UNIT 1  HUMAN RIGHTS — WHAT AND WHY?

Structure

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1.0 OBJECTIVES

After studying this unit, you should be able to

- explain what a human right is;
- briefly describe the history of the struggle for achieving human rights;
- list the stages that a person can go through to achieve her/his rights; and
- describe the importance of handling our rights responsibly.

1. INTRODUCTION

Starting from October, 1998, the UN has declared that the world would devote a year to the cause of the aged. What compelled such a declaration? Could it be because most of us normally ignore the needs and comforts of the old people around us? How many of us recognise their right to live a dignified life of dignity? In this Unit, we have tried to contemplate such questions of general human importance.

We begin the unit by trying to understand what a human right is. Then we go on to discuss why it is important to think and talk about human rights.

In the next section, i.e., Sec.1.3, we will elucidate some efforts through the centuries help people achieve such rights. Our aim in this section is to expose you to the important steps taken by the world community from time to time for safeguarding human rights.

In Sec.1.4, we will try and see what practical help individuals and groups obtain their rights.

And, finally, in Sec.1.5, we aim to spur you to tackle about the other side of the question, that is, the responsibilities that go with rights. Most people try and ignore this aspect, because it is easier to do so.

As you may have realised, this Unit simply aims to prepare you for a detailed study of the course material to follow. It gives you only a brief glimpse of the entire course. We hope it will get you started on considering some critical issues relating to your interaction with your family, the
While going through this Unit, you will find several CYP. i.e., Check Your Progress exercises. A CYP is meant to help you judge how far you have grasped the discussion that has gone before it. Therefore, if you really want to take up a proper study of the Unit, you must try every CYP as you come to it.

1.2 WHAT IS A HUMAN RIGHT?

Bani had just got back home after a very tiring day at her workplace. As she entered the door her husband screamed at her: "What do you mean by not coming earlier? Who do you think is going to feed me and the children?", etc. punctuated with a lot of abuse.

How often have you come across such a situation where a person is deprived of the dignity and the care that each human being has a right to? Such a right, which is basic to a human being's existence, is a human right. More specifically, human rights are what each human being is entitled to; to allow her/his the freedom to live a dignified, secure life of her/his choice. They include rights related to the safety of the person; the right to be free from coercion by other individuals, groups or governments; the right to social benefits, rest and leisure; and the right to a good basic education. There are many more such rights. But, why don't you pause for a moment now and try this question?

While answering the question above, did you include the right to life and liberty? And what about the right not to be tortured or subjected to cruel, inhuman or degrading treatment? None of these human rights pertaining to our security should ever be violated, even in a state of national emergency.

Now, look closely at your surroundings. Do you find that the rights mentioned above are not violated? What about children being slapped or abused? This continues to happen to a "weaker" person till a "stronger" person or group protests and protects them.

So, though we talk about fundamental rights that we must have, we find that people need help from various "powerful" groups to ensure that they really have these rights.

Trying the following questions may enlighten you to think more about the points discussed so far.

Have you noticed that equality is important for effective enjoyment of human rights? This means that all the citizens should be treated as equals, that all should get equal protection of law without any discrimination, and all should get equal opportunities to pursue employment in public offices. It is the duty of the state to provide free legal aid to an aggrieved party for getting justice in the court of law.

In the same way, on the macro level, all states should be treated as equals. In the absence of equality, a powerful country may oppress a weak nation.

You must have heard and read in your newspaper how small countries are being heated by stronger countries of the world.
Let us consider these categories and the movements, in brief.

1.2.1 Civil and Political Rights

As the names suggest, civil and political rights are the entitlements relating to fair and equal treatment, to justice and political freedom and to general security. Some of them are

- Freedom from slavery and torture.
- The right to life, liberty and security of person.
- Equality before the law.
- Protection against arbitrary arrest, detention or exile.
- Right to a 'fair trial.
- Right to own property.
- Right to privacy, family, home and marriage.
- Right to seek asylum in another country.
- Right to nationality.
- Freedom of religion.
- Freedom of expression.

The International Covenant on Civil and Political Rights (ICCPR) of 1966 protects these rights in normal times. This means that some of these rights can be suspended in times of 'public emergency, which threatens the life of the nation'. Of course, some of these rights, like the right to life, can never be suspended.
You will have an opportunity to study civil and political rights in more detail in some of the other units of the course.

