UNIT 13 HUMAN RIGHTS: STATE AND SOCIETY

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13.0 OBJECTIVES

This unit is to make you aware of threats to Human Rights from action of the State and non-State actors. After reading this unit you will be able to understand:

- the authority and power of state and possibilities of its abuse against Human Rights;
- violation of Human Rights by non-State actors, like Terrorists;
- societal violation of Human Rights like based on Caste;
- social Insensitivity towards women and Children; and
- violation of Human Rights due to developmental activities.

13.1 INTRODUCTION

We have seen elsewhere in this course that human rights are natural rights because they are not given to a human being by any authority, nor are these based on any positive law. These rights are justified per se, by virtue of our natural condition, our human condition. However, naturally given rights are often violated by different actors under a variety of pretexts. Such violations, including the tendency to violate, are what we shall describe as threats and challenges. There has been a general tendency to consider the State as a significant violator of human rights. But, now it has became quite clear that the state is not the only agent that abuses human rights. There are many non-state actors also, who violate the natural rights of individuals.
What are the possible grounds on which human right violations take place? And, how do such abuses generally take place? This chapter aims to deal with certain issues within the context of the Indian state and society. We will take a look at the ways in which both the state and non-state actors pose challenges to human rights.

13.2 HUMAN RIGHTS AND STATE

According to German sociologist Max Weber, one of the defining features of the modern state is its monopoly over the legitimate use of violence. The modern state, through its instruments of governance like the legislature, the judiciary and the executive legitimates its violence. The state is the most powerful social organization because it has near total control over our lives. Its power is clearly manifested by its ability to punish its citizens and its right to wage war against an enemy. In short, the state has the power on life and death over both citizens as well as aliens. The state has several instruments of coercion like the police and the armed forces. The misuse of these instruments has resulted in the abuse of human rights. Certain political scientists even claim that even their very use could be a cause for the violation of human rights. Even in a society that does not have death penalty, the state’s control over lives is evident in its right to conduct war and its right to use deadly means to pursue against those it claims to be lawbreakers. Though the noble idea of justice is that the law is there to protect all of us, yet in the wrong hands, it can be used against those who pose threat or challenge to the political regime. An example of misuse of state machinery in India is emergency rule in India during 1975-1977.

13.2.1 The Emergency Experience

On 26 June 1975, the government led by Prime Minister Indira Gandhi imposed Emergency. The Declaration of the Emergency led to the suspension of the Fundamental Rights, and to gross violations of human rights, with preventive detention laws being used extensively. This included a Presidential Order suspending the right to move the courts for the enforcement of Fundamental Rights that guaranteed citizens equality before and equal protection of law (Article 14), no deprivation of life and liberty except by procedure established by law (Article 21) and no detention without being informed of the grounds for it. Opposition leaders, trade union leaders and social activists were arrested and detained for political reasons. There was massive repression, and abuse of human rights. There were ordinances that an individual could be detained without disclosing to him or her the grounds for detention or allowing representation against the detention, the detention might be renewed after four months. The ordinance also added that the grounds for detention were confidential, and, because they were matters of state and thus, against the public interest to disclose, should not be communicated to detenus and courts. There was massive censorship imposed on newspapers, media outlets and prohibitions of public gathering.

Let us take a look at the opinion of Justice Hans Raj Khanna, the dissenting judge in the case of the Additional district magistrate, Jabalpur vs. SS Shukla et. al. (Judgement dated 28/04/1976) with regards to importance of right to life and personal liberty which was restricted during emergency.

Article 21 cannot be considered to be the sole repository of the right to life and personal liberty. The right to life and personal liberty is the most precious right of human beings in civilized societies governed by the rule of law.
Sanctity of life and liberty was not something new when the Constitution was drafted. It represented a fact of higher values which mankind began to cherish in its, evolution from a state of tooth and claw to a civilized existence. The principle that no one shall be deprived of his life and liberty without the authority of law was not the gift of the Constitution. It was a necessary corollary of the concept relating to the sanctity of life and liberty, it existed and was in force before the coming into force of the Constitution.

