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

- Indira Gandhi

“शिक्षा मानव को बन्धनों से मुक्त करती है और आज के युग में तो यह लोकतंत्र की भावना का आधार भी है। जन्म तथा अन्य कारणों से उत्पन्न जाति एवं वर्गीकृतिवाद विषयों को दूर करते हुए मनुष्य को इन सबसे ऊपर उठाती है।"

- इंदिरा गांधी
Block 4

HUMAN RIGHTS: THREATS AND CHALLENGES

UNIT 13
Human Rights: State and Society 5

UNIT 14
Human Rights: Terrorism and Fundamentalism 17

UNIT 15
Human Rights and Environment 32

UNIT 16
Emerging Trends – Media, Internet, Globalization 51
**Expert Committee**

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

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

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

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

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

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

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

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

---

**Programme & Course Coordinator:** Prof. A.S Narang

**Block Preparation Team**

Unit-13  
Dr. Swaha Das  
Sr. Lecturer  
I.P. College for Women, University of Delhi, Delhi. and Hari Nair, Research Scholar

Unit-14  
Dr. T.P. Singh  
Reader  
Department of Political Science  
Banaras Hindu University, Varanasi.

Unit-15  
Dr. Poonam Kanwal

Unit-16  
Dr. S.A.M. Pasha  
Reader  
Department of Political Science, Jamia Millia Islamia

**Editor:** Prof. A.S Narang

**Print Production**

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

Sh.Yashpal  
Section Officer  
MPDD (Pub.)

© Indira Gandhi National Open University 2009  
ISBN: 978-81-266-3867-3

All rights reserved. No part of this work may be reproduced in any form, by mimeograph or any other means, without permission in writing from the Indira Gandhi National Open University.

Further information about the Indira Gandhi National Open University courses may be obtained from the University’s office at Maidan Garhi, New Delhi-110 068.

Printed and Published on behalf of the Indira Gandhi National Open University, by Registrar MPDD.  
Printed At: Kalyan Enterprises, D-20, Sec. B-3 Tronica City (Inde. Area) Loni, Gzb. (U.P.)
BLOCK 4 HUMAN RIGHTS: THREATS
AND CHALLENGES

Inspite of guaranteed rights provided in the Constitution of India, availability of elaborated machinery for the implementation of rights and redressal against violation, in every day life we witness widespread denial of rights to certain sections of society or violations of rights of citizens in general. There also are new challenges that society faces with regard to attacks on rights as also new opportunities coming up which can help us in protection of rights. In this block you will read about the causes and types of Human Rights violations, and emerging opportunities and challenges.

Unit 13 is on threats to Human Rights both from State and Society. State having monopoly over the legitimate use of violence can use its powers to violate human rights of citizens and others in various ways using the pretexts of emergency or need for maintenance of law and order. This can be done both by the executive authority and using legislative powers. You will read how both these ways have been used in India from time to time. Traditionally it has been understood that the major violator of rights is State. But now it is becoming quite clear that apart from state non-state actors also violate the rights. In India, societal discrimination against Scheduled Castes and Scheduled Tribes, gender discrimination and neglect of children have been going on for centuries. The emergence of Terrorism has posed new challenge for the very basic right to life. You will read about all these in this unit.

Unit 14 is specifically on Human Rights and Terrorism. The unit discusses the phenomena of terrorism as it has emerged in India and world over, its impact on national security and human rights. You will read the dual problems citizens face. On the one hand their rights, especially the right to life, are threatened by the terrorist groups and fundamentalist forces and on the other hand state, in the name of dealing with terrorists, use or misuse its powers to violate human rights even of common citizens, especially those of dissenters. Unit also discusses some of the mechanisms available against the misuse of powers by the state and role media and civil society is playing in protection of rights in the given situation.

Unit 15 deals with a new form of threat to Human Rights that is degradation of environment. It has now been recognized that basic human rights, especially right to life are dependent upon good and healthy environment. Therefore, healthy environment itself is considered a human right. In this you will read about some of the efforts made at international level to highlight the concerns about environment degradation steps taken by Government of India for protection of environment. These include Constitutional provisions, laws and policies. You will also read about the active role judiciary in India has been playing for protection of environment and control of pollution.

Last Unit of the block, Unit 16, discusses the issues arising out of new trends, the place media has acquired, emergence of internet and process of globalization. In the present age of globalization and information and technological revaluation there have emerged both new opportunities for expansion of rights and their protection as well as new challenges in the exercises of rights. You will read about these and understand the trends and challenges for Human Rights movement in the Post-cold-war era of globalization. Unit also discusses rise of a variety of global social movements leading to transnational networks for gender justice, peace, anti-militarism, etc.
UNIT 13 HUMAN RIGHTS: STATE AND SOCIETY

Structure

13.0 Objectives
13.1 Introduction
13.2 Human Rights and State
  13.2.1 The Emergency Experience
  13.2.2 The Draconian Laws
  13.2.3 Torture
13.3 Terrorism and Human Rights
13.4 Caste and Human Rights
  13.4.1 Scheduled Castes
  13.4.2 Scheduled Tribes
13.5 Gender Discrimination
13.6 Insensitiveness towards Children
13.7 Development and Human Rights
13.8 Let Us Sum Up
13.9 Answers to Check Your Progress Exercises

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 Insensitiveness 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's 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, destitution,
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, everywhere, 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 Rights: Threats and Challenges

The 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 to adequately compensate for the losses incurred in the name of national interest. One of the most ambitious river development projects in the world is the Narmada Valley Development Project. This is reported to have displaced thousands of small and marginal farmers. Aurobindo 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 become 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.
UNIT 14 HUMAN RIGHTS: TERRORISM AND FUNDAMENTALISM

Structure

14.0 Objectives
14.1 Introduction
14.2 Defining Terrorism
14.3 Genesis and Growth of Terrorism in India
14.4 Effects of Terrorism and Fundamentalism on Human Rights
14.5 Response of the State to Growing Terrorism
   14.5.1 Human Rights Abuse
   14.5.2 Preventive Detention Laws
   14.5.3 Curtailment of the Civil Rights and Encroachment in the Private Domain
14.6 Response to Criticisms: National Human Rights Commission
   14.6.1 Response of the Judiciary to the Human Rights Abuse
   14.6.2 Response of the Media: Exposure of the State Cover-up
   14.6.3 Response of the Civil Society Groups to the Human Rights Abuse
14.7 Relations between Terrorism and Human Rights
   14.7.1 Balanced Approach to Deal with Terrorism
14.8 Let Us Sum Up
14.9 Key Words and Phrases
14.10 Answers to Check Your Progress Exercises

14.0 OBJECTIVES

This unit discusses: emergence of terrorism as a global problem, threat posed by terrorism to international peace, security and stability and genesis and growth of terrorism in India.

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

- know about the politico-ethnic, politico-religious and socio-economic roots of terrorism;
- analyse the impact of terrorism on the national security and resultant violation of human rights by the law enforcing agencies in India;
- critically review the different measures adopted by the Union and State Governments of India to root out terrorism; and
- understand how the civil society groups and mass media are generating awareness towards the human rights and restraining state agencies from abusing the human rights.
14.1 INTRODUCTION

Terrorism at present is considered one of the greatest menace to the state and civil society. It is the greatest challenge to the international community in the post bi-polar world. There is hardly any part of the world, which remains unaffected by the scourge of terrorism. India is no exception. Terrorism in some form has been used as a means to achieve political goals since time immemorial. However, in the wake of 9/11 terror attack in the US, it has emerged as the main global security concern. It is posing greatest threat to the international peace, security and stability. For the first time in the history of humankind, non-state actors are posing such a grave threat to the international community. India has been facing the problem of terrorism for quite some time. In fact much before 9/11 events India has been drawing the attention of the international community towards this menace. Somehow, the Western World could not appreciate the concerns. It is now widely agreed that terrorists not only are threat to the security of state but they also violate the rights of citizens. In addition they provoke the state to act in a way that includes curtailing the liberties and rights of common citizens. We will discuss all these aspects of terrorism in this unit.

14.2 DEFINING TERRORISM

There is no universally accepted definition of terrorism. It is extremely difficult to define terrorism because terrorists for one are freedom fighters or martyrs for others. Terrorism is a low-cost and low-intensity warfare. It is a fight of David (weak) against Goliath (strong). Terrorists adopt the hit and run tactics of the guerilla warfare. They ambush their targets, usually security forces, and after hitting their targets they fade away. Of late, suicide human bombers are increasingly being used by the terrorist organizations to kill their political enemies and spread terror among the people. Suicide squad is the ultimate and most lethal weapon in the arsenal of terrorists. This shows the high level of indoctrination, motivation and sense of sacrifice among the cadres of terrorist organizations.

The great German strategic thinker Carl von Clauswitz has defined war as continuance of politics through other means. Terrorism is also a kind of war, however, different from conventional war. It is an irregular protracted war, which aims at weakening and breaking the morale and resolve of the enemy. Terrorism emanates from a sense of injustice, feeling of deprivation and exploitation. It aims at righting the wrongs. Terrorism is always for political objectives. It is these political objectives which makes terrorists different from criminals. Their violent activities are condoned and justified too because of their right or wrong grievances. Terrorism is a means and political objective is the end. This political objective can be demand for separation, autonomy and independence.

Violence is the tactics adopted by the terrorists to generate the atmosphere of fear among their enemies. A terrorist makes supreme sacrifice by laying his life for the sake of his cause. The problem with the terrorism is that just and reasonable cause of terrorists becomes unjust and unreasonable for others against whom it is directed. Because of this subjective nature of terrorists’ grievances, the definition of terrorism becomes difficult. Bombing, hostage taking, kidnapping and killing of innocent civilians as well as high profile political personalities and other celebrities are employed by the terrorists as means to get their demands conceded. These acts are also committed
for publicity purpose. These acts are also meant to highlight their plight and attract the global attention towards their problems.

Terrorism is basically a psychological warfare. It is battle between the terrorists and the state to win the masses to their side. Terrorists not only aim at breaking the morale of their enemies but at the same time aim at winning the heart and mind of the people. Support of the people is critical for the sustenance of the terrorism. Terrorist depend upon the masses for recruitment, intelligence and logistical support for their survival and success. It is because of the crucial role of the people that Mao has advised the insurgents never to annoy masses. He has likened insurgent guerrillas to fish and masses to water. Separated from water fish will not survive and likewise alienated from masses insurgents will not survive long.

Check Your Progress 1

1) Briefly define terrorism.

2) What are the means usually employed by the terrorists to get their demands?

14.3 GENESIS AND GROWTH OF TERRORISM IN INDIA

The history of terrorism in India can be traced to the British period. Some youths inspired by the Russian and Irish terrorist movement indulged in the assassination of unpopular and cruel British officials. They also raided British armory and treasury and looted it to sustain their revolutionary movement. However, their revolutionary movement could not be sustained for long, as mainstream political movement led by the Congress Party and Mahatma Gandhi (apostle of non-violence) did not support it. Consequently, it was a short-lived phenomenon in India’s national movement. At the same time revolutionaries did not indulge in violence against the innocent people. They targeted only the official machinery of coercion and oppression. Therefore they were respected by the masses.

Telangana peasant movement directed against landlords was the first terrorist movement in the post-independent India. However, the most serious challenge to Indian political system was posed by the insurgency in the Northeast. Nagaland was the first to raise the banner of revolt. It quickly spread to other states of Northeast. Mizoram, Manipur, Tripura and eventually Assam followed the suit. Out of the seven states of Northeast, only Arunachal and Meghalaya are so far peaceful. Terrorism in
Northwest India, particularly Punjab and Jammu and Kashmir have also posed serious threat to the unity and integrity of the country. Central India consisting of the states of Andhra Pradesh, Chattisgarh, Jharkhand, Bihar and Orissa is the third region of India troubled by the problem of terrorism. Though no part of the country is safe from terrorism but these three regions are more problematic. The nature of terrorism and their grievances in three regions are different. Though they are fighting the Indian State for different reasons but for tactical reasons they also join hands with each other to fight security forces involved in the counter insurgency operations.

The cause of insurgency in the northeast is ethnicity. The people of northeast feel that they are on the periphery of India and core India has been exploiting their abundant natural resources for its benefit. Culturally also they are different from mainland India. These have created a feeling of alienation among them. Large-scale migrations of the non-tribal people firstly, in the wake of partition and later Bangladeshi immigrants and migrants from other parts of the country have threatened demographic composition of the region.

