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## **UNIT 14: RIGHTS AND UNIVERSALITY (ARE HUMAN RIGHTS UNIVERSAL?)\***

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### **14.0 OBJECTIVES**

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This unit will introduce and explain the concept of human rights. After studying this unit, you should be able to:

- Explain the meaning of human rights
- Know various types and characteristics of human rights
- Analyze some of their limitations and shortcomings

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### **14.1 INTRODUCTION**

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The idea of human rights is not new and its roots can be found even in the ancient times. The defence of human rights is visible from the Babylonian laws to Upanishads. They are norms which intend to protect all people from severe political, social, and legal abuses without any type of discrimination.

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Article 1 of the United Nations Declaration of Human Rights (UDHR) says all human beings are born free and equal in dignity and rights. Existence of human rights conveys that there are some universally applicable standards of justice and in this sense; they may compete with state sovereignty. Another important issue is whether human rights are truly universal, applicable to all individuals across diverse societies. In the succeeding paragraphs, all such important issues related to the concept of human rights are discussed in detail.

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## 14.2 CONCEPT OF HUMAN RIGHTS

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Human rights are the rights that belong to all individuals by virtue of their humanity which could potentially lead to establishment of a just society. They are capabilities and values which protect the interests of human beings around the world irrespective of distinctions like religion, race, sex, nationality, language etc. They are regarded as a secular and modern version of natural rights. *Susan Moller Okin* says human rights are claims to something of crucial importance to human life. *Scot Davidson* connects human rights with protection of human beings from government in certain areas of their lives and creation of those social conditions by the state in which individuals can attain their fullest potential. Under human rights, the individuals are the rights holders while government and society are the duty bearers. Here, the government and society are duty bound not to infringe upon the rights of individuals. In fact, government should ensure that human rights can be enjoyed by various individuals through domestic legislation. Human rights place human beings at the centre of domestic and international governance. Here, it is important to mention the relationship between human rights and human security. According to the UN Commission on Human Security, the concept of human security seeks to protect the vital core of all human lives in ways that enhance human freedoms and human fulfilment. The relationship between human security and human rights is complementary and interdependent. They mutually reinforce each other as human security identifies the rights at stake in a particular situation while human rights help in promotion of human security. The objectives of both, human rights and human security overlap. The threats like war and conflict which lead to human insecurity also hinder enjoyment of human rights. Hence, protecting and promotion of human rights is also the basis for promotion of human security.

### 14.2.1 Justifications for Human Rights

Human rights exist at both, international and national levels. Various treaties at international level have turned human rights into international law. At the national level, human rights exist through decisions of judiciary, legislations and customs. For ex, the US constitution prohibits slavery and servitude. One justification for human rights is that they are inherent to human beings as they are God-given. The US Declaration of Independence says that people have

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been endowed by their creator with natural rights to life, liberty and pursuit of happiness. Others believe that human rights are part of human morality based on reason and value. For ex, there is consensus that intentional murder of an innocent person should not be committed by anyone. The interest theory approach argues that the main function of human rights is to protect and promote necessary human interests. Its objective is to find biological and social prerequisites which allow human beings to lead a minimally good life. The universality of human rights is based on indispensable and some basic attributes for human welfare across all cultures, for ex, need for food. According to philosopher *John Finnis*, human rights are justifiable for their instrumental value to secure essential conditions for human well-being. On the other hand, the will theory approach argues that human rights are valid because of a single human attribute – the capacity for freedom. Its proponents argue that what is distinctive about human beings is the capacity for freedom and this should form the core of any set of rights.

A number of other justifications exist for human rights – dignity, fairness and equality etc. Yet another view highlights the political role of human rights. In his book, *The Law of Peoples (1999)*, *John Rawls* has discussed human rights from a political perspective. He argued that human rights are a special class of urgent rights which are universal and plural, like right to security, formal equality before law, personal property etc. Rawls has a limited concept of human rights and many fundamental freedoms were left out by him because he wanted a list that could be reasonable for all the countries and not just the liberal democracies. His idea of human rights sets limits on international toleration and any society that does not guarantee the list of rights given by Rawls crosses the limit of toleration. He has argued for economic sanctions and even military intervention against such a government. According to *Charles Beitz*, human rights are basic requirement of global justice and they are conditions that all societies should strive to achieve. Outside corrective interference is justified if a government did not fulfil human rights despite having means to do so. If a country lacks local resources to achieve human rights, other countries should assist it.