Even in the absence of Art. 21 in the Constitution, the State has got no power to deprive a person of his life or liberty without the authority of law. That is the essential postulate and basic assumption of the Rule of Law and not of men in all civilized nations. Without such sanctity of life and liberty, the distinction between a Lawless society and one governed by laws would cease to have any meaning. The principle that no one shall be deprived of his life or liberty without the authority of law is rooted in the consideration that life and liberty are priceless possessions which cannot be made the plaything of individual whim and caprice and that any act which has the effect of tampering with life and liberty must receive substance from and sanction of the laws of the land. Article 21 incorporates an essential aspect of that principle and makes it part of the Fundamental Rights guaranteed in part III of the Constitution. It does not, however, follow from the above that if Art. 21 had not been drafted and inserted in Part III, in that even would have been permissible for the State to deprive a person of his life or liberty without the authority of law.

### 13.2.2 The Draconion Laws

Although the emergency provisions were withdrawn in 1977, some measures remained at play in laws like the *Prevention of Terrorism Act, 2002* (POTA), and the *Armed Forces (Special Powers) Act, 1958* (AFSPA). Those parts of India where these laws in some way are in play and those people of our country who are subjected to these laws are re-living the dark and dangerous days of the Emergency.

The *Prevention of Terrorism Act 2002* (POTA) discarded the right of an accused person to seek remedy by a due process of law. This law violated the fundamental legal maxim that an individual is presumed innocent until proven guilty beyond reasonable doubt. People arrested under POTA could be held for 30 days before being produced in court. Human rights organizations have pointed out that the authorities have used threats and torture to extract “confessions” during this period. This law now has been repealed but in many ways and in many other shapes such provisions are still used.

The *Armed Forces Special Powers Act 1958* (AFSPA) gives the military wide powers of arrest including the right to shoot and kill and to occupy or destroy property in counter-insurgency operations. It is justified on the grounds that there is a serious threat to national security from armed combatants. The AFSPA has been in force for decades in Jammu and Kashmir, and the seven states of the Northeast. Critics of the AFSPA point out human rights violations committed by the military under this act.

### 13.2.3 Torture

It has been mentioned in the earlier chapters that both the international instruments on human rights and the Constitution of India attach great importance to the protection of life and personal liberty of an individual and emphasize the respect of human
dignity. The very charter of the United Nations and preamble to the Universal Declaration of Human Rights proclaim that inherent dignity and equal and inalienable rights of all members of the human family are the foundation of freedom, justice and peace in the world. While the activities need to be punished and for that purpose law enforcement agencies are empowered to apprehend, arrest and detain such persons, the norms of respect for human dignity demand that even such persons cannot be treated in inhuman or degrading manner nor can they be tortured. Such treatment or torture seek to annihilate the victims’ personality and denies them the inherent dignity of human being. Both the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) lay great stress on right to life suggesting:

- Every human being has the inherent right to life.
- This right shall be protected by law.
- No one shall be arbitrarily deprived of his/her life.

International community, therefore, in many documents and on several fora has declared that deprivation of life without legal authority and legally established judicial procedures, and acts of torture or other cruel, inhuman or degrading treatment or punishment are offences against human dignity and stand condemned as denials of the purposes of the Charter of the United Nations and violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. These principles have been given the pride of place in the Constitution of India too. In addition to the Constitution, various other Acts also prohibit extra-judicial executions, torture and inhuman treatment. Such acts have been made punishable under law.