Existence of various kinds of ethnic groups in the Northeast has further complicated the scene in the region. Apart from their conflict with the Union Government, there is inter-ethnic conflict as well. Nagas, Kukis, Meiteis, Bodos etc. do not get along well, which results in frequent violent clashes among them. Nagas frequently clash with Kukis and this inter ethnic conflict results in enormous loss of life and property.

Thus, we find that the entire Northeast region is littered with various kinds of ethnicity based insurgent groups. These ethnic insurgents often join hands with each other also as they consider that their common enemy is the Indian state. All these militant groups taken together pose serious threat to the Indian nation-state.

The Northeast region is bordered by Myanmar, China, Bhutan, Nepal and Bangladesh. This long international border adds external dimension to the problem. Countries inimical to India cannot resist the temptation to fish in the troubled water. Since unfriendly countries not only provide safe heaven to the terrorists but also arm, equip, train and motivate these terrorists to indulge in violent activities in India. The terrain in the northeast is also rugged and so it suits insurgents to carry on their terrorist activities. The cumulative impact of all these factors has been that there seems to be no end of insurgency in the northeast.

If politico-ethnic factors are responsible for terrorism in the northeast region then in the northwest it is politico-religious reason. Terrorism in Kashmir is mainly state (Pakistan) sponsored. Pakistan provides all kind of logistical support to terrorism in Kashmir. Most of the terrorist groups active in the valley such as Hijubul Mujahideen, Lashkare-i-toiba, Jaishe-Mohammad are creation of Pakistan intelligence agency Inter Services Intelligence (ISI). JKLF (Jammu & Kashmir Liberation Front) is only terrorist outfit, which is demanding independence for J&K, whereas all other prominent terrorist groups are demanding merger of Kashmir with Pakistan. It is the ISI, which coordinates their activities.

The emergence of global Islamic terrorism has also aided and abetted terrorism in J&K. In the name of Jihad, terrorists from Afghanistan, Central Asia and Arabian countries have also joined terrorists in Kashmir. These foreign mercenaries are calling the shots in the Kashmir valley. Of late, there has been some conflict between the local and foreign terrorists. Punjab is another case of politico-religious terrorism.
Here again it was religion inspired terrorism with the active support of Pakistan. However, of late here the problem of terrorism has been resolved to the great extent. Nevertheless, if ignored it might erupt again.

The nature of terrorism in the central India is different from northeast and northwest India. Here terrorism is ideology based and caused by the socio-economic reasons. These terrorists are popularly known as Maoists or Naxals and are waging war against the upper-caste landlords. This insurgency is spreading very fast and a vast part of the country is coming under the impact of Maoist violence. The term Naxalism or Naxals refers to Naxalbari, a taluk in West Bengal. It is here in 1960s, the peasant movement against landlords led by legendary revolutionary Kanu Sanyal and Charu Majumdar began. Though Naxal problem was eventually contained in West Bengal but it spread to other regions of the country and now a large part of the country is affected by this Naxal violence. There is hardly any state which is completely free from the Naxal violence. However, the problem is grave in Bihar, Jharkhand, Orissa, Chattisgarh and Telangana region of Andhra Pradesh. Some parts of Maharashtra, Madhya Pradesh, Uttar Pradesh and West Bengal are also affected by Maoist violence.

Peoples War Group (PWG), Communist Party of India-Marxist and Leninist (CPI-ML), Marxist Coordination Centre (MCC) are prominent Naxal groups active in different states of the Indian Union. They have created serious internal security threat and security forces are finding it difficult to contain and defeat them. Over the years, these Maoist groups have become bold and now they successfully organize jailbreaks and plundering of state armory. In their areas of influence, Maoists also run parallel government. They organize Jan Adalat (people court) and pass the verdict, which is instantly carried out. In some pockets of Andhra Pradesh, Chattisgarh, Jharkhand and Bihar, it is the Maoist writs which run. In Chattisgarh, state government supported Salva Jadum to fight Naxals but this experiment failed in containing Naxalism.

Naxals are equipped with the sophisticated weapons and they have acquired the expertise in planting landmines and using Improvised Explosive Devices (IED). This has enhanced the destructive capacity of Naxalites and has led to enormous loss of life and property. Naxals are blasting Police Stations, Railway Stations and other public property and disrupting normal life in their zone of influence. They kill the class enemies such as landlords, suspected informers, police and paramilitary forces.

The cause of Naxalism is extreme poverty and inequality. The Naxal affected regions are the most backward and extreme poverty ridden regions of the country. Since Naxalites take up the cause of poor, oppressed and exploited, they enjoy popular mass support in their regions. This is the reason that governments are finding it difficult to curb Naxalism. To root out Naxalism, the state has to first root out poverty and inequality. Naxalism is primarily socio-economic problem and so it can be resolved only through socio-economic measures.

Check Your Progress 2

1) What is politico-ethnic terrorism? Name the region affected by ethnic terrorism.
2) Specify the basic nature of terrorism in Kashmir.

3) What is Naxalism? Specify the areas affected by Naxal violence.

14.4 EFFECTS OF TERRORISM AND FUNDAMENTALISM ON HUMAN RIGHTS

It is not only state but terrorists and fundamentalists also indulge in large-scale violation of human rights. Terrorists forcibly recruit young boys to their cadre and against their and their parents wishes, impart them arms training and indoctrinate them to their cause. They also indulge in ethnic and religious cleansing. People have been segregated on ethnic and religious grounds in villages and buses and shot dead in brutal manner. Scores of innocent civilians have been killed and forced to move out by the terrorists and fundamentalists in the name of religion and ethnicity. Helpless Kashmiri Pundits have been uprooted from their homeland and forced to live in refugee camps. In Northeast non-tribals are targeted by insurgents on ethnic grounds.

Terrorists and fundamentalists have resorted to bombing of public places like trains, buses, railway stations, markets, cinema halls, amusement parks and religious gatherings etc., which have resulted in enormous loss of lives and property. They resort to hostage taking, hijacking and bombing of the planes. Terrorists also extort money from the people at gunpoint. They are also engaged in drugs trade and promoting gun culture and this is having evil impact on the society.

Though all sections of population are affected by terrorism and fundamentalism, women are the worst victims. Terrorists often abduct the women and outrage their modesty. Rape of women by terrorists and fundamentalist is common in all conflict zones, whether it is Kashmir or Northeast or Gujarat.

Terrorists and fundamentalists usually resort to moral policing and impose dress code upon women. In Kashmir fundamentalist have banned certain western dresses like jeans and forced women to wear veils, cover their heads and should always be accompanied by male members of their family while going out of their home. In other parts of the country also fundamentalist forces have enforced so called puritan codes
and opposed events like Valentine day celebrations and resorted to violence in various parts of the country.

### 14.5 RESPONSE OF THE STATE TO GROWING TERRORISM

The growing terrorism in India has created a serious challenge to national security. Terrorism is the grave threat to internal security. The response of the Indian state has been mainly three pronged. Firstly, Indian state has been treating terrorism as law and order problem and so to deal with it, Government of India has deployed first paramilitary forces and in case of their failure has deployed army as last resort. The police, paramilitary and army have been given extraordinary powers of frisking, searching and detaining people in disturbed areas to bring the situation under control. Secondly, to combat terrorism the Union and State Governments have enacted various laws to strengthen legal mechanism to sternly deal with terrorism. These laws usually restrict and sometimes even violate some of the fundamental rights granted by the constitution of India. The deployment of paramilitary and armed forces and draconian anti-terror laws have led to serious abuse of human rights in the areas ravaged by terrorism. Thirdly, Indian state has responded to terrorism by pumping lots of fund for the socio-economic development of the regions affected by the scourge of terrorism. This influx of lots of money not necessarily has led to the socio-economic development of the region. A large chunk of money has usually been siphoned off by the bureaucrat-politician-contractor nexus and thus further alienating the people from the state and aggravating the problem of terrorism.

#### 14.5.1 Human Rights Abuse

Growing terrorism has resulted in the increasing violation of human rights. In fact the first and foremost casualty of terrorism has been the human rights. The right to life of common citizens is violated. Under threat from terrorists ordinary person’s rights to movement and freedom of expression is also affected. At the same time the abuse of human rights by the security forces has also become common. In the name of fighting terrorists, the police, paramilitary forces, armed forces are arbitrarily searching, frisking, arresting, detaining, torturing and even killing the innocent people. Rape, murder, torture, disappearance, custodial deaths are common in the areas affected by terrorism. The widespread abuse of human rights in the name of fighting terrorism has created a serious problem for the country. It has sullied the image of India in the international community and has given very bad name to the law enforcing agencies. In the name of electronic surveillance, intelligence agencies are intruding in the private domain of the people and recording their private conversation also, sometime for political purposes. Thus, electronic surveillance has become a tool against political opponents. All this has resulted in the alarming erosion of civil and personal liberty of the people and serious human rights abuses by the law enforcing agencies.

#### 14.5.2 Preventive Detention Laws

India has a long history of preventive detention laws dating back to the British period. Rowllett Act against whom Gandhiji launched Satyagraha and which also led to Jallianwala Bagh massacre was a preventive detention act. In post independent India, the infamous Maintenance of Internal Security Act (MISA) by which scores of opposition leaders were imprisoned during emergency was also a preventive
detention act. After the emergency, MISA was repealed but soon National Security Act (NSA) was enacted.

To effectively fight terrorists more legal measures were adopted. The most controversial of these were Terrorist and Disruptive Activities Act (TADA) and Prevention of Terrorism Act (POTA). These preventive laws granted unprecedented powers to police to detain any suspected persons for being terrorists. These laws have usually been misused by the State to imprison innocent people and settle political scores with their political opponents. MDMK leader Vaiko was detained under POTA because of his speech in favour of the LTTE, which has been declared a terrorist outfit by the government of India. In U.P. government detained an independent M.L.A. under POTA because of political differences. Under the notorious TADA scores of people belonging to the minority community were detained. TADA and POTA became so notorious that National Human Rights Commission (NHRC) termed them as draconian laws and urged the government for its immediate repeal, when these laws were in operation. NHRC contended that existing laws were sufficient to deal with terrorism and no extraordinary law is needed for counter-terrorism operation. Both TADA and POTA have now been repealed several States of the Indian Union have also enacted laws to deal with organized crime and terrorism. MACOCA of Maharashtra, UPCOCA and Gangster Act of U.P. etc. are some examples of the State laws.

Security forces battling terrorism have also been equipped with measures like Armed Forces Special Power Act (AFSPA). In northeast, the people and civil society groups are demanding for withdrawal and repeal of this act.

14.5.3 Curtailment of the Civil Rights and Encroachment in the Private Domain

Terrorism has led to the increased security check-ups. Frequent frisking of the people has become irksome. Freedom of the press has also been curtailed. The most interesting part is that the people because of the fear of spread of terrorism do not vehemently oppose these curtailments of civil liberties.

The security forces are encroaching in the private domain of the people. In terrorist-affected areas, they can detain, question and search the house of any person without any legal authorization. In the name of electronic surveillance of terrorists, they are tapping the private conversation of the people. Sometime this electronic surveillance is used against political adversaries. The result has been undesirable encroachment of the intelligence agencies in the private domain of the people and loss of privacy.

Check Your Progress 3

1) What is human rights abuse? How are security forces violating human rights of the people in the name of fighting terrorism?

2) What were TADA and POTA? Why have they been repealed?
3) How has the state responded to the growing menace of terrorism?

14.6 RESPONSE TO CRITICISMS: NATIONAL HUMAN RIGHTS COMMISSION

Government has also responded to the allegation of human rights abuse by the security forces by creating a specialized institution by a parliamentary act in 1993, namely National Human Rights Commission (NHRC). Government has entrusted to the NHRC the responsibility of protecting the human rights of the people. NHRC has been given the power to send fact finding teams to investigate the abuse of human rights and submit its report to the government. The major flaw in the NHRC is that, it is merely a recommendatory body. It cannot take penal action on its own and depend upon other government agencies to ensure the compliance of its fact-finding report. However, the mere existence of a governmental institution acts as restraint on the law enforcement agencies not to indulge in human rights abuses, while dealing with the people.

