disappeared.”

(...)
"But has Gautama any theory of his own?"

"The Tathâgata, O Vaccha! is free from all theories; but this, Vaccha, does the Tathâgata know—the nature of form, and how form arises and perishes; the nature of sensation, and how sensation arises and perishes; the nature of perception, and how perception arises and perishes; the nature of predisposition, and how predisposition arises and perishes; the nature of consciousness, how consciousness arises and perishes. Therefore, I say that Tathâgata has attained deliverance and is free from attachment, in as much as all imaginings, or agitations, or false notions concerning an ego or anything pertaining to an ego have perished, have faded away, have ceased, have been given up and relinquished."


1.3.1 Human Rights and War: Ashoka’s Rajadharma

An important aspect of human rights concerns the treatment of human beings during war as well as prisoners of war. The evolution of humanitarian law and the international law of war have focussed on the rights of men, women and children in armed conflicts. The Indian tradition of human rights during war is best exemplified in the work of the converted emperor Ashoka. His story is narrated as below:

The ‘Beloved-of-the-Gods’, King Piyadasi, conquered the Kalingas eight years after his coronation. One hundred and fifty thousand were deported, one hundred thousand were killed and many more died (from other causes). After the Kalingas had been conquered, the ‘Beloved-of-the-Gods’ came to feel a strong inclination towards the Dhamma, a love for the Dhamma and for instruction in Dhamma. Now, the ‘Beloved-of-the-Gods’ feels a deep remorse for having conquered the Kalingas.

Indeed, the ‘Beloved-of-the-Gods’ is deeply pained by the killing, dying and deportation that take place when an unconquered country is conquered. But Beloved-of-the-Gods is pained even more by this—that Brahmans, ascetics, and householders of different religions who live in those countries, and who are respectful to superiors, to mother and father, to elders, and who behave properly and have strong loyalty towards friends, acquaintances, companions, relatives, servants and employees—that they are injured, killed or separated from their loved ones. Even those who are not affected (by all this) suffer when they see friends, acquaintances, companions and relatives affected. These misfortunes befall all (as a result of war), and this pains the ‘Beloved-of-the-Gods’. (…)

Therefore the killing, death or deportation of a hundredth, or even a thousandth part of those who died during the conquest of Kalinga now pains the ‘Beloved-of-the-Gods’. Now, the ‘Beloved-of-the-Gods’ thinks that even those who do wrong should be forgiven where forgiveness is possible. Even the forest people, who live in the ‘Beloved-of-the-Gods’ domain, are entreated and reasoned with to act properly. They are told that despite his remorse the ‘Beloved-of-the-Gods’ has the power to punish them if necessary, so that they should be ashamed of their wrong and not be killed. Truly, the ‘Beloved-of-the-Gods’ desires non-injury, restraint and impartiality to all beings, even where wrong has been done.
Now it is conquest by Dhamma that the ‘Beloved-of-the-Gods’ considers to be the best conquest. And it (conquest by Dhamma) has been won here, on the borders, even six hundred yajanas away, where the Greek king Antiochos rules, beyond there where the four kings named Ptolemy, Antigonos, Magas and Alexander rule, likewise in the south among the Cholas, the Pandyas, and as far as Tamraparni. Here in the king’s domain among the Greeks, the Kambojas, the Nabhakas, the Nabhapamkits, the Bhojas, the Pitinikas, the Andhras and the Palidas, everywhere people are following ‘Beloved-of-the-Gods’ instructions in Dhamma. Even where ‘Beloved-of-the-Gods’ envoys have not been, these people too, having heard of the practice of Dhamma and the ordinances and instructions in Dhamma given by the ‘Beloved-of-the-Gods’, are following it and will continue to do so. This conquest has been won everywhere, and it gives great joy — the joy which only conquest by Dhamma can give. But even this joy is of little consequence. The ‘Beloved-of-the-Gods’ considers the great fruit to be experienced in the next world to be more important.

“I have had this Dhamma edict written so that my sons and great-grandsons may not consider making new conquests, or that if military conquests are made, that they be done with forbearance and light punishment, or better still, that they consider making conquest by Dhamma only, for that bears fruit in this world and the next. May all their intense devotion be given to this which has a result in this world and the next.”

Selected from the English translation of the 13th Rock Edict at Kalinga, Orissa by Ven. S. Dhammika

1.3.2 Jainism

The most important ethical aspect of Jainism is non-violence to life and elements, like air, water, fire and earth. The rationale for stressing on the principle of non-violence is based on the belief that violent acts accumulate maximum karma. If every being carries jiva and if goal of all human beings was the liberation of the soul from further rebirth, this would be possible only through the exercise of certain ethical principles. It is in the exercise of these ethical principles that Jainism advocates the fulfilment of five vows common to all human beings. These include ahimsa, i.e., not killing or injuring a living being intentionally; satya, i.e., to say the truth, asteya, i.e., not to steal, i.e., not to take what is not given, brahmacharya, i.e., to live in chastity, parigraha-tyaga, i.e., not to desire, but to remain be satisfied within the limits one has set for oneself.

Like Buddhism Jainism also show how a virtuous life is possible without the necessity of the idea of God, and how the idea of rights is subsumed within an ethical code that an individual legislates for oneself.

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

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

1.3.3 Lokayata

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

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

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

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

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

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

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

1.4.1 The Bhakti and Sufi Movements

The Bhakti Movement, whose origins may be traced backed to the 4th B.C, played a very important role in furthering the evolution of the idea of human equality despite differences of caste, creed, religion and gender. It gained greater momentum in the medieval period and was an expression of an intense and passionate relation with the divine. In the process, this tradition challenged established social conventions, including family life, religious rituals and traditional economic and political values. The poet-saints of the Bhakti tradition sang in praise of the divine in various vernacular languages, especially Marathi, Tamil and Hindi. Some of the more recognized individuals of the age are Chaitanya, Jnanadeva and Meera. However, we shall look at a few others as well, who played a role in emphasising the dignity and equality of all human beings.

The Bhakti tradition also witnessed a parallel current in Sufism, which was an expression of the mystical Islam. Sufism stressed on a belief in a mystical union between the individual soul and God. This was in contrast to the orthodox emphasis on law and tradition. The appeal of the Sufi saints, particularly of the Chisti order was great among the poor because they emphasized care of the needy as a religious act.

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

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

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

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

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

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

The founder of the great Sikh religion, Guru Nanak, was greatly influenced by Bhakti and Sufi ideas. Both Kabir and Guru Nanak found a common link between Hinduism and Islam. To Guru Nanak religion meant much more than mere pious man’s life here and here after, ensuring a complete and happy life in this world and bliss and salvation in the next. Guru Nanak therefore, also laid down for his followers broad rules of conduct for daily life and generally defined even their social, economic and political relationships. Guru Nanak, to begin with acquired a first hand knowledge of the conditions of the people and the behaviour of the ruling class towards their subject people at that time.

He saw the prevailing social evils like untouchability, sati, child marriage, sexual indulgence and perversion and slavery in their worst forms as also the tyranny of rulers. He strongly condemned social inequality, economic exploitation and political despotism of his times. He was moved by the suffering of women. He condemned the tyrannical rulers of the times; and fearlessly criticized them. The society Guru Nanak visualised was based on the ideas of Truth, Contentment and Intellect. He was in search of a society in which equality, freedom and fraternity could be established in the real sense. He rejected caste system and subordinate position of women. He thus advocated a new social order, based on in present day terminology, human rights.
Bauls are not known outside Bengal. The philosophy of the Baul movement lies in the simple man’s (sahaj) search for the “Man of his heart” – his God. The movement traces its origin to the fall of Buddhism and Vaishnavism. Bauls are like the wind (Baul means wind, vayu) – always free, not tied to any religious traditions. They accepted no caste division, they did not worship any special deity nor did they accept any temple or mosque. Baul devotees belonged to the lowest strata of both Hindus and Muslims. “What need have we of other temples, when our body is the temple where the spirit has its abode”, they sang. They did not observe asceticism, nor did they believe in celibacy. Earthly love, they argued, helps them to feel divine life, and harmony between material and spiritual needs.

Ponder over the following argument

The Bhakti movement has shown that when genuine love for all human beings is accompanied by the belief in the equality of all despite traditional differences of religion, caste and gender the need for rights do not arise at all.

Check Your Progress 3

1) Briefly describe Akbar’s policy of tolerance?

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2) What do you understand by Bhakti movement? What role it played in creating a culture of tolerance?

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3) Describe Kabir’s role as a representative of Bhakti and Sufi traditions.

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4) Write a short note on Guru Nanak’s ideas on justice.

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1.5 THE HISTORY OF HUMAN RIGHTS IN MODERN INDIA

The history of the evolution of human rights in independent India is tied to the struggle against British imperialism, which was based on a racist ideology. A timeline that includes some of the prominent landmarks in the Indian struggle for human rights under colonial rule is offered below. In the next unit you will read in detail about status and movement for rights during colonial period.

1883-4

The Ilbert Bill is the popular name for the Criminal Procedure Amendment Code Bill introduced in the Central Legislative Council by Sir Courtney Ilbert during the administration of Lord Ripon (1880-1884). The Ilbert Bill in its original form proposed giving even Indian magistrates the power to try British subjects in criminal cases. The members of the Indian Civil Service serving as District Magistrates and Sessions Judges, irrespective of colour, caste and creed could try European as well as Indian offenders. The opposition from the British and European community in India led to the failure to pass this bill in its original form. The bill was reformed to allow a compromise by which British and European offenders could demand trial by a jury in which half the members would be European.

1918

The special session of the Indian National Congress at Bombay adopted a Declaration of Rights, which included elementary safeguards of the freedoms of speech, expression and assembly, the right to be tried according to law and, above all, the freedom from racial discrimination.

1919

S. Satyamurthy, a Congress leader from Madras wrote The Rights of Citizens in a response to the draconian Rowlatt Act. He lucidly enunciated on the ‘Declaration of Rights’ and defined certain concepts related to civil liberties.

1925

A new declaration was adopted at the Kanpur Convention of the Indian National Congress that contained the rights to free primary education, the equality of the sexes, freedom of conscience and of religion. The list of rights was expanded to include social and cultural rights.

1928

Motilal Nehru was charged with reporting on the principles of a constitution for independent India. The Nehru Report included the rights to freedom of conscience, profession and practice of religion, free primary education and the equality of sexes. The inclusion of the right to private property sparked off an interesting debate with the Socialist bloc in the Indian National Congress, which called it a bourgeois right.
Jawaharlal Nehru played a leading role in the establishment of the Indian Civil Liberties Union, whose objective was to create consciousness and to expand and extend the scope and content of the civil liberties. The ICLU whose branches were set up in Bombay, Calcutta, Madras and Punjab investigated cases of political imprisonment and harassment, police brutalities, bans and extensions on citizens' rights, not only by the British Raj but also by the rulers of the princely states. It brought out reports and lodged protests on the basis of these investigations. Making a strong opposition to feudalism and autocracy, Nehru asserted that the subjection and deprivation of human rights of many Indians could not be tolerated under any circumstances.

The ICLU was involved in attempts to spread the consciousness about civil rights within the Congress. When it came to power in some provincial governments, circulars were sent to all its ministries regarding the preservation of civil rights. The failure to successfully implement the preservation of rights in these provinces led to divisions within the ICLU, which eventually led to the organization losing its momentum that had marked its initial stages.

### 1.6 GANDHIAN CONCEPT OF RIGHTS

Before we discuss Mohandas Gandhi’s thoughts on human rights and duties, we must have an understanding of his conception of human nature. The Gandhian conception of human nature was born out of a cosmopolitan world-view because he was open to all kinds of beliefs. It was predominantly influenced by Hindu, Jain and Christian traditions. The Mahatma believed that the mankind was part of the cosmos and that every human being was dependent on every other individual. The human nature was therefore interdependent.

The British-Indian scholar Bhikhu Parekh has elaborated on Gandhi’s ideas of human interdependence. Human beings are interdependent in the sense that we have involuntarily inherited debts. We are indebted for having inherited a world to which our contribution is nil. Therefore, it is impossible to repay except by contributing to collective well-being of the entire humanity. For Gandhi then, human life was *yajña*, a life to be spent in service of others and this service was not only a duty but a right. Only if the duty of service was performed human beings could lead meaningful and dignified lives. To describe such a conception of duty, Gandhi used the word *dharma*.

Just as Gandhi discovered that human nature was interdependent, he also understood that each individual was unique. The singularity arose from the very particular psychological and moral constitution of each individual. Such a difference explained the need for personal autonomy, which was necessary to fulfil one’s *dharma*. Thus, the Gandhian idea of individual rights was characterised within the framework of human interdependence; or in other words, within a socially responsible framework. Although Gandhi had differences with the idea of rights in the European liberal tradition of his time, certain contemporary developments in the study of rights seem to have bridged the Western differences with the Gandhian tradition.

"The very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed."
1.7 ENVIRONMENTALIST TRADITIONS

An acute environmental awareness has been the feature of our social life for the last four or five decades. It is generally believed that the 1970s and 1980s brought about an anxiety that the natural resources of the earth were getting depleted as a result of excessive consumption of natural resources in some parts of the world and an increasing population in some other parts. An accompanying anxiety was that mindless developmental activities in the world were polluting the entire earth making it an unsafe place to live. It was felt that the modern man had proved himself unfit to live in harmony with nature as well as man. A powerful environmental movement has now grown throughout the world around these ideas. As a result the environmental awareness has become a considerable part of any human rights activity. In this context, it is crucially significant to point out that although an environmental perspective is completely alien to any western or European tradition, it finds ample references in Indian history and tradition.