It is a common knowledge that police uses torture and violent methods while investigating the cases to make suspects confess their crimes. It has been reported that even other law-enforcing agencies and prison officials use torture to maim suspects and inmates to behave in a particular manner. It is also reported that even women and elderly are subjected to inhuman treatment in police custody. Cases of custodial rape and deaths are reported quite often. The Government expresses its disapproval of torture. The Constitution of India, various laws and decisions and instructions of Supreme Court in particular, prohibit Torture. Articles 20(3) and 21 of the Constitution hold torture as a violation of fundamental human rights. The practice, however, continues almost unabated. India, as yet has not ratified the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted in 1984. National Human Rights Commission and NGOs engaged in promotion and protection of Human Rights have been impressing upon the government for ratification of this convention. By doing so the government will become accountable to international committee. The Supreme Court of India, in many of its judgments, has made it very clear that it is an obligation of the state to ensure that there is no infringement of the indefensible rights of a citizen to life including dignity of life. It is therefore, not only important for policemen and other agencies not to resort to torture and violence but also to be careful of being negligent otherwise.

Check Your Progress 1

1) What do you understand by state’s monopoly on coercive powers?
2) Why is Emergency period of 1975-77 considered as a period of denial of Human Rights?

3) Why torture is considered as violation of Human Rights?

13.3 TERRORISM AND HUMAN RIGHTS

Although we have taken a very critical look at the role of the state as a possible agent of human rights violations, it also is a fact that citizens are victims also of similar acts by non-state actors. This is most clearly manifested in the phenomenon commonly termed as “terrorism”. Terrorism is the modus operandi of armed groups, inspired by extremist and fundamentalist ideologies, to strike at a state, against which it cannot openly launch a war. Therefore, terrorism may be described a “low-intensity war/conflict”, but it is war nonetheless. We may highlight the differences between war and terrorism in two different ways: first, the enemy of the state is always surreptitious; and the attacks against the state are often directed against the unarmed civilian population.

What are the possible reasons behind terrorist activities? The terrorists justify their acts of violence on the basis of perceived injustices of the state. They believe that they are capable of debilitating a state by pressurizing its decision makers. The agents of the state are obliged to respond to wanton acts of violence, but their task is made difficult not merely because the enemy is hidden but also because they have to consider public opinion. Terror groups attempt to blackmail the ruling establishment of a state by hijacking civilian aircrafts and threatening to kill hostages. Often terrorists exploit to their great advantage the fact that the independent media, governmental and non-governmental organizations keep a close watch on how states respond to terrorist violence. While the acts of the state are scrutinized, terrorists almost always remain out of the reach of law and the media. Democratically elected governments have to decide between the pressure of public opinion and the demands of terrorists, which is never an easy choice, we will discuss in detail about terrorists violating human rights in the next unit.

13.4 CASTE AND HUMAN RIGHTS

The most serious societal violation of Human Rights in India is that of Scheduled Castes and almost equally of Scheduled Tribes. Socio-economic inequality in India
is a heritage of long history. This has largely been prevalent on caste basis. The Scheduled Castes, Scheduled Tribes and Backward castes represent the social groups which have suffered down the ages due to caste prejudices, economic inequality and education backwardness.

13.4.1 The Scheduled Castes

The term Scheduled Caste signifies those groups of people who were out of the caste system or the varna hierarchy in the past. According to the practice of determination of caste by birth and assigned social status to them they were the lowest in the caste hierarchy. They were kept out from participation in public life by being branded as untouchables. Only after independence they have been declared equal citizens by the Constitution of India. As you have read in an earlier Unit of this course various efforts have been made to improve their status and position in the society. However, the results so far are not much encouraging. Hence, social inequality and discrimination on caste basis persists.

Though the constitution has abolished untouchability, it still continues in various parts of the country. The masses of Scheduled Castes continue to toil, mainly as the service class for their survival. They are by and large landless labourers. They are mostly engaged in menial jobs with little control over resources such as land, forest and water. The emergence of a miniscule minority among scheduled castes on account of socio-economic transformation and reservation policy is symbolic of empowerment. In general they remain at the lowest rung of the society. In government jobs they are mainly employed in Group C and Group D jobs. More than fifty per cent of Safai Karmacharis come from this group, which indicate a kind of occupational continuity. Some work in most dehumanized and degraded conditions. Government records bring out that lakhs of persons are employed as manual scavengers, that is those who put up human excreta with their hands and carry it on their heads and shoulders. The harm done to the health and dignity of the human beings involved in a life-long labour of carrying the excreta of others cannot be described in words. Even if a middle class has emerged among the SCs due to the measures of reservations policy, they do not enjoy the same amount of honour and prestige associated with their status as enjoyed by members of higher castes.