14.6.1 Response of the Judiciary to the Human Rights Abuse

Indian judiciary has also responded to increasing violation of human rights in the name of fighting terrorism. Judiciary has increasingly used the Public Interest Litigation (PIL) to safeguard the human rights of the common people. PIL is the innovation and contribution of Indian judicial system. In it the rule of *locus standi* is relaxed, so that anyone can file petition for justice, even on the basis of newspaper report on behalf of aggrieved person. Even by writing a simple postcard to court, one can file petition for justice in case of any serious human rights abuse. Indian judiciary has played key role in punishing state officials and fixing their responsibility in case of human rights abuses by them. Judiciary has been instrumental in ensuring the fair trial and punishment of the people involved in anti-Sikh riots in Delhi and post-Godhra riot cases and fake encounters in Gujarat.

14.6.2 Response of the Media: Exposure of the State Cover-up

Mass media both electronic and print media are playing prominent role in the observance of human rights in the country. It is the media which first exposes the serious abuses of human rights and only then other agencies of the government come into action. Media regularly exposes the cover-up by the state agencies. Custodial deaths, torture, fake encounters, killing of innocent people by terming them terrorists,
etc. are regularly investigated and reported by the media. This helps the government and judiciary in bringing the culprits to the book. Godhra riot victims would have never got justice, if media would not have exposed the connivance of the state police force with the rioters. Misuse of draconian terror laws such as TADA and POTA was widely reported by the media and this eventually prepared the ground for its repeal. Media is a powerful watchdog of the human rights. This is the reason that from time to time, in the name of national security, states try to gag media. Various efforts to gag media by the state have failed. This shows the vibrancy of Indian democracy.

14.6.3 Response of the Civil Society Groups to the Human Rights Abuse

Civil society groups both national and international are rendering yeoman service to the protection and promotion of human rights in India. Peoples Union for Civil Liberties (PUCL) and Peoples Union for Democratic Rights (PUDR) are prominent national civil society groups, who are investigating and reporting their findings in the media about the serious abuses of human rights by the law enforcing agencies. PUCL and PUDR findings have played key role in the trial of people involved in anti-Sikh riots in Delhi and post-Godhara riots in Gujrat. PUCL and PUDR send their investigating teams wherever human rights abuse occur.

Amnesty International and Human Rights Watch are prominent international civil society groups involved in protecting human rights globally including India. Their annual reports regarding the human rights situations in different countries are given significant importance by the international community. The work of national and international civil society groups has acted as powerful restraint upon state agencies and has compelled them to pay due respect to human rights. Their investigative report has also been helpful in providing justice to the victims of human rights abuse.

The law enforcing agencies accuse civil society groups and human rights activists for ignoring human rights abuse by the terrorists and raising a clamour when some human rights abuse has occurred by the police or armed forces. This act of human right activists is helping the cause of terrorists and undermining the morale of security forces. This allegation has been countered by the human right activists. They contend that they are no votaries of terrorism. They also want that terrorism should be dealt with sternly. However, this should be done without violating the rule of law and human rights of the people.

14.7 RELATIONS BETWEEN TERRORISM AND HUMAN RIGHTS

The popular perception is that counter terrorism operation will inevitably lead to the violation of human rights. Containment of terrorism and observance of human rights are simultaneously not possible. Strict observance of the human rights will lead to rise in terrorism. It is contended that terrorists by taking the benefit of the freedom provided by the democratic political system are indulging in the violence. Terrorists are misusing the freedom given by the human rights regime. You can have only one; either the elimination of terrorism or full respect for human rights. Both goals are contradictory and cannot be achieved simultaneously. One has to be sacrificed for the other. The obvious choice is human rights.
This is an erroneous conception. Respect for the human rights and successful counter-terrorism operation is not opposed to each other. In fact both are complementary to each other. Without observing human rights you can never win the heart and mind of the people. Terrorism can not be eliminated only through military means. Military means can only play subsidiary role in containing and eventually eliminating terrorism. Therefore, the need of the hour is that by giving due respect to the human rights of the people the problem of terrorism is resolved. Respect for human rights and containment of terrorism is not antithetical. Terrorism is basically a psychological war and this psychological war can be won only by observing human rights.

Violation of human rights will strengthen the case of terrorists. It will alienate common people from the state and terrorists will be able to win their sympathy. It is precisely because of this reason; terrorists often provoke the security forces to violate the human rights. This makes the security forces unpopular among the people. Without winning the support of people, war on terrorism can never be won. Terrorism is basically political problem and so it can be resolved only politically. For political solution of the problem, strict observance of human rights by the law enforcing agencies is must.

### 14.7.1 Balanced Approach to Deal with Terrorism

Needless to say that terrorism is one of the greatest challenges to the Indian state. It is threatening state building and nation building efforts of independent India. The menace has to be curbed without compromise. Whatever be the reasons for dissatisfaction terrorism can not be justified as a means for getting justice. However since terrorists, insurgents and fundamentalists are also Indian citizens, who for some reasons have taken to violent path the need of the hour is also to understand them and to address their genuine grievances and bring them back to the national mainstream.

The first task of the government has to be to identify the root causes of terrorism and then take the appropriate steps to redress them. The root cause of terrorism in India are mainly two. The first is cultural-political and the second is socio-economic. If these two concerns of the people are addressed, the problem of terrorism can be resolved to a great extent. The desire for the preservation of ethnic-religious identity, removal of abysmal poverty, regional development, employment opportunities etc. are genuine concerns of the people and must be addressed by the government.

India is a multi-ethnic, multi-religious, multi-cultural, multi-lingual society. This diversity can be both asset and liability. It all depends upon the policies of the state. If handled imaginatively, this diversity can be a source of strength and if leadership is incompetent, shortsighted and insensitive, then it can be a source of national weakness. Every community has right to preserve its separate ethnic, religious, cultural and linguistic identity. Any feeling of the loss of distinct identity may lead to alienation, violence and terrorism. By strictly adhering to secularism both in letter and spirit and by allowing all the cultural, religious, ethnic and linguistic groups equal opportunity to preserve, promote and propagate their culture, religion and language, this problem of identity can be resolved.

Socio-economic backwardness, absence of job opportunities, lack of proper development and absence of inclusive growth is the second important reason for violence. The need for food, clothing and shelter are the bare minimum needs of the people, in absence of these none can survive. It is the duty of the state to provide these basic minimum needs to the people. If state fails in this duty, people will resort
to violence. The wide gulf between the rich and poor and exclusion of a large segment of the population from developmental process has aggravated the problem. The resultant agrarian crisis and food insecurity are posing great challenge to the nation. By adopting the policies of welfare state and addressing the genuine socio-economic needs of the people, the fast spreading problem of Naxal violence can be resolved.

After addressing the genuine grievances of the people, the state has to strengthen its law enforcement machinery to sternly deal with extremism and terrorism. The terrorism, though rooted in socio-economic and cultural reasons, is also a law and order problem. Here law enforcement agencies have to use minimum possible force to contain terrorism without violating the law of the land. Security forces must pay due respect to the human rights of the people and avoid harassing innocent civilians. Through this approach criminal elements can be isolated and dealt sternly. The fight against terrorism is basically fight to win over the heart and mind of people, and this is possible when law enforcement agencies are sensitive to the civil and political rights of the people. Only by adopting balanced approach i.e. by resolving the genuine political-cultural and socio-economic grievances of the people and by adopting the zero tolerance attitude towards terrorism, the problem can be effectively dealt with.

Check Your Progress 4

1) Discuss contributions of PUCL and PUDR in the protection of human rights in India.

2) What is PIL? What has been its role in safeguarding the human rights of the people in India?

3) Why and for what purpose National Human Rights Commission has been established?
4) Are respect for human rights and containment of terrorism contradictory or complimentary to each other?

14.8 LET US SUM UP

Terrorism in the post-cold war period has emerged as the greatest menace to the international community. Growing terrorism has led to the increasing violation of human rights by terrorists as well as the state apparatus. No part of the world is free from the problem of terrorism. India is no exception.

Though entire country has been impacted by the scourge of terrorism, but Northeast, Northwest and Central India are worst affected regions. The nature and cause of terrorism differ in these three regions. In Northeast it is politico-ethnic terrorism, in Northwest it is politico-religious terrorism and in Central India it is Maoist ideology inspired terrorism caused by socio-economic reasons.

State has responded to the growing problem of terrorism by declaring the affected regions as disturbed areas followed by the deployment of paramilitary and armed forces. State has also enacted draconian preventive laws such as TADA and POTA to counter terrorism. All these counter terrorism measures had led to curtailment of civil and personal liberties of the people; encroachment in their personal domain resulting in the loss of privacy and widespread human rights abuse by the law enforcing agencies.

Civil society groups, mass media and judiciary are acting as effective restraint on state terrorism. State has also responded to the allegation of human rights abuse by state authorities by setting up National Human Rights Commission.

Respect for human rights and containment of terrorism are not antithetical. Both the objectives can be achieved simultaneously. Only by observing human rights and rule of law, State agencies can contain and eliminate terrorism. Human right activist are no votary of terrorism. Their only plea is that the terrorism should be dealt with sternly without violating rule of law and abusing human rights. Thus, respect for human rights and containment of terrorism are complementary to each other. Counter terrorism measures and operations must pay due respect to the human rights. Only then counter terrorism operations will yield desired results.

14.9 KEY WORDS AND PHRASES

Electronic surveillance : phone tapping, recording of the electronic communication
### 14.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

#### Check Your Progress 1

1) Terrorism is a low intensity, low cost, protracted, irregular warfare, employed by the weak against the strong to attain some political objectives, which emanates from their feeling of injustice and deprivation.

2) Terrorists resort to guerrilla warfare tactics of hit and run, hijacking of planes, hostage taking, kidnapping, targeting security forces, killing of the high profile politicians, celebrities, sometimes innocent civilians too, suicide attack, bomb explosions, etc.

#### Check Your Progress 2

1) Politico-ethnic terrorism refers to the politicization of the ethnic groups and inculcation of feeling of loss of distinct ethnic identity, deprivation, exploitation, injustice, etc. and mobilizing them for armed struggle against the state. Northeast India is the victim of ethnic terrorism.

2) Kashmir has been ravaged by politico-religious terrorism. Kashmir is the victim of state sponsored terrorism. Involvement of foreign mercenaries has further aggravated the problem of terrorism in Kashmir.

3) Naxalism refers to Maoist violence caused by socio-economic reasons, which began from Naxalbari in West Bengal and later spread to other parts of India. Naxalites are inspired by the Maoist ideology of guerrilla warfare and want to annihilate class enemies. Central India is the worst affected by the Naxal violence.

#### Check Your Progress 3

1) Violation of civil and personal rights of the people is human rights abuse. Unauthorized detention, torture, custodial death, intrusion in the privacy of the people through electronic surveillance, frequent frisking, search, unprovoked firing, etc.

2) TADA and POTA were preventive detention laws. These were enacted to fight
terrorism but were grossly misused. Therefore, these draconian anti-terror laws have been repealed.

3. State response: declaration of disturbed area, deployment of paramilitary and armed forces, enactment of anti-terror laws, socio-economic development of the affected region and initiation of dialogue to resolve problem within the constitutional framework.

Check Your Progress 4

1) PUCL and PUDR are civil society groups engaged in protecting the human rights. They send their fact-finding teams to investigate violation of human rights by the state agencies. Their reports have played key role in prosecuting and punishing the offenders of human rights abuse.

2) PIL is the innovation of Indian judicial system for safeguarding human rights. In PIL, the rule of locus standi is waived and so non-agrieved person can file petition on the behalf of others.

3) NHRC was established by an act of Parliament in 1993. It is an institutional response by the state to increasing incidents of human rights abuse. It investigates human rights violation and reports to government. It is only a recommendatory body.

4) Respect for human rights and containment of terrorism are complimentary to each other. Violation of human rights alienates the people, erodes their faith in the state and fuels terrorism.
15.0 Objectives

This unit focuses on the United Nation’s and Indian state’s endeavour’s in recognizing that the basic human rights and the right to life itself are dependent upon healthy environment.

After going through this unit, you will be able to:

- link the basic human rights especially the right to life to healthy environment;
• understand the role of UN in the protection and improvement of environment;

• know the environmental provisions in the constitution of India and environmental laws;

• appreciate the role of civil society in bringing the environmental issues to the forefront; and

• assess the role of judiciary in the field of environment.

15.1 INTRODUCTION

The issue of rights is central to the notion of citizenship. In the ancient Greece the citizenship rights were enjoyed by a select few but in the modern times, citizenship rights have been extended to all, irrespective of class, gender, racial, religious, differences. But the idea of universal rights is also being challenged now by ethnic groups, and other cultural and religious minorities which are clamoring for special rights to protect their identity in a multi-cultural society.