### Check Your Progress Exercise 1

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What do you understand by human rights?

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### 14.3 HISTORICAL DEVELOPMENT

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The expression, human rights may be relatively new as it became popular after the Second World War. However, the foundations of modern discourse on human rights can be seen in the natural law tradition from antiquity. The origin of human rights can be traced to ancient Rome and Greece, where it was present in the ideas of Stoicism. Stoics believed that the human conduct should be in harmony with the law of nature and should be judged on this basis. Stoics believed that nature had given all individuals the capacity to reason and they have an obligation to treat one another with respect. They saw the slave and the slave owner as equals demonstrating equality of all human beings. According to *Ulpian*, a Roman jurist, all men were born free and equal as per the law of nature. *Cicero* and *Seneca* argued for universal community of world citizens. *Plato* had made one of the earliest attempts to have universal ethical standards by making a distinction between just and unjust, good and evil and truth and untruth. *Aristotle* also contributed to the natural law tradition as he examined the value of justice and virtue in the political community. In the medieval and the Greco-Roman times, natural law was mainly concerned with duties of man instead of his rights. *Aristotle* and *St. Thomas Aquinas* recognized the legitimacy of serfdom and slavery. By doing so, the most important idea behind human rights was excluded – liberty or freedom and equality. It was only after the Middle Ages that natural law was associated with natural rights. The idea of human rights as natural rights became a reality due to some social changes in Europe, beginning with decline of European feudalism from 13<sup>th</sup> century. It continued through Renaissance to the Treaty of Westphalia in 1648. In this period, there was resistance to religious intolerance, economic and political bondage while there was commitment to individual expression which shifted focus of natural law from duties to rights. This change was visible as Magna Carta (1215), the Petition of Right (1628) and the English Bill of Rights (1689) came into existence. Supported by political philosophers like *Hugo Grotius*, *Thomas Hobbes* and *John Locke*, natural rights were natural in the sense that they were God-given and therefore, were part of the human nature. They were not simply moral claims but were the basic conditions to lead a truly human existence. Grotius argued that natural law is independent of God and it cannot be changes or abrogated by the will of an omnipotent being. Natural law was the basis of his ideas on international law.

In the late 17<sup>th</sup> century, the era of enlightenment began in Europe, which emphasised rationality. The idea of rights of man was developed by enlightenment thinkers which were in sync with human rights and these rights constituted an autonomous sphere which belonged to the citizens.

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Feminists later expanded this idea to include rights of women as well. The enlightenment theorists highlighted that the power of kings should be limited and based on the consent of those who are governed. They also argued that the king should respect the rights of their subjects. *Thomas Hobbes* has mentioned pre-social man who lives in a state of nature with others. In the state of nature, one can do anything; even harm others as there are no laws to govern and the notion of justice is also absent. All men agree for a social contract to safeguard their self-preservation. They surrender their unlimited freedom to an absolute sovereign to fulfil their basic right to security. *John Locke*, in his work, *Two Treatises of Government* (1689), refuted the idea that a king has a divine right to rule. He argued that human beings have natural rights which should not be violated by the government. He basically defended three natural rights, right to life, liberty and property. He argued for a weak government that was subordinate to the law.

