
UNIT 18 LAW OF HUMAN RIGHTS

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18.0 INTRODUCTION

Human beings in the past had suffered from most destructive wars of different kinds in history which violated the human rights. Historical background of the human rights was more social and moral than legal one. The traditional approaches towards protecting the rights of the people were determined by his/her birth or social status in a class of society. Human Rights, now, are common to all people, on all continents of the globe, irrespective of their colour, sex, race, religion, language, cultural and economic differences. Human Rights have become part of the current international relations, and most countries participate in the human rights system. This inalienability of human rights reflects the idea of natural individual rights that precede the State's authority. Protection and promotion of human rights are increasingly seen as requiring international action and concern. In the origins of human rights ideology can be found in the natural law theory. In

this Unit, we will attempt to analyse the entire gamut of human rights including the methods and means of protecting them.

18.1 OBJECTIVES

The international community affords a unique opportunity to carry out a comprehensive analysis of the international human rights system and of the machinery for the protection of human rights in order to enhance and promote fuller observance of these rights in different countries in just and balanced manner. Hence, we will deal with the protection and promotion of human rights, which is a matter of priority for both the international and national communities.

After going through this Unit, you should be able to:

- Explain the concept of human rights.;
- Critically analyse the constitutional duty of the State in protecting and enforcing the fundamental human rights;
- Describe and discuss the international Human Rights Declarations, Covenants and Protocols.
- Appreciate the initiative of the Central government to give more emphasis on the personal life and liberty through Human Rights Act.
- Explain the scope and significance of different types of jurisdiction for enforcing the fundamental human rights in the Supreme Court, High Court and Human Rights Commissions.
- Describe the role and functions of the Human Rights Commissions in protecting human rights in India.
- Examine the role of Non-Governmental Organisations, Social Action Groups and Non-State Actors in ensuring justice to all.
- Promote the value of human rights system by creating awareness about human rights.

18.2 HUMAN RIGHTS: CONCEPT, ORIGIN, PRINCIPLES AND CLASSIFICATION

Human rights are often characterized as universal, fundamental, inherent and inalienable. It is hard to give exhaustive definition of the concept of Human Rights. Various definitions have been propounded in this regard by different scholars of different legal systems from time to time.

18.2.1 Concept and Scope of Human Rights

Bosanquet (1912) defines Human Rights as rights of claims recognized by society and enforced by the State. Human Rights are common to all people on all continents irrespective of their colour, sex, race, religion, language, cultural and economic differences.

After formation of the United Nations in 1945, Human Rights have become a universalized subject. The General Assembly of the United Nations is empowered to initiate studies and make recommendations for the purpose of promoting

cooperation in realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The General Assembly adopted numerous declarations and conventions on human rights. It has also established some subsidiary organs to discharge some of its duties. Some notable organs are: United Nations International Emergency Fund (UNICEF) and United Nations High Commissioner for Refugees (UNHCR).

On December 1948 the United Nations General Assembly unanimously adopted Universal Declaration of Human Rights. It contained an elaborate list of human rights intended as common standard of achievement for all people and all nations with 30 Articles. Thereafter, the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR) of 1966 have further widened the network of international covenants and treaties sought to cover the several facets of individual life.

Economic and Social Council (ECOSOC) is one of the organs of the United Nations. It recommends measures to promote respect for and observance of human rights and fundamental freedom. ECOSOC also coordinates the activities of the specialized agencies of the United Nations. ECOSOC has set up the Commission on Human Rights in 1946 consisting of government representatives. The Human Rights Commission prepared a detailed report and submitted it to the ECOSOC relating to the implementation of the Charter on Human Rights. It stressed the need for an international agency to implement provisions of Human Rights. In 1967, the Council recommended to the Secretariat for establishment of the UN High Commissioner of Human Rights.

The policy document issued by the Government of USA in 1978 defines Human Rights as: freedom from arbitrary arrest and imprisonment, torture, unfair trial, cruel and unusual punishment, invasion of privacy, right to food, shelter, health care and education, and freedom of thought, speech, assembly, religion, press, movement and participation in government.

This broad definition rather gives us clear idea of the scope of human rights with range of aspects embedded in it.

18.2.2 Origin of Human Rights

Origin, evolution and development of Human Rights occurred predominantly due to agitations for civil and political liberation, among other things. Here, let us examine some details of human rights development in pre-United Nations period.

- ***Magna Carta (1215)***: Magna Carta was a grant of privileges conceded by King John of England to his subjects in June 1215. The charter was achieved through a rebellion that had deep-seated cause. Some prominent Kings, at a time of acute inflation, invented new forms of taxation, supervised local government more stringently and developed feudal and judicial prerogatives of the Crown as means of financial extraction and political control. They greatly expanded the functions of the Royal household and exchequer, and were ably supported both in central and local government by career administration. The Magna Carta sought to establish, nationally and on a vast scale, a system of liberties that were being accumulated locally by purchase and in a more limited fashion in the preceding generation.

- ***Petition of Rights (1628)***: The Petition of Right is a major English constitutional document passed by the Parliament in May 1628 that sets out specific liberties of the subject that the King is prohibited from infringing. The Petition of Right was produced by the English Parliament in the run-up to the English Civil War. The Petition is most notable for its confirmation of the principles that taxes can be levied only by the Parliament, that martial law may not be imposed in time of peace, and that prisoners must be able to challenge the legitimacy of their detentions through the writ of habeas corpus.
- ***Bill of Rights (1789)***: During the debates on the adoption of the Constitution, its opponents repeatedly charged that the Constitution as drafted would open the way to tyranny by the central government. Fresh in their minds was the memory of the British violation of civil rights before and during the Revolution. They demanded a “bill of rights” that would spell out the immunities of individual citizens. Several state conventions in their formal ratification of the Constitution asked for such amendments; others ratified the Constitution with the understanding that the amendments would be offered.

On September 25, 1789, the First Congress of the United States therefore proposed to the state legislatures 12 amendments to the Constitution that met arguments most frequently advanced against it. The first two proposed amendments, which concerned the number of constituents for each representative and the compensation of Congressmen, were not ratified. The first 10 amendments of the US Constitution are known as the Bill of Rights. The ‘Bill of Rights’ lays down limits on the powers of sovereign and sets out the rights of Parliament and rules for freedom of speech in Parliament, the requirement to regular elections to Parliament and the right to petition the monarch without fear of retribution.