You have already read that human rights, developed out of the ‘natural rights’ theories, in the twentieth century. Human rights are rights, which people are entitled by virtue of being human. They are ‘universal’ rights in the sense that they have been given to all human beings irrespective of their nationality (place of birth), race, religion, gender, class or whatever. They are ‘fundamental’ (in the sense that without these rights human beings can not develop) and therefore they are ‘inalienable’ (these rights can not be separated from human beings). It is also held that they are ‘absolute’; meaning that these rights must be upheld under all circumstances and at all times.

Some of the rights that have been recognized by the Universal Declaration of Human Rights and various conventions and covenants are positive and others are negative in character. Positive rights are those rights which require active participation of the state for their implementation (for instance- the right to healthy environment, the right to food, the right to education, the right to clean water); negative rights deal with civil and political liberties, which the state must not encroach upon. During last few years issue of Environment has also been related to positive rights. Both at International level and in India this is being discussed in a significant manner. In this unit we will have a look on this with special reference to India.

15.2 UNITED NATIONS AND THE HUMAN ENVIRONMENT

It has been recognized since 1970’s onwards that basic human rights and the right to life itself are dependent upon good and healthy environment. Not only the rights of the present generation but also that of the future generations to live and lead a healthy life is embedded in the right to a healthy environment.

Environmental degradation and dwindling natural resources became a matter of concern at the global level, since the 1960’s. A number of writers and activists began to question what came to be called ‘industrialism’. In 1950’s Jonathon Porrit, wrote ‘Seeing Green: The Politics of Green Explained’, in which he criticized both capitalism and communism, as both were dedicated to industrial growth, to the expansion of
the means of production, to unchecked and unhampered technological development and to materialist ethics. Rachel Carson’s, ‘Silent Spring’, (1962) emphasized upon the fragility of ecological relationships and that human beings should consider themselves as part of such relationships than above or beyond them. The book also questioned the traditional notions of scientific progress. The ‘Limits to Growth’ report published by Club of Rome in 1972 held that infinite growth in a finite system was not feasible. These writings became an important feature of the environmental movement that started in 1960’s. It began to be recognized that environment provides the basic conditions of existence for human life on the planet earth, therefore we must take care of it not only for ourselves but also for the generations not yet born. The right to a healthy environment being recognized by the UN as a basic human right which is connected with right to life itself.

15.2.1 The Stockholm Conference

The first international conference which recognized that environment was central to the well being of human beings and to the enjoyment of their basic human rights and right to life itself was the Stockholm conference. It brought the environmental issues on the political agenda of the nation states and global community.

The conference was organized in 1972 and was attended by heads of the states or governments. A global forum of the NGO’s was also organized parallel to the conference. The conference produced a declaration and an action plan with about 100 recommendations on environmental management and support measures. It also led to the formation of the United Nations Environment Program (UNEP).

The slogan of the conference was ‘Only One Earth’ and the debate in the conference centered around the Club of Rome’s report on the ‘Limits to Growth’ (1972). The conference expressed concerns about threats to the human environment from growing population, fast depletion of non-renewable resources and pollution. It also held that solving these problems was a political issue which could no longer be left to scientists, experts or private individuals. It called upon the need to establish specific political institutions to check deterioration of the environment as none of the earlier institutions were designed to contain ecologically harmful affects of various activities. The conference also held that it was not merely important to act but act together in order to preserve environment for present and future generations. It emphasized upon ‘common outlook’ and ‘common principles’ for the preservation and enhancement of human environment. The conference this way highlighted the issue of interdependence between nations and generations (present and future generations).

One of the important achievements of the Stockholm conference was that it led to the establishment of Environment Ministries in most countries. However, not much impact was felt on economic or development issues, there was a growing recognition that broader arrangements were needed to integrate environmental concerns in the development process. Meanwhile, rapid deforestation in the tropical areas led to concerns for biological diversity; droughts in certain parts of the world raised the issue of desertification; hole in the Ozone layer in the Antarctic stratosphere raised the issue of global impact of human activities (pollution); the rising temperature due to increase in the emissions of green house gases brought in the issue of global warming and sea level rise. All these issues and the rising population in certain parts of the world brought the issues concerning poverty and growing materialism and consumerism in the forefront. The environment, thus, continued to degrade and natural resources dwindle.
15.2.2 The Brundtland Commission

In 1983, the United Nations appointed a commission to address the issue of rapidly deteriorating human environment and shrinking of natural resource base and their consequences on social and economic development. The commission came to be known as Brundtland Commission. It was named after its chairperson, Gro Harlem Brundtland. The concept of ‘sustainable development’ evolved from the deliberations and proceedings of the commission and considerable degree of emphasis was also placed on how to achieve that. ‘Sustainable development’ was defined as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’ The term was used for the first time ever since the environmental issues have cropped up in contemporary times and since then it has become a ‘hurray’ word which has been used by environmentalists belonging to different ideological shades in the political spectrum.

The commission prepared an environmental perspective for the 21st century and emphasized that environmental problems are global in nature and therefore it was in the common interest of all nations to have common objectives which take account of inter-relationships between people, resources, environment and development. The commission’s report was published in 1987 with the title ‘Our Common Future’.

15.2.3 The Rio Earth Summit

The environmental movement that started in the 1960’s with writers and activists expressing concerns on environmental degradation reached its peak with the Earth summit at Rio De Janerio (Brazil) in 1992. The conference was held 5 years after the Brundtland Commission and 20 years after the World Conference on Environment and Development at Stockholm, with the same Secretary General, Maurice Strong. More than 100 heads of state/ government participated and the parallel global forum of the Non-Governmental Organizations (NGO’s) was attended by 30,000 persons. The summit was held to take stock of the progress made towards sustainable development since the Brundtland Commission report. The objective of the conference was to build upon the expectations and achievements of the commission report. A declaration and an action plan were adopted by the participating heads of the nation-states. The outcomes of the Earth Summit included – Convention on Biological Diversity, The Framework Convention on Climate Change, Principles of Forest Management, Declaration on Environment and Development and Agenda 21. Together these outcomes cover every aspect of sustainable development.

An important thing that was witnessed during the Earth Summit was differences of opinion between the developed and developing nations of the world. The developed nations called for environmental sustainability where the developing nations demanded a chance to allow their economies to catch up with the developed world.

15.2.4 Convention on Climate Change

The Convention on Climate Change was adopted in response to scientific forecasts in relation to man-made global warming. It highlighted the fact that burning of fossil fuels by human beings were releasing large quantities of gases including carbon dioxide in to the earth’s atmosphere which led to warming of the surface of the earth, causing threat to human and natural eco-systems. The aim of the convention was to make efforts to reduce the threat of ‘global warming’, by stabilizing the release of ‘green house gases’ at a level that will not pose danger to the global climate system. The developed countries of the world were asked to take the lead in combating
global warming and its negative effects as they contributed maximum to green house gas emissions. The developed countries were also asked to give technological and financial assistance to the developing countries (whose economies were based on the fossil fuels) so that they could switch on to sustainable methods of production and other development initiatives. The Convention asked the developed nations of the world to reduce the emission of the green houses to year 1990, level by year 2000.

At the third conference of the parties of the convention held in 1997, at Kyoto, (Japan) the Convention on Climate Change was amended. The amended convention is known as Kyoto Protocol. The countries that ratify the agreement are required to reduce emissions of green house gases 5% below the 1990 level by the period 2008-2012. The countries that have ratified the protocol are 160 in number and they are divided in to two categories – the developed countries are referred as Annex I countries and the developing countries are referred as Annex II countries. Collectively, these countries contribute 55% of global Green House Gas (GHG) emissions. The Annex I countries have accepted (GHG) emissions and any country out of these that fails to meet its Kyoto obligation will be penalized. The Annex II countries are not obliged to reduce (GHG) emissions but can participate in the Clean Development Management (CDM) and they have no (GHG) emission restriction. The protocol has placed ‘common but differentiated responsibilities’ on the nations concerning (GHG) emission reduction.

India and China have signed and ratified the protocol but are not required to reduce carbon dioxide emissions. USA & Australia the nations that have contributed the most to global warming have only signed the treaty but not ratified it. USA is the single largest emitter of carbon dioxide from the burning of fossil fuels. In 1998, the Vice-President of USA, Al Gore symbolically signed the Protocol but held that USA would not ratify it until the developing nations were asked to do the same. President, George W. Bush was also not keen on submitting the treaty to the Senate for ratification because of the exemptions granted to countries like China (the second largest emitter of Carbon Dioxide) and India. [There has been 55% increase in India’s contribution to GHG emissions in the period 1990-2004 and in the case of China it has been 47%.] In nutshell USA, does not believe in the classification of the countries into Annex I and Annex II. The USA is not interested in ratifying the protocol also because it will put lot of strain on its economy.

An important issue that has emerged from the talks is the politics between nations on the issue of environment.

15.2.5 The Johannesburg Conference

The environmental trend did not improve in the last decade of the 20th century rather it continued to deteriorate. New issues emerged, related to genetic engineering, biotechnology, information technology revolution, globalization and the impact of human activities on climate change became clearer. The Global Environmental Outlook (GEO) 2000 a United Nations project to review global environment in its report mentioned that extremes of wealth and poverty; consumerism and population growth was threatening the whole human system including the global environment. The Johannesburg Conference, organized in 2002, to review the achievements and failures of the Rio Declaration. The issues discussed in the conference included water & sanitation, energy, health, agriculture and bio-diversity (WEHAB). It re-invigorated its commitment to sustainable development.
Check Your Progress 1

1) Why so much importance is attached to the Stockholm Conference?
............................................................................
............................................................................
............................................................................
............................................................................

2) What do you understand by the term ‘Sustainable Development’?
............................................................................
............................................................................
............................................................................
............................................................................

3) What is Kyoto Protocol? Discuss the differences between nations on the issue of climate change.
............................................................................
............................................................................
............................................................................
............................................................................

15.3 HUMAN RIGHTS AND THE ENVIRONMENT IN THE CONTEXT OF INDIA

The Indian constitution contains specific provisions that deal with the protection and improvement of the environment. These provisions were included in the Indian constitution by the 42nd Amendment Act of 1976 and they explicitly spell out national commitment to protection and improvement of the environment. Judicial interpretation of these principles, since the last two decades of the twentieth century, has strengthened the constitutional commitment to environmental protection. The judiciary has connected the right to wholesome environment with the basic human right, right to life. In the Indian constitution, the right to life is a fundamental right, guaranteed by Article 21.

15.3.1 The Forty Second Amendment Act- Articles 48A and 51(A) (g)

The Forty Second Amendment Act added Article 48A and 51(A) (g) to the constitution. Article 48A is covered in Part IV of the constitution that deals with the Directive Principles of the State Policy. And Article 51(A) (g) is covered in Part IVA, of the constitution which deals with Fundamental duties. Article 48A says that- ‘The state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.’ Article 51(A) (g) says that it is the fundamental duty of the citizens ‘to protect and improve the natural environment including forests and wildlife and to have a compassion for living creatures.’ Considered jointly,
Articles 48A and 51(A)(g) express national commitment towards protection and improvement of the environment.

The directive principles are in the form of guidelines, which the Indian government must take into account while making laws and policies. These principles are not enforceable by judiciary but are fundamental in the governance of the country. The expression ‘protect and improve’, that appears in Article 48(A), not merely instructs the policy makers that they must take into account the environmental factors while going ahead with development plans and initiatives but also advises them to take positive action in the direction of environment. The Indian Judiciary which has taken the initiative of protecting and improving the environment has, in a number of cases, cited the directive principles. The 42nd Amendment Act of 1976 also expanded the Concurrent list (Seventh Schedule) by shifting subjects like forests and protection of wild animals and birds, family planning and population control from the state list to concurrent list.

15.3.2 Federal Division of Powers and Environment

India has a federal form of government therefore there is a division of (legislative, administrative and financial) power between the union government and the state governments. Part XI of the constitution deals with the legislative and administrative division of power between the Union government and the state governments and their powers have been clearly mentioned in the Seventh Schedule. Article 246 (Part XI) contains 3 lists- Union list, State list and Concurrent list. The Union list (List I) contains 97 subjects over which the Union government can legislate. These include defence, foreign affairs, atomic energy, transportation, shipping, mines and mineral development, inter-state rivers etc. The State List (List II) contains 66 subjects over which state legislatures have the power to make laws. These include public health and sanitation, agriculture, water supplies, irrigation, drainage, fisheries etc. There are 52 subjects in the Concurrent list (List III) over which both the Parliament and the state legislatures can legislate but in case of a conflict between the laws made by the Parliament and the state legislatures the constitution says that the laws made by the Parliament will prevail. The subjects like forests, the protection of the wildlife, mines and mineral development (not covered by the Union list), population list, family planning etc are covered by the Concurrent list.