These ideas had a big impact on the Western world in the 17<sup>th</sup> and 18<sup>th</sup> century. Along with the Glorious Revolution in England, these ideas also inspired the US and French revolutions. The US Declaration of Independence (1776) declared life, liberty and the pursuit of happiness as inalienable rights. Similar sentiment was expressed by the French Declaration of the Rights of Man and of the Citizen (1789). These ideas became global in the 19<sup>th</sup> and the 20<sup>th</sup> century as attempts were made to have internationally acceptable standards, generally based on humanitarianism. One of the main ideas behind internationalization of human rights was that there will be no wars if all members of all societies were equally free, an idea expressed by enlightenment and German philosopher Immanuel Kant, who argued that free societies do not fight against each other. In this regard, a number of conventions were held to outlaw slavery at the international level while the Hague Convention (1907) and Geneva Convention (1926) laid down the rules to regulate the conduct of war. After the Second World War, the UN adopted the Universal Declaration of Human Rights (UDHR) in 1948. It was later supplemented by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economics, Social and Cultural Rights (ICESCR) in 1966. They have acquired the status of customary international law. The UDHR in 1948 came exactly after 300 years of the Treaty of Westphalia. In these 300 years, state sovereignty was unchallenged in international politics, but human rights started an era where there have been tensions between state sovereignty and human rights.

### Check Your Progress Exercise 2

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Discuss John Locke's views on natural rights.

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**14.4 NATURE OF HUMAN RIGHTS**

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Following are the characteristics of human rights.

First, human rights are fundamental which means nobody can remove entitlement of human beings to these rights. Human rights are not non-essential claims or goods, but they are fundamental in nature.

Second, these rights are indivisible as civic and political rights and economic, social and cultural rights are interrelated and carry equal importance without any hierarchy.

Third, human rights are universal in nature as they belong to human beings everywhere, irrespective of religion, language, race and other differences. Human rights are equally possessed by all human beings including the unborn in some circumstances as they are necessary to achieve social justice.

Fourth, there may be certain limitations on some of the rights of an individual because others too have similar rights. This connects rights to duties and they are not absolute.

Fifth, human rights are inalienable; the individual cannot lose these rights temporarily or permanently by bad conduct or by voluntarily giving them up.

Sixth, they are interdependent and interrelated. The fulfilment of one right often depends wholly or in part, upon the fulfilment of other rights. For ex, right to health could depend on right to education and information in some circumstances.

Lastly, the idea of human rights is not static but dynamic which change according to political, social and economic changes. One example is development of human rights for the people with special needs. Another example is debates around digital rights in the age of internet, which allow individuals to access internet and have rights like data protection and privacy.

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**14.5 TYPES OF HUMAN RIGHTS**

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There are three main types of human rights as given below.

**14.5.1 Civil and Political Rights**

These rights are also called first generation rights and are the earliest form of natural or human rights which were advocated by the English, the

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American and the French revolutions. These rights are based on the political philosophy of liberal individualism. That is why; these rights are more in negative terms (freedom from) than positive (right to). They can be enjoyed only if restrictions are placed on other individuals. However, all civil and political rights are not negative. For ex, the right to non-discrimination requires legislation and enforcement mechanisms from the state. Civil and political rights are mentioned in Articles 2-21 of the Universal Declaration of Human Rights including right to life, liberty and security of the person, freedom from slavery, torture, arbitrary arrest or detention etc.

### 14.5.2 Economic, Social and Cultural Rights

These rights are also called second generation rights and emphasize the socialist tradition, highlighting the social and class inequalities that arise out of the capitalist economy. They are mostly positive rights (right to), not negative rights (freedom from). These rights safeguard the exploitation of the working class and the colonial peoples from exploitation. They are highlighted in Articles 22-27 of the UDHR and cover right to social security, right to protection against unemployment and right to work. However, not all economic, social and cultural rights are positive. For ex, the right to free choice of employment does not require any affirmative action from the government. These rights are not free from criticism and many experts believe that maintenance of these rights requires material resources and political capabilities that are not possessed by many countries. Hence, they remain aspirations instead of entitlements. Also, too much of state intervention may hamper the efficiency of capitalist economies.