- ***French Declaration (1789)***: The Representatives of the French people organized in National Assembly, considering that ignorance, forgetfulness or contempt of the rights of man are the sole causes of public miseries and the corruption of governments, have resolved to set forth in a solemn declaration the natural, inalienable and sacred rights of man so that this declaration, being ever present to all the members of the social body, may unceasingly remind them of their rights and duties; in order that the acts of the legislative power and those of the executive power, may at each moment, be compared with the aim of every political institution and thereby may be more respected; and in order that the demands of the citizens, grounded henceforth upon simple and incontestable principles may always take the direction of maintaining the constitution and welfare of all.

18.2.3 Principles and Characteristics of Human Rights

To provide you better understanding of the nature of the human rights we present to you the principles and characteristics of human rights.

18.2.3.1 Principles of Human Rights

The very basic principles of human rights are: interdependency, indivisibility and inalienability.

- **Interdependence of Human Rights:** Each right is dependent on each other right for any and all human rights to be enjoyed in reality. Thus, a State cannot deny a person any of these rights.
- **Indivisibility of Human Rights:** All human rights form one indivisible body of norms that cannot be separated into different sets. No human right can be divided easily by any means of State action. Civil, Political and Economic rights of human beings are not easily separable from one another.
- **Inalienability of Human Rights:** Fundamental human rights are inherent rights of human being. These have interconnection with people because of their birth as human in the universe. There are no possibilities to alienate for any cause at any levels.

18.2.3.2 Characteristics of Human Rights

Human Rights have several distinctive characteristics that distinguish them from any other types of rights. These characteristics are as follows.

- Human rights are universal legal guarantees.
- Human rights belong to all human beings.
- Human rights protect individuals and/or groups from actions and omissions of the State and some non-State actors that affect fundamental human dignity.

18.2.4 Classification of Human Rights

Human rights may be classified into Civil, Political, Economic, Social and Cultural Rights.

- **Civil Rights:** Civil rights are those rights which enable an individual to lead a normal social life. These civil rights are protected by the States. These rights are otherwise described as civil liberties. The main liberties are freedom of speech and expression, freedom to form association and assembly, equality before law and equal protection of laws.
- **Political Rights:** Political rights are of paramount importance, as they provide a basis for working of a democratic government. Democracy is governed by consent, public opinion or public criticism through public participation in decision-making. The important political rights include: right to vote, right to free and fair elections, right to take active participation on governmental decision-making, right to claim corrupt-free government, right to recall and referendum. The individual has the right to stand for election, right to use public office, right to petition and criticize the government. Political rights provide equal opportunity for all to take part in political life.
- **Economic Rights:** The right to life and a worthy manner of living required certain economic rights. The chief among them are: right to employment, right to fair wages, right to humane conditions of work and the right to equal pay for equal work. These economic rights fulfill the basic livelihood of human being.
- **Social Rights:** Social rights of human being lay emphasis on social equality. The individual has the right of not being an isolated member of the society and the State. The social discrimination and oppression generally arises from harmful traditions such as those based on caste, religion, race, colour

and sex. These social divisions are the social evils and the social rights protect the individual from these evils.

- **Cultural rights:** Cultural rights are those rights that help to preserve their culture and heritage both in their public and private life.
- **Generational Human Rights:** Based on the origin, development and usage amongst people in the international arena generational human rights have been further classified as follows:
 - **First Generational Human Rights:** Civil and Political Rights are included under this category.
 - **Second Generational Human Rights:** These include Economic and Social Rights.
 - **Third Generational Human Rights:** Environmental Protection and Right to Economic Development have been put under this category.
 - **Fourth Generational Human Rights:** Rights of the Child and the Woman have come under this.

Human rights are also classified as follows:

- **Security rights** that prohibit crimes such as murder/enforced involuntary suicide, massacre, torture and rape.
- **Liberty rights** that protect freedoms in areas such as belief and religion, association, assembling and movement.
- **Political rights** that protect the liberty to participate in politics by expressing themselves, protesting, participating in a republic.
- **Due process rights** that protect against abuses of the legal system such as arrest and imprisonment without trial, secret trials and excessive punishments.
- **Equality rights** that guarantee equal citizenship, equality before the law and non-discrimination.
- **Welfare rights** (also known as economic rights) that require the provision for education, paid holidays, and protection against severe poverty and starvation.
- **Group rights:** right to form associations and assemble peacefully.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

1) What are the characteristics of Human Rights?

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2) Describe or classify Generational Human Rights.

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3) What are the various fundamental principles of Human Rights?

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18.3 INTERNATIONAL HUMAN RIGHTS FRAMEWORK

In the wake of a devastating world wars, the international community had witnessed some of the most barbarous crimes in human history. To serve the cause of human rights of all, the United Nations charter was adopted with consensus. The United Nations General Assembly adopted the Universal Declaration of Human Rights as a bulwark against oppression and discrimination. Member States of the United Nations represented a range of ideologies, political systems, and religious and cultural backgrounds as well as different stages of economic development. The Preamble of the United Nations Charter emphasizes the respect for and protection and promotion of human rights of all, irrespective of their colour, race, sex, religion and language. General Assembly, Security Council and Economic and Social Council are the chief organs that verify the effective implementation of the purpose and objectives of the United Nations Charter. The General Assembly can propose certain recommendations upon the request of the Economic and Social Council. Security Council may execute the provisions of declarations and conventions including the opinions of the International Court of Justice.

18.3.1 Universal Declaration of Human Rights

In accordance with the Charter of the United Nations and the principles of humanitarian law, Commission on Human Rights was appointed by the Economic and Social Council of the United Nations. The committee chaired by Mrs. Eleanor Roosevelt, widow of the former United States President, agreed on the central importance of affirming universal respect for human rights and fundamental freedoms, including the principles of non-discrimination and civil and political rights as well as social, cultural and economic rights. The Commission then

revised the draft declaration, in the light of replies from Member States, before submitting it to the General Assembly. The committee prepared the Universal Declaration on Human Rights (UDHR) during the years 1947 and 1948. The proclamation of the UDHR on the 10th December 1948 in the General Assembly of the United Nations can be seen as a turning point in the international protection of human rights. The drafters of the UDHR were very determinant to ensure that the draft text would reflect different cultural traditions and incorporate common values inherent in the world's principal legal systems and religious and philosophical traditions.