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

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

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

Check Your Progress 4

1) Write a note on Indian Civil Liberties Union.

2) What is meant by Gandhi’s ideas of interdependence?

3) Describe contribution of Bishnoi’s in the protection of environment.

1.8 LET US SUM UP

In this Unit you have read about the ideas and inspiration for Human Rights in different periods of Indian History. Obviously the concept of Human Rights as it is seen in the present declarations and theories is not visible in ancient and medieval periods. However various spiritual values do provide basis for the respect of rights of individuals. In ancient Hindu scriptures it is more through emphasis on duties of individuals as members of communities. However, even in ancient period we see Buddhism standing up for the downtrodden in society. During the Buddhist period, interest in man, his image, and man’s affairs on this earth became the primary concern of thoughtful men and women. Buddhism and Jainism also constituted non-Sanskrit tradition that carries forward compassion for all human beings. During medieval period Bhakti and Sufi movement in particular gave rise to a number of progressive movements with the core philosophy of equality and tolerance. Saints and Sufis of this period tried to bring society out of orthodoxy and spoke against exploitation of human beings on the basis of caste and gender. The outset of modern period in India coincided with the advent of British rule and the English education. In this period there started emerging a clear concern for civil liberties as a part of National movement. This was reflected through various movements.

1.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) Dharma and Karma are the two most important ethical principles of Hindu Philosophy. While the former implied doing certain things and avoiding other acts, the karma primarily means outcomes of deeds in terms of law of causation.
2) In Hindu philosophy rights are in community. Individuals enjoy rights by performing duties. Duties of one in a way imply rights of others and the community.

Check Your Progress 2

1) Budhism preached equality of human beings. It opposed social norms of caste and purity and hierarchy. Its ideal of non-violence also means respect for the right to life of all. By rejecting the idea of only one truth it also favoured freedom of thought and expression.

2) King Ashoka rejected the killing of human beings in war. He also favoured the principle of forgiveness thus suggesting the need for reconciliation. See sub-section 1.3.1.

3) See sub-section 1.3.2.

Check Your Progress 3

1) Akbar’s policy included treatment to the population without making any discrimination on the grounds of religion. He believed in promotion of brotherhood of all men. He also forbade the enslavement of wives and children of rebellions villages and abolished jizya a tax levied on Hindus.

2) Bhakati movement was opposed to the existing ritual orthodoxy of religion. It played an important role in furthering the evolution of the idea of human equality despite differences of caste, creed, religion and danger. It thus contributed in the culture of tolerance by supporting the values of equality and freedom.

3) Kabir struck at the roots of ritualism and superstition. He preached the gospel of universal tolerance and religious freedom, human equality.

4) Guru Nanak condemned prevailing social evils like untouchability, sati, child marriage and slavery. He favoured a society based on equality, freedom and fraternity.

Check Your Progress 4

1) The Indian Civil Liberties Union was founded in 1936 to create consciousness and to expand and extend the scopes and content of civil liberties. For details see section 1.5.

2) Mahatma Gandhi believed that the mankind was part of the cosmos and that every human being was dependent on every other individual. He, therefore, believed that it was each human being’s duty to serve others. This service be considered not only a duty but a right.

3) Bishnoi’s have used their natural resources judiciously and shown tremendous respect for the environment around them. They have maintained very strict rules regarding the protection of wildlife and trees in their area.
UNIT 2 FREEDOM STRUGGLE AND CIVIL LIBERTIES MOVEMENT

Structure

2.0 Objectives
2.1 Introduction
2.2 The Indian Case
2.3 Liberty of the Press
   2.3.1 The Indian Press
   2.3.2 The Vernacular Press Act
   2.3.3 Press and Nationalist Politics
2.4 Struggle for Civil Liberties
   2.4.1 Fight for Equal Justice
   2.4.2 Fight against Repression
   2.4.3 The Rowlatt Bill Agitation
   2.4.4 The Communist and Revolutionary Activities
2.5 National Movement and Human Rights
   2.5.1 The Civil Disobedience Movement
   2.5.2 World War II
2.6 Indian Civil Liberties Union
2.7 Let Us Sum Up
2.8 Answers to Check Your Progress Exercises
2.9 Suggested Readings

2.0 OBJECTIVES

This unit introduces you to the emergence and development of Human Rights movement as a part of freedom struggle. After going through this unit you will be able to understand:

- the nature of human rights violations during colonial rule;
- struggles for civil liberties especially for freedoms, equality and justice;
- inclusion of human rights issues in the national movement; and
- contribution of civil liberties movement in freedom struggle.

2.1 INTRODUCTION

Civil liberties are a part of the broad spectrum of liberties that are necessary for a civilized existence of the human beings. Political thinkers generally agree on the following liberties as the most important ones for a civilized existence:
A. Liberty of the person, that is to say, freedom from arbitrary arrest and detention; and security against punishment without trial under the rule of law.

B. Liberty of movement within the territory of the state.

C. Security of private property.

D. Freedom of conscience, including the profession and practice of religion as well as atheism.

E. Liberty of opinion and expression of opinion including the freedom of holding assembly and of the press.

The enjoyment of any liberty depends upon the nature of the state. Liberty can be real only in a regime that recognizes and respects rights. Oppressive and non-democratic regimes have almost no regards for human rights. Civil liberties movements, therefore, form an important part of the Human Rights movement. It targets authoritarian and totalitarian regimes either foreign or native. To the extent that it challenges the ruling power, it is also a political movement though the political dimension is not always articulate. Freedom movement is more clearly a political movement directed against a foreign rule. Therefore, it is more often subjected to oppression and leads to revolutions than civil liberties movement.

In a general sense civil liberties movements are revolutionary because they are transformational. They usually develop within the legal framework of the regime with petitions and persuasions. Like all other movements they seek to mobilize followers. At a certain stage the rulers may see reason and concede the demands of a movement. Alternatively, the rulers may feel threatened and come down heavily upon the petitioners. It is at this stage that the civil liberties movements become political.

The scope of civil liberties movement is wider because that may be directed against native as well as foreign rulers. In both the cases civil liberties movement pre-dates political struggles, though all civil liberties movements need not grow into political struggles if the rulers are wise enough to meet the demands of the activists.

### 2.2 THE INDIAN CASE

The British Government in India did not interfere with the religious beliefs and practices of the Indians except by way of maintenance of law and order, like prevention of communal riots on religious grounds. They did not interfere with social customs except when pressed by intellectual leaders of the communities. They did not generally prevent people from moving across the country except for some sensitive tribal belts. They established a regime of private property and generally did not violate it after the 1857 uprising. They established a rule of law – the Pax Britannica. But the justice they provided was not equal between the European and the Indian subjects.

One of the contradictions of the British colonial rule in India was that it introduced Indians to the Western liberal ideas but could not tolerate them when they went against the interests of the regime. It was in this context that in India civil liberties movement began almost immediately after the foundation of the British Empire, at the initiative of the English-educated, urban middle class, that faced the problems of suppression of the press, detention and plain repression.
However, there was a shortcoming on the part of the Indians too. The English-educated elite of British India was extremely small in number. The common population in the nineteenth century, on the other hand, was virtually unaware of the civil liberty issues. Demands of civil liberties grew among a tiny urban middle class with a great deal of hesitation and uncertainty. A movement requires a mass following that did not exist. It was not until the enactment of the Rowlatt Act in 1919 that a mass movement for civil liberty could grow. This first mass movement in India became disorderly, if not violent, on certain occasions bringing down the Government’s ferocious attack on it. Gandhiji withdrew the agitation but the Government’s repression continued. The climax came with the massacre of Jalianwalla Bag. Soon the civil liberties movement was lifted to a full-fledged political struggle – the Non-Cooperation and the Khilafat agitation.

It was the Moderate and the Liberals, who kept the issue of civil liberties alive within the press and the legislative bodies. This proved to be complementary, rather than contradictory, to the mass agitations that were going on throughout the country. There was a variety of ways in which the issues of Civil Liberties were raised during the freedom struggle. These included:

- Inclusion of civil liberties issues in the agenda of the struggle
- Making demands from the government
- Creating awareness among the people about colonial oppression and denial of human rights
- Organizing protests

Speaking in a broader sense the vary nature of colonial rule was an oppressive governance and denial of freedoms both to a nation and its habitants. Therefore the national movement was primarily a movement for restoration of dignity of the nation and those of individuals living in it. Of course it was a wider movement covering various aspects of anti-colonial struggle. However, as mentioned above, the Human Rights issues remained a major component of it all through.

Check Your Progress 1

1) What are the main civil liberties? Why are they essential?

2) To what extent did British rule allow civil liberties in India?
business monopoly. In 1780 James Augustus Hickey started his *Bengal Gazette or Calcutta General Adviser*. He described it as 'A Weekly Political and Commercial Paper Open to all Parties, but influenced by none.' His critique of the Company's officials – including Warren Hastings, the Governor-General – was regarded by the Government as scurrilous. In 1782 the office of the journal was seized; Hickey was arrested and imprisoned. But Hickey put on record his demand for the liberty of the press in these words:

The subject should have full liberty to declare his principles and opinions, and every act which tends to coerce that liberty is tyrannical and injurious to the community.

The Company's officials were apprehensive that criticisms of the press could reach England and damage their interests. A number of English-language publications from Calcutta, Madras, and Bombay, that followed the Hickey incident, steered clear of Hickey's 'sin.' On the other hand, Hickey almost became a legend and a model for the nationalist journalism that appeared some time later.

In 1799 Lord Wellesley issued the Censorship of Press Act that required all newspaper materials to be pre-censored by the Government. In 1807 the Censorship Act was extended to cover journals, pamphlets and books. However, such restrictions applied only to British-born journalists and could not cover the Indian subjects. In 1818 Marquis of Hastings repealed the Act.

### 2.3.1 The Indian Press

The first Indian-language publications appeared in Bengali in 1818. In 1821, Ram Mohan Roy, the famous Bengali reformer, brought out *Sambad Kaumudi*, though he did not edit it. In 1822 he started a Persian weekly, named *Mirat ul Akhbar* in order to

.... lay before the Public such articles of intelligence as may increase their experience and tend to their improvement and [to] ... communicate to the Rulers a knowledge of the real situation of their subjects, and [to] make the subjects acquainted with the established laws and customs of their rulers: [so] that the rulers may the more readily find an opportunity of granting relief to the people; and the people may be put in possession of the means of obtaining protection and redress from their rulers.

This prospectus presented by Roy clearly laid down two objectives of the paper: (1) dissemination of useful information among the public and (2) to act as a go-between, an interpreter between the public and the government. Silently, politics stepped into native journalism. He joined other liberal Hindus like Dwaraka Nath Tagore to publish a weekly journal – *Banga Duta* – in four languages (English, Bengali, Persian and Hindi).

John Adams, successor to the Marquis of Hastings, issued a Press Ordinance in 1823 prohibiting publication of newspapers and other periodicals without a licence. This led to the first civil-political petition from the Indians to the British government.

Ram Mohan Roy, Chandra Kumar Tagore, Dwaraka Nath Tagore, Hara Chandra Ghosh, Gauri Charan Banerjee and Prasanna Kumar Tagore, all leading members of the Calcutta gentry, submitted a petition to the Supreme Court at Calcutta seeking a hearing of objections to the ordinance. Macnaghten, the sole judge of the Supreme Court, refused to hear the petition on the plea that he had pledged himself to
Government to sanction the ordinance. Ram Mohan and his colleagues then moved the British King against the ordinance arguing that the ordinance would take away the vital right of the King’s loyal Indian subjects to communicate their condition to their sovereign. Written in the most polite and loyal language, this petition may be said to be the first Indian manifesto of press freedom. The ordinance, however, continued until 3 August 1835 when Charles Metcalfe replaced it by a Press Law.

By 1839 Calcutta had twenty-six European and nine Indian newspapers. Bombay had ten European, and four Indian, newspapers. Madras had nine European newspapers. Newspapers were also published from Ludhiana, Delhi, Agra and Serampore. In 1851 Dadabhai Naoroji published Rast Goftur, a Gujarati fortnightly, from Bombay. In 1853 Haris Chandra Mukherjee published the Hindu Patriot from Calcutta. These two last newspapers were fearless in opinions and may be said to be the beginnings of political journalism in India.

2.3.2 The Vernacular Press Act

The disturbances of 1857 caused Lord Canning to re-impose censorship. Three Indian papers – Doorbin, Sultan-ul-Akhbar and Samachar Sudhavarshan – were persecuted for writing ‘seditious’ articles. In 1876 about 169 Indian-owned newspapers were being published. The fiercest attack on them came in 1878 with the conservative imperialist viceroy, Lord Lytton’s Vernacular Press Act. Under this Act the printer and publisher of any Indian-language newspaper could be called upon to enter into a bond not to publish anything likely to excite feelings of disaffection against the government or antipathy between persons of different races, castes and religions among British subjects. For keeping on the safe-side of the law newspapers were advised to accept pre-censorship.