Add to all this is the fact of atrocities against Scheduled Castes. During the years the atrocities or incidence of violence against SCs have increased. One of the reasons for increasing violence against them is the rising awakening among them about their rights and intolerance of the same by certain sections of upper castes. While Scheduled Castes are slowly trying to recover from such disabilities, their social mobility is hampered because of structural problems and mindsets. The situation is almost same for Scheduled Tribes.

13.4.2 Scheduled Tribes

The word Tribe has been used to refer to groups belonging to forests and hill areas who in many ways are distinct from so-called mainstream population. For ages, the tribals had little or more than a casual contact with the so-called civilized or advanced cultures and societies. It was during British consolidation that a contact was established with areas of their habitation. They are spread over various regions of India. Majority of the Tribes depend on land and forest to make a living. Their social life is also interwoven around the land they live on. But per capita land available to tribal people has been decreasing.
At the time of independence, the situation of tribal people was both backward and different. Their standard of living, judged by any norms, educational standards and physical quality of life was low. At the same time they had different culture, religion, values and traditions. Though, they were not part of prevailing traditional caste system but in many parts of the country they came to be considered with contempt as low caste people and treated likewise.

As you have read in another unit, after independence the Constitution of India, like for Schedule Casts, prescribed protection and safeguards for Scheduled Tribes. Later a number of schemes and programmes have also been launched for their welfare. From the government side tribal have not only been made equal citizen of India but have also been given special privileges, preferences and concessions to come out of their traditional lower and inhuman position. However, in spite of constitutional provisions and various plans, the poverty, illiteracy, destitutions, oppression and bondage of these people in many ways continues. There is a general feeling that while provisions and plans for the welfare of SCs and STs are strong at the constitutional and planning levels, these are weak in the implementation. At the same time various developmental projects like establishment of industries, construction of dams and roads, enactment of forest laws etc, have deprived tribals of their land and means of livelihood. Their languages, living styles, culture and traditions are considered by society as uncivilized and looked down. Thus they also feel attack on their identity. As such STs like SCs also remain socially unequal, discriminated and mistreated by upper cases and so-called advanced sections of society.

From the above discussion it becomes clear that in India there have been denial of rights to certain sections of society on the basis of rigid caste system that ordained professions and status by the accident of birth in given family and jati. In independent India constitutional and legal provisions have made these discriminated groups equal citizens and prohibited discrimination particularly practice of untouchability against them. A number of schemes have also been formulated and implemented for their welfare. However, when we look at the overall conditions of the SCs and STs, particularly in rural areas, we find that a large number of these people remain exploited and denied even basic human rights. There are various shortcomings in the way policies are implemented by various governmental agencies. But more important is social attitude, mindset and belief systems on the one hand and ulterior motives of vested interests that perpetuate the system. A lot needs to be done both at the level of state and societal level for effective implementation of policies and schemes and awareness generation both among scheduled castes and tribes themselves and society at large.

Check Your Progress 2

1) How does terrorism violate human rights of citizens?
2) What is the social status of Scheduled Castes in our society in terms of enjoyment of Human Rights?

3) Who are Scheduled Tribes? In what their rights remain inadequate?