Let us now consider the other category of human rights.

### 1.2.2 Economic, Social and Cultural Rights

Balu is a slightly mentally retarded adult. When his family tries to find a girl, they are told to forget it because even completely normal graduates are wandering about aimlessly. Isn't Balu entitled to earn a decent living?

The rights to employment and to a reasonable standard of living are what economic rights. They include access to good nutrition, health and education. In fact, these rights also include

- Right to work;
- Equal pay for equal work; and
- Right to form and join trade unions.

Another closely linked category of rights is the right to an equal social and cultural status that a person or community has. To see what this means, you may like to try the following questions.

<table>
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<th>Check Your Progress 2</th>
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<tr>
<td>1) Consider a Hindu male in his late twenties. His parents want him to marry a particular lady who is expected to bring in a large dowry. Are his other civil rights being protected? How or how not?</td>
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<td>2) Is the right to vote a human right? If so, why are children not allowed to vote?</td>
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<td>3) A wanderer, Alpha, from the so-called civilised world comes across a tribe in the interior of a jungle. Alpha is an extremely caring and courteous person, who manages to charm the locals with interesting stories, actions and gifts. After going back, he returns with other people from his country, again and again. Soon, the tribals start adopting the &quot;more civilised&quot; ways. The tribals who don't want to change are put under great social pressure to do so. In the situation above, do you see any human rights being violated? If so, which ones? What would you do if you were a member of the tribe? What would you do if you were a citizen of Alpha's nation?</td>
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<tr>
<td>4) Look at the newspapers of the week around you. Pick out from them what you think are examples of violations of human rights. Explain why you consider them to be so.</td>
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We must remember that all our claims are not necessarily human rights. Often the term 'rights' is used loosely. We may say things like "I have a right to own a car" or "I have a right to buy a dress". The point is that you can have both of these if you have money, but they are not your human rights. As you have seen and will see, human rights are protected by the law of the country, International Bill of Rights and various other national and international charters, codes, statutes, etc.

But, let us not forget that right to travel or right to clothing is a basic human right. Now that you have considered what human rights are, you must have realised why they are important for a dignified and humane existence. As you must have seen around you, and through this unit, people have had to struggle to secure such an existence. Let us have a quick look at the history of these struggles.

1.3 HUMAN RIGHTS THROUGH THE AGES

Looking at any particular period of human existence, can you think of even one example where all the people of even one community were considered equal in the eyes of the law? Hasn't some section or the other had the feeling of injustice and unfairness? This has led to struggles for equality throughout the world from time immemorial. (You will come across some details of such struggles in other units of the course.)

In India, there have been several social movements for improving the condition of women, dalits, children and other oppressed groups. However, the written laws pertaining to such changes are traceable only from the 19th century onwards. On the other hand, the struggles for rights of human beings in Western nations have been slowly transformed into written social norms over several centuries. Let us list some important landmarks in the evolution of human rights up to recent times.

1. Magna Carta (1215)
   This was a treaty between King John of England and the English noblemen who fought and got some concessions from the crown.

2. The English Bill of Rights (1689)
   This bill was instrumental in the introduction and enforcement of the common principles of law like Habeas Corpus, Due Process of Law, etc.

3. The French Declaration of the Rights of Man and of the Citizen (1789)

4. The American Bill of Rights (1791)

5. The Abolition of Sati Act (1833)
   Raja Ram Mohan Roy generated public opinion in favour of this act in India.

6. International Slavery Convention (1926)
   In this Convention, the members of the League of Nations agreed on a definition of slavery and pledged themselves to a complete abolition of slavery in all its forms. Forced or compulsory labour, it was agreed, can be exacted only for public purposes. It was subsequently adopted by the UN General Assembly in December, 1953. India is a signatory of this Convention.
1. Charter of the United Nations (signed on 26 June, 1945)
   This came into force on 24 October, 1945, which is observed as the UN Day. It seeks to
   strengthen universal peace through "promoting and encouraging respect for human rights
   and for fundamental freedom for all without distinction as to race, sex, language and
   religion." According to Article 56 of the Charter, all the member states (India included)
   must provide their nationals with a higher standard of living, and with opportunities for
   social development. It also provides for cultural and educational co-operation.