The effect of the Vernacular Press Act was severe. According to Sir Erskine Perry, a member of the Secretary of State’s India Council, ‘No imperial legislature could forge a more powerful weapon for extirpating an obnoxious press.’ According to Surendra Nath Banerjea, ‘Within less than fifteen months, the vernacular press all over India, save that of Madras, was muzzled.’ A big meeting was held in the Town Hall at Calcutta in protest against the Act. H.M. Mody, a liberal politician of Bombay, called the Act ‘utterly uncalled for, unduly repressive in character and inspired by sinister motives.’ In an article in the Times of India Sir Pherozeshah Mehta severely criticized the Act pointing out that moderate and respectable men, their functions not yet hardened into habits, would retire from the field without any struggle and violent and unprincipled agitators would thrive on the persecution which would furnish the very nourishment necessary for their existence.

Ironically, the Act exempted English-language papers that were guilty of the strongest criticism of the government. In fact the Act produced the opposite of the intended result. In a clever move, Amrita Bazar Patrika, an English-Bengali bi-lingual newspaper from Bengal, changed to English language overnight. In Madras, where pre-censorship was already in place, G. Subramanya Iyer published The Hindu. Pressure of public opinion was so strong that in the same year (1878) the pre-censorship clause was removed. In 1882 Lytton’s liberal successor, Ripon, repealed the Act. Indians won their first round of the fight for civil liberty – liberty of press.

In 1881 an influential Bengali newspaper, Bangabasi, was started in Calcutta and the Tribune was founded in Lahore. In 1891 Bal Gangadhar Tilak, the ‘extremist’ leader, took over the two Marathi newspapers: Keshari and Maratha. He and his papers were naturally subjected to persecution.
2.3.3 Press and Nationalist Politics

In 1903 the Government brought the Official Secrets (Amendment) Bill in the Supreme Legislative Council proposing to place civil matters on a level with naval and military matters. This would seriously curtail the freedom of press. Gopal Krishan Gokhale, the great liberal leader, opposed the bill reminding the Government that, in this country, there was no legal instrument for enforcing the responsibility of the Government to the people. The Indian press was the only instrument of outward check available for bringing out the faults of the bureaucracy continuously. In these circumstances the proper course of action for the government was not to gag the press but to discourage the issue of confidential circulars in order to take away in the dark, what had been promised again and again in the Acts of Parliament, the Proclamations, etc.

The agitation against Bengal Partition of 1905, however, opened the floodgates of extremist politics and official persecution in which the press secured the primary focus. In 1908 the Newspapers (Incitement to Offences) Act was passed. Tilak was jailed in Mandalay (Myanmar) for six years. Surendra Nath Banerjea and some others were put behind the bars for different periods within British India. Bengali newspapers – Yuigantar, Sandhya and Bandematam associated with revolutionary organizations, were banned.

Under the Newspapers (Incitement to Offences) Act, 1908, the magistrates were given power to confiscate the press for publishing articles that promoted violence. This Act was followed by the Indian Press Act, 1910. The Act empowered the magistrates to require a deposit of not less than Rs 500 and not more than Rs 2000 from the keepers of news-printing presses and publishers of newspapers. The local governments were empowered to require the existing presses and publishers of newspapers not less than Rs 500 and not more than Rs 5000 as security. Publication of an objectionable matter could lead to confiscation of the security. All attempts, direct or indirect, to seduce persons employed in the defence forces or to intimidate a person to give money for revolutionary work or to prevent them from giving help in discovering and punishing revolutionary crimes were included in the definition of objectionable matter. The definition of seditious writings was also expanded. The power to determine which publication was objectionable was given to the provincial governments and not to any court.

From the beginning of the twentieth century, thus, the question of press freedom became entangled with nationalist politics. Ostensibly aimed at curbing revolutionary and 'seditious' activities, the Press Acts and regulations were wider in scope than even the draconian Indian Penal Code. No wonder, after the introduction of the Government of India Act, 1919, Sir Tej Bahadur Sapru, the Law Member of the Government of India, headed a committee to examine the working of the Indian Press Act, 1910. On the recommendation of the Committee, the Act was repealed. However, in the midst of the Civil Disobedience Movement and the resurgence of revolutionary movement in 1931, the Indian Press (Emergency Powers) Act was passed. Several nationalist newspapers were penalized under the Act. In 1932 a Foreign Relations Act and in 1934 an Indian States (Protection) Act were passed in order to safeguard the Government's relations with friendly countries and interests of the Indian princes from criticisms of the nationalist press. These Acts were in operation till the end of World War II in 1945.
Check Your Progress 2

1) What was the contribution of Hicky to press freedom in India.

2) Describe Raja Ram Mohan Roy's role in the growth of press and its freedom.

3) How did British administration control the press?

2.4 STRUGGLE FOR CIVIL LIBERTIES

The British colonial rule, in spite of coming from liberal traditions of Britain, rationalized the colonial exploitation of India by stating that the principle of liberty did not apply to backward states of the society. They legitimised despotic mode of governance in dealing with what they called barbarians. Thus Indians were not only exploited economically but denied even basic rights of equality, justice and dignity. The law enforcement agencies, particularly the police, were used as basic tools to suppress the rights of individuals. The early social reformers and nationalists, while did not oppose British rule, were very much concerned with the denial of civil liberties. Starting from Raja Ram Mohan Roy, to the taking over by Mahatma Gandhi of the Nationalist Movement issues of civil liberties were taken up both in various forums and movements and agitations.

2.4.1 Fight for Equal Justice

The British Indian Government had set up an Executive Council for the Governor-General (and for the provincial Governors) in 1861. It had a few nominated non-official Indian members until the coming into force of the Indian Councils Act, 1892. The Council meekly submitted to the passing of the Vernacular Press Act and the Indian Arms Act in 1878 in the Lytton regime. In the case of the Criminal Procedure Code (Amendment) Bill, 1873, however, there was an interesting paradox in play. This bill, also known as the Ilbert Bill, was framed at the instance of the Liberal Governor-General, Ripon. It wanted to remove a grave disparity in the field of criminal justice between the British and the Indian subjects of the empire. Hitherto the European (British) subjects were tried, in criminal cases, by only European (British) judges. The Ilbert Bill proposed to end this privilege.
The Europeans strongly resisted the move and the Government was forced to bring an amendment to its original bill to grant the Europeans the privilege to demand a jury trial when they were brought before a district magistrate or a session court with a criminal charge. The nominated Indian members of the Council found themselves on the right side of the Government with regard to the original bill. They welcomed the original bill and criticized the subsequent amendment proposal. Syed Amir Ali reminded the members of the Council Queen Victoria’s Proclamation in 1858 promising equal justice to all the subjects. The Maharaja of Darbhanga demanded that the right to jury trial be available to the Indian subjects too. The Indian members’ arguments did not cut ice and the amended bill was passed. But it exposed the liberal pretensions of the empire as well as its vulnerability to organized pressure.

2.4.2 Fight against Repression

The Indian Councils Act 1892 provided for nomination of some members after they were elected by severely restricted electorates. Such members naturally had enough strength to be forthright in their criticism of the government. Pherozeshah Mehta, who had entered the Council in 1895, was outspoken in his defence of the civil liberties of the Indians. When the government brought an amendment to the Police Act of 1861 enabling the authorities to single out persons or sections of the people in a disturbed district and recover costs of maintaining the punitive police force there from only those persons. It also enabled them to levy contributions on absentee owners of property if their actions were judged to be contributing to disturbances in the locality. Several other arbitrary powers were also given to the magistrates like the power to regulate processions. Mehta said that he could not ‘conceive of more imperial, more retrograde, more open to abuse or more demoralizing’ legislation.

The Government was touched by the fierceness of the criticism. Besides Mehta, G.R. Chitnavis, the Maharaja of Darbhanga and a few others moved amendments to the bill without effect. They were defeated by the Governmental majority.

In the wake of the 1905 agitations against the partition of Bengal the Government, in 1907, moved in the Supreme Council the Prevention of Seditious Meetings Bill at its Simla session. Rash Behari Ghosh repudiated the necessity of passing the bill sharply reprimanding the Government for over-readiness to scent danger. When, in 1908-09, the Government deported nine Bengalee youth on charges of taking part in the revolutionary activities, in the Legislative Council, Gokhale pleaded for the reconsideration of their cases and urged that they should be restored to their homes. That would be an act of justice to the concerned individuals as well as a good augury for the coming (Morley-Minto) reforms.

There was hardly any improvement in the civil liberties situation after the introduction of the Morley-Minto reforms. In the very first session of the reformed Council the Government introduced a bill seeking to extend the life of the prevention of Seditious Meetings Act, 1907, by five months. Gokhale and other elected Indian representatives opposed the bill as it was not desirable to impose the draconian restrictions in a comparatively calm situation. This would not improve the relations between the government and the people. The law conferred dangerously wide powers on the executive and would certainly be abused, paralysing all activities in the country. Sachchidananda Sinha observed that the measures would curtail liberty of discussion and allow the police to interfere with the public producing annoyance and irritation. The bill was, however, passed.
In 1913 Surendra Nath Banerjea, member of the Imperial Legislative Council, moved a resolution recommending the separation of the executive and the judicial functions in the administration of criminal justice. Subsequently, he pressed for the modification of the Press Act, 1910 as it had given great powers to the police. Later, he criticized the Criminal Law (Amendment) Bill of 1915 on the same ground.

2.4.3 The Rowlatt Bill Agitation

The Moderates and the Liberals who dominated Indian representation in the Councils disagreed with the Extremists and the Gandhians on the strategies and objects of their politics. However, they were all agreed on the question of civil liberties. Their unity was reflected in the Moderates and the Liberals’ persistent opposition to the Criminal Law (Emergency Powers) Bill, also known as the Rowlatt Bill and Gandhiji’s launching of the first nation-wide satyagraha following the passage of the bill.

In September 1918 the Sedition Committee (Rowlatt Committee) report on revolutionary violence in India was submitted to the Imperial Legislative Council for consideration. C.S. Kharparde moved that consideration of the Report be held in abeyance. Mohammad Ali Jinnah said that nobody was more anxious than the Indian members of the Council that the crimes, mentioned in the Report, be prevented, but the Government could not ask the Indian members to help them to prevent crimes when it laid down the policy without consulting the Indian members.

The Government moved the bill in the Imperial Legislative Council on 6 February 1919 and the leader of the Opposition (from the Congress) moved for deferring the consideration of the bill until six months after the life of the current Legislative Council. This would effectively kill the bill. V.S. Srinivasa Sastri said that the bill betrayed a callous disregard of liberty. Tej Bahadur Sapru said that no Indian worth his salt could support the bill. K.V. Rangaswami Ayyangar observed: ‘We surely cannot give our consent as a primitive ruler would expect us to give.’ Madan Mohan Malaviya traced the history of revolutionary violence in India and squarely blamed the government for it. Raja Rampal Singh and Sitanath Ray joined them. Surendra Nath Banerjea said that the bill, if passed, would cripple political activity and bring about stagnation in public life. The Raja of Mahmudabad called the bill ‘inopportune, unsound, uncalled for and un-British’. Mohammad Ali Jinnah strongly opposed the bill. In spite of the unanimous opposition of the non-official Indian members the Government passed the bill on 18 March 1919. On 28 March 1919, with a hard-hitting letter to the Viceroy, Jinnah resigned his membership of the Council.

The Rowlatt Bill and the opposition to it inaugurated a new phase of Indian politics. It brought the civil liberties question directly into the sphere of politics. The Montagu-Chelmsford reform was opposed by the Indian National Congress which boycotted the 1920 elections but came back, in 1924, as the Swaraj party. It boycotted the legislature again during the Civil Disobedience Movement and the Second World War. During these periods the Moderates and Independents dominated the non-official membership. But, like the Congress, they did not give up their struggle for civil liberties whenever there was attack from the Government.

On 14 February 1921 Srinivasa Sastri moved a resolution in the Council of State recommending the appointment of a committee at an early date to examine the repressive laws and report whether all or any of them should be repealed or amended as the very existence of such laws was fuelling unrest in the country. Other members moved amendments to Sastri’s motion asking for straightaway repeal of many such
On 3 March 1921 Sastri moved another resolution demanding amendment to the Criminal Procedure Code in order to lay down strict conditions under which alone firearms could be used by forces to suppress riots and prevent unlawful assemblies. He recommended that the officials who were responsible for the use of firearms will be liable to legal action for use without the sanction of the government and each case of firing will be followed by public enquiry. The resolution was rejected by the Council. But, following the first resolution, Sir Tej Bahadur Sapru, Law Member of the Government, got some of the repressive laws, like the Newspaper (Incitement of Offence) Act, 1908, the Indian Criminal Law (Amendment) Act of 1908 and the Press Act of 1910, repealed.

The Congress and Independent members of the Central Legislative Assembly jointly opposed the continuation of several repressive laws in spite of the Repressive Laws Committee having recommended their termination. In October 1924 the Government issued the Bengal Criminal Law Amendment Ordinance under which several political leaders, including the Chief Executive Officer of the Calcutta Municipal Corporation, Subhas Chandra Bose, were arrested causing widespread resentment in the country.