13.5 GENDER DISCRIMINATION

Ours is a Patriarchal Society. Patriarchy refers to the domination of men over women. The operation of patriarchy leads to women occupying a subordinate position. In recent years, activists have drawn attention to how violations of human rights maintain the subordinate status of women in the world. Human Rights research has always been aware of the specific abuses directed at women. The non-governmental organization Human Rights Watch in particular has focussed on documenting violations of women’s human rights and seeking remedies for such abuse. Violence against women is perpetrated both by the state as well as by private actors, both outside the home, as well as inside. There are certain human rights violations, which are gender specific such as rape, Sati and the forced trafficking of women for purposes of sexual servitude. Rape is often used as a form of torture. Sexual relationship without the consent of the partner is often used as a form of torture. Thus, rape occurs even within a marriage. Both the state and non-state actors have been involved in several instances of violations of women’s human rights. Women also suffer guilt by association, for they are imprisoned, tortured and even killed simply because their associates or relatives are believed by governments to be involved in political opposition groups. The rights of women are violated not merely in the political or civil sphere, but in the realm of culture, of customs and of practices. You have read about the same in Unit 5 of this course. Here it is sufficient to mention that it is not just the state but primarily the society and family that is responsible for the violation of rights. Domestic Violence Bill 2006 is a recognition of the possibility of the home being a site of violence, and of the nature of violence.

13.6 INSENSITIVITY TOWARDS CHILDREN

The rights of children could be classified as those that are specific to children, and those that comprise the general set of rights. In so far as children are human, they are subject to human rights standards. However, there are violations of human rights that are targeted specifically at children. Many conventions that make specific reference to children and childhood – for instance the United Nations Convention on the Rights of the Child 1989 – set out civil, political, economic, social and cultural rights of children besides those general rights and freedoms applicable to all human beings.
These rights are designed to clarifying that children are also human. The common belief that a child is inferior to an adult has resulted in a widespread abuse of children’s rights.

The Convention generally defines as a child anyone below the age of 18, unless an earlier age of majority is recognized by the country’s laws. There are other child specific rights in the Convention, but these are wider in their implications and interpretations. Many of these provisions are reflections of broader human rights concerns. Social and economic rights are also covered. The approach of this convention is different from the common law approach prevalent in most countries that seek to treat children as possessions, ownership of which would be decided in family disputes.

Not only India has ratified the Convention on Rights of Children but it itself has enacted various laws and formulated policies for the protection of their rights and their well-being. You have read about these in detail in Unit 6. However, in practice laws are violated at every level. The human rights violations of children is manifest in the targeting of children — by kidnapping them, imprisoning them, torturing them or even killing them in an attempt to intimidate or punish their parents. In India, the wide prevalence of child labour is an instance of the violation of the child’s human rights. There is a constitutional prohibition for employment of children and laws against child labour. However, every where, one can see children engaged in all types of works, including very hazardous. Children are employed because they are the cheapest source of labour and because they could be easily exploited and manipulated. Children are also employed to pay off the debts of the parents. Often, children work in conditions far worse than that are experienced by adults. The carpet industry and manufacturing of matches are a few such industries that exploit child labour. The child labourers live and work under extremely unhealthy conditions, which often impair them physically and emotionally. The most basic standards of human rights to decent conditions in which to work, to fair payment for that work, to rest and leisure are violated. It seems that Indian society, at large, remains insensitive to plight of children particularly poor whose very childhood is denied.

13.7 DEVELOPMENT AND HUMAN RIGHTS

After Independence, the development policies of the Indian state were guided by the logic of modernity, especially the idea of progress through rapid industrialization. This was sought to be achieved through the Five-Year Plans. The planners believed that rapid industrialization was required to ensure India’s economic growth and thus remove social inequalities. However, the development policies of the Indian state, when equated with industrialization and urbanization have more often than not led to an unequal distribution of these benefits.