### 14.5.3 Solidarity or Group Rights

Another set of rights has emerged which is called solidarity or group or third generation rights. In contrast to separate individuals, these rights are held by social groups and have been shaped by the Global South perspective. They include rights like the right to political, economic, social and cultural self-determination, the right to economic and social development and the right to clean and healthy environment etc. Climate change problems pose a number of risks to human rights like right to life, health, food and housing. The consequences of climate change are already visible in a number of countries around the world. A human rights approach tries to look at the people whose lives are most affected by climate disasters. It also argues that human rights should be integrated in the policies that try to tackle climate change.

Critics of third generation rights argue that human rights focus on individuals and they will be weakened if individuals are seen in terms of group membership. Some experts believe that a fourth generation of human rights also exists that consists of women and intergenerational rights (rights of the future generations). Others believe these rights should be connected to information technology.

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What are first generation rights?

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**14.6 HUMAN RIGHTS AT INTERNATIONAL LEVEL**

After establishment of the United Nations, efforts have been made to establish an international regime for promotion and safeguarding human rights through institutions, norms and treaties. Civil society actors are also involved in this process at domestic and international levels. The UN Universal Declaration of Human Rights is at the centre of the international regime on human rights. In 1945, the UN charter had urged universal respect and observation of human rights and fundamental freedoms of all individuals. However, it did not mention the specific human rights that were to be respected by various state governments. This shortcoming was overcome by the UDHR in 1948. The UDHR is not a legally binding treaty, but it is seen as a part of customary international law and it acts as a deterrent against violation of human rights by states. Two covenants were adopted in 1966; the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economics, Social and Cultural Rights (ICESCR). This made the UDHR a legally binding human rights law. The UDHR, along with these two covenants are generally called International Bill of Human Rights. The ICCPR recognises the inherent dignity of all individuals and attempts to promote conditions within states so that their citizens can enjoy civil and political rights. The ICESCR shows commitment to promote social progress and better standards of life. Some rights that are not part of UDHR find a mention in International Covenant on Economics, Social and Cultural Rights, for ex, right of all peoples to self-determination and the right of ethnic, religious and linguistic minorities to enjoy their culture, practice their religion and use their language. In cases where there is an overlap between the UDHR and ICESCR, the latter helps to interpret the former. There are a number of other core international human rights instruments that include the International Convention on the Elimination of All Forms of Racial Discrimination (1965), Convention on the Elimination



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of All Forms of Discrimination against Women (1979), Optional Protocol to the Convention against Torture (2002) and the Convention on the Rights of Persons with Disabilities (2006).

Putting more emphasis on implementation of human rights, the UN established the Office of the UN High Commissioner for Human Rights in 1993. Its mandate is to protect and promote human rights guaranteed by international law. The high commissioner has to protect and promote all civil, political, economic, social and cultural rights, to provide advisory services and financial and technical assistance in the area of human rights to the states that request for it and to promote and coordinate activities related to human rights in the UN system. The UN also established Human Rights Council in 2006 which replaced the UN Human Rights Commission in 2006 to address violations of human rights. It has no authority apart from making recommendations to the General Assembly which in turn, can only advise the UN Security Council. A number of non-governmental organisations also play a part for promotion and protection of human rights, for ex, Amnesty International, Human Rights Watch and Human Rights Action Centre. They promote human rights by direct assistance, collecting accurate information, campaigning and lobbying and by education and awareness. Action has been also taken at regional levels to promote human rights in Europe, Africa, West Asia, the Americas and South-east Asia. The UN members in 2005 recognised the principle of the responsibility to protect (R2P) under which states have a responsibility to protect their populations against human rights violations like genocide, war crimes and ethnic cleansing. If they fail to ensure this, the states forfeit their sovereignty and the international community is responsible to protect the victims. However, this principle has become controversial for its inconsistent use and allegations of ulterior motives of the countries that intervene in a human rights crisis.

### Check Your Progress Exercise 4

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What is the principle of responsibility to protect?