On 25 January 1925 Doraiswami Aiyangar moved a resolution in the Central Legislative Assembly asking for the replacement of the Ordinance by a legislative Act. The Congressmen and the Independents joined hands in criticism of the Ordinance although Government argued that revolutionary and communist activities were spreading in the country. The Government was defeated. A few days later Vithalbhai Patel of the Congress introduced a bill in the Assembly seeking to replace certain special enactments supplementing the ordinary criminal laws, like the Bengal State Prisoners Regulation, 1818, the State Prisoners Act, 1850 and the Prevention of Seditious Meetings Act, 1911. Patel reminded the government that, in the previous year, a resolution had been passed in the House urging the Governor-General to take steps for replacement of the repressive laws. Patel got powerful support from leaders of the Independents, including M.A. Jinnah. The bill was passed by a big majority.

In January 1926 Maulvi Mohammad Shafee moved a resolution in the Assembly seeking release of political prisoners of various categories. He was supported by C.S. Ranga Iyer and Lala Lajpat Rai among others and the resolution was passed. In the next month Amarnath Dutt moved a bill for repeal of the Bengal Regulation of 1824. T.C. Goswami from Bengal gave him an emotional support. But, due to abstention of some Swarajist (Congress) members, the bill was defeated by a narrow margin.

2.4.4 Communists and the Revolutionary Activities

In 1928 the Government suspected the growth of communist influence in the country and brought up a Public Safety Bill. The bill ideologically divided the Indian members of the Central legislature. The Government rallied on the support of zamindars and several Muslim members. Jinnah was not there in the legislature. He had been living in England. On the other hand, a Liberal like M.R. Jayakar, who had no sympathy with communism, opposed the Government when it proposed to send the bill to a select committee on the ground of liberty and dislike of executive excess. The Government won the battle by a narrow margin and the bill went to the select...
committee. On its return to the Assembly the bill was fought over even more bitterly, the House being divided equally. The bill was defeated by the casting vote of the President, Vithal Bhai Patel. The Government moved a fresh bill a few days later and marshalled greater strength. Although even the industrialist, G.D. Birla, opposed the bill it was sent to the select committee.

Before the select committee report was presented to the House, however, the Government arrested 31 communists and trade unionists in what came to be known as the Meerut Conspiracy case. It created widespread commotion in the country. When the Public Safety Bill was introduced in the House after the select committee stage, M. R Jayakar pointed out the similarity of the bill with the case and objected to its discussion when the matter was sub judice. The Government, for the time being, withdrew. A few days later it pushed the bill again on the plea that, in its view, there was no legal bar to the discussion of the bill despite the on-going case. A legal battle ensued. Jinnah sent a cable opining that the President could not stop further discussion on the bill. President Patel finally gave the ruling that no discussion on the bill was possible without reference to the matter that was sub judice. Though the President had no specific power to stop the discussion, his power arose out of necessary implication and analogy. A discussion of the bill would amount to abuse of the power of the House. He, therefore, ruled out further discussion on the bill. In response the Government issued an ordinance incorporating the provisions of the bill.

The next phase began shortly thereafter when a batch of young revolutionaries, led by Bhagat Singh, were rounded up in the Lahore Conspiracy Case. They were treated as ordinary criminals. Their demand for being treated as political prisoners being successively rejected, they went on hunger strike. In spite of the nation-wide support to their demand the Government did not relent. One of the prisoners, Jatin Das, died on 13 September 1929 after 64 days of hunger strike. Pandit Motilal Nehru moved an adjournment motion in the House that was carried after a fierce debate. The government stood censured.

### 2.5 NATIONAL MOVEMENT AND HUMAN RIGHTS

The question of civil liberties during freedom struggle was not limited to certain demands, but in due course it became a part of wider struggle for freedom. The contributions of early leaders like Gopal Krishna Gokhle and Bal Gangadhar Tilak were quite significant in this. In the early stages the national movement itself was confined to very few people, the ideas of human rights 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 the one hand strengthened the national movement, and on the other, motivated various sections and groups of society to take up the questions of their rights on their own. This was especially true of low caste people, peasants, women and young people. National movement, itself, from 1920 onward, apart from making demands on the British government to enlarge the space available for exercise of human rights actually conducted popular struggle around this issue. The issues were incorporated also in the broader movement for freedom.

#### 2.5.1 The Civil Disobedience Movement

On 2 March 1931, while discussing the results of the first Round Table Conference in the Assembly, T. Rangachariar warned the government that it would not be able to
to keep India in the empire by the force of lathis, armoured cars and bombs. However, widespread arrests started throughout the country beginning on 7 March 1931 with the arrest of Sardar Vallabh Bhai Patel on the eve of the Salt Satyagraha launched by Gandhiji. Although the Congress boycotted the Central Legislative Assembly at the time, Pandit Madan Mohan Malaviya of the Nationalist Party, Leader of the Opposition, moved an adjournment motion on two grounds: (i) The government had arrested Patel even before he made a speech and broke any law. (ii) The Government had successively rejected Gandhiji’s demands forcing him to launch the agitation. The adjournment motion was defeated as the Muslim League was opposed to the Civil Disobedience Movement and voted against the motion and the Independents remained largely neutral. Soon Malaviya resigned his membership of the Assembly. He was followed shortly by the President of the Assembly, Vithal Bhai Patel.

The civil liberties question came up in a big way during the Civil Disobedience Movement that put particular emphasis on the no-rent campaign and boycott of British goods. Widespread arrests took place in Bengal and the North-West Frontier Province, the latter being placed under the martial law even though the Khudai Khidmatgars of Abdul Gaffar Khan were carrying on a perfectly peaceful agitation. The no-rent campaigners of Gujarat and the United Provinces came under heavy pressure too. As the Congress had boycotted the elections to the fourth Assembly there was virtually no opposition there. Yet the Indian members could not ignore the tumult outside the House. On 26 January 1931 Gandhiji and a few Congress leaders were released by the government. On 29 January Sheikh Sadiq Hasan of the Punjab moved a resolution in the Assembly calling for an end to repression and adoption of a conciliatory policy by the government. In his speech Hasan moved for a general amnesty to all the political prisoners. Amar Nath Dutt moved an amendment seeking the withdrawal of all ordinances and repressive laws and release of the prisoners. Sir Hari Singh Gaur, a government ally, noted that the agitation of Gandhiji was legitimate and non-violent. Sir Abdur Rahim, leader of the Independent group, also demanded the withdrawal of ordinances and repressive laws. The resolution, however, was not put to vote since the government appeared to be in favour of a conciliatory policy.

The expectations were, however, belied by the execution of Bhagat Singh on 23 March 1931. The next day Diwan Bahadur T. Rangachariar, leader of the Nationalist Party, strongly criticized the government for ignoring public opinion, conveyed by Gandhiji, against the execution and his group walked out of the Assembly. Protests against the rule by repression went on and came to a head again at the end of the unsuccessful second Round Table Conference at the end of 1931. Government arrested most of the Congress leaders, including Gandhiji. Sir Hari Singh Gaur moved a long resolution in the Assembly virtually censuring the government and was supported by several members. But the Muslim Leaguers joined the government to defeat the resolution.

2.5.2 World War II

Congressmen joined the fifth Assembly in 1934 as Swarajists and fought for labour rights, particularly, the right to strike. In 1937, for the first time, Congressmen formed government in seven provinces. They made some modest achievements in the sphere of civil liberties. However, the phase was a short one. In 1939, when the Governor-General joined India to the Second World War, Congressmen resigned from the provincial governments and boycotted the Central Legislative Assembly for one year.
During the Quit India movement of 1942 terror was let loose on the freedom fighters by means of the Defence of India Rules. In 1943 Assembly members raised the demand for release of the political prisoners but the Government did not budge. On 9 February 1944, however, Congressmen and Muslim Leaguers joined in defeating the government on an adjournment motion to demand the review of the Defence of India Act that had severely curtailed the liberties of the Indians. But Congressmen were released only after the end of the war. And yet several Congress Socialists, including Jaya Prakash Narayan, were kept detained. On 21 January 1946 the Assembly passed, without division, an adjournment motion demanding the release of all political detenus. The Assembly expressed itself strongly in favour of the release of the Indian National Army personnel and passed an adjournment motion expressing grave concern at the treatment of the Royal Indian Navy ratings.

2.6 INDIAN CIVIL LIBERTIES UNION

There were no doubt differences among Indian political leaders about the question of self-rule and Independence and the communal question. However all sections of the political leadership, barring the stooges of the Imperial Government who came to the legislative bodies through nomination, were united on the question of civil liberties. From the beginning, says the eminent historian of the national movement, Bipan Chandra, the nationalists fought against attacks by the State on the freedoms of the Press, expression and association, and made the struggle for these freedoms an integral part of the national movement. During their brief spell in power, from 1937-39, the Congress ministries greatly extended the scope of civil liberties. The defence of civil liberties was not narrowly conceived in terms of one political group but was extended to include the defence of other groups whose views were politically and ideologically different. The Moderates defended Tilak, the Extremist, and non-violent Congressmen passionately defended revolutionary terrorists and communists alike during their trials. In 1928, the Public Safety Bill and Trade Disputes Bill were opposed not only by Motilal Nehru but also by conservatives like Madan Mohan Malaviya and M.R. Jayakar.

Check Your Progress 3

1) Discuss the role of the Moderates and the Congress Swarajists in defending the freedom of the Indian revolutionaries.

2) Discuss the role of the Moderates on the Rowlatt Bill agitation.
3) Write a note on Indian Civil Liberties Union.

2.7 LET US SUM UP

Civil rights are the primary requirement of liberal democracy and involve struggle against authoritarianism and totalitarianism, local or foreign. In India civil rights demands grew through the impact of Western liberal ideas on the educated middle class. The main demands were the freedom of the press, for justice and for security against repression. The struggle for civil liberties was conducted essentially along constitutional lines. But the agitation against the Rowlatt Act turned into a mass movement. After that this struggle for civil liberties merged with the broader struggle for freedom at the mass level, though, within the legislature, it went on along constitutional lines. 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.

2.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) Main Civil liberties include freedom from arbitrary arrest and detention, freedom of movement, freedom of conscience, speech and expression etc. These liberties are essential for a dignified life of individuals. See section 2.1

2) The British did not interfere with the religious beliefs and practices of people. They did not generally prevent people from moving across the country. But the justice they provided was not equal and later there were many restrictions on freedoms. See section 2.2 and 2.3

Check Your Progress 2

1) See sub-section 2.3.1

2) Ram Mohan Roy started publishing papers with the objectives of dissemination of useful information and to provide links between government and public. He alone with others opposed restrictions imposed on press. See sub-section 2.3.2

3) The British administered passed acts like the Vernacular Press Act, Newspaper (Incitement to offences) Act, placing restrictions on newspapers. It also imposed censure on many occasions.

Check Your Progress 3

1) See sub-section 2.4.4

2) Moderates in general did not agree with extremists and Gandhians on the strategies
and objects of their politics. But on the issue of Rowlatt Bill they were united with them and joined Gandhiji’s Satyagrah against that. See sub-section 2.4.3

3) See section 2.6

2.9 SUGGESTED READINGS


UNIT 3 CONSTITUTIONAL VISION: FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

Structure
3.0 Objectives
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3.2 Constituent Assembly and Rights
3.3 Important Characteristics
  3.3.1 Flexibility of Rights
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3.5 Directive Principles of State Policy:
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  3.6.2 Range and Type of Duties
3.7 Let Us Sum Up
3.8 Answers to Check Your Progress Exercises
3.9 Suggested Readings

3.0 OBJECTIVES

This unit deals with the nature and scope of rights incorporated in the Constitution of India. After going through this unit you will:

- understand the background of incorporation of rights in the Constitution of India;
- nature and types of rights;
- differences between Fundamental Rights and Directives Principles of State Policy; and
- scope and limitation of the rights provided in the Constitution.

3.1 INTRODUCTION

You have already studied that the concept of Rights is a western contribution, more specifically, a contribution of the Enlightenment in Europe in the 17th and the 18th
centuries. Its emergence signified the end of blind faith in any superhuman agency and the growth of faith in mankind’s rational faculties, its ability to build its own future. Of course, there are two views of rights: (1) The view that a man/woman is naturally entitled to rights as the conditions of his/her development and fulfilment of aspirations. (2) The view that a man/woman enjoys rights as member of society and by fulfilling his/her obligations/duties to it.

It was in Britain that, in 1628, the first Petition of Rights was submitted to the monarch and it was in Britain that a Declaration of Rights was issued by the King in Parliament in 1689. Yet Britain does not formally have any consolidated document on Fundamental Rights. The British people are, formally, subjects of the British Crown. They only enjoy the Rule of Law at the favour of the Crown.

Neither did the Indian subjects of the British Crown have any Fundamental Rights before Independence. Fundamental Rights came to the Indians only in 1950 with the proclamation of the Republican Constitution of the country. It is only in a republican country that rights can be guaranteed in a written form because a republic is a country that belongs to its people and not to any ruler.

The United States of America was the first country in the world to codify the fundamental rights of the citizens. Because of the influence of the natural rights theory these rights were put in a negative form – to tell the state to desist from violating those rights that, naturally, belonged to the citizens. At the beginning of the twentieth century the US Supreme Court assumed the power to protect those rights by means of judicial review. In India, after attainment of independence, the rights were given an important place in the Constitution of India. In this unit we will read about nature of these rights.