For the first time in history, the international community embraced a document considered to have universal value — “a common standard of achievement for all peoples and all nations”. Its Preamble acknowledges the importance of human rights legal framework to maintaining international peace and security, stating that recognition of the inherent dignity and equal and inalienable rights of all individuals is the foundation of freedom, justice and peace in the world. Elaborating the United Nations Charter's declared purpose of promoting social progress and well-being in larger freedom, the Declaration gives equal importance to economic, social and cultural rights, and to civil rights and political liberties, and affords them the same degree of protection. The Declaration has inspired more than 60 international human rights instruments, which together constitute a comprehensive system of legally binding treaties for the promotion and protection of human rights.

UDHR has remarkably, for the first time, set forth the rights and freedoms of individuals in such detail. It also represented the first international recognition that human rights and fundamental freedoms are applicable to every person everywhere. The foundation of international human rights law, the Universal Declaration, serves as a model for numerous international treaties and declarations and is incorporated in the constitutions and laws of many countries. Today, the Universal Declaration, translated into nearly 250 national and local languages, is the best known and most cited human rights document in the world.

The UDHR is remarkable in two fundamental aspects and classifies human rights as *Civil and Political Rights, and Economic, Social and Cultural Rights*.

- Civil and Political Rights include: life, prohibition of slavery, prohibition of inhuman treatment, equality before the law, prohibition of arbitrary arrest, right to marry, right to property, freedom of expression, right to assembly, right to association and right to take part in government.
- Economic, Social and Cultural Rights include the right to social security, right to an adequate standard of living and right to health.

The first two articles lay the universal foundation of human rights:

- i) Article 1 declares that “all human beings are born equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Human beings are equal because of their shared essence of human dignity; and
- ii) Article 2 recognizes the universal dignity of a life free from discrimination. “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex,

language, religion, political or other opinion, national or social origin, property, birth or other status.” Human rights are universal, not because of any State or international organization, but because they belong to all of humanity.

The two articles assure that human rights are the birthright of everyone, not privileges of a select few, nor privileges to be granted or denied by a few.

Articles 3 to 21 of UDHR set forth civil and political rights to which everyone is entitled. The right to life, liberty and personal security, recognized in Article 3, sets the base for all following political rights and civil liberties, including freedom from slavery, torture and arbitrary arrest as well as the rights to a fair trial, free speech and free movement and privacy.

Articles 22 to 27 of UDHR ensure the economic, social and cultural rights to which all human beings are entitled. The cornerstone of these rights is Article 22, acknowledging that, as a member of society, everyone has the right to social security and is, therefore, entitled to the realization of the economic, social and cultural rights “indispensable” for his or her dignity and free and full personal development. Five articles elaborate the rights necessary for the enjoyment of the fundamental right to social security, including economic rights related to work, fair remuneration and leisure, social rights concerning an adequate standard of living for health, well-being and education, and the right to participate in the cultural life of the community.

Articles 28 to 30 of UDHR provide a larger protective framework in which all human rights are to be universally enjoyed. Article 28 recognizes the right to a social and international order that enables the realization of human rights and fundamental freedoms. Article 29 acknowledges that, along with rights, human beings also have obligations to the community which enables them to develop their individual potential freely and fully. Article 30 protects the interpretation of the articles of the Declaration from any outside interference contrary to the purposes and principles of the United Nations. It explicitly states that no State, group or person can claim, on the basis of the Declaration, to have the right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth in the Universal Declaration.

In accordance with the Charter of the United Nations and the principles of humanitarian law, the UDHR was a landmark achievement in world history. Today, it continues to affect people’s lives and inspire human rights activism and legislation all over the world. Most important, the UDHR was to be a common statement of mutual aspirations — a shared vision of a more equitable and just world.

18.3.2 International Bill of Human Rights

The Commission on Human Rights, the premier human rights intergovernmental body within the United Nations, set out to translate its principles into international treaties that protected specific rights. The Member States debated the individual provisions for two decades, seeking to give explicit endorsement to certain aspects of the universality of human rights only implicitly referred to in the Universal Declaration such as the right of all peoples to self-determination, as well as reference to certain vulnerable groups such as indigenous people and minorities.

Given the unprecedented nature of the task, the United Nations General Assembly decided to draft two Covenants codifying the *two sets of rights* outlined in the Universal Declaration: Civil and Political Rights, and Economic, Social and Cultural Rights, which were adopted in 1966. The Preambles and Articles 1, 2, 3 and 5 are virtually identical in both — International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights. Both preambles recognize that human rights derive from the inherent dignity of human beings. Article 1 of each Covenant affirms that all peoples have the right of self-determination and by virtue of that right they are free to determine their political status and to pursue their economic, social and cultural development. Article 2, in both cases, reaffirms the principle of non-discrimination, echoing the UDHR. Article 3 stresses that States should ensure the equal right of men and women to the enjoyment of all human rights. Article 5 of both Covenants echoes the final provision of the UDHR, providing safeguards against the destruction or undue limitation of any human right or fundamental freedom.

UDHR, International Covenants on Civil and Political Rights, and International Covenants on Economic, Social and Cultural Rights together with the two Optional Protocols comprise the *International Bill of Human Rights*. Two Optional Protocols of Civil and Political Rights, and Economic, Social and Cultural Rights were adopted in 1976. These Optional Protocols elaborate certain provisions of the Covenant on Civil and Political Rights, one providing for complaints by individuals, the other advocating the abolition of the death penalty.

International Bill of Human Rights elaborate fundamental rights and freedoms such as: prohibition of slavery and genocide, humanitarian law, the administration of justice, social development, religious tolerance, cultural cooperation, prevention of discrimination, violence against women, and the status of refugees and minorities. The following *four Conventions*, relating to racial discrimination, torture, women and children, are considered core human rights treaties, together with the two International Covenants. The *International Covenant on Civil and Political Rights* created an agency, the *Human Rights Committee* to promote participation with its standards; the committee expresses opinions as to whether a particular practice is a human rights violation, although these reports are not legally binding.