8. Universal Declaration of Human Rights (UDHR) (passed by the General Assembly on
   10 December, 1948)

9. The Geneva Red Cross Conventions (1949) and Protocols (1977)
   These include four major international treaties dealing with improving the conditions of the
   wounded and sick members of the armed forces in the battle zone, treatment of prisoners
   of war (POWs) and protection of civilians in times of war.

10. The Convention Relating to the Status of Refugees (1951)

11. International Convention on the Elimination of all Forms of Racial Discrimination
   (CERD) (1965)


   This Covenant, along with ICESCR, make the 1948 Declaration legally binding on the
   signatory states. These states are required to open the doors for international monitoring of
   human rights. The ICCPR has been signed by 121 states, and ICESCR by 123 states. The
   Indian Government has ratified both these covenants in 1979.
   **Note:** 8, 12 and 13 form the **International Bill of Rights (IBR).**

    (1979)
    The signatories to the Convention agreed to pursue policies aimed at elimination of
    discrimination against women. To this end, the states will take necessary legislative and
    other measures to establish equality between men and women, and will repeal all such laws
    as tend to discriminate against women.

    This came into force on 26 June, 1987. The basic idea is to protect a person against any
    pain or suffering (except those that are part of lawful punishments), since individual dignity
    is considered most important. There is a Committee Against Torture which monitors
    implementation of this Convention. This committee obliges every country to take effective
    legislative, administrative and other measures to prevent acts of torture. India signed this
    convention in 1998.


17. The Earth Summit at Rio (1992)

   In this conference, 171 states reaffirmed that the Universal Declaration constitutes a
"common standard of achievement for all people and all nations", they also accepted that "it is the duty of all States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."


The Indian Government passed this act. It simultaneously created the National Human Rights Commission which monitors the observance and violations pertaining to our rights.

The list above includes only crucial events which influenced the scope and direction of human rights protection. Going through the list right-up to the present times, you may have noticed that the focus of the movement is gradually becoming more specialised to include specific social groups (child, women, refugees, etc). You may also have observed that the issues relating to development (environment, population, social development, housing, etc.) are being taken up seriously.

How seriously all the nations of the world treat the issue of human rights can be judged by the fact that all the human rights agreements registered with the UN are signed by most of the members of the UN. Such universal acceptance is rarely visible on other issues.

Now, an opportunity for you to sit back and consider the long list you have just looked at.

Check Your Progress:

1) Are the two categories of rights discussed in 1.2.1 and 1.2.2 same/different? If yes, in what way?

2) Which of the following claims is not a human right? Give reasons for your answer.
   a) Right to practice your own religion.
   b) Right to have a home.
   c) Right to travel by air.
   d) A girl's right to study.

3) Can you think of some other claims which are not human rights?

4) In the list above, you would have come across some common and some distinctions. What is the difference between the two? Can you give analogous examples of such agreements between several persons instead of several states?
As you may have realised, since covenants are legally binding agreements, they would contain "measures of implementation". This, of course, leads us to the vital question: are all these legal and moral treaties enough to achieve equality?

1.4 HOW CAN ALL HUMANS ACHIEVE THEIR RIGHTS?

Ayesha lives in a city slum. Her parents are daily wagers. She has a brother and the two of them study in a primary school nearby. Every time their parents require help in their work, Ayesha has to stay away from school. Is this fair to Ayesha?

Now consider Ravi's situation. He runs a newspaper in a small town. He is now in jail because he had the courage to publish the truth about the misdeeds of the local 'benefactor'. Has Ravi been treated fairly?

Both these situations, and many others from your own experience, may help you apprehend more clearly how useful local social norms and a state's laws are for ensuring human rights.

So, when these formal and informal enforcement agencies don't work, who can a person appeal to? Can a person then complain against his/her State about violation of rights given in the Covenants?

The answer is yes if
(a) the rights violated are of a civil or political kind,
(b) the country concerned has signed the ICCPR, and
(c) the victim concerned has exhausted all legal means of redressal inside the country without success.

A person can, then, complain to the Human Rights Committee (at Geneva) under the Optional Protocol to the ICCPR. The Committee takes up the matter with the country concerned. The country's official comments are also sent to the aggrieved person. The Committee reports annually to the UN General Assembly on its activities carried out under this Protocol. Regrettably, India has not signed this Optional Protocol (April, 1999) rendering us unable to seek protection under this Protocol.