3.2 CONSTITUENT ASSEMBLY AND RIGHTS

You have read in the last unit that concern for rights and civil liberties had become a part of the national movement. Also when the Constitution of India was being framed the United Nations General Assembly had adopted the Universal Declaration of Human Rights signifying the International Communities concern for those. At the same time as a result of Socialist ideas having become popular with the emergence of Soviet Union and People of former colonial societies looking for socio-economic transformation idea of rights was no more limited to civil liberties but it was also concerned with the fulfilment of basic material needs required for the survival of human beings in a dignified manner. This vision was also brought in the national movement of India, As such the political leaders of India had committed themselves to guaranteeing fundamental rights to Indians in a constitution. The Objectives Resolution moved by Jawaharlal Nehru in the Constituent Assembly on December 13, 1946 promised to all citizens of India:

Justice, social, economic and political;
Equality of status, of opportunity and before law; and
Freedom of thoughts, expression, belief, faith, worship, association and action, subject to law and public order.

Later these promises were made part of the preamble of the Constitution. The Constituent Assembly of India, after long deliberations, constructed those rights. It framed several rights in the traditional, negative form. However, several rights required
the state to act positively. It was, at the same time, realized that, while the state could be prevented from interfering with the negative rights of the citizens by the courts, there was no way to force it to enforce all the positive rights in a satisfactory way. There was, ultimately, the question of capacity of the state. Therefore, the Constituent Assembly divided the rights into two parts. In Part III of the Constitution the negative rights were put, in Part IV were put the positive rights in the form of Directive Principles of State Policy. In framing the Directive Principles of State Policy the Constituent Assembly of India followed the example of the Irish republican constitution.

There is a second kind of rights that are termed by the Supreme Court of India, in the case of Bishamber v. the State of Uttar Pradesh (1981) as constitutional rights. The most important of such rights is the right to be registered as a voter (Articles 325 and 326 of the Constitution). Right to vote is not a fundamental right but the right to be registered a voter is a constitutional right. The other important constitutional right is the right to property that was removed from Part III of the Constitution (Fundamental Rights) by the 44th Amendment to the Constitution in 1978 but now forms Article 300A.

The Constituent Assembly gave the Supreme Court of India and the High Courts of the states the power to issue writs against violation of (the negative) fundamental rights. The rights in Part IV were properly speaking, principles, that were declared as important too, in a political way, and the governments were warned that the principles laid down in this part were fundamental to governance (Article 37).

It is important to note that while in many constitutions like that of the United States rights are only mentioned, in the Indian Constitution these are properly framed. Similarly while in U.S. and some other constitutions the rights were stated in crisp, unqualified language in Indian Constitutional restrictions on rights are also provided. Whatever conditions are attached to such rights in the public interest are spelt out by the judiciary. In the large body of the Indian Constitution most of the fundamental rights are stated in qualified terms, like 'subject to public order' (Article 25) or 'nothing in this Article shall prevent the state from making any law' (Article 16). This does not mean that the Indian judiciary has no creative role to play in respect of fundamental rights. It is frequently required to interpret the Articles on fundamental rights in the light of the qualifications attached to the Articles.

Another difference of the Indian Constitution with the US Constitution is that the Indian Constitution provides for not only individual rights but also group rights. The US Constitution grants only individual rights. The group rights in the Indian Constitution are confined to cultural and educational spheres.

The most important difference between the Indian and the US Constitutions is that, whereas the constitution makers of the USA were guided by the eighteenth century laissez faire doctrine, the constitution makers of India were guided by a welfarist doctrine. This positive, reformist and welfarist, approach to the Constitution was reflected most in the Parts III and IV on fundamental rights and directive principles.

### 3.3 IMPORTANT CHARACTERISTICS

In the first place, the fundamental rights that were asserted were not only against arbitrary state intervention; they were also against social discrimination among people. Thus, Article 17 abolished untouchability and made it an offence punishable in
accordance with law. So was prohibited traffic in human beings and begar (unpaid labour) and similar forms of forced labour, that were made punishable in accordance with law [Article 23 (1)].

In the second place, the Constitution made some enabling provisions for the state authorizing it to take special measures for the welfare of the members of the backward classes, the Scheduled Castes and the Scheduled Tribes [Article 15(4)] and to reserve appointments and posts in services of the state [Article 16(4)].

## 3.3.1 Flexibility of Rights

Power to amend the Constitution including fundamental rights and powers of judiciary to protect fundamental rights and interpret the constitution have made fundamental rights flexible provisions to an extent. Some amendments in the Constitution have led to the expansion of economic opportunities of the weaker sections of the country whereas some have limited the scope of rights. At the same time through its judgements judiciary has widened the scope of rights.

It should be noted further that the difference between the fundamental rights and the directive principles of the Indian Constitution has not remained watertight. The 25th Amendment to the Constitution in 1971 laid down that any law giving effect to some clauses of Article 39 (in Directive Principles) would not be void because of its conflict with any of the Fundamental Rights granted in Part III. The 42nd Amendment in 1976 generalized this exception with regard to any of the directive principles of state policy. The 96th Amendment in 2002 virtually transferred Article 45 from Part IV to Part III in the form of Article 21A (free and compulsory education to children up to 14 years).

This transfer of course does not automatically ensure free and compulsory education of all children. Article 21A says that ‘The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.’ It fact for a long time free primary education is being provided by the state in all parts of the country within its capacity. Article 21A, therefore, may be regarded simply as constitutionalization of an existing practice.

Almost an opposite trend is visible with regard to property. Originally, the Constitution provided for the right to property to all citizens except for the right of the state to acquire property for public purpose (with compensation). The requirements of the land reform programme of the Government led to numerous amendments of the Article right from the first year of the republic until it was removed from Part III of the Constitution to form a new chapter (Chapter IV) of Part XII that deals with ‘Finance, Property, Contracts and Suits,’ by the 44th Amendment in 1978. In 1982 the Supreme Court held that right to property is no more a fundamental right, but it is a constitutional right (Bishamber v. The State of Uttar Pradesh, 1981).

Over the years, however, there has been an increase in restrictions on personal freedoms because of considerations of security of the state.

## 3.3.2 Laws and Rights

According to Article 13 all old laws inconsistent with the rights conferred in Part III would be void and the state shall not enact any law taking away these rights. However, the state has been enabled to pass laws for the acquisition of estates (Article 31A). Further, any law included in the Ninth Schedule since the first amendment
of the Constitution in 1951 and the laws giving effect to any of the Directive Principles of State Policy (since the 42nd Amendment in 1976) have been saved. All such savings are, however, subject to judicial review as per a number of judgements of the Supreme Court of India.

Further, as it has already been said, the Articles in this part have themselves created scope of judicial interpretation.

**Check Your Progress 1**

1) Why did Constituent Assembly give importance to issue of rights?

2) In what aspects Indian System of rights differ from some other Constitutions?

3) Describe two important characteristics of the system of rights in the Constitution.

4) How do Directive Principles of State Policy differ from Fundamental Rights?

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**3.4 SCOPE OF THE FUNDAMENTAL RIGHTS**

There are two kinds of right, some available to all persons living in India and some available only to citizens.

Following the 44th Amendment the Fundamental Rights in Part III of the Constitution come under six heads:

a) Right to Equality (Articles 14–18)

b) Right to Freedom (Articles 19–22)
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c) Right against Exploitation (Articles 23–24)
d) Right to Freedom of Religion (Articles 25–28)
e) Cultural and Educational Rights (Articles 29–30)
f) Right to Constitutional Remedies (Article 32)

3.4.1 Right to Equality

The state shall not deny any person equality before the law or equal protection of law to any citizen (Article 14). This means that no one is above the law or has a special privilege under the law. At the same time everyone is to be equally treated by law.

The state shall not discriminate against any citizen on ground only of race, religion, caste, sex or place of birth, and no citizen shall be discriminated against in the use of public places and public utilities on the same grounds. However, the state can make special provision for women, children and any socially and educationally backward class (Article 15). There shall be equality of opportunity in respect of public employment for all citizens and they may not be deprived of equal opportunities on grounds only of religion, race, caste, sex, descent or place of birth. However, the state can make special provision for reservation of posts for members of any backward class or citizens not adequately represented in the services or for the Scheduled Castes and Scheduled Tribes. The state may make provision for reservation in promotions for members of the Scheduled Castes and the Scheduled Tribes (Article 16).

Untouchability is abolished and punishable by law (Article 17). The state shall not confer any title other than military or academic. No citizen shall accept any title from a 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 a title from a foreign state. No person holding an office of profit under the state shall, without the consent of the President, accept any gift or emolument from a foreign state (Article 18).

3.4.2 Right to Freedom

Article 19 confers, on all citizens, freedom

a) of speech and expression subject to reasonable restrictions imposed by laws in the interest of sovereignty and integrity of India, the security of the state, friendly relations with the foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence;

b) to assemble peaceably and without arms subject to reasonable restrictions imposed by law in the interest of the sovereignty and integrity of India or public order;

c) to form associations or unions subject to reasonable restrictions imposed by law in the interest of the sovereignty and integrity of India, public order or morality;

d) to move freely throughout the territory of India or reside in any part of India subject to reasonable restrictions imposed by law in the interests of the general public or the protection of interests of any Scheduled Tribe; and

e) to practise any profession or to carry on any occupation, trade or business subject to reasonable restrictions imposed by law in public interest.
Articles 20 and 22, together, provide for protection in respect of conviction for offences beyond law and detention without trial to all persons except in the case of preventive detention primarily for political reasons. Article 21 forbids the deprivation of the life and personal liberty of all persons except according to procedure established by law.

A new Article (Article 21A) promises the right to education to all children of the age between six and fourteen.

### 3.4.3 Right against Exploitation

Traffic in human beings and forced labour, like beggar, are prohibited though the state may impose compulsory service for public purposes without discrimination (Article 23). Children below the age of 14 may not be employed in factories, mines, and other hazardous jobs (Article 24).

### 3.4.4 Right to Freedom of Religion

Subject to public order, morality, and health, all persons are equally entitled to freedom of conscience and the right to profess, practise and propagate religion [Article 25(1)]. However, the state can legislate on economic, financial, political, and other secular activities associated with a religious practice [Article 25(2)]. The state can also legislate for social welfare and reform, and to throw open Hindu religious institutions of public character to all sections of the Hindus [Article 25(3)].

Article 25 is the foundation of Indian secularism, not only because it guarantees religious freedom of individuals and equality of all religions, it also makes a clear distinction of religious affairs of the people, and the secular activities of the state. The state is entitled to regulate the secular activities, including the economic, financial, and political. The state is entitled to undertake social welfare and social reform of all sections of the people. In respect of throwing open of the religious institutions of public character, however, the state power is confined to the Hindus. In this respect, the Hindu will include followers of the Sikh, the Jaina, and the Buddhist religions.

This last stipulation will be understood only if read together with Article 17 that prohibits untouchability, an evil consequence of the caste system. Untouchability exists among the Hindus. The Jainas also have a kind of caste system and are vulnerable to untouchability while several ‘untouchable’ castes have converted themselves to Buddhism. At the back of this provision there is a strong tradition of the temple entry movement since the 1920s.

Article 26 provides to all religious denomination the right to set up and manage their religious institutions, to acquire and manage property subject to public order, morality, and health. Article 27 forbids the imposition of any tax for the exclusive benefit of any particular religion. Article 28 forbids the imparting of religious institutions wholly funded by the state. In other schools students may not be forced to attend religious instructions.

### 3.4.5 Cultural and Educational Rights

These are aimed at the benefits of the minorities. Any section of people in India or any part of it has the right to preserve their language, script and culture. No citizens shall be denied admission into a school, maintained or aided by the state on the
ground of religion, race, caste, language, or any of them (Article 29). All religious or linguistics minorities have the right to set up or maintain educational institutions of their own choice. The state, while making grants to the educational institutions, shall not discriminate against a religious or linguistic minority (Article 30).

3.4.6 Right to Constitutional Remedies

The Supreme Court has been given power to enforce the Fundamental Rights by appropriate remedies to their violation. It can issue writs of habeas corpus (commanding the detaining authorities 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 warranto (asking an official body of the authority under which a power has been exercised), and certiorari (taking over of a case from a lower court by a higher court) towards this objective (Article 32). Article 226 of the Constitution has granted the same powers to the State High Courts also.

3.5 DIRECTIVE PRINCIPLES OF STATE POLICY

As has been mentioned earlier that the Directive Principles of State Policy are a special feature of the Indian Constitution. They do not restrict the power of the state, they add to the state’s responsibility, thereby indirectly enhance its powers. Essentially, they are aimed at social welfare, particularly, of the weaker sections of the Indian people.

3.5.1 The Specific Principles

The state shall strive to reduce inequalities of income, status, facilities, and opportunities not only among individuals but also among groups residing in different areas and pursuing different occupations.

The state shall, in particular, try to secure to all citizens the right to an adequate means of livelihood, distribution of ownership and control of material resources of the community so as to best serve the common good; resist concentration of wealth and the means of production against common detriment; secure for men and women equal pay for equal work; secure improvement of health and strength of workers; and free and dignified growth of children.

The state shall take steps to organize and empower village panchayats; secure participation of workers in the management of industries; frame a uniform civil code; secure separation of judiciary and executive.

Within the limits of its resources the state will make provision for the rights 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.

For improvement of agriculture and animal husbandry try to improve the breeds and prohibit slaughter of calves, cows, and other milch and draught cattle. It will try to improve environment, protect forest cover and wild life.
It will try to preserve monuments, and places and objects of historical interests. Finally, it will endeavour to promote international peace and cooperation.