18.3.3 Vienna Declaration on Human Rights 1993

To celebrate International Year for Human Rights and to mark the twentieth anniversary of the UDHR, International Conference on Human Rights was convened in Tehran, Iran. After evaluating the impact of the Universal Declaration on national legislation and judicial decisions, the Conference approved the Proclamation of Tehran, which formulated a programme for the future, addressing the problems of colonialism, racial discrimination, illiteracy and the protection of the family. The Tehran Proclamation emphasized particularly the principle of non-discrimination, condemning the policy of apartheid as a “crime against humanity”, and urged the international community to ratify the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights adopted by the United Nations two years earlier.

World Conference on Human Rights, convened in Vienna in 1993, reassessed the progress of United Nations human rights work over the years. The Vienna Conference was marked by an unprecedented degree of support by the international community. There was broad consensus that, with fundamental rights codified and the essential machinery in place, it was time to implement the established human rights standards and norms with greater vigilance.

- Vienna Declaration and Programme of Action reaffirmed the centrality of the Universal Declaration for human rights protection, and recognized, for the first time unanimously, the right to development as an inalienable right and an integral part of international human rights law. The Conference emphasized that, as human rights are universal and indivisible as well as interrelated and interdependent, they should be promoted in equal manner. The delegates rejected arguments that some human rights were optional or subordinate to cultural traditions and practices. The Vienna Conference, thus, gave high priority to preserving the integrity of the Universal Declaration.
- The Vienna Declaration stressed that the protection and promotion of human rights are the “first responsibility” of Governments. It recognized democracy as a human right, thus strengthening the promotion of democracy and the rule of law. Also, giving high priority to the universal ratification of international human rights treaties the World Conference urged States especially to ratify promptly the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Similarly, the Conference took innovative steps to protect the rights of vulnerable groups and to bring women’s rights into the mainstream of United Nations human rights work, supporting the establishment of a Special Rapporteur on violence against women and calling for an international decade of the world’s indigenous peoples.
- The World Conference on Human Rights further emphasised the importance of humanitarian assistance to victims of all natural and man-made disasters. The world conference also expresses its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. The World Conference on Human Rights welcoming the early ratification of the Convention on the Rights of the Child stresses that the child, for the full and harmonious development of his or her personality, should grow up in a family environment which accordingly merits broader protection. Special attention needs to be paid to ensure non-discrimination and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society.
- The World Conference on Human Rights reaffirmed that the importance and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, and their role in remedying human rights violations, in the dissemination of human rights information, and in appropriate human rights education. The World Conference also reiterated the need to consider the possibility for establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already

exist. The conference recognized the important role of Non-Governmental Organisations in the promotion of human rights and in humanitarian activities at national, regional and international levels. It appreciated their contribution to increasing public awareness of human rights issues and to the conduct of education, training and research in their fields for promoting and protecting all human rights and fundamental freedoms.

- The Vienna Declaration and Programme of Action provided the international community with a new framework of planning, dialogue and cooperation that enables an integrated approach to promoting human rights. The recognition of the interdependence between democracy, development and human rights, for example, laid the groundwork for increased cooperation among international development agencies and national organizations in promoting human rights. The Vienna Declaration states, for the first time explicitly, that all organs, programmes and specialized agencies of the United Nations system should have a central role in strengthening human rights. Its key institutional recommendation, however, was the establishment of the post of United Nations High Commissioner for Human Rights to coordinate all human rights activities system-wide. The World Conference also called for a comprehensive five-year review of the progress made in the implementation of the Vienna Declaration and Programme of Action in 1998. This review coincides with the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights.

18.3.4 International Human Rights Documents: Specific Fields

In furtherance of the recognition of human rights in various aspects, both in international and national arena, the United Nations General Assembly has adopted some prominent human rights conventions on diversified fields. We present brief details of some of these conventions.

- 1) ***International Convention on the Elimination of All Forms of Racial Discrimination:*** This convention was a ground-breaking treaty defining and condemning racial discrimination. Calling for national measures towards the advancement of specific racial or ethnic groups, the Convention also makes the dissemination of ideas based on racial superiority or inspiring racial hatred punishable by law.
- 2) ***Convention on the Elimination of All Forms of Discrimination against Women:*** It specifies measures for the advancement and empowerment of women in private and public life, particularly in the areas of education, employment, health, marriage and the family.
- 3) ***Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:*** This Convention bans torture, rape and weapons of war. In 1998, in a major effort to help torture victims and to step up international attempts to end torture, the United Nations declared 26 June as the *Annual International Day in Support of Victims of Torture*.
- 4) ***Convention on the Rights of the Child:*** It is the most universally ratified human rights Convention. Only two Member States, the United States and Somalia, are not yet parties to the Convention, which protects children, among other things, from economic and sexual exploitation. Some 14 States

have incorporated provisions of the Convention on the Rights of the Child into their constitutions, while 35 have passed new laws conforming to the Convention or amended laws related to child abuse, child labour and adoption. Other Member States have extended the length of compulsory education, guaranteed child-refugees and minority-children special protection or reformed juvenile justice systems, as stipulated by the Convention.

18.3.5 International Human Rights Agencies

Human Rights instruments are only one part of the UN's human rights programme. In fact, the UN has several agencies and courts, independent of its human rights declarations, covenants and protocol to address continuing human rights abuses. There are three notable agencies under the UN system to verify an effective implementation of the human rights declarations.

18.3.5.1 United Nations Commission on Human Rights

The Commission on Human Rights has been the central architect of the work of the United Nations in the field of Human Rights. It was established by the resolution of the Human Rights Council. The very role of Commission is to prepare the reports regarding the provisions of International Bill of Human Rights, International Covenants and Declarations on civil liberties, the status of women, the freedom of information, the prevention of discrimination on the grounds of race, sex, colour, language, religion and other matters concerning the human rights. The commission shall assist the Economic and Social Council in the coordination of activities concerning the human rights in the United Nations system.