But then, what happens after the UN gets the report? Can it order a country to comply with its human rights obligations?

The UN can, and does, intervene in certain cases. For example, if a country does not allow its people the right of self-determination, political rights of participation for a democratic government, right to nationality, security of foreign nationals, etc., the UN does intervene.

The UN's intervention can be in the form of applying moral, legal or military pressure on the defaulting nation. But there are two major problems that come up.

Firstly, since the issues are so highly political, it can lead to extremely nasty and unfair treatment of different nations. This is because the intervening nations are the five holders of veto power in the Security Council. They are the only ones who are authorised to define grounds for military intervention. They often have double standards. For instance, they have not taken action against the role of Great Britain in Northern Ireland or of China in Tibet. But they have twisted the arms of Iraq, Somalia and Haiti.
Due to this factor, intervention is seen as an arbitrary action by a powerful state to increase its sphere of influence. Therefore, the pressure of the world public opinion, which used to be a great restraint on the states, has lost much of its strength.

Another problem in curtailing the violation of human rights is the acceptance of a right as such. Some people and nations argue that the rights are relative to one's own culture and tradition. What is considered human rights abuse in one view, may be accepted by some nations as law. For example, the death penalty that is still prescribed by law for some crimes in many nations is a violation of the right to life according to western liberal and most other human rights activists.

In Units 2 and 3 you shall read more about this.

In spite of the problems mentioned in this section, you have studied about some consensus having been achieved in the world about human rights. Of course, the struggle continues.

Let us now consider an aspect of human rights that is as important as achieving our rights.

1.5 RESPONSIBILITIES WITH RIGHTS

Throughout this unit, you have read about our basic entitlements and how we need to fight for them. But, what if a man comes up to you, and slaps you hard, saying that it is his right to do so – freedom of expression? This brings us to the other side of the question, which is equally, if not more, important. Do we have the maturity to handle our rights responsibly? Do we have the tolerance and honesty to allow everybody a fair deal? I do have the right to properly, but not to steal somebody else's. I have the right to my beliefs, but not to harm another person for their beliefs.

So, if you believe that you are entitled to basic human rights, then so is each individual. Fighting and getting my human rights also means that I must be fair to others in my family, in my community, in the world.

Being fair to others, and tolerant of others, is not at all easy, as you must have seen from your own experience. This is true at so many levels. How often have you wanted to tape the mouth of a person who disagrees with you? At another level, what do you do if your child wants to marry a person from another caste or religion? The following exercise will help you go deeper into the issue.

Check Your Progress 4

1) Give an example of what one group considers a human right violation; and another group disagrees.

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2) What are cultural rights? And how are they protected.

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If you've thought over the contents of this section, you would agree that there needs to be a proper balance between rights and responsibilities. This could happen if each of us, and our communities, tries to accept and understand each others' needs and points of view.

We shall study in detail the points raised in this unit in the rest of the course. For now, let us take a brief look at the issues touched upon in this unit.

1.6 LET US SUM UP

In this unit, we have covered the following points:

1. The meaning of 'human right'.
2. What civil, political, economic, social and cultural rights are, with several examples of each.
3. A brief look at human right movements in the last thousand years. We have particularly stressed on important developments in the world since 1945.
4. What measures individuals and groups can take recourse to for achieving their rights.
5. The importance of responsibly handling our rights.

1.7 KEY WORDS

- Civil: Pertaining to the private relations among citizens.
- Covenant: A mutual agreement.
- Declaration: A written affirmation, which is morally but not legally binding on the signatories.
- Convention: An agreement between the signatories that is legally binding on them.
- Protocol: A treaty that revises or adds to the provisions of an earlier treaty.

1.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) For example, the right to vote. You can think of several other rights if you look at your situation and that of your society.

2) Does it discriminate on the ground of colour of the skin? Also, note that the right to marry and found a family is a human right (Art. 16 of the UDHR). Find out, where else in the covenants (in the next block) the right to marry is mentioned. What happens to the dignity of the girl?
3) Some major ones are untouchability and gender-based discriminations (like women being paid lower wages), which you should add to this list. Think for yourself how these social evils represent denial of human rights. An example of a minor violation could be being rude to your family members. For other minor violations, look around you in your family, neighbourhood, workplace, cultural, meetings. Of course, this doesn’t mean that major violations don’t take place in one’s home or neighbourhood.