Check Your Progress 2

1) Describe the Right to Equality as provided in the Constitution of India.

2) What freedoms have been provided to citizens and what restrictions have been placed on them?

3) How does the Constitution of India ensure secularism?

4) Describe the specific principle contained in the Directive Principles of State Policy.

3.6 FUNDAMENTAL DUTIES

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

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

### 3.6.1 Implication of Inclusion of Fundamental Duties

Before coming to the specific duties listed in the section on Fundamental Duties, let us examine the implications of its inclusion. The insertion of a specific section on duties lays down some obligations which a citizen is expected to fulfill while enjoying their Fundamental Rights. It also declares adherence to Article 29 (1) of the Universal Declaration of Human Rights which holds that ‘Everyone has duties to the community in which alone the free and full development of his personality is possible’. The Constitutions of Japan, USSR and China have separate charters on Rights.

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

Most Fundamental Rights provided by the Constitution are an expression of this ‘solemn resolve’ of the people of India as declared in the Preamble. They include, therefore, a corresponding duty so that the aims of equality, liberty, justice etc. are secured in a manner that the dignity of the individual is not affronted and national integrity not compromised. The various rights to freedom in the Constitution would, for example, involve corresponding duties whereby the exercise of this right does not encroach on similar rights of others or endangers national security, public order, etc. Also, the Directive Principles which aim at building a just society also give expression to the promise which the people of India made to each other in the Preamble. Even before the insertion of Article 51 A, therefore, the Supreme Court observed that it was ‘fallacy to think that under our Constitution there are only rights on the citizens. The mandate of our Constitution is to build a welfare society and that object may be achieved to the extent that Directive Principles are implemented by legislation’ (Chandra Bhawan vs. State of Mysore, 1970, S.C. 2042.).

### 3.6.2 Range and Type of Duties

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

3.7 LET US SUM UP

During colonial period Indians were subjected to denial of rights in various ways. The idea of guaranteed rights, therefore, became one of the moving forces in the freedom struggle. In this background inclusion of rights in the Constituent Assembly was almost a forgone conclusion. Though there were differences over the form of rights and their scope, there was consensus about their inclusion. The Assembly finally included in the Constitution two sets of rights in two parts - III and IV one justiciable - Fundamental Rights and other non-justiciable - Directive Principles of State Policy. While the first set of rights can be equated primarily with civil and political rights placing restrictions on the state not to interfere in the liberty and equality of citizens the other set that is Directive Principles can be understood in the nature of economic, social and cultural rights asking he state to adopt positive measures to fulfil citizens needs for a dignified life.

Constitution empowers the Judiciary to protect Fundamental rights. Of course rights are not totally unrestricted. State can suspend or reduce these in the interest of country’s security, social order, health etc. Judiciary, however, has placed limitations on the powers of the state in this regard. At the same time by powers to amend the constitution available to Parliament and interpret the constitution and review the legislative and executive actions available to judiciary there has come both limitations and widening of the scope of rights. The Indian Constitution thus provided a detailed vision of rights, machinery for their protections and promotion and a balance between individuals rights and society good and state’s security.

3.8 ANSWERS TO CHECK YOUR PROGRESS

EXERCISES

Check Your Progress 1

1) During colonial period Indians were denied basic rights. Early social reformers and nationalist leaders were quite influenced by the idea of rights. Demand and movement for civil liberties and rights had become part of national movement.

2) Indian Constitution describes rights in clear and comprehensive manner: limitations on rights are prescribed with in the chapter on Fundamental rights. Indian constitution not only provides for individual rights but also group rights.

3) Explain characteristics of Flexibility and relationship between Law and Rights. See sub-sections 3.3.1 and 3.3.2.

4) Fundamental Rights are primarily civil and political rights, and negative in nature. These are justiciable. Directive Principles provide for positive economic, social and cultural rights but are non-justiciable.

Check Your Progress 2

1) See sub-section 3.4.1.
2) Freedoms of Speech and expression, To assemble peaceably and without arms, to form associations and unions, to move freely through out the territory of India or reside in any part of India, and to practice any profession or carry on any occupation trade etc. For restrictions on these freedoms report sub-section 3.4.2.

3) By granting freedom of religion and prohibiting state to favour any religion see sub-section 3.4.4.

4) Write on the basis of sub-section 3.5.1.

3.9 SUGGESTED READINGS


UNIT 4 INDIA’S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Structure
4.0 Objectives
4.1 Introduction
4.2 Nature of International Human Rights Obligations
   4.2.1 State as Guarantor of Human Rights
   4.2.2 Reservations and Declarations
   4.2.3 Implementation Procedures and Treaty Monitoring Bodies
4.3 Domestic Status of International Human Rights Treaties
4.4 India and the ICCPR
4.5 India and the ICESCR
4.6 India and the ICERD
4.7 India and the CRC
4.8 India and the CEDAW
4.9 Judiciary and International Human Rights Obligations
4.10 Let Us Sum Up
4.11 Key Words
4.12 Answers to Check Your Progress Exercises
4.13 Useful Books and Articles

4.0 OBJECTIVES

After studying this unit you will be able to:

• know which human rights treaties have been ratified by India;
• what is the nature of international human rights obligations contained in those treaties;
• how these international obligations are implemented at the domestic level by India;
• explain the reservations and declarations made by India to these treaties; and
• understand the role of Indian judiciary in invoking international human rights obligations in their judgments.

4.1 INTRODUCTION

During the last 60 years India has ratified or signed 15 human rights treaties. However, in this Unit we are discussing only five treaties, which are known as core treaties, (the date of ratification or signature is given within brackets). They are called core because they have special monitoring bodies to supervise the domestic application...
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of international obligations arising from their ratification. Since India has so far not ratified CAT, it is not discussed here. The treaties discussed are:

1) International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD) (3 December 1968);

2) International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) (10 April 1979);

3) International Covenant on Civil and Political Rights, 1966 (ICCPR) (10 April 1979);

4) Convention on the Rights of the Child, 1989 (CRC), (11 December 1992);

5) Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) (9 July 1993); and

6) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT) (signed on 14 October 1997).

4.2 NATURE OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

To understand how India has been honouring its international human rights obligations contained in these core / major treaties in its domestic practices, it is essential to know the nature of these obligations. There are three important features of international human rights obligations. These three features help us to have a better understanding of the extent to which these international obligations are enforced at the domestic level. Let us elaborate these in brief.

4.2.1 State as Guarantor of Human Rights

The two UN Covenants on human rights recognize that the “State” is the guarantor and protector of human rights of the individuals residing in it. It is not the question of State sovereignty but States differ from one another in their socio-economic, political and cultural conditions and traditions. Since human rights are intrinsically related to the socio-economic and political systems and their realization depends to a great extent on the socio-political, economic and cultural development of a particular State, they are, therefore, in reality to be enjoyed by individuals in their own States and implemented under their domestic laws and institutions. Indeed, all human rights treaties recognize this fact. Moreover, these treaties are evolved on the principle that State is the guarantor of human rights. International obligations do not operate directly upon the individuals but work on the States. They are designed to induce them to adhere to the minimum norms agreed upon and spelled out in them. They serve only as an international process to encourage States to carry out their international human rights obligations and to desist from their violations.

All the core treaties recognize the principle of domestic application of international human rights obligations. They require the State Parties to adopt legislative and other measures to ensure realization of the rights provided in those treaties. For example, the ICESCR provides that each State Party undertakes to take steps with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, such as the adoption of legislative measures. The ICCPR also requires States to adopt legislative or other measures as may be necessary to
give effect to the rights of the Covenant whenever such provisions do not already exist in its domestic law. The Covenant specifically states that such measures have to be in accordance with their “constitutional process”.

4.2.2 Reservations and Declarations

Most human rights treaties have been adopted by consensus, but they allow States to file reservations and declaratory statements to restrict / limit certain rights at the time of their ratification by them. Making reservations is not only part of the sovereign discretion of the State, but it recognizes the principle of built-in flexibility to accommodate national variations in respect of human rights treaties. The provision of reservations has enabled many States to ratify these treaties—thereby making their ratification universal. But these reservations should be compatible with the “object and purpose” of the Convention concerned. Reservations to substantive provisions of human rights treaties have greatly weakened the obligations of State Parties. In fact, they have undermined their effective implementation. In the succeeding pages you will know that India has made reservations to the core human rights treaties.

4.2.3 Implementation Procedures and Treaty Monitoring Bodies

When a country accepts one of the human rights treaties through ratification, it assumes a legal obligation to implement the rights set out in that treaty. But this is only the first step, because recognition of rights on paper is not sufficient to guarantee that they will be enjoyed in practice. When these treaties were adopted, it was recognized that State Parties would require encouragement and assistance in meeting their international obligations to put in place the necessary measures to ensure the enjoyment of rights provided in the treaty by everyone within the State. Each treaty therefore creates an international Committee of independent experts to monitor, by various measures, implementation of its provisions.

Most treaties provide three procedures of implementation — the reporting procedure, the inter-State complaint system and the individual petition system. You have read about these in course CHR-I. Just to remind let us briefly elaborate these procedures.

1) The Reporting Procedure

All core human rights treaties require the State Parties to submit periodic reports to monitoring bodies on the measures they have adopted which give effect to the rights contained in them and on the progress made in the enjoyment of those rights. These reports are supposed to indicate also the factors and difficulties, if any, affecting the implementation of internationally recognized human rights. Unlike the other two procedures, reporting procedure is compulsory. These reports are critically examined by independent expert members of monitoring bodies in the light of alternative country reports submitted by NGOs. Sometimes the Committee members seek additional information or reports. This kind of regular dialogue / interaction between the States and the UN bodies creates a favourable international public opinion for enforcement of human rights. The reporting procedure, in fact, is a novel system in international law as it has removed the matter of human rights from the exclusive concern of national jurisdictions. On the basis of reviewing of the State reports the monitoring bodies adopt not only “General Comments” which elaborate and interpret the meaning and content of human rights, but also formulate “Concluding Observations and Recommendations” on individual State Party.
2) **Inter-State Communication System**

Some human rights treaties provide for the inter-State complaint system. In most treaties this system is an optional procedure. However, under the ICERD, this procedure is not optional. Under this procedure one State can lodge a complaint of human rights violation against another State, provided both the States have accepted this optional procedure. Such complaints should be settled to the satisfaction of both the States within six months. After six months any Party may take the complaint to concerned monitoring body for mediation. Most States do not invoke this procedure for fear of reprisals.

3) **Individual Communication System**

The ICCPR, CEDAW and ICERD have an optional procedure of individual petition system. Unfortunately, India has not accepted these optional procedures, though it is a party to all the three treaties. In this procedure an individual, who claims that any of his rights have been violated, may submit written communications to the monitoring bodies for consideration after having exhausted all the available domestic remedies.

**Check Your Progress 1**

1) Name the core human rights treaties that have been ratified by India.

2) Do you think international human rights obligations operate directly upon the individual?

3) Why do human rights treaties allow State Parties to file reservations and declarations at the time of their ratification?

4) Discuss the usefulness of reporting procedure.
4.3 DOMESTIC STATUS OF INTERNATIONAL HUMAN RIGHTS TREATIES

In India treaties are not self-executing. The provisions of treaties do not form automatically part of the domestic law. Implementing legislation is necessary to give effect to the provisions of the treaties. In common law countries customary international law is considered as a part of the law of the land as long as they are not inconsistent with national statutes. Also, in these countries the courts refer to international treaties ratified by their country as a source of guidance in constitutional and statutory construction when their laws are uncertain, ambiguous or incomplete. In India, the Parliament, executive, and judiciary have the power to interpret a treaty. In certain cases, a treaty might be implemented by the exercise of the executive power of the President in accordance with Article 53 of the constitution.

Article 51(1) of the Indian constitution further provides that the State shall “foster respect for international law and treaty obligations”. Indian courts have endeavoured to interpret the Indian constitution and laws in consonance with the provisions of the international treaties ratified by India.

4.4 INDIA AND THE ICCPR

India is a party to the ICCPR. It has submitted, as of October 2007, only three periodic reports to the Human Rights Committee (HRC), the monitoring body of the Covenant. The first report (due in July 1980) was submitted in July 1983; the second report (due in July 1985) was submitted in July 1989 and the third report (due in March 1992) was submitted in November 1995. The fourth and fifth reports, due in March 2001 and 2006 respectively, are still awaited. Like many other State Parties, India is not submitting its periodic reports on time. Moreover, these reports when submitted late become dated. Also, they do not reflect the ground realities or violations of human rights. While evaluating India’s obligations under the ICCPR it is important to note that India has made several reservations also. They are:

1) Regarding Article 1 India has declared that the words “the right of self-determination” are to apply only to people under foreign domination, and do not apply to people in sovereign States.

2) India has said that Article 9 will be applied in consonance with the sections of Article 22 of the Indian constitution. Further, India noted that under Indian law there is no enforceable right to compensation for unlawful arrest or detention as prescribed by Article 9 (5) of the Covenant.

3) With regard to Article 13 (freedom of aliens from expulsion), India has said that this Article will be applied in consonance with the Indian constitution.
4) With reference to Articles 12, 19(3), 21 and 22 of the ICCPR India declared that the provisions of the said Article shall be so applied as to be in conformity with the provisions of Article 19 of the constitution.