18.3.5.2 The High Commissioner for Human Rights

To respect the recommendations of the World Conference on Human Rights, 1993 the United Nations General Assembly established the Office of the High Commissioner for Human Rights as part of the UN Secretariat. The OHCHR coordinates many human rights activities within the UN, working closely with treaty bodies such as the *Human Rights Committee*, and other UN agencies such as the *Human Rights Council*. The High Commissioner assists in the development of new treaties and procedures, sets the agenda for human rights agencies within the UN, and provides advisory services to governments. Most importantly, the High Commissioner serves as a full-time advocate for human rights within the United Nations. The OHCHR also has field offices throughout the world, including offices in Central Asia, East and Southern Africa, the Pacific, Latin America, and the Middle East.

The following are the functions of the United Nations High Commissioner for Human Rights:

- a) Promotes universal enjoyment of all human rights by giving practical effect to the will and resolve of the world community as expressed by the United Nations;
- b) Plays the leading role on human rights issues and emphasises the importance of human rights at the international and national levels;
- c) Promotes international cooperation for human rights;

- d) Stimulates and coordinates action for human rights throughout the United Nations system;
- e) Promotes universal ratification and implementation of international standards;
- f) Assists in the development of new norms;
- g) Supports human rights organs and treaty monitoring bodies;
- h) Responds to serious violations of human rights;
- i) Undertakes preventive human rights actions;
- j) Promotes the establishment of national human rights infrastructure;
- k) Undertakes human rights field activities and operations; and
- l) Provides education, information, advisory services and technical assistance in the field of human rights.

18.3.5.3 The Human Rights Council

UN Human Rights Commission was replaced by a new Human Rights Council in 2006. The Council consists of 47 members, elected directly and individually by the General Assembly with membership based on equitable geographic distribution. Council members serve terms of three years, with a limitation of no more than two consecutive terms. Procedures for Council membership are aimed at keeping countries with very poor human rights records off the Commission. Members must be elected by an absolute majority of the General Assembly, requiring 96 votes in a secret ballot, rather than a simple majority of General Assembly members present. The new Council's responsibilities include: promoting universal respect for the protection of all human rights, addressing gross human rights violations, making recommendations to the General Assembly, and responding promptly to human rights emergencies.

The Council's other responsibilities include providing direct assistance to UN member states to help them meet their human rights responsibilities through communication, technical assistance, and capacity building. The General Assembly also acts as a check on the Council, with the ability to suspend Council members whose countries commit gross human rights violations. The Council will meet no fewer than three times per year with the ability to hold special sessions when necessary. For now, the Council will adopt the procedures and responsibilities of the Human Rights Commission, but has a year-to-year review and change them.

18.3.6 Non-Governmental Organizations

The Non-Governmental Organisations (NGOs) of the world play major role in protecting human rights. The NGOs had to fight to secure representation in the UN after several years. NGOs without Borders are extremely active at the international level in the areas of human rights, war crimes, and humanitarian aid. NGOs allow for collaborations between local and global efforts for human rights by "translating complex international issues into activities to be undertaken by concerned citizens in their own community." The functions of international NGOs include: investigating complaints, advocacy with governments and international governmental organizations, and policy making.

Although NGOs do not have the authority to implement or enforce international law, they have several advantages when compared to State organizations in the human rights system. Much of their work includes: information processing and fact finding, in which NGOs educate people about their human rights and gather information regarding human rights abuses in violating countries. In this process NGOs have the benefit of access to local people and organizations and are often able to get direct and indirect access to critical information about current human rights violations. Once NGOs gather information, they can design campaigns to educate the international community of these abuses.

A key function of NGOs is *advocacy* — urging support for human rights and attempting to influence governments or international groups with regard to specific actions. Advocacy involves education, persuasion, public exposure, criticism and provoking specific responses to human rights abuses. Representatives of NGOs are seen everywhere in the international human rights system. Many international human rights NGOs attend and often participate in the meetings of UN human rights bodies. They provide information about human rights situations through their reports and testimony. They shape the agendas, policies, and treaties of the UN through participation and lobbying. Notable examples include NGO involvement in the development of the Universal Declaration of Human Rights and the UN Declaration on Torture and Other Cruel, Inhuman or Degrading Treatment.

Success in promoting human rights requires hard-to-achieve tasks including building responsive and non-corrupt governments, increasing economic productivity, improving the power and status of women and managing international tensions and conflicts. Realizing human rights worldwide is a project for centuries, not decades. The NGOs often publish reports condemning human rights violations throughout the world. NGOs with affiliates around the world include: *Amnesty International*, *Red Cross Society*, *Human Rights Watch*, *the International Commission of Jurists*, *the International Federation of Human Rights*, *Minority Group Rights*, *Doctors without Borders*, and *Oxfam*. Besides these high profile NGOs there are thousands of local and national organizations working on human rights issues.

Here, to provide you an idea of the kinds or types of role they can play, we just make a brief mention about *Amnesty International* and *Red Cross Society*.

- ***Amnesty International:*** It is the world's largest voluntary organization fighting for human rights. Its service is to free the prisoners from ill-treatment or inhuman treatment and torture. It has *three main aims* — the immediate release of all prisoners of conscience, the fair and prompt trials for all political prisoners, and the prevention of torture and executions. To achieve these aims, it follows simple methods of applying pressure on governments and authorities who are behaving unjustly. In 1983, it published Twelve-point plan for the prevention of torture. The members of Amnesty International are committed, idealistic and realistic.
- ***Red Cross Society:*** It was originally founded by Jean Henry Duant to help the wounded in the battle field. Red Cross and Red Crescent are recognized all over the world as symbols of aid and relief. Now, it is called International Committee for Red Cross movement. The fundamental principles of

International Red Cross and Red Crescent Movement are: Humanity, Impartiality, Neutrality, Independence, Voluntary service, Unity and Universality. It has also an extended area of activities including welfare of prisoners of war, war victims of civil war, health care to the wounded in the war, and helping the disabled people.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

4) What are the important agencies of United Nations that play crucial role in protecting Human Rights?

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5) Explain the role of United Nations Commission on Human Rights in protecting the human rights.