Parliament has the power to make laws with regard to the matters not included in any of the lists, these powers of the Parliament are called as the residuary powers. Parliament has been empowered to legislate with regard to matters included in the state list, if it is ‘necessary or expedient in the national interest’ and if it is passed by 2/3rd of the members present and voting in the Council of States. (Article 249) (Part XI). The Water (Prevention and Control) Act of 1974 was enacted by the Parliament after it was passed by 12 state legislatures.

Further Article 253 of the constitution empowers the Parliament to make laws for the whole or any part of the country to implement international obligations and treaties. The Parliament has used this power to enact the Air (Prevention and Control of Pollution) Act of 1981 and the Environment Protection Act of 1986 to implement the decisions of the Stockholm Conference. The division of legislative powers between the Union and the state legislatures from the environmental view point is noteworthy. The environmental issues which are best tackled at the local level such as sanitation, waste disposal have been placed in the State list and the issues such as water pollution and wildlife which need uniform approach have been placed in the Union list.
The history of environmental policy and laws in India is not very old, rather it is quiet recent, and it can be traced back to the decade of 1970’s. After the Stockholm conference, (1972) the Indian government came out with an environmental policy and comprehensive laws to protect the environment. The Water (Prevention and Control of Pollution) Act of 1974 and The Wildlife Protection Act of 1972 were adopted in the period following the conference. The Department of Environment was established in 1980, it was elevated to become the Ministry of Environment and Forests, (MOEF) in 1985. MOEF, is the primary and an overarching administrative institution to check the deterioration of the environment and plan, promote, co-ordinate, over-see the implementation of environmental and forestry programmes. It works towards "conservation and survey of flora and fauna, forests and wildlife, prevention and control of pollution, aorestation and regeneration of degraded areas and protection of environment in the framework of legislations."

The national forest conservation and air pollution laws were passed in the early 1980’s. Number, of other laws were created particularly after the Bhopal gas tragedy of 1984: Environment Protection Act (EPA) an all embracing act was enacted in 1986 and it was followed by tightening of the laws relating to air and water pollution and hazardous activities.

15.4.1 Water (Prevention and Control of Pollution) Act of 1974

The Water Act (1974) was India’s first attempt after the Stockholm Conference to deal comprehensively with an environmental issue. The act was the culmination of discussion between the central and state governments over water pollution. Water is a state subject therefore the act was formulated by Parliament under Article 252 of the Indian constitution, which empowers Parliament to enact laws on state subjects if two or more states consent to it.

The act constitutes the Central and State boards. It empowers the state boards to control sewage and establish and enforce effluent standards for factories discharging pollutants into water bodies. The boards control the industries by approving, rejecting or conditioning their applications that come before it, seeking approval with regard to treatment or disposal of the effluents. The state boards also minimize water pollution by advising state governments on appropriate sites for new industry. A central board performs the same functions for union territories and coordinates activities among the states; it is more powerful than a state board. The activities of the state boards have to comply with the directions of the Central board. The Water Act was amended in 1988, the amendment strengthened the act’s implementation provisions and the penalties are more stringent than before. Now a board may close a defaulting industrial plant or withdraw its supply of power or water by an administrative order.

15.4.2 Air (Prevention and Control of Pollution) Act of 1981

The Parliament enacted the Air Act in 1981 under Article 253 of the Indian constitution. The purpose of the Act is prevention, control and abatement of air pollution. The Acts statement of reasons and objects contains government’s concern for the ‘detrimental effect of air pollution on the health of the people and also on animal life, vegetation and property.’
The Act’s framework is similar to that of the Water Act. The authority of Central and State boards under water act was expanded to include air pollution control, in order to have an integrated approach to environment. States not having water pollution boards were required to set up air pollution control boards. Under the Air Act, all industries within designated ‘air pollution control areas’ must obtain consent from the state boards. The states are required to prescribe emission standards for industry and automobiles after consulting the Central board. They are also required to note its ambient air quality standards. The 1987 amendment strengthened the enforcement machinery and introduced stiffer penalties. Now, the boards have the power to close down a defaulting plant or stop its supply of electricity or water. The amendment also covers noise pollution.

15.4.3 Environment Protection Act (EPA) (1986)

The Bhopal gas tragedy that took place in December 1984 brought the issue of human rights and environment on the forefront. Forty tons of highly toxic methyl isocyanate, manufactured and stored in Union Carbide’s plant in Bhopal, escaped into the atmosphere, killing around 3,500 people. About 2 Lakh people were injured seriously and permanently.

In the context of this tragedy, the government responded by enacting the Environment Protection Act (EPA) in 1986. This act was formulated under Article 253 of the constitution. EPA, relates to protection and improvement of the human environment and prevention of hazards to human beings and other living creatures, plants and property. It is an umbrella legislation which gives powers to the central government to coordinate the activities of both central and state authorities with regard to water and air pollution. The EPA defines the environment to include, water, air, and land and the interrelationships that exist between them and human beings and other living creatures like plants, micro-organisms. “Environmental pollution”. EPA refers to the presence of any environmental pollutant (water, liquid or gaseous substance) in such concentration that may tend to be injurious to the environment. The act also talks about “hazardous substances” which may cause harm to human beings and other living creatures.

EPA, is an ‘enabling law’ as it gives wide powers to the political executive to enable bureaucrats to frame rules and regulations for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution [section 3(1)]. It also empowers the Central government to set new standards for the quality of environment as well as standards for controlling emissions and effluent discharges; to regulate industrial locations; to prescribe procedures for managing hazardous substances; to establish safeguards for preventing accidents; and to collect and disseminate information regarding environmental pollution.

Section 5, of the act, gives powers to the Central government to issue written orders, including orders to close, prohibit, or regulate the supply of electricity, water, or any other service. The Act, gives Central Government the power of entry to an industry for examination, testing of equipment etc (section 10) and the power to take samples of air, water, soil, or any other substances from any place for analysis. (section 11) The act empowers the Centre to delegate its powers and functions to any officer, state government or other authority.
15.4.4 Regulation of Hazardous Substances Rules

Modern industries use, generate and dispose of toxic substances like heavy metals, nuclear and radioactive wastes, dangerous micro-organisms (product of DNA technology), synthetic chemical compounds such as DDT, explosives etc. A long term exposure to such substances poses a danger to human life, leading to cancer, birth defects, as well damage to the lungs and nervous system. Numerous rules on the proper handling of hazardous waste have been devised by the Indian Government, since 1989. The Hazardous Wastes (Management and Handling) Rules, 1989, have been framed under the enabling provisions of the Environment Protection Act., 1986. These rules apply to designated category of wastes. Under rule 5, no person without a permit from the State Pollution Control Board, can collect, receive, treat, transport, store, or dispose hazardous wastes. Under rule 6 the Board has the power to suspend or cancel an authorization. Rule 11, prohibits import of hazardous wastes into India. Municipal Solid Wastes (Management and Handling) Rules, (2000) deal with the procedure for the collection, storage, segregation, transportation, processing and disposal of municipal wastes. The Recycled Plastics Manufacture and Usage Rules, 1999 deal with rules related to reusing and recycling plastics.

15.4.5 Forest Conservation Act of 1980

Rapid deforestation and environmental degradation compelled the Central government to enact the forest Act of 1980. The act was amended in 1988. The Act requires the approval of the Central government before a state de-reserves a reserved forest, uses forest land for non-forest purposes, assigns forest land to a forest private person or clears forest land for the purpose of reforestation.

From the above it becomes clear that since the Stockholm conference and particularly after the Bhopal gas tragedy (1984), the Indian legislature has been quick to enact laws regulating development and other activities. The new laws and rules are impressive in their range covering areas which were not earlier dealt with like noise pollution, vehicular pollution, hazardous waste, transportation of chemicals, coastal developments and environment impact assessment. Stringent penalties have also been introduced in the old pollution control laws like water act, air act etc. New regulatory techniques like public hearings, which provide a forum to civil society organizations to voice their concerns, citizens initiatives and workers participation have been added to the old schemes. All this is true but it is equally true that the administrative agencies have been reluctant to use its powers to discipline violators and have been marred by negligent and apathetic attitude. Against this backdrop, civil society assertion has been seen in recent years, against government’s policies and administrative agencies lackadaisical attitude.

Check Your Progress 2

1) Discuss the provisions in the Indian Constitution relating to environment.
2) What laws have been enacted to prevent water and air pollution?


15.5 CIVIL SOCIETY AND ENVIRONMENT

The civil society assertion has assumed two forms – form of a movement and litigation. Through this assertion civil society actors and organizations have not only criticized the government’s policies and administrative agencies lackadaisical attitude but have also put forward their own paradigm of development and their own theory of rights and rules of governance. The Chipko movement, (the movement to hug trees) of the 1970’s that developed in the Himalayan villages of UP and Chilika Bachao Andolan that took place in the Chilika region of Orissa in 1990’s, were against the government policy of commercialization of forest and fishery resources respectively. The protagonists of the Chipko movement held that local resources are meant for local use. Tamil Nadu, Andhra Pradesh and other coastal regions of the country have witnessed movements against aquaculture farming (prawn culture). There have been struggles of the people against mechanization of fishing as it had harmful impact upon fishermen doing fishing with traditional techniques and means like canoes, catamarans, rowing and sailing boats. Kerala fishermen’s struggle against mechanization of fishing in the 1960’s and 1970’s is the famous movement in the contemporary history of environmental conflicts.

There have been movements against government’s policy of making big dams like Narmada, Tehri, Silent river project Koel Karo and many others. In-fact dam making has become synonymous with protests, in India. Dams have been opposed because they displace thousands of people, because dam making requires large tracts of land which the government acquires by displacing people from their home land. Most of the displaced people belong to the poor and powerless sections of the society. Dams have also been opposed because they are considered to be ecologically unsound. Some of the dams are on the seismic zone. They reduce biological diversity and destroy the habitats of the animals and other species. Dams have also become controversial because citizens have been excluded from the discussions about the location, size, the socio-economic impact, costs and benefits, the magnitude of displacement, and rehabilitation issues. Lack of participatory democracy and transparency has emerged as one of the contentious issues in the struggles against big dams. It is also alleged that dam building has become a business on which a number of corporations depend like multinational engineering, equipment manufacture and construction. Besides these struggles there have been protests on the issue of mining, minor forest products.
It is worth noting that all these struggles, protests and movements are taking place at the backdrop of dwindling natural resources, and environmental degradation. In the forefront of these struggles have been the poor peasants, tribals and other marginalized sections of the society whose livelihood and survival is linked with these resources. These protests, struggles and movements show how lives of the poor people are intertwined with nature- trees, forests, seas and oceans and so on; their culture and very survival is dependent upon them.

Besides these movements, there has been litigation explosion since the last few decades of the 20th century. Through Public Interest Litigations (PIL) civil society actors and organizations have not only criticized administrative agencies lackadaisical approach and government’s policies towards resources but have also demanded remedy in the form of positive action or alternate policies. Litigation explosion illuminates the role of Judiciary in the field of environment. A silent spectator to environmental despoliation and administrative apathy, for number of years, Judiciary has assumed a pro-active role in the field of environment, since the last few decades of the 20th century. It has emerged as an important ally of the civil society actors and organizations, in regard to environmental issues. Both have worked in tandem with each other to protect and improve the environment. It has acted like a policy maker, a super administrator and a public educator, in order to preserve and protect India’s environment and natural resources. The development of environmental laws in India since 1990’s can be attributed to Judiciary, which while responding to citizen’s complaints vis a vis environmental degradation and administrative negligence and apathy, has gone to the extent of making laws.

A unique situation has emerged in India, on the one hand there are state agencies, pollution control boards, forest bureaucracies which are supposed to play an active role but have gone slow in their work and on the other hand there are non-formal, ad-hoc citizens and civil society organizations interrogating the political executive and administrative agencies for their apathy and negligence and an active Judiciary working as an ally of the civil society groups and both working in tandem with each other.

15.6 JUDICIARY AND PUBLIC INTEREST ENVIRONMENTAL LITIGATIONS

As you know judiciary is a part of the state structure like legislature and the executive. The way legislature and executive, the dominant institutions of the state mold society through their agenda, policy and program, judiciary also shapes the society but in its own distinctive way. Indian Judiciary especially the Supreme Court has played this role through its power of judicial review and activism.