These reservations have greatly affected the implementation of international human rights obligations in India. At the outset it must be noted that India’s three periodic reports have revealed that attempts to either remove or amend the reservations is not on the agenda of the Government. Let us examine the content and implications of these reservations.

India’s reservation to Article 1 of the Covenant has attracted many criticisms. The governments of France, Germany and the Netherlands have filed “objections” with the UN on India’s reservation. The French government stated that it takes objection to India’s reservation, as this reservation attaches conditions not provided for by the UN Charter to the exercise of the right to self-determination. The contention of Germany was that the right of self-determination as enshrined in the UN Charter and in the Covenants applies to all peoples and not only to those under foreign domination. All peoples, therefore, have the inalienable right freely to determine their political status and freely to pursue economic, social and cultural development. In its view India’s interpretation of the right of self-determination cannot be considered as valid because it is not only contrary to the clear language of the provisions in question but also incompatible with the object and purpose of the Covenant. The Netherlands considered that any attempt to limit the scope of this right or to attach conditions not provided for in the Covenant would undermine the concept of self-determination and would thereby seriously weaken its universally acceptable character.

Also, India’s reservation to Article 9 has been criticized by scholars, the HRC and the Supreme Court of India. Further, India has always maintained, and continues to claim that the specific conditions within India demand that for the maintenance of law and order, combating terrorism and other threats to security, there must be an allowance for infringing on individual liberty.

It must be noted that the Supreme Court has considered the issue of compensation for unlawful arrest, and have awarded compensation to numerous victims even when there is no constitutionally enforceable right to compensation. For example, in three landmark judgments—Rudal Shah, Nilabati Behera and D.K.Basu— the Supreme Court awarded compensation. In D.K. Basu the Supreme Court went to the extent of stating that India’s reservation to Article 9 has lost its relevance in view of the law laid down by it in a number of cases for the infringement of the fundamental right to life. Therefore, it is suggested that the government should review its reservation to this Article with a view to withdrawing it, so as to ensure its implementation.

Whenever a country’s report is considered by the HRC, its concluding observations on the report are very instructive, as they provide a critical perspective on human rights situations in the country. After considering India’s third periodic report, the Committee adopted many observations and recommendations (on 30 July 1997), some of which are listed below:

1) The HRC regretted the lack of information on difficulties encountered in implementing the provisions of the Covenant in practice.

2) The Committee, noting the reservations and declarations made by India to articles 1, 9, 12, 13, 19(3), 21 and 22 of the Covenant, invited India to review those
reservations and declarations with a view to withdrawing them, so as to ensure progress in the implementation of the Covenant rights.

3) It noted with concern that dalits and tribes and ethnic and national minorities continue to suffer from many violations of their Covenant rights.

4) It was gravely concerned with the deplorable practices of foeticide and infanticide of females despite legislative measure to ban it. It suggested that the government must take further measures to overcome those problems and to protect women from all discriminatory practices, including violence.

5) It is concerned that women remain underrepresented in public life and at the higher levels of the public service and are subjected to personal laws which violates the right of women to equality before law and to non-discrimination.

6) It was concerned with the gross violation of human rights as a result of the continuing reliance on the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed (especially in the north-eastern States).

7) The Committee endorsed the views of the National Human Rights Commission (NHRC) that the problems in areas affected by terrorism and armed insurgency are essentially political in character and that the approach to resolving them must also, essentially, be political, and it emphasized that terrorism should be fought with means that are compatible with the Covenant.

8) It regretted that in Manipur the Armed Forces (Special Powers) Act has been applied since 1980. In Committee’s opinion it is like using emergency powers without officially declaring emergency as per Article 4(3) of the Covenant.

9) The Committee regretted that the NHRC is prevented by the Act establishing it from investigating directly complaints of human rights violations against the armed forces.

10) It expressed concern that police and other security forces do not always respect the rule of law and that court orders for habeas corpus are not always complied with. It expressed its concern about the growing incidents of custodial deaths, rape and torture.

11) It was also of the view that preventive detention is a restriction on liberty. It recommended that a central register of detainees under preventive detention laws be maintained and that India will allow for visit of the International Committee of Red Cross to all types of detention facilities, particularly in areas of armed conflict.

12) It noted with concern that although Terrorist and Disruptive Activities Act (TADA) has lapsed, 1600 people were still in detention under it. It recommended that measures be taken for their early release or trial.

13) It expressed concern at bonded and child labour, child prostitution and the plight of street children.

Notwithstanding these critical observations and recommendations, the HRC highlighted the positive aspects of India’s record of human rights. It welcomed frequent references
to the provisions of international human rights treaties by Indian courts, especially the Supreme Court in their judgments. The establishment of NHRC in 1993 was a welcome development. It also welcomed the establishment of National Commission for Scheduled Castes and Scheduled Tribes, National Commission for Women and National Commission for Minorities. It welcomed the lapse, in 1995, of TADA. It noted that positions in elected bodies are reserved for dalits and tribals and that a constitutional amendment has reserved one third of the seats in elected local bodies (Panchayat Raj) for women.

Check Your Progress 2

1) What is the domestic status of international human rights treaties in India?

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2) Do you support India’s reservations to ICCPR?

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3) Which countries have filed objections on India’s reservation to Article 1 of both the Covenants? What is the content of their objections?

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4) Why the Supreme Court of India said in D.K.Basu judgment that India’s reservation to Article 9 of ICCPR has lost its relevance?

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5) What are the concluding observations and recommendations of HRC on India’s third periodic report?

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4.5 INDIA AND THE ICESCR

India ratified ICESCR in 1979 with the following reservations:

i) **Article 1**: India has declared that the words “the right to self-determination” are to only apply to people under foreign domination, and do not apply to people in sovereign States.

ii) **Article 4** (limitations in the exercise of rights) and **8** (trade union rights): It declares that the provisions of those Articles shall be so applied as to be in conformity with the article 19 of the constitution.

iii) **Article 7(c)** (equal opportunity for promotion in employment): With reference to this Article India declares that its provisions shall be so applied to be in conformity with the provisions of Article 16 (4) of the constitution.

As of 2007, India has submitted its periodic reports to the Committee on Economic Social and Cultural Rights (CESCR) only twice. Its first report was submitted during 1980-1989 (in three parts covering different rights of the Covenant). The combined second, third, fourth and fifth reports due in June 1991, 1996, 2001 and 2006 respectively was submitted on 23 October 2006. It is unfortunate that after 1989 the next report was submitted nearly after 18 years in 2006. The CESCR, which reviews State reports took a decision to consider India’s report in its 40th session scheduled for 28 April - 16 May 2008. It is instructive to recall here what the CESCR had said in 1990 on India’s report. It had commented that the policy in the field of education with regard to dalits and tribals and other lower castes and ensuring equal opportunity of education for those groups was unclear. With regard to the right to culture, it observed that “more attention should be given to preserving the cultural traditions of minorities and to promoting access to cultural life by ordinary people”.

4.6 INDIA AND ICERD

India ratified ICERD on 3 December 1968. ICERD is the first core human rights treaty to enter into force which provided for a 18 member monitoring body, CERD. This treaty served as a model for the adoption of other core treaties, especially the two UN Covenants. This treaty not only defines racial discrimination but also sets out in six detailed Articles the obligations of States Parties to combat this scourge. The Convention requires a State Party to take appropriate measures against racial discrimination rooted in society, including the propagation of racial ideas advocated by groups and organizations. Under Article 9 of the Convention the States Parties are required to submit periodic reports on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the treaty. The periodicities of these reports have to be every two years.

So far India has submitted nineteen periodic reports — a much better record of fulfilling its obligation to report on the compliance of Convention rights. India submitted its 19th report (which contains its 15th to 19th reports) on 26 January 2006. In its 70th session (February – March 2007) the CERD examined this report in the light of many NGO alternative reports. After reviewing the report, the Committee adopted concluding observations on 6 March 2007. The Committee welcomed the report submitted by India and appreciated the comprehensive provisions and other legislations adopted to combat discrimination, including discrimination based on race and caste. However, the CERD took note of India’s position that discrimination based on caste
fall outside the scope of Article 1 of the Convention (where racial discrimination is defined) and reaffirmed its position expressed in General Recommendation No. 29 that discrimination based on the ground of caste is fully covered by Article 1 of the Convention. The Committee urged India to repeal the Armed Forces (Special Powers) Act. It also made many other recommendations including for accession to the Convention Relating to the Status of Refugees and its 1967 Protocol and enactment of a comprehensive legal framework governing the treatment of refugees. It also recommended to effectively implement the Minimum Wages Act, 1948, the Equal Remuneration Act, 1976, the Bonded Labour Abolition Act, 1976, the Child Labour (Prohibition) Act, 1986, and the employment of Manual Scavengers and Construction of dry Latrines (Prohibition) Act, 1993.

It is interesting to note that Committee members asked many questions to the State representative concerning dalits and tribals. For instance, the Committee sought detailed information on concrete measures taken to eradicate the de facto segregation of dalits in access to temples, schools, hospitals, water resources, local markets and shops, restaurants, tea shops, cinemas, cultural and religious festivals, police stations, streets and other places. It requested a report on measures taken to protect dalit women against torture, rape, stripping and parading and other forms of violence and humiliation. It wanted to know what measures were adopted to deal with issues like sexual exploitation and trafficking of dalit and tribal women. It sought information on measures taken to ensure the right of dalits to vote freely and protect dalit voters against alleged booth rigging, booth capturing, denial of access to polls, intimidation and violence. Information on measures to promote inter-caste marriages between dalits and non-dalits and to eradicate social norms of purity and pollution which de facto preclude such marriages was sought. It wanted to know how the laws banning devadasi system is implemented. Finally it wanted to know what action is being taken to combat the alleged failure of the police and other law enforcement officers to properly register and investigate complaints about acts of ethnic and caste violence. Also it sought to know the measures taken to ensure that perpetrators of such acts are convicted and sentenced under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Since the rights of dalits and tribals are violated on a large scale, the Committee seeks additional information concerning the protection of their rights.

It must be noted that the reports of NGOs on Indian report provided excellent and well researched documentation of the rights of dalits.

## 4.7 INDIA AND THE CRC

As of 2007, India has submitted two reports under CRC. The first report was submitted on 19 March 1997 and the second report on 10 December 2004. India has been asked by the Committee to submit a combined third and fourth report on 10 July 2008. After reviewing India’s first report the monitoring Committee adopted observations and recommendations on 28 January 2000. The Committee was happy to note the existence of a broad range of constitutional and legislative provisions and institutions for the protection of human rights and children’s rights. It welcomed the growing involvement of NGOs and other grassroots organizations in activities to enhance the protection of human rights. It noted that extreme poverty, which affected a significant part of India’s population, and natural disasters were factors which represented serious difficulties to the fulfillment of all of India’s obligations under the Convention.
The Committee adopted many recommendations, which included, among others, the following:

- that India pursue efforts to ensure full compatibility of its legislation with the Convention;

- that all necessary measures, including the allocation of the required resources, be taken to ensure and strengthen the effective implementation of existing legislation;

- that a comprehensive national plan of action, based on a child rights approach, be adopted to implement the Convention;

- regarding the definition of the child, the Committee is concerned that the various age limits set by the law are not in accordance with the general principles and provisions of the Committee. Of particular concern to the Committee is the very low age of criminal responsibility under the Penal Code, which is set at seven years. The Committee is further concerned that minimum age standards are poorly enforced (e.g., 1929 Child Marriage Restraint Act). Therefore, the Committee recommends that India review its legislation with a view to ensuring that age limits conformed to the principles and provisions of the Convention, and that it take greater efforts to enforce those minimum-age requirements;

- that the registration of each child taken to police station be mandatory, including time, date and reason for detention, and that such detention be subject to mandatory review by a magistrate;

- that legislative measures be taken to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse against children in the family, schools and care institutions;

- that the 1986 Child Labour Act be amended so that household enterprises and government schools and training centres were no longer exempt from prohibitions on employing children, and that coverage was expanded to include agriculture and other informal sectors; the Bidi Act should be amended so that exemptions for household-based productions are eliminated. Employees should be required to have and produce on demand proof of age of all children working on their premises;

- that all necessary measures be taken to eradicate the practice of Devadasi system;

- that in order to combat trafficking in children, including for commercial sexual purpose, the Penal Code should contain provisions against kidnapping and abduction; and

- that India review its laws in the administration of juvenile justice to ensure that they were in accordance with the Convention. The Committee was concerned with the administration of juvenile justice in India and its incompatibility with Convention provisions. The Committee was concerned with the possibility of trying boys between 16-18 as adults in criminal cases. Noting that the death penalty is de facto not applied to persons under 18; the Committee is very concerned that de jure, this possibility exists. Therefore, it recommends that India abolish by law the imposition of death penalty to persons under 18.
After reviewing the second periodic report, the Committee adopted on 30 January 2004 many Concluding Observations, which are quite similar to those adopted in 2000. It welcomed the adoption of the Constitution (86th Amendment) Act 2002 making free and compulsory education to all children between 6-14 years old as a fundamental right. It welcomed the ratification by India of the SAARC Convention on Preventing Trafficking in Women and Children for Prostitution. However, it regretted that some of the concerns it expressed and the recommendations it made in 2000 have not been sufficiently addressed, specially concerning child labour, administration of juvenile justice, birth registration (as 46% of children are not registered at birth), disabilities, education, and basic health. Therefore, it urged India to make efforts to implement those recommendations.