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## 14.7 DEBATE OVER UNIVERSALITY OF HUMAN RIGHTS

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There is consensus in the Western countries that human rights are universal in nature. Even the UDHR states that all humans are free and equal with no distinction given to their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. However, in the non-Western countries, there are views against the universality of human rights. Supporters of such views argue that human rights are not universal, but culturally relative and cannot override cultural differences that exist between various societies around the world. A single document cannot claim to represent all individuals in the world when their experiences are so different. There are five main arguments used by various supporters who argue that human rights are culturally relative. First, the individuals who were involved in the process of drafting the UDHR were cosmopolitans having international experiences and also had certain privileges in their societies. There is a difference in the way how cosmopolitans and ordinary people interpret human rights. Second, human rights reflect Western values that put more emphasis on the individual and ignore units like social groups and families. Third, the national governments resist international norms that are against local cultural and social values or their domestic political interests. During the Cold War, the Soviet Union and many non-Western countries gave more importance to the International Covenant on Economic, Social and Cultural Rights while the Western countries were in favour of the International Covenant on Civil and Political Rights. The Helsinki Accords were signed in 1975 between the Soviet and Western bloc countries to respect human rights and fundamental freedoms. Fourth, Some rights recognised by the UDHR, like marriage and religious freedom may be against cultural norms in some non-Western countries and the policymakers in these countries interpret certain rights as Western cultural impositions. Saudi Arabia had refused to adopt the UDHR in 1948, saying that certain freedoms (like rights of men and women to marry who they choose) were against Islamic principles. The Cairo Declaration on Human Rights in Islam (1990) said that rights and all moral principles are based on divine authority instead of human authority. Lastly, it is often argued that the developing countries often cannot afford human rights as the tasks of economic development and nation building are still unfinished in such countries. Hence, they argue that authoritarianism is more efficient in promoting economic growth and development. This is the main idea behind the case of Asian values which argue that economic growth in South-east Asia is attributable to values like obedience, respect for authority and order. The argument is that human rights can be sacrificed to attain economic prosperity. For these countries, the International Covenant on Economic, Social and Cultural Rights take precedence over the International Covenant on Civil and Political Rights.

The universalists, on the other hand, have countered the claims of cultural

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relativists. First, although the universalists agree that much of the world was not represented while the UDHR was formulated, however, they highlight representation from India, China, Chile, Cuba, Panama, Lebanon and Philippines to show that people from diverse cultures and backgrounds contributed while drafting the UDHR. Also, almost two-third of the endorsing votes for the UDHR came from the non-Western countries. Second, the UDHR is not totally based on individual rights. The UDHR highlights spirit of brotherhood, community and society as well. It also recognises that an individual is constituted and sustained by relationships with others. Third, the tension between universal and local realities is not always contradictory and allows different kinds of change to emerge in certain cases. Fourth, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are like Siamese twins – inseparable and independent, sustaining and nourishing each other. Many of the civil and political rights protect groups while many of the social and economic rights protect individuals. Fifth, the culturally relative position is generally defended by authoritarian regimes to stay in power, but they do not hesitate to domestically crush their culture whenever it suits their interests. Rights are violated where there is coercion and violence. Such actions should be condemned irrespective of any traditional justification. So, the real culprit is not culture but coercion. Every religion advocates values of justice, compassion and truth etc. Former Secretary General of the UN, Kofi Annan had rightly said that the problem is not in faith, but with the faithful. Lastly, Nobel laureate Amartya Sen has highlighted there is a general agreement on policies that help economic development – openness to competition, the use of international markets, high level of literacy and school education, successful land reforms and public incentives for investment, export and industrialisation – none of them requires authoritarian government and none of them is incompatible with human rights. He has further argued that the so called Asian values often invoked to justify authoritarianism are not Asian in any sense as Asia is culturally diverse. He has highlighted that to achieve universal freedom of choice, capabilities like education are necessary. Cultural relativism will not be meaningful where it undermines the capabilities necessary to function.