Public Interest Litigation (PIL) is synonym with judicial activism. It was developed and nurtured by judges like VK Krishna Iyer and P N Bhagwati, to bring justice close to the masses. It was felt that traditional legal system was highly elitist, conservative, individualistic and incapable of responding to the needs of the masses, groups and collectivities. It was felt by the socially conscious judges that judiciary must shed off its elitist image and become accessible to the masses and disadvantaged sections of the society otherwise it can not call itself judiciary of the masses. It was also felt that the legal proceedings must be made simple as illiteracy also prevents the people to have access to the judiciary. In order to overcome the deficiencies in the traditional legal system the socially conscious judges evolved new techniques and strategies to bring justice close to the masses. PIL was a part of the legal aid
movement, which started in the beginning of the 1970's, but developed and blossomed in the post-emergency period. Since 1980's the emphasis of PIL has also been on environmental issues and it has been extensively used by civil society actors and organizations to interrogate the administrative agencies and state's policies towards resources. Some of these cases have been discussed below. Judiciary's contribution in the field of protection and improvement of environment can be seen from these cases.

15.6.1 Ganga Pollution Cases

These cases were filed by an environmentalist lawyer M. C Mehta in 1985 under Article 32 of the constitution to prevent the problems and sickening conditions caused by the pollution of the river Ganga. The petitioner was not a riparian owner (meaning owning a property or living near by the river) but the court took up the issue as it was in the public interest. The right to protect the environment in this case was justified on the basis of Article 21, 48A and article 51A. The Court referred to the Water Prevention and Control of Pollution Act 1974 and Environment Protection Act of 1986, in order to start the proceedings against the industries and municipal bodies polluting the river. After the preliminary enquires the Court started proceedings against 400 major and medium industries and about 100 municipal bodies in the states of Uttar Pradesh, Bihar and West Bengal. The Court divided the cases in to 3 parts, in view of the sheer magnitude of the case.

I

In the first part the Court dealt with tanneries (leather industries) at Jajmau near Kanpur. The Court questioned the owners of the tanneries for not setting up effluent treatment plants. When told that they were not in a financial position to set up these plants the Court held that “Just like an industry which can not pay minimum wages to its workers can not be allowed to exist, a tannery which cannot set up a primary treatment plant can not be permitted to continue.” The Court also held that the effluents discharged by the tanneries were ten times harmful as compared with the domestic sewage water which flowed in to the river. On the basis of this reasoning the Court closed the tanneries, which had not set up effluent discharge plants and maintained that while closure would bring unemployment and loss of revenue for some, life health and ecology was more important to the people in general.

II

In the second part the Court, took up the cases against municipal bodies in Uttar Pradesh. The Court first considered the case in respect of the Kanpur Municipal Corporation (KMC) as Kanpur is one of the biggest cities on the banks of the Ganga river. On the basis of the information prepared by the Industrial Toxicology Research Centre and Council of Scientific & Research Centre, on the Ganga Action Plan, the court criticized the municipalities and other local bodies for ignoring the pollution of the river. It held that the water in the river Ganga at Kanpur had become so much polluted that it could not be used by the people either for drinking or for bathing. It emphasized upon the statutory obligations of the Municipal Corporation under section 114 of the Uttar Pradesh Mahapalika Adhiniyam (1959), regarding disposal of sewage and protection of the environment and held that duties had remained on paper only.

The Court therefore ordered that the Kanpur Nagar Mahapalika should take action to prevent the pollution of the water in the river Ganga. It also ordered shifting of
the dairies outside the city; that public latrines and urinals be constructed for the use of poor people in order to prevent defecation by them in open land; the practice of throwing corpses and semi-burnt corpses into the river Ganga be put to an end; that only those industries should be given licenses which had adequate provisions for the treatment of trade effluents. The Court also held that directions given to Kanpur Municipal Corporation should apply mutatis mutandis to other Municipal Corporations and Municipalities. The Court in this case also advised the Central government to direct all educational institutions to include the subject of national environment in text books and to observe ‘Keep City Clean’ week to make people aware of the importance of cleanliness and hazards of pollution.

III

In the third part the Court dealt with the tanneries in Tangra, Tijila, Topsia, and Pagla Danga situated in the eastern fringe of the city of Calcutta (Kolkata). The eastern fringe of the city of Calcutta had 550 tanneries. NEERI, conducted a survey in September 1995 and held that the tanneries were causing serious environmental, health and hygiene problems as they did not have any waste drainage and collection system. On the basis of detailed examinations by scientific and technical bodies the Court stopped the functioning of the tanneries at Calcutta and re-located them to the new Leather Complex set up by West Bengal Government. The tanneries which declined to relocate were not allowed to function;

15.6.2 Vellore Citizens Welfare Forum Case

This case was filed by Vellore Citizens Welfare Forum (Tamil Nadu), a civil society organization complaining about the tanneries which were discharging untreated effluent into agricultural fields, roadsides, waterways and open lands. The effluents eventually flowed into the river, thereby contaminating the main source of water supply to the residents of Vellore.

The Supreme Court in this case emphasized upon the principles of ‘sustainable development’ and applied the ‘Precautionary’ and the ‘Polluter Pays Principle’ in the case. It held that the state government and statutory authorities must anticipate, prevent, and attack the causes of environmental degradation (Precautionary Principle). And the polluter must owe the responsibility for its deeds and pay compensation to the victims and also the cost of restoring the environmental degradation (Polluter Pays principle). It also directed the central government to constitute an authority under section 3 of the Environment Act, 1986 to deal with the situation created by the tanneries and other polluting industries in the state of Tamil Nadu.

15.6.3 Taj Trapezium Case

This case was filed by M C Mehta in 1997 to highlight and question the case of foundaries, chemical industries and the refinery at Mathura which were damaging Taj. The case falls under Air (Prevention and Control of Pollution) Act of 1981. The Supreme Court held that Taj was not only a piece of cultural heritage but an industry in itself. It was visited by more than 2 million tourists every year and was a source of revenue for the country. The emissions generated by the use of coal and coke by the foundries, chemical/hazardous industries and the refineries at Mathura were damaging the Taj. The Court held that industries are essential for the development of the economy but environment and eco-systems also have to be protected. The pollution generated by the industry must commensurate with the carrying capacity of the ecosystem. The Court in its order asked 292 polluting industries to switch over
to the natural gas as an industrial fuel. The industries that were not in a position to obtain gas connections should stop functioning and relocate themselves outside the Taj Trapezium Zone. It asked the UPSIDC (UP State Industrial Development Corporation) to allocate the alternate sites to the industries seeking relocation.

15.6.4 Vehicular Pollution Case

The vehicular pollution case (Delhi) was filed by M C Mehta, in 1995. But it gained momentum only in 1998 when the court formed the technical advisory committee (Bhure Lal Committee), to advice the Court on the technical aspects of the issue. On the basis of the recommendations of Bhure Lal Committee in 1998 the court passed an order on 5th April 2002, recommending CNG for buses and Euro diesel for cars. In this case, the Supreme Court acted like a real administrator, scrutinizing and monitoring its orders and also exposed the government policies with regard to fuel and politics of big lobbies involved in the issue. It brought the issue of clean air in the centre stage and related it to the health of the public.

15.6.5 Indian Council for Enviro Legal Action Case

This case was filed by an environmentalist organization, Indian Council for Enviro Legal Action. It brought to light misery and anguish of the people living in the vicinity of chemical plants in a small village in Bichhri (Udaipur) Rajasthan. It focused on the entrepreneurs who were damaging and spoiling the environment by producing toxic chemicals by violating the environmental laws of the country in their eagerness to earn money through foreign exchange. The toxic and untreated wastewater and sludge produced by chemical industries in Bichhri village percolated deep inside the earth polluting both earth and water. People of Bichhri village virtually revolted in 1989 and their concerns were also expressed in the Parliament. Since no remedial action was taken up, Indian Council for Enviro Legal Action filed a writ petition in August 1989.

This litigation was filed so that action could be taken against the chemical industries for not treating the toxic waste before disposing off; and to restore the areas which had been harmed. The Supreme Court interrogated the Government of India through MOEF; the Government of Rajasthan, Rajasthan Pollution Control Board (RPCB) and the chemical industries. It also appointed NEERI a scientific and technical commission to examine the damage caused by the chemical industries to the environment in the area.

After studying all the reports, including the counter affidavits of the owners of the chemical industries, the court held that the chemical industries in pursuit of profit had inflicted untold misery upon the poor villagers by despoiling their land and water sources. It characterized the industries as ‘rogue industries’ and used the ‘polluter pays principle’ and also ordered the central government to determine the amount required for restoring the environment to its pristine position, in consultation with MOEF. In its final statement the court ordered the closure of all the plants and factories located in Bichhri village.

15.6.6 Rural Litigation Entitlement Kendra Case

The Doon valley decades back was swarmed by water from Ganga and Yamuna tributaries. It had abundant bushes, which held the soil together and abundant water streams emanated from the lime stone aquifers. It received enough water during the rainy season, which helped the tree roots to store water and the lime stones had

to form aquifers. The stored water would release in continuous manner and it was on the availability of continuous supply of water that the cities of Mussorie, Dehradun and other small towns and villages developed. Many villages, canals and roads added the word ‘pani’ to their names due to continuous supply of water in streams and other reservoirs. Towns, roads and canals like Guccchu Pani, Jhari Pani, Nala Pani, Khatta Pani, Karu Pani, Meetha Pani, East Canal Road, West Canal Road, Bijapur Canal Road, Rajpur Canal Road came into existence. Unscientific and uncontrolled limestone mining that started during 1955 – 1965 started playing havoc with the ecology of the area. Blasting operations destroyed green forests, shook up the hills damaged the property, cattle and agricultural lands of the villagers. With the felling of trees rains became less and with limestone’s dug out, the aquifers ceased to exist. The streams started getting blocked and the flow of water reduced. The scarcity of water disturbed the irrigation system. The valley slowly and gradually started losing its beauty and became prone to land slides, flash floods, water shortages, rising temperatures and failing crop productions.

The Supreme Court in its landmark judgment stopped mining in the region and passed orders concerning reforestation of the valley. Justice Amarendra Nath Sen, while passing orders in September 1985, held that exploitation of mineral resources is important for industrial development but it should be done in such a manner that it does not disturb the ecology and affect the livelihood and the conditions of a large number of people. If development is to be achieved by disturbing the ecology and destroying the basic amenities of life then it may not lead to economic growth and prosperity. He held that it is important to strike a balance between economic growth and conservation.

15.6.7 T N Godavarman vs. Union of India

T.N. Godavarman case is an ‘ongoing and unparalleled’ forest conservation case in the history of environmental litigations in India. Though this writ petition was filed to stop felling of trees in the Nilgiris district, the entire country came within the writ jurisdiction. The case was filed by T N Godavarman Thirumulkpad of Nilambur, (Tamil Nadu) along with Kalpavriksh (a Pune based non-governmental organization) and Society Andaman and Nicobar Ecology (SANE) (a Port Blair based NGO) and the Bombay Natural History Society (BNHS). In this case the Supreme Court issued several detailed orders to see the enforcement of forest laws in India particularly those relating to conservation. It assumed the role of a ‘super administrator’ and passed several orders regulating the felling, use and movement of timber across the country and freezing of all wood based industries. The areas where the Supreme Court cracked its whip since the case started include Jammu and Kashmir (it allowed felling only in accordance with the Jammu and Kashmir Forest Conservation Act of 1990); Arunachal Pradesh (it banned all wood based industries in Tirap and Changlang districts); Assam (it ordered all saw mills to close in Dibrugarh and Tinsukia); Delhi (200 wagons of illegal timber were seized at Nangloi, the court ordered action against the officials whose acts of commission’s and omissions allowed felling of trees); Chattisgarh (the court called for an action against former commissioner of Bastar and other officials involved in illegal felling ); Madhya Pradesh (where illegal mining was going on and healthy trees were being cut in the garb of diseased ones); Andaman and Nicobar Islands (where felling was going on, it sent a team to assess the impact of felling); Tamil Nadu (the court stayed the felling and transportation of timber in Nilgiris); Maharashtra (the court banned felling in Matheran hill station).
15.6.8 Article 21 and Judicial Interpretation

Article 21 states that ‘No person shall be deprived of his life or personal liberty except according to the procedure established by law.’ This article appears to be a negative right, but has been given positive meaning by judicial interpretations. The right to life has become a canvas on which judges are painting a picture of new rights. It has become a repository of many meanings. New rights have been associated with the right to life and liberty. For instance, Right to life is interpreted to mean - Right to a wholesome environment. This interpretation can be traced back to Rural Litigation and Entitlement Kendra case which came before the Supreme Court in 1983. Justice Ranganath Mishra while giving the final order went into the ecological history of Himalayas how they supported Ganges, Yamuna. Forests, air and water were indispensable gifts of nature to human life and that any disturbance in the natural process was bound to affect human life and society. In Subhash Kumar v State of Bihar case, the court held that the right to life includes unpolluted air and water. The court held that if anything endangers or impairs the quality of life in derogation of law, a citizen has a right to move the Supreme Court under Article 32 of the constitution. In Virendra Gaur v State of Haryana case the court held that ‘Enjoyment of life ……encompasses within its ambit the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can not be enjoyed……. Environmental, ecological, air, water pollution, etc should be regarded as amounting to violation of Article 21.’ In Shri Ram Gas Leak case the court held that when an enterprise engaged in hazardous activities becomes a danger to the health and safety of the people in the factory and in the surrounding areas then it owes a duty to the community so that no one is harmed.