Millions of Indians living in rural areas have been adversely affected by the Indian state’s development policies. They were very often excluded from the various stages of planning as well as in its execution. People were thus converted into mere objects of centralized planning. Their traditional or indigenous ways of thinking and living were thoroughly destroyed by modernist perceptions of what constituted progress and development. The rights of the marginalized communities like the tribals were, and still continue to be, severely hampered. The construction of several large-scale dams, artillery ranges, uranium mines and Special Economic Zones have led to the displacement of largely Dalits and Tribals on a massive scale. The ecological and
human costs of the people adversely affected by these projects include forcible eviction from their homes, deprivation of the means of livelihood, the submergence of forest area and farming land, immense environment degradation and pollution. Critics of the Development policies point out that the displaced people are often only entitled to meagre cash compensation, with little attempt by the state of adequately compensate for the losses incurred in the name of national of interest. One of the most ambitious river development projects in the world is the Narmada Valley Development Project. This is reported to have displaced thousand of small and marginal farmers. Aumdhati Roy points out that this politics of forced, involuntary displacement is often accepted as unavoidable in our democratic system.

Industrial and irrigational projects have led to the displacement of millions of defenceless and voiceless people all over the country on a massive scale. They were forcibly evicted from their homes after they were deprived of their traditional means of livelihood. If they stayed on, they often suffered from the harmful effects arising out of the terrible environmental degradation and consequent pollution. The displaced people are often only entitled to meagre cash compensation without any restitution of their rights.

Check Your Progress 3

1) Why in India women feel discriminated against?

2) How are children’s rights abused?

3) How some developmental projects violate human rights of certain sections of society?

13.8 LET US SUM UP

In this unit you have learnt that violation of human rights are committed by the state as well as non-state actors, what we refer to as private actors. The state has at its disposal considerable coercive powers that it can use to abuse the rights of citizens. One example of extensive use of this power in India has been the period of Emergency rule when state power was extensively used against citizens freedoms in general.
opponents of the regime in particular. Even without emergency various state agencies violate human rights in many ways using laws that are enacted for special purposes or just to be efficient as in the case of use of Torture by Police.

While earlier it was considered that primarily state is violator of human rights, now it is accepted that apart from state non-state actors and society in general also violates human rights. Terrorists and Fundamentalists are the most fragrant violators of human rights of innocent citizens. At the same time society guided by certain cultural and religious norms either remain insensitive to rights of some groups or indulges in violation of rights particularly the dignity of individuals. In India age-old practice of mistreatment of persons on the basis of caste is a glaring example of societal violation of rights. Similarly prevalence of patriarchy and a mindset about the role of women is responsible for discrimination against them. In spite of everyone talking of innocence and childhood society in general remain insensitive to violation of rights of children, including child labour and their misuse.

Another irony of the situation is that various projects formulated and implemented for wider social welfare or development of the country tend to violate rights of certain sections of society. For example, acquisition of land for establishment of industries or construction of dams etc. many at times deprive poor, small farmers, tribals etc. of their land and means of livelihood.

All the above mentioned challenges to the exercise of rights by individuals by state and society have became serious concerns for activists engaged in promotion and protection of human rights. They are highlighting such violations and generating awareness about the same and mobilizing support for better environment.

13.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) It is only the state that can legally take away the life of citizens or punish them in any way. It has control over police and military forces.

2) The Declaration of the emergency led to the suspension of Fundamental Rights, Opposition leaders, Trade union leaders and even social activities were arrested arbitrarily. Executive authority was used without any check.

3) Torture amounts to degrading treatment that offends basic human dignity. This also violates human rights by forcing the suspect to confess under coercion.

Check Your Progress 2

1) Terrorism deprives innocent persons of their rights to life. See section 13.3.

2) Schedules Castes suffer from social inequality and discrimination. They continue to be employed in menial and degrading jobs. see sub-section 13.4.1.

3) Scheduled Tribes are those people who had been living in forest and hill areas and remained distinct from mainstream population. In many ways they continue to be treated with contempt. They suffer from poverty, destitution, oppression and bondage.
Check Your Progress 3

1) Women in India feel discriminated because of prevalence of patriarchy which considers women as subordinate. See section 13.5.

2) Children are employed in hazardous works. They are also employed to pay off the debts of the parents and also punished for their faults.

3) See section 13.7.