Jack Donnelly says that there are four ways to approach the universal versus culturally relative human rights debate. First, through the radical cultural relativism perspective, culture is the only source of human rights. Second, the radical universalist perspective sees culture as irrelevant and there are values and rights which are relevant across time and space. Third, strong cultural relativism approach argues that rights are determined by culture, but universality of rights serves as a check on potential misuse of relativism. Fourth, the weak cultural relativism perspective says culture is an important source of rights, but allows relatively rare and strictly limited local variations and exceptions. Donnelly believes that weak cultural relativism is the best

way to reconcile the universal versus cultural relativism debate. Such an approach allows variations in form while emphasising the universal aspect. For ex, right to work requires to be recognised in all societies covering aspects like right to seek employment and right to be compensated for unemployment. However, the length and amount of unemployment could vary in different societies.

**Check Your Progress Exercise 5**

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Discuss Amartya Sen’s critique of Asian values and cultural relativism.

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**14.8 LIMITATIONS OF HUMAN RIGHTS**

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Despite their noble intentions, human rights have faced criticism as explained below.

First, universalist liberalism, which forms basis of human rights has been criticised by communitarians. They argue that individuals are not atomized and asocial; instead, they are embedded in the community which shapes their values and desires. Individual experiences cannot be separated from social context which gives them meaning. Post-modernists have criticised the enlightenment, which led to political tradition of liberalism. They argue that there are no universal values and objective truths and have emphasised fragmented and plural nature of reality.

Second, feminist critique highlights the androcentric nature of human rights, arguing that human rights reflect a masculine experience. Those who hold human rights in practice are men, not women. Gender equality and freedom from discrimination for women is given low priority in international arena. Susan Moller Okin says that respect for cultural practices should be subordinate to the requirement of women’s equality.

Third, cultural relativists portray universal nature of human rights as a form of cultural imperialism having ethnocentric tendencies. They argue that human rights are an instrument of Western political neo-colonialism.

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Fourth, the second generation rights have been criticised as their maintenance requires material resources and political capabilities that are not possessed by many countries. Hence, they remain aspirations instead of entitlements. Also, too much of state intervention may hamper the efficiency of capitalist economies. Critics of the third generation rights argue that human rights focus on individuals and they will be weakened if individuals are seen in terms of group membership.

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### 14.9 LET US SUM UP

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Human rights are the rights that belong to all individuals by virtue of their humanity. Protecting and promotion of human rights is also the basis for promotion of human security. Human rights are fundamental, indivisible, universal, dynamic, inalienable, interdependent and interrelated in nature. The universality of human rights is often questioned by some people in non-Western countries. Such position is generally defended by authoritarian regimes to stay in power, but they do not hesitate to domestically crush their culture whenever it suits their interests. Rights are violated where there is coercion and violence. Such actions should be condemned irrespective of any traditional justification. So, the real culprit is not culture, but coercion.

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### 14.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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#### Check Your Progress Exercise 1

- 1) Your answer should highlight following points

- Rights that belong to all individuals by the virtue of their humanity
- Secular and modern version of natural rights
- Relationship between human rights and human security

**Check Your Progress Exercise 2**

- 1) Your answer should highlight following points
  - Natural rights should not be violated by the government
  - Defended three natural rights, right to life, liberty and property
  - Argued for a weak government that was subordinate to the law

**Check Your Progress Exercise 3**

- 1) Your answer should highlight following points
  - Earliest form of natural or human rights
  - Advocated by the English, American and French revolutions
  - Based on the political philosophy of liberal individualism
  - Are more in negative terms (freedom from) than positive (right to)

**Check Your Progress Exercise 4**

- 1) Your answer should highlight following points
  - Recognized by UN members in 2005
  - States have responsibility to protect their populations against human rights violations like genocide, war crimes and ethnic cleansing
  - If they fail to ensure this, the states forfeit their sovereignty
  - International community is responsible to protect the victims in such cases

**Check Your Progress Exercise 5**

- 1) Your answer should highlight following points
  - Asian values often invoked to justify authoritarianism
  - They are not Asian in any sense as Asia is culturally diverse
  - To achieve universal freedom of choice, capabilities are necessary
  - Cultural relativism will not be meaningful where it undermines the capabilities necessary to function