4) In India: untouchability, female infanticide. 
   Abroad: racial discrimination (black and white), and nuclear inequality (haves and have-nots). There are several others that you could add.

Check Your Progress 2

1) The common practice of giving and receiving dowry is a punishable offence under the Dowry Prohibition Act. Even then, as many as 2435 dowry-related crimes were registered in 1994, according to Crimes India Data. Depending on the nature of the crime, the criminals receive punishment. But the Orissa High Court struck down the circular of the Govt. of Orissa which asked for handcuffing the mothers-in-law and leg-shackling the sisters-in-law in dowry death cases, in its decision in May 1995 on the petition filed by the Orissa branch of the People’s Union for Civil Liberties. Why? Because such practices also amount to torture which cannot be inflicted even on the prisoners. The latter have a right to freedom from torture (ICCPR).

2) Yes, according to various provisions in the International Bill of Rights encouraging political participation. Voting is meant for the adults; in India for the adults 18 years of age or more. Children below that age therefore cannot vote. Why do you think this is so?

3) If Alpha is not resorting to any inhuman or coercive methods, there is nothing wrong in his encouraging the tribals to reform themselves. The tribals, on the other hand, are only improving their human right conditions by adopting the ‘more civilized’ ways. Both Alpha and the tribals are gaining by such moves. The tribes, who are not willing to change, must not, however, be brought under coercive pressure.

4) We come across stories of wife-beating and forced child-labour in the newspapers quite frequently. Both of these are cases of human rights violation. It is so because the beating of a wife robs her of her dignity as a woman, as a human being. Remember our Constitution does not discriminate between two persons on the basis of sex. In the case of a child (of 14 years or less) being forcibly engaged as labourer, he is being deprived of his right to education and a decent upbringing as a child.

Check Your Progress 3

1) If you are a slave, can you rightfully claim equal wages? Since all human beings are equal, they have a right to draw equal wages – men or women. What happens to your right to health, housing, clothing etc. if your right to food is denied (all of them are social and economic rights)? Often, arrest of trade union leaders and subjecting them to inhuman punishments in jail violate a series of human rights. Build an argument in favour of the trade unionist’s human rights to show how the civil (1.2.1) and social rights (1.2.2) are inter-dependent.

2) Why? Right to travel or move is a human right. It is recognized, and therefore enforceable, by law. However, the claim to ‘travel by air’ does not have the same force and, therefore, it is not a human right as such. But when this claim to travel by air is denied on discriminatory grounds for arbitrary reasons, it becomes a case of human right violation.
Discrimination against an Indian citizen is prohibited on grounds of religion, race, caste, sex, desert, and place of birth.

3) They must not come under any category of human rights enshrined in the International Bill of Rights or Part III, Part IV and Part IV-A of the Indian Constitution and various court judgements pronounced on them. You will come to know about them later.

4) A 'covenant' is legally binding on the signatory states, whereas a 'declaration' is morally, but not legally binding on its signatories. Look for other examples.

Check Your Progress 4

1) For example, whereas Islam believes in punishing thieves with 'amputation of hand', western liberalism considers it an act of torture and against human rights endorsed by the world body.

2) In the expression "Economic, Social and Cultural Rights" (ICESCR), mostly the focus has been on the first two. Cultural rights are very seldom referred to. Cultural Rights refer to "creative, artistic and scientific activities" in a narrow sense and to the "totality of values, knowledge and practice" in a broad sense. Right to education, right to information, impact of globalization etc. are the topics which come under its scope. Article 27 of the UDHR provides for "a right to participate freely in the cultural life of the community". United Nations Education and Social and Cultural Organization (UNESCO) is the concerned UN body which takes various initiatives in this field. Notable achievements in this field are the Universal Copyright Convention (1971), Convention against Discrimination in Education (1960), and Convention concerning the Protection of the World Cultural and Natural Heritage.

3) (i) Is Panchayat encroaching upon Mala's right to divorce? Freedom from torture is more important than living together under a panchayat in such degrading conditions of existence.

(ii) Is Ramu getting a wage according to the minimum wages Act? Is his salary on par with (i) the work extracted from him and (ii) the wages drawn by others doing the same work elsewhere? Is he also free to leave Aslam Khan's fields for attractive jobs?