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6) What are the powers and functions of the Human Rights Council?

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7) What are the aims of Amnesty International?

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18.4 NATIONAL FRAMEWORK OF HUMAN RIGHTS

In India, the concept of Human Rights has received a set-back during the medieval period with invasions of Muslim rulers who followed a policy of discrimination against Hindus. Removal of social and economic inequality remains the greatest challenge for our government even today. As a result, our legislators and political leadership have to ceaselessly strive to address these challenges.

18.4.1 Pre-Independence Efforts

In India, the significance of human rights has, however, been recognized much before the international initiatives. Let us analyse the same in detail.

Practices of Ashoka: Following seven practices of Ashoka inspire the human beings to promote and protect not only human rights but also natural rights of animals.

- 1) Non-slaughter of breathing creatures.
- 2) Non-injury to the existing creatures.
- 3) Heartening to the words of parents.
- 4) Heartening to the words of elders.
- 5) Reverence to the teachers.
- 6) Simple behaviour towards the Brahmana and Sraman ascetics and slaves.
- 7) Small expense or necessary expenditure and small savings indicating the ethical way of spending and saving.

Motilal Nehru Committee: The Indian National Congress which was vanguard of freedom struggle took the lead to demand for fundamental freedoms, and civil and political rights of the people. The first explicit demand of the people of Indian sub-continent for fundamental rights was prepared by Indian National Congress in 1895. It is described as Home Rule Document. The document guarantees every one basic human right including fundamental freedom of expression, inviolability of one's own home, right to property and equality before law. In 1918, Indian National Congress demanded for a Declaration of the Rights of People of India on par with British Citizens. It guarantees equality before law, protection of life, personal liberty, property, freedom of speech and press, and right to form association. Delhi Declaration declared the Principles of Self Determination as one of the basic rights. The recommendations of the Motilal Committee include:

- Personal liberty, inviolability of dwelling-place and property;
- Freedom of conscience and profession and practice of religion subject to public order and morality;
- Right to free expression of opinion, to assemble peacefully and without arms, and to form association and union subject to public order, morality and decency;
- Right to free elementary education, and equality in the matter of admission into any educational institution maintained and aided by the State, without distinction of caste and creed;

- Equality for all citizens to the law and civil rights;
- Right to every citizen to seek redress from the courts;
- Protection of respect in punishment under ex-post-facto law;
- Non-discrimination against any person on grounds of religion, caste or creed in the matter of public employment, office or power in honour and in the exercise of any trade or callings;
- Equality of right to all citizens in the matter of access to and use of public roads, wells and other places of public resort;
- Freedom of combination and association for the maintenance and implementation of labour and economic conditions;
- Right to keep and bear arms in accordance with regulations; and
- Equality of rights to men and women as citizens.

Nevertheless, the Simon Commission totally rejected the demands voiced by the Motilal Nehru Committee Report.

18.4.2 Human Rights and Constitution of India, 1950

The Indian culture has been the product of assimilation of diverse cultures and religions that came into contact with the enormous Indian sub-continent over time. The international community has recognised the growing importance of strengthening national human rights institutions.

The Constitution of India which came into effect in 1950, incorporated “Fundamental Rights” of the citizens, though it does not directly authorise any Article on Human Rights. Preamble and Part III categorically describe and encompass different aspects of Human Rights, amongst others. Preamble unequivocally highlights justice (social, economic and political), liberty (of thought, expression, belief, faith and worship), equality (of status and of opportunity) and, to promote among all the citizens fraternity assuring the dignity of the individual. Articles 14 to 32 of the Constitution lay various fundamental rights including, equality before law and equal protection of laws with some exception relating to protective discrimination. Article 17 describes abolition of untouchability. Article 19 is a well known for fundamental freedoms — of speech and expression, to assemble, to form association, to roam and move throughout the territory of India and to carry out any trade, commerce, profession, occupation and so on. These fundamental freedoms are, however, not absolute where the appropriate governments can impose reasonable restrictions on the grounds of public order, morality, decency and friendly relations among people of the nation. These fundamental freedoms are possible only to the citizens of India.

Articles 20, 21 and 22 are bedrock of the Constitution of India which ensures right to life, livelihood and personal liberty. Articles 23 and 24 categorically direct the government to take appropriate measures to abolish bonded labour and slavery in India. Articles 25–28 recognise fundamental freedom of religion. Articles 29 and 30 assure the rights of all minority castes, languages, religions and cultures. Article 32 is the heart and soul of the constitution which emphasises that any affected person can approach the supreme court for enforcement of fundamental right. The justiciability of fundamental rights is itself guaranteed under the Indian Constitution. The responsibility for the enforcement of the

fundamental rights lies with the Supreme Court by virtue of Article 32, and with the High Courts by virtue of Article 226.

18.4.3 Human Rights Act, 1993

The Government of India did realize the need to establish an independent Act in conformity with the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights in view of the fact that India has become a party to these Covenants by ratifying them. To reassure the constitutional directions, judicial decisions and international bill of human rights the Parliament enacted Human Rights Act, 1993. The Human Rights Act (in India) contains broad provisions relating to definition human rights and Human Rights Commissions with their functions and powers, composition and other related aspects. Section 2(d) of the Act defines human rights as rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by Courts in India. The Act also authorizes the government to establish autonomous National and State Human Rights Commissions, thus, reflecting its commitment for effective implementation of human rights.

Let us look at the details related to the constitution, composition, powers and functions of these Commissions.

18.4.3.1 National Human Rights Commission

Chapter II and *Chapter III* of the Human Rights Act, 1993 deals with various significant aspects of National Human Rights Commission. We present the same here.

Constitution of National Human Rights Commission (Section 3): It is as follows.

- 1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.
- 2) The Commission shall consist of:
 - a) *Chairperson* - Chief Justice of the Supreme Court;
 - b) *Members* - who is or has been, a Judge of the Supreme Court;
 - who is, or has been, the Chief Justice of a High Court;
 - two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.
- 3) The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be *deemed to be Members* of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.
- 4) *Secretary-General* - who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

- 5) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

Appointment of Chairperson and other Members (Section 4): It is as follows.