Expressing its serious concern on many problems faced by children, the Committee urged India, among others, to:

- extend to the whole of India the application of the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000;
- enforce the Karnataka Devadasi Prohibition Act, 1982;
- take all necessary steps to implement the Child Marriage Restraint Act;
- ratify two Optional Protocols to the CRC. (It is gratifying to note that in 2005 India ratified them.)

### 4.8 INDIA AND THE CEDAW

While ratifying CEDAW, India made two Declaratory Statements and one reservation. (i) Article 16(1) calls for elimination of all discrimination against women in matters relating to marriage and family relations. India declares that it shall abide by these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent. (ii) Article 16 (2) calls for making the registration of marriage in an official registry compulsory. India declares that it agrees to the principle of compulsory registration of marriages. However, failure to get the marriage registered will not invalidate the marriage particularly in India with its variety of customs, religions and levels of literacy. (iii) Article 29 (1) establishes compulsory arbitration by the International Court of Justice of disputes concerning interpretation of CEDAW. India declares that it does not consider itself bound by this provision.

As of October 2007, India has submitted three periodic reports. The first report (due on 8 August 1994) was submitted on 10 March 1999. The second and third reports (due in 1998 and 2002 respectively) were submitted on 19 October 2005 as a combined report. The CEDAW Committee reviewed this combined report on 18 January 2007 and adopted many Concluding Comments on it. The Committee regretted that these reports were long overdue and did not provide the information requested by it on the communal violence in Gujarat, specially its impact on women, which negatively affected the implementation of the Convention. Therefore, the Committee requested for the submission of a follow-up report on the matter before January 2008. It sought information on the number of cases of sexual assault and violence against women reported in Gujarat; compensation awarded to women victims; and on arrests made and punishments imposed.
The Committee commended India’s National Policy on the Empowerment of Women which commits to ensure that all marriages are registered by 2010. It congratulated India on the enactment of the Protection of Women from Domestic Violence Act, 2005, and for amendments to the Hindu Succession Act and the Indian Divorce Act. It also commended India for its achievements in increasing enrolment in primary education through Sarva Shiksha Abhiyan Programme.

However, the Committee was critical of India’s efforts to implement Convention obligations. It expressed its concern and regret that many of its previous concluding comments and observations adopted in 2000 remain inadequately addressed, its recommendations to enforce laws preventing discrimination against dalit women; to take affirmative action to increase women’s participation in the judiciary. Therefore, the Committee urged India to implement its recommendations adopted in 2000. It requested India to provide information on the steps taken to abolish or reform the Armed Forces Special Powers Act and to ensure that investigation and prosecution of acts of violence against women by the military in disturbed areas and during detention is not impeded.

The Committee urged India to review or withdraw its reservations to Article 5 (a) and 16 (1) and encourage debate within the relevant communities on gender equality and the human rights of women and review and reform personal laws of different communities to ensure de jure gender equality and compliance with the Convention. It urged India to:

- Provide free legal services to poor women in rural and tribal areas;
- Amend relevant legislation relating to rape and expand definition of rape to criminalize marital rape and other forms of sexual assault, including child sexual abuse;
- Initiate and monitor the reform of textbooks at the state level to eliminate all gender-based stereotypes;
- Take adequate measures to implement and monitor implementation of Prohibition of Sex Determination Act, including safeguards to prevent criminalization of women who are pressurized into seeking sex-selective abortions;
- Eliminate child labour in compliance with international obligations and the Child Labour Prohibition Act, 1986; and
- Amend the Special Marriage Act to ensure equality for women in marriage and its dissolution and to give them equal rights to property accumulated during the marriage.

4.9 JUDICIARY AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

One very significant development with regard to respecting International treaties has been that the Supreme Court and the High Courts have been invoking international obligations in their judgments while deciding petitions seeking to enforce the constitutional provisions on fundamental rights. The courts have invoked international obligations to interpret and expand the scope of these constitutional provisions in the following cases.
i) In *Xaviers vs. Canara Bank*, the Kerala High Court, by invoking Article 11 of the ICCPR, forbid the imprisonment of a person merely on the ground of his inability to fulfill a contractual obligation, ten years before (i.e., in 1969) India ratified the ICCPR.

ii) In *Sheela Barse vs. Children's Aid Society*, the Supreme Court while, invoking Article 24 of the ICCPR, which recognizes children’s right to education, ruled in 1987 that children are the citizens of the future era. Therefore, it decided that it is an obligation of Indian government and the State machinery to implement the international obligation on the rights of the child in the proper way.

iii) In *People's Union for Civil Liberties (PUCL) vs. Union of India*, the Supreme Court castigated in 1997 the Central Bureau of Investigation for arbitrarily and indiscriminately tapping the telephones of politicians in contravention to Article 21 of the Constitution, which forbids deprivation of life or personal liberty except according to the procedure established by law. In this judgment, Justice Kuldeep Singh invoked Article 17 of the ICCPR, which guarantees freedom from arbitrary or unlawful interference with an individual’s privacy, family, home or correspondence.

iv) Article 19(1) and (2) of the ICCPR recognizes that every individual has right to seek information. This right is not recognized in the Indian Constitution. In *PUCL vs. Union of India*, the Supreme Court declared in 1997 that “it is almost accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law”.

v) In *Visakhav. State of Rajasthan* (1997) regarding “sexual harassment” of women at the workplace, the Supreme Court was more forthright in the use of human rights instruments for interpreting the constitutional provisions as well as the legal position of treaties that are not enacted as law. Chief Justice J.S. Verma observed:

> In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work place, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with dignity in Articles 14, 15, 19(1) and 21 of the Constitution and the safeguards against sexual harassment therein. *Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof*, to promote the object of the constitutional guarantee. (Italics added).

vi) Though India has entered a reservation to Article 9(5) of the ICCPR (concerning compensation for unlawful arrest), the Supreme Court in *Rudal Shah* (1983) has sought to read the awarding of compensation into their powers under Article 32 of the constitution.

vii) In *Nilabati Behra vs. State of Orissa* (1993), the Supreme Court’s approach was similar.

viii) In *D.K. Basu vs. State of West Bengal*, a landmark judgment delivered in 1997, the Supreme Court not only made reference to the Court’s precedent of awarding
compensation for fundamental rights but it also specifically refers to Article 9(5) of the ICCPR to which India has made reservation. The Court pronounced that reservation to this article has lost its relevance in view of the law laid down by it in a number of cases awarding compensation for the infringement of the right to life.

ix) In Francis Coralie Mullin, referring to Article 7 of the ICCPR, the Supreme Court held that the right to live with basic human dignity included the right not to be subjected to torture or to cruel, inhuman or degrading punishment or treatment.

x) Similarly, in Prem Shankar vs. Delhi Administration (1980), the Supreme Court invoked Article 10 of the ICCPR which prohibits inflicting of torture on any person.

Check Your Progress 3

1) Under which treaty most questions on dalit rights are asked by treaty monitoring body? How does that body deal with such issues?

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2) Write about five recommendations adopted by CRC on Indian report.

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3) Explain briefly about five cases in which the Supreme Court invoked the Articles of core human rights.

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4.10 LET US SUM UP

In this unit we have read that; (i) India has ratified 15 human rights treaties, including five core treaties — the ICERD, ICESCR, ICCPR, CRC and CEDAW. (ii) States are the guarantors of human rights of their citizens. International human rights obligations do not operate directly upon the individuals but work on the States. They encourage them to carry out their international obligations towards human rights and to desist from their violations. (iii) India does not submit its reports on time. These reports appear to be outdated when reviewed by treaty monitoring bodies. Concluding
human rights. (iv) Reservations entered by India to some of these treaties have undermined the importance of certain rights. (v) Treaties are not self-executing in India. Human rights treaties have not been incorporated into domestic law. (vi) The Supreme Court and the High Courts have been invoking the provisions of human rights treaties, while deciding cases under constitutional and national law.

4.11 KEY WORDS

**Common Law**: The part of law developed by the courts in British modeled Parliamentary democracies.

**Convention**: In a specific sense, multilateral agreements between several States usually under the auspices of an international organization.

**De facto**: In reality or in fact.

**De jure**: In law or in theory.

**Derogation**: Deviation or avoidance of obligations under international convention by State Parties.

**Foeticide**: Premature and deliberate termination of pregnancy resulting in the death of the embryo or foetus.

**Genocide**: The act of killing of members of a group with the intention to wholly or partially destroy a national, ethnic, racial or religious group.

**Habeas Corpus**: A Latin word, which means “have the body”. A document in which a judicial authority directs the detaining authority to produce the detainee at a designated time and place.

**Optional Protocol**: An instrument that provides for rights and obligations in addition to those that may be laid down in the principal treaty or convention. States are required to ratify or accept an Optional Protocol separately.

**Ratification**: The act by which a State signifies its willingness to accept the obligations outlined in a treaty or convention and agrees to be bound by it.

**Reservation**: A unilateral statement made by a State when signing or ratifying an international treaty, excluding or modifying the application of certain provisions of such treaty.
4.12 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) India has ratified five core human rights treaties: ICERD, ICESCR, ICCPR, CRC and CEDAW. See sub-section 4.1

2) India's international human rights obligation do not operate directly upon the individuals. Rather they impose obligations on States Parties. They have to be implemented by States in their domestic setting through their constitutional and political processes. Human rights treaties require States Parties to take steps—legislative, administrative etc. – to implement these obligations. See sub-section 4.2.1

3) Human rights treaties, like other treaties, have a provision of reservations/declarations that a State Party files at the time of ratification. Marking reservation is not only part of the sovereign discretion of the State, but it recognizes the principle of built-in flexibility to accommodate national variations in respect of human rights treaties. The provisions of reservations has enabled many States to ratify these treaties—thereby making their ratification universal. See sub-section 4.2.2

4) Reporting procedure has many advantages. It acknowledges that States have to take various measures to give effect to the international human rights obligations. It enables them to indicate the factors and difficulties that they faced while implementing these obligations. The discussion/review of State reports by expert Committees in the light of NGO reports introduce a kind of dialogue between the State and international human rights body. See sub-section 4.2.3

5) Inter-state communication system establishes a procedure that one State can complain to another State Party on the noncompliance of human rights obligations or their violations. This procedure is generally optional and applicable to those States which have accepted it. It requires that such complaints have to be settled amicably within six months—after this period any Party may bring this matter to the treaty monitoring body for mediation. See sub-section 4.2.3

Check Your Progress 2

1) In India treaties are not self-executing. The provisions of treaties do not form automatically part of the domestic law. Implementing legislation is necessary to give effect to the provisions of the treaties. In India, the Parliament, executive, and judiciary have the power to interpret a treaty. See section 4.3

2) See sub 4.4

3) France, Germany and the Netherlands have filed objections. The French government stated that it takes objection to India's reservation, as this reservation attaches conditions not provided for by the UN Charter to the exercise of the right to self-determination. The contention of Germany was that the right of self-determination as enshrined in the UN Charter and in the Covenants applies to all peoples and not only to those under foreign domination. All peoples, therefore, have the inalienable right freely to determine their political status and freely to pursue economic, social and cultural development. The Netherlands considered that any attempts to limit
the scope of this right or to attach conditions not provided for in the Covenant would undermine the concept of self-determination and would thereby seriously weaken its universally acceptable character. See section 4.4

4) In D.K. Basu judgment the Supreme Court not only made reference to the Court’s precedent of awarding compensation for fundamental right (since 1980 in Rudal shah case) but it also stated that Article 9(5) of the ICCPR (to which India has made reservation) has lost its relevance in view of the law laid down by it in a number of cases awarding compensation for the infringement of the right to life. See section 4.4

5) Human Rights Committee made 13 Concluding Observations and Recommendations on India’s third report under ICCPR, which pertained, among other, to issues of bonded / child labour, preventive detention laws like TADA, NSA, etc, role of NHRC, Armed Forces (Special Powers) Act, and rights of dalits, tribes and minorities. See section 4.4

Check Your Progress 3

1) It is ICERD. The monitoring Committee sought detailed information on concrete measures taken to eradicate the de facto segregation of dalits in access to temples, schools, hospitals, water resources, local markets and shops, restaurants, tea shops, cinemas, cultural and religious festivals, police stations, streets and other places. It requested a report on measures taken to protect dalit women against torture, rape, stripping and parading and other forms of violence and humiliation. It expressed concern on problems of devadasis, bonded labour and manual scavenging. See section 4.6

2) These recommendations pertained to the following issues: eliminate child labour; take adequate measures to monitor implementation of prohibition of Sex Determination Act; eradicate devadasi system; combat trafficking in children, including for commercial sexual purpose; bring the definition of child in domestic law in commercial with CRC. See section 4.7

3) The Supreme Court invoked the provision of human rights treaties in many of its judgments. Five of the cases in this category are the following: D.K. Basu, Sheela Barse vs. Children’s Aid Society, PUCL vs. Union of India, Vishaka vs. State of Rajasthan and Nilabati Behera vs. State of Orissa. See section 4.9

4.13 USEFUL BOOKS AND ARTICLES


SAHRDC, Introducing Human Rights (New Delhi: Oxford University Press, 2006)