There are also instances where Judiciary’s activism took a back seat. In Dhanu Taluka, Konkan Railway Corporation, Tehri and Narmada dam cases judiciary failed to take a pro-environment and pro-people stand and failed to change the policy decisions of the government. The judgments in these cases were a retreat from the social revolution initiated by judiciary in the last few decades of the twentieth century. But if seen as a whole, judiciary’s contribution in the field of environment protection and improvement cannot be whitewashed. In other words it can not be ignored.

Check Your Progress 3

1) Discuss the role of civil society on environmental issues.

2) Write a brief note on Ganga pollution cases.
3) Examine the role of judiciary in the protection and improvement of the environment.

15.7 LET US SUM UP

It has been recognized globally by the United Nations as well as the nation states that the basic human rights and the right to life itself of present and future generations is embedded in a balanced environment. An International level Stockholm Conference was the first international conference which brought the environmental issues on the political agenda of the nation states and global community. Thereafter the issue has been discussed and debated at various fora.

The Indian constitution contains specific provisions that deal with the protection and improvement of the environment. Judicial interpretation of these principles has strengthened the national commitment to environment protection. The judiciary has connected the right to wholesome environment with the basic human right, right to life. Comprehensive laws have been adopted to protect and improve the environment.

Despite these laws, administrative agencies have been reluctant to use its powers to discipline violators. Civil society assertion has been seen in recent years, against government’s policies towards resources and administrative agencies attitude. This assertion has assumed the form of a movement and litigation. Litigation explosion has brought in to light the role of Judiciary in the field of environment. Article 21, the right to life has become a canvas on which judges have painted a picture of new rights. If seen as a whole, judiciary’s contribution in the field of environment protection and improvement cannot be ignored.

15.8 KEY WORDS

Civil Society : It is considered as an arena where rational conversations/discussions take place with in the general public over state policies or its actions and inactions. The institutions of civil society consist of associations, citizens groups, free press etc.

Industrialism : It is characterized by large-scale production, the accumulation of capital and relentless growth and is dedicated to materialism, utilitarian values and absolute faith in science and technology.

15.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) Stockholm Conference was the first conference, which was organized on the human
Human Rights: Threats, and Challenges

environment. It brought the issue of environment on the political agenda of the nation states. Emphasised upon ‘common outlook’ and ‘common principles’ for the preservation and enhancement of human environment.

2) The term was used by the Brundt Commission. The term was defined as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’

3) At the third conference of the parties of the convention held in 1997, at Kyoto, (Japan) the Convention on Climate Change was amended. The amended convention is known as Kyoto Protocol. The protocol has placed ‘common but differentiated responsibilities’.

Check Your Progress 2

1) Your answer should cover — the 42nd Constitutional Amendment Act – Article 48A, 51(A)(g); the federal division of powers and the environmental laws.

2) Write briefly on the Water (Prevention and Control of Pollution) Act 1974, The Wild Life (Protection Act 1972, the National Forest Conservation and air pollution laws.

3) See sub-section 15.4.3.

Check Your Progress 3

1) The Civil Society assertion has taken two forms – form of a movement and litigation.

2) See sub-section 15.6.1

3) Your answer should emphasize upon- Public Interest Litigations, the cases.

15.10 FURTHER READINGS


UNIT 16 EMERGING TRENDS – MEDIA, INTERNET, GLOBALIZATION

Structure

16.0 Objectives
16.1 Introduction
16.2 Media
  16.2.1 Access to Media Information and Human Rights Protection
  16.2.2 The Media as a Tool of Human Rights Abuse
16.3 Internet
  16.3.1 Internet and Human Rights
16.4 Globalization and Human Rights
  16.4.1 Global Social Movements
  16.4.2 Globalization in India
  16.4.3 Globalization Trade and Investment
16.5 Let Us Sum Up
16.6 Answers to Check Your Progress Exercises

16.0 OBJECTIVES

This unit deals with the emerging trends in Human Rights movement in India. After going through this unit you will be able to:

- understand the place of Media in the post-Cold war era and global public scrutiny;
- the nature of Internet and the challenge of digital literacy for the 21st century; and
- to evaluate how international human rights movement is an integral part of globalization.

16.1 INTRODUCTION

In the present age of Globalization and ever growing role of information technology, there have emerged both opportunities and challenges for the promotion and protection of Human Rights. As is well known that the end of cold war brought in major changes in the international political and economic relations. In the process a new world economic order guided by international agencies like International Monetary Fund, World Bank, World Trade Organization, etc. has emerged. This has greatly removed trade and tariff barriers, thereby making the entry of Transnational Companies in many countries quite easy. A key component of the post-cold war era since 1991 has been the rapidity with which information can flow throughout the world. Increased information flows, rapidity of transmission, and transparency characterized, inter alia, the contemporary world. Modern communications, especially the Internet and television, have rendered time-space factor obsolete. Over the years, the presence of news anchors, reporters, photo journalists, and other media actors in human crises
has become a common occurrence. In that sense media has emerged a powerful instrument in bringing to light violation of human rights. States are under pressure to fulfill international obligations while at the same time are losing some of their sovereign powers. Thus there have emerged interesting developments and challenges for human rights movement all over the world. It is true for India also. In this Unit we will discuss some of these developments.

16.2 MEDIA

The traditional wisdom would have believe us that media and democracy reinforce, sustain, and nourish each other. The former is considered as the Fourth Estate, the other three pillars being the organs of the government, namely, the legislature, executive, and the judiciary. According to Rajni Kothari, modernization, conceived as adherence to the principles of rule of law, equity, justice, freedom, equality and other related principles, is facilitated by mass media. This stellar role was played by the Indian mass media during the course of freedom struggle. In his pioneering work, *State Against Democracy: In Search of Humane Governance*, Kothari reminds the State of its bounden duty to respect and protect fundamental freedoms of people. The media have a right and a duty, as a check on the power of the state to inform, to report truthfully about government misconduct and to expose abuses of public authority. As a derivative of the latter power has a tendency to corrupt its wielders, and absolute power corrupts absolutely.

16.2.1 Access to Media Information and Human Rights Protection

With a globalized media, *a fait accompli*, states are now confronted with the glare of global public scrutiny into their human rights practices. A state that violates human rights norms, accepted by the global community in a variety of international treaties, may attract the opprobrium of other countries as well that of international organizations, of international audiences, and of its own citizens. Besides, global modes of communication can inform local populations about the abuses their governments are veiling from them, thus inducing the formation of social or civil movements against the status quo. The global sharing of information can not only provide victimized groups access to supporters throughout the world but it can also increase the costs to the state for its domestic repressive policies towards its citizens. As the ability to access information increases, the dispersal of knowledge becomes virtually impossible to stop. This circulation of information impels the state to act in a transparent manner. Underlying the aforesaid, the Vienna World Conference on Human Rights (1993), stressed the importance of objective, responsible and impartial nature of information about human rights and humanitarian issues for whom freedom and protection should be guaranteed within the framework of national law.

Today, no state can completely block communication technologies. With the advent of satellite dishes and their cognate systems of transmission, and the Internet, repressive regimes can no longer murder or torture their citizens in complete secrecy. Access to sources of mass communication lifts the veil of secrecy necessary to transgress human rights. Media coverage of human rights violations is likely to prevent violations by exposing them. News coverage of human rights shapes public opinion, affects foreign policy, and serves as informal means of documenting abuse. The globalized communications system can provide human rights groups with information, assistance, and support in their crusade against oppression. When people know about human
rights and are aware of human rights abuses, they are more likely to seek to protect them and exposure can lead to changes in policy by the state concerned. Global media can be used by human rights activists and non-governmental organizations to publicize human rights violations in order to shame perpetrators into changing their behaviour. Pamphleteering, Internet blogs, stage theatre, nukkad natak (and other traditional forms of media representation) may also be cited in this connection.

In this context, the case of India can also be highly illustrative with regard to human rights-media relationship. The imposition of national emergency in 1975, the atrocities committed against the Sikh community in 1984, the ongoing imbroglio in Kashmir in which the Hindu Pandits have been at the receiving end and other radical left movements symbolized in the form of Naxalism/Maoism, and other human rights abuses involving Christians, Muslims, and Dalits, starkly brings out the portrayal of human rights in media. The English language print media in particular has, with a few exceptions, brought out the reality in an objective manner. The vernacular print media remains much to be desired in this direction.

In all international human rights instruments, access to media has been enshrined as one of the fundamental freedoms to be made available to all, globally. Article 10 of the Universal Declaration of Human Rights (UDHR), 1948, states, “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Free and open media are important factors in the promotion and protection of human rights. The media can disseminate human rights information, mobilize human rights NGOs, foster popular participation in civil society, promote tolerance, and unearth governmental activity.

It is plausible to assert that the greater the number of communication receivers - radios, computers, newspapers, or TVs - the more informed the population will be, and thus the less likely the government will be to use violence against its citizens. If it is indeed true that the media are an asset when it comes to publicizing human rights violations and possibly preventing them from happening again, then it is logical to assume that the more media forms and media receivers there are in one state, the more likely that the state is to be respectful of human rights.

Among the benefits of the free flow of information and opinion are the prevention of human rights violations. The ability of the press to serve as an avenue for free expression, allowing dissenting opinions to be voiced, providing alternative information, and coordinating independent explanation and analyses, also benefits human rights. By contrast, controlled, intimidated, and embedded media merely promote state rhetoric and propaganda. The cooption of some sections of the US media in the context of the occupation of Iraq is a case in point. A free press can question the state’s policies. Media, under the control of national and international moneyed sections, safeguard, in reality, the interests of their respective classes. A study by a noted media specialist concludes that advances in information technology benefit human rights movements by enabling rapid transmission of information to monitor and respond to human rights violations. To advance human rights, citizens should be in a position to send and receive information freely. Human rights atrocities can rarely be done without public knowledge when the general public has access to TV, radio, newspapers, or Internet communications.

Media globalization leads to human rights globalization. Buttressing the latter, gives fillip to the notion of universality of human rights. The UDHR, the International
Covenants on Civil and Political Rights (ICCPR), 1966, to name just the two, do speak eloquently of the universality idea.

The upshot of the aforesaid undoubtedly tells us that an independent and a free media plays a crucial role in the maintenance of human rights standards. A free press can ensure that the people will have access to information on how their government behaves towards its citizens. Independent media can reduce the secrecy needed to torture, to murder, or to disappear citizens by monitoring state behaviour and exposing abuses of public authority. Furthermore, media access is beneficial and even necessary to maintaining human rights standards. The media is difficult, but not impossible, for the state to control.

16.2.2 The Media as a Tool of Human Rights Abuse

The malignant role of the contemporary communication technology in encouraging human rights violations has also come to the fore in recent times in different parts of the world. The United States Institute of Peace (USIP) has, in its report of 2003, concluded that “across the globe, media have been used as tools to inflame grievances and accelerate the escalation towards violence.” The literature is galore with examples of cases where the mass media were used to incite violence, murder, and genocide, most recently in Rwanda, Somalia, and Yugoslavia. They acquired international notoriety for the kind of treatment they meted out to their own citizens in a not-so-distant past. The media, with its capability of reaching large numbers of people, can thus also be used to inflame hatred and to mobilize the public to murder their neighbours. The use of the media to inhibit human rights often requires closed or state-controlled media. Genocide, as was seen in Rwanda, necessitated state-controlled media with a large numbers of receivers to incite many potential killers. The media can be used by a government or a military to shape an image of certain groups as enemies of the state and of the people’s security. Consequently, once these groups are characterized as treacherous enemies or evil predators, they can be eliminated with little impunity.