- 1) The Chairperson and other Members shall be appointed by the President by warrant under his hand and seal.

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of:

- a) *Chairperson* - The Prime Minister,
- b) *Members* - Speaker of the House of the People,
 - Minister in-charge of the Ministry of Home Affairs in the Government of India
 - Leader of the Opposition in the House of the People,
 - Leader of the Opposition in the Council of States,
 - Deputy Chairman of the Council of States.

Provided further that, no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

- 2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee.

Removal of a Member of the Commission (Section 5): It provides as follows.

- 1) Subject to the provisions of Sub-section (2), the Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.
- 2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be:
 - a) is adjudged an insolvent; or
 - b) engages during his term of office in any paid employment outside the duties of his office: or
 - c) is unfit to continue in office by reason of infirmity of mind or body; or
 - d) is of unsound mind and stands so declared by a competent court; or
 - e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

Term of office of Members (Section 6): It is as follows.

- 1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

- 2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years.
 - Provided that no Member shall hold office after he has attained the age of seventy years.
- 3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.

Member to act as Chairperson or to discharge his functions in certain circumstances (Section 7): It is as follows.

- 1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.
- 2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Terms and conditions of service of Members (Section 8): The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed. Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

Vacancies, etc., not to invalidate the proceedings of the Commission (Section 9): No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

Procedure to be regulated by the Commission (Section 10): It provides as follows.

- 1) The Commission shall meet at such time and place as the Chairperson may think fit.
- 2) The Commission shall regulate its own procedure.
- 3) All orders and decisions of the Commission shall be audited by the Secretary-General or any other officer of the Commission duly authorised by the Chairperson in this behalf.

Officers and other staff of the Commission (Section 11): These include the following.

- 1) The Central Government shall make available to the Commission:
 - an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and
 - such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.

- 2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.
- 3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section 2) shall be such as may be prescribed.

Functions of the Commission (Section 12): The Commission shall perform all or any of the following functions, namely:

- a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of:
 - violation of human rights or abetment thereof, or
 - negligence in the prevention of such violation, by a public servant;
- b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
- d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- g) undertake and promote research in the field of human rights;
- h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights; and
- j) such other functions as it may consider necessary for the protection of human rights.

Powers relating to inquiries (Section 13): These are as follows.

- 1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely:
 - summoning and enforcing the attendance of witnesses and examine them on oath;
 - discovery and production of any document;
 - receiving evidence on affidavits;

- requisitioning any public record or copy thereof from any court or office;
 - issuing commissions for the examination of witnesses or documents; and
 - any other matter, which may be prescribed.
- 2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.
 - 3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.
 - 4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.
 - 5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Investigation (Section 14): It is as follows.

- 1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.
- 2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section 1) may, subject to the direction and control of the Commission:
 - a) summon and enforce the attendance of any person and examine him;
 - b) require the discovery and production of any document; and
 - c) requisition any public record or copy thereof from any office.

- 3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section 1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.
- 4) The officer or agency whose services are utilised under sub-section 1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.
- 5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section 4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

Statement made by persons to the Commission (Section 15): No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

- Provided that the statement:
 - a) is made in reply to the question which he is required by the Commission to answer; or
 - b) is relevant to the subject matter of the inquiry.

Persons likely to be prejudicially affected to be heard (Section 16): If, at any stage of the inquiry, the Commission:

- a) considers it necessary to inquire into the conduct of any person; or
- b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence.

- Provided that nothing in this section shall apply where the credit of a witness is being impeached.

Now, we present to you the *procedure that the National Human Rights Commission follows*. It is dealt with in Chapter IV of the Human Rights Act, 1993 and is as follows.

Inquiry into complaints (Section 17): The Commission while inquiring into the complaints of violations of human rights may:

- i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it;

Provided that:

- if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

- if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;
- ii) without prejudice to anything contained in clause i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

Steps after inquiry (Section 18): The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:

- 1) where the inquiry discloses, violation of human rights or negligence in the prevention of violation of human rights by a public servant, the commission may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action, as the Commission may deem fit against the concerned person or persons;
- 2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- 3) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
- 4) subject to the provisions of clause 5), provide a copy of the inquiry report to the petitioner or his representative;
- 5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;
- 6) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

Procedure with respect to armed forces (Section 19): It is as follows.

- 1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely:
 - a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;
 - b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.
- 2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.
- 3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.

- 4) The Commission shall provide a copy of the report published under sub-section 3) to the petitioner or his representative.

Annual and special reports of the Commission (Section 20): These are as follows.

- 1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.
- 2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

18.4.3.2 State Human Rights Commission

Chapter V of the Human Rights Act categorically describes the various aspects of State Human Rights Commissions.

Constitution of State Human Rights Commissions (Section 21): It is as follows.

- 1) A State Government may constitute a body to be known as the (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.
- 2) The State Commission shall consist of:
 - a) *Chairperson* — Chief Justice of a High Court;
 - b) *Members* — who is, or has been, a Judge of a High Court;
— one Member who is, or has been, a district judge in that State;
— two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.
- 3) *Secretary* - who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.
- 4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.
- 5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:
 - Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter;

- Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures “List II and List III in the Seventh Schedule to the Constitution”, the words and figures “List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws” had been substituted.

Appointment of Chairperson and other Members of State Commission (Section 22): It is as follows.

- 1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:
 - Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of:
 - *Chairperson* — The Chief Minister;
 - *Members* — Speaker of the Legislative Assembly;
 - Minister in-charge of the Department of Home, in that State;
 - Leader of the Opposition in the Legislative Assembly.
 - Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee.
 - Provided also that no sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.
- 2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy in the Committee.

Removal of a Member of the State Commission (Section 23): It provides as follows.

- 1) Subject to the provisions of sub-section (2), the Chairperson or any other member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.
- 2) Notwithstanding anything in sub-section 1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be:
 - a) is adjudged an insolvent; OR
 - b) engages during his term of office in any paid employment outside the duties of his office; OR
 - c) is unfit to continue in office by reason of infirmity of mind or body; OR
 - d) is of unsound mind and stands so declared by a competent court; OR
 - e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

Term of office of Members of the State Commission (Section 24): It is as follows.

- 1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier;
- 2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years;
 - Provided that no Member shall hold office after he has attained the age of seventy years.
- 3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.

Member to act as Chairperson or to discharge his functions in certain circumstances (Section 25): It provides as follows.

- 1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.
- 2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Terms and conditions of service of Members of the State Commission (Section 26): The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed by the State Government.

- Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

Officers and other staff of the State Commission (Section 27): These are as follows.

- 1) The State Government shall make available to the Commission:
 - a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and
 - b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.
- 2) Subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

- 3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section 2) shall be such as may be prescribed by the State Government.

Annual and special reports of State Commission (Section 28): These include the following.

- 1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.
- 2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the sections, if any.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under "Answers to 'Check Your Progress' Questions".

- 8) Highlight the constitutional provisions aimed at protection of the Human Rights in India.

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- 9) Explain the steps that the Commission on Human Rights takes after completion of enquiry.

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18.5 LET US SUM UP

Human rights now are more widely accepted than they have ever been. They have become part of the current international relations, and most countries participate in the human rights system. Human rights are no doubt inherent rights of human being. Treaties, Declarations, Conventions, etc help encourage and pressure countries to deal with their human rights problems. To make appropriate enforcement against human rights violations there are large number of institutions working at the International, Regional and National levels. Besides the contribution by the governmental agencies, there are Civil Societies and Non-Governmental Organisations which are playing remarkable role in effective implementation of Human Rights.

18.6 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) Human Rights have several distinctive characteristics that distinguish them from any other types of rights. These characteristics are as follows.
 - Human rights are universal legal guarantees.
 - Human rights belong to all human beings.
 - Human rights protect individuals and/or groups from actions and omissions of the State and some non-State actors that affect fundamental human dignity.
- 2) Based on the origin, development and usage amongst people in the international arena, generational human rights have been classified as follows:
 - *First Generational Human Rights:* Civil and Political Rights are included under this category.
 - *Second Generational Human Rights:* Include Economic and Social Rights.
 - *Third Generational Human Rights:* Environmental Protection and Right to Economic Development have been put under this category.
 - *Fourth Generational Human Rights:* Rights of the Child and Women have come under this.
- 3) The fundamental principles of human rights are: interdependency, indivisibility and inalienability.
 - *Interdependence of Human Rights:* Each right is dependent on each other right for any and all human rights to be enjoyed in reality. Thus, a state cannot deny a person any of these rights.
 - *Indivisibility of Human Rights:* All human rights form one indivisible body of norms that cannot be separated into different sets. No human right can be divided easily by any means of state action. Civil, Political and Economic rights of human beings are not easily separable from one another, and, thus, state cannot pick and choose them.

- *Inalienability of Human Rights*: Fundamental human rights are inherent rights of human being. These have interconnection with people because of their birth as human in the universe. There are no possibilities to alienate for any cause at any levels.
- 4) United Nations has several International Human Rights Agencies and courts which are independent of its human rights declarations, covenants and protocol to address human rights abuses. Human Rights instruments are just part of the UN's human rights programme. There are three notable agencies under the UN system through whom it plays its role including verification of effective implementation of the human rights declarations. They are: i) United Nations Commission on Human Rights, ii) The High Commissioner for Human Rights, iii) The Human Rights Council.
 - 5) The Commission on Human Rights has been the central architect of the work of the United Nations in the field of Human Rights. It was established by the Resolution of the Human Rights Council. The very role of Commission is to prepare the reports regarding the provisions of International Bill of Human Rights, International Covenants and Declarations on civil liberties, the status of women, freedom of information and similar matters, the prevention of discrimination on grounds of race, sex, colour, language, religion and other matters concerning the human rights. The commission shall assist the Economic and Social Council in the coordination of activities concerning the human rights in the United Nations system.
 - 6) UN Human Rights Council's responsibilities include: promoting universal respect for the protection of all human rights, addressing gross human rights violations, making recommendations to the General Assembly, and responding promptly to human rights emergencies. The Council's other responsibilities include providing direct assistance to UN member states to help them meet their human rights responsibilities through communication, technical assistance, and capacity building. The General Assembly also acts as a check on the Council, with the ability to suspend Council members whose countries commit gross human rights violations. The Council will meet no fewer than three times per year with the ability to hold special sessions when necessary. For now, the Council will adopt the procedures and responsibilities of the Human Rights Commission, but has a year-to-year review and change them.
 - 7) Amnesty International is the world's largest voluntary organization fighting for human rights. Its service is to free the prisoners from ill-treatment, inhuman treatment, and torture. Amnesty International has *three main aims* — the immediate release of all prisoners of conscience, fair and prompt trials for all political prisoners and the prevention of torture and executions. To achieve these aims, it follows simple methods of applying pressure on governments and authorities who are behaving unjustly. In 1983, it published Twelve-point plan for the prevention of torture. The members of Amnesty International are committed, idealistic and realistic.
 - 8) Articles 21 and 22 are bedrock of the Constitution of India which ensures right to life, livelihood and personal liberty. Persons who are arrested have certain rights – both at the time of arrest and immediately thereafter – which are inherent in Articles 21 and 22(1) of the Constitution. The Supreme Court

has observed in several decisions that these rights are to be recognised and scrupulously protected. Articles 23 and 24 categorically direct the government to take appropriate measures to abolish bonded labour and slavery in India. Articles 25–28 recognise fundamental freedom of religion. Articles 29 and 30 assure the rights of all minority castes, languages, religions and cultures. Article 32 is the heart and soul of the constitution which emphasises that any affected person can approach the Supreme Court for enforcement of fundamental right. The justiciability of fundamental rights is itself guaranteed under the Indian Constitution. The responsibility for the enforcement of the fundamental rights lies with the Supreme Court by virtue of Article 32, and with the High Court by virtue of Article 226.

- 9) The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:
- i) where the inquiry discloses violation of human rights or negligence in the prevention of violation of human rights by a public servant, the commission may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
 - ii) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
 - iii) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
 - iv) subject to the provisions of clause v), provide a copy of the inquiry report to the petitioner or his representative;
 - v) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;
 - vi) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

18.7 REFERENCES

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