In contrast to the aforesaid, the press played a crucial role during India’s freedom struggle. Notable freedom fighters such as Bal Gangadhar Tilak, Mahatma Gandhi and Pandit Jawaharlal Nehru promoted the newspapers as Kesari, Harijan and National Herald respectively, to advance the cause of freedom struggle, and to highlight the need for removing social evils and the importance of education.

In the post-independence India, the government passed the Press Council Act in 1978. Section 13 of the said Act aims at preserving the freedom of the press and maintaining and improving the standards of newspapers and news agencies in India.

In most recent times, Indian media is beset with what is rightly described as the ‘crisis of content’. This crisis has manifested itself prominently in the case of the television news media, which attempts to sensationalize the issues related to child, women, tribals, minorities, besides other vulnerable sections of the society. The Vice President of India, Mohd. Hamid Ansari while uncovering the problem said in July 2008: the phenomenon of convergence between news media, entertainment and telecom has meant that the demarcation between professional journalistic output, public relations, advertising and entertainment is fast blurring. Questions are being raised whether journalists understand these demarcations and respect them or are willing to sacrifice them for commercial gain and monetary benefits. The public perception today is that the ethical underpinning of professional journalism has weakened. The Fourth Estate of the Republic is at a crossroads, facing the most
critical challenge in its history. The defining characteristic of the last decade has been the progressive transformation of the Indian citizen into a significant consumer of media content and products. At the broad level, one finds entertainment, especially films and reality show entertainment, increasingly thrusting itself into news media, thereby getting drawn into the culture of consumerism, a bane of western societies masquerading as globalization. The pressure of TRP ratings has meant that astrology, superstition, crime and sleaze have prevailed and the broad trend towards tabloidisation continues.

Check Your Progress 1

1) Define Fourth Estate? Explain its role in a democracy.

2) Explain a key feature of media in the post-Cold war era?

3) How do media prevent human rights abuses?

4) Explain the relationship between Universal Declaration of Human Rights (UDHR) and freedom of opinion and expression?

16.3 INTERNET

We live in a period of constant change. We can expect rapid increases in the rate of change as the population is expected to double over the next few decades. One root of this change is technology, another source is knowledge and information. The quantum of information available to the individual is projected to be double every five years. More people, more tools and more knowledge are the realities of modern life. The future promises us more changes than we have ever experienced before. The
rise of information technology as an artifact of everyday life as the modern world has brought with it the dawn of a new era often christened as the ‘Age of Information’. It is changing the way we perceive the world, how we think and communicate with one another, what we learn, where we work, entertain ourselves, spend free time, shop and even meet people. The Internet provides one example of a virtual environment where these changes in perceptions and relationships are constantly happening, enabling new social realities to emerge. Today, partially because we manipulate information with great ease, we are discovering the realities of our social constructs.

The Internet has become widely useful. With the most remarkable speed, it has been accepted much quicker than the telephone or the radio. As the Internet forges ahead ambitiously towards critical mass, some social scientists are beginning to examine carefully the policy implications of current demographic patterns of its access and usage. Unsurprisingly, access is not distributed haphazardly, but correlates strongly with income and educational levels. Looming large is the concern that the Internet may not scale economically, leading to what Lloyd Morrisett, the former President of the Markle Foundation, has called a ‘digital divide’ between the information ‘haves’ and ‘have-nots’.

It is assumed that most transactions in the new society will in a near future be mediated by information and communication technologies. In such an environment, the ability to harness information and communication technology is certainly critical in the production of material and non-material goods and services and, more important, in their consumption. It also applies to social activities such as education, entertainment art and generations of awareness.

16.3.1 Internet and Human Rights

As already mentioned that the internet as a new medium of communications has become quite useful as means for dissemination of information. In Human Rights movement also it is becoming a significant tool to generate awareness, protect international human rights standards and expose violation of human rights both by states and non-state actors. It allows individuals to express their ideas and opinions directly to a world audience and easily to each other, while allowing access to many more ideas, opinions and information than previous media have allowed. It has been observed that internet is a transformative force that can help open closed societies and provide the near-instantaneous flow of information to inform the public, mobilize for change and ultimately hold institutions accountable.

According to Center for Democracy and Technology the effect of access to and use of global interactive medium has been to promote and defend civil and political rights worldwide. Through the Internet, citizens from the most repressive regimes are able to find information about matters concerning their own governments and their human rights records that newspaper may dare print.

The Government of India perceives that telecommunications and information technology is a prerequisite for the socio-economic transformation of the country. It also realizes that this sector has a vital role to play in India’s Gross Domestic Product (GDP). In order to translate this reality into a concrete action, the Government of India felt that a forward-looking telecommunication and information policy is necessary. The Government owned media has been made autonomous through establishment of Prasar Bharti. Now private radio and TV channels operate without much governmental control and interference.
In 1994, The Government announced the National Telecom Policy. The latter included among others, the objective of universal availability of basic telecom services to all villages. The policy contained the Internet Service Provision (ISP) by private operators who were licensed to operate and provide such services. However, the 1994 policy could not meet the declared objectives because the private sector entry into the venture has been slower than what was envisaged. An Act was promulgated on the 28th March, 1997 to provide for the establishment to the Telecom Regulatory Authority of India (TRAI). The Department of Information Technology (DIT) has set up the National Internet Exchange of India (NIXI) in 2004 to ensure that Internet traffic, originating and destined for India, should be routed within India. The latter aimed at providing an effective regulatory framework and adequate safeguards to ensure fair competition and protection of consumer interests.

Check Your Progress 2

1) How is Internet helpful in promotion and protection of human rights?

2) Describe the negative aspects of Internet.

3) How can Information and Communication Technology (ICT) synergise the digital environment?

16.4 GLOBALIZATION AND HUMAN RIGHTS

The international human rights movement is an integral part of globalization. Globalization draws people into global networks, so that they begin to interact more regularly with others across national and cultural borders. Both globalization and human rights claim to be universal ideas. However, each one of these universalizing processes evokes resistance. Globalization has inbuilt tendencies to shift decision making processes away from governments and peoples to globalized economic institutions and transnational corporations that have but a negligible interest in the socio-cultural welfare or human rights of people in the developing world. Richard Falk identifies two forms of globalization that operate simultaneously: “globalization
from above" and "globalization from below". While the former is imposed from the outside and is controlled and led by transnational corporations (TNCs) and international financial institutions, with states facilitating the process, the latter is local, grassroots, and enjoys broader mass support as it mobilizes global civil society. The two levels, according to Falk, are in a dialectical relationship. Increasingly, hegemonic neoliberal globalization is counterbalanced with an emerging global civil society. While globalization from above leads to a hegemonic human rights discourse based on the concepts of universalism, and secularism, globalization from below fosters a more holistic and integrated vision of rights. It is the latter, that is compatible with the world-wide realization of human rights. While globalization from above is inherently homogenizing and hegemonic in its tendencies, globalization from below is essentially pluralistic.

The growing activism of non-governmental organizations (NGOs) has led to domestic social and political struggles. NGOs are keen on building a culture of human rights from below and this globalization is a product of local agency rather than global hegemony. Focusing on grassroots empowerment and education, NGOs have become agents of change. NGOs often construct their sorts of universalism that conform to those advocated by transnational networks. Many observers have emphasized that globalization can produce either accommodation or resistance. James H. Mittleman maintains that “globalization is a multi-level set of processes with built-in structures on its power and potential, for it produces resistance against itself. In other words, globalization creates discontents not merely as latent and undeclared resistance, but sometimes crystallized as open counter movements”. Globalization, paradoxically breeds localisms, and universalisms, as part of the same process.

Globalization need not necessarily usher in a progressive era for the promotion of universal human rights. Contemporary globalization is implicated in a set of growing disjunctures between the global diffusion of the idea of universal human rights and the social, political and economic conditions necessary for their effective realization. As the conditions of globalization are intensified, the capacity of states and the global human rights regime to ensure compliance with the established global norms is significantly eroded. Furthermore, because globalization creates global patterns of hierarchy and stratification, both of which accentuate growing inequalities within and between nations, it contributes to the bifurcation of the global system into zones of conformity and zones of instability. It is in the latter domain that internal strife, poverty, repressive mechanisms undermine the basis of conformity with emerging global norms, and hence begets chronic resistance to universal human rights standards. This dominant neo-liberal vision is intimately connected to the world-historical shift in power from nation-states to increasingly mobile types of capital and international financial institutions and international organizations. The importance of articulating democratic and progressive forms of citizenship at a national as well as a local, regional, and global level as part of a wider effort to resist the profit-maximizing consumption-oriented, market-based citizen-subject of the neo-liberal imagination is very much a need of the hour.

The politics of human rights as distinct from politics for human rights is clearly observable at the international level. Human rights at the latter level have become the function of power dynamics. Hypocrisy is very much visible among the majority of the UN member-states that have used the Organization to serve their foreign policy objectives. Powerful states did not care for the UN when they perceived that it was not of any use to them. They took unilateral actions in the realm of international relations, impacting very gravely on the state of human rights, besides other areas.
Following 11 September attacks in U.S.A., countries in the name of countering terrorism, have resorted to actions which negatively impacted the state of liberties the world over. Some religious and ethnic communities have been targeted in the name of war on terror.

16.4.1 Global Social Movements

The phenomenon of globalization has, among other things, given rise to a variety of global social movements, one of whose objectives has been the promotion and protection of human rights. To give an institutional expression, the latter led to transnational feminist networks whose common agenda includes issues such as women’s human rights, gender justice, reproductive health rights, violence against women, peace and anti-militarism, and feminist economics. These networks are variously described as global civil society entities, transnational advocacy groups, transnational social movement organizations, international non-governmental organizations, cumulatively constituting what is described as transnational public sphere.

Closely intertwined with the aforesaid are what Margaret Keck and Kathryn Sikkink, call ‘transnational networks’ or ‘activists without border’, that have been able to influence policies in such areas as human rights, environment and women’s rights. Often led by international and domestic NGOs, they work through international campaigns, influencing the public at large, governments and international organizations. Keck and Sikkink trace the history of transnational developmental networks from the anti-slavery movements of the 18th and 19th century.

Globalization is often supposed to have paved the way for the universalization of peace, since only in a tranquil world can trade and exchange of ideas really flourish. But in action, globalization of goods, capital, and people often leads to globalization of violence. Also a powerful global justice movement has taken shape out of countless resistance struggles. A new transnational social activism is increasingly a potent political force in the global equation. Any attempt to understand the world and to act in the world as social agents, must contemplate globalization as a concept and as a process. Perhaps much of the discourse on globalization is an ideological argument for neo-liberal policies for which “there is no alternative” (TINA). This view stresses domestic reduction in government’s economic role, deregulation, privatization, and global reductions in tariffs, opening up of capital markets, liberalization of foreign investment regimes, etc., in the context of an overall enhanced reliance on market mechanisms. The faith market as a panacea for all the economic ills of society has led critics to condemn globalization as ‘market fundamentalism’.

The Third world nation states play an active and sometimes contradictory role in the context of neo-liberal globalization and usually are seen as the instrument of propagation for the ideology of neo-liberalism. But as peripheral states, they are also constrained by imperial states. The search for how Third world states can be transformed to achieve some autonomy and political will in order to control the dominance of the instruments of neo-liberal globalization — the International Monetary Fund (IMF), World Trade Organization (WTO), General Agreement on Trade and Tariff (GATT) — has made the nation-states a contested terrain. The World Bank (WB) rhetorically claims to uphold the “satisfaction of needs” but rarely follows through in practice, whereas the International Monetary Fund (IMF) would say, if pressed, these needs are more likely to be satisfied by free market. The WTO is even more caricatural since for the WTO, all human activities, including food, water, health, education, culture, etc., are potentially profitable commodities, tradable in the world market.
By implication, state sovereignty becomes a casualty in the process of globalization. Politically conceived, globalization refers to the consolidation of universal institutionalization of normative, ethical, and legal governance, and a cosmopolitan law of global civil society. The governance ideal, besides affecting other spheres of human life, is intimately tied to international human rights regime, notwithstanding the fact that it contains elements of both imperial hegemonization and homogenization. The message of globalization is so thoroughly integrated into public discourse by mass media owned by the globalizers themselves, a phenomenon known as convergence.

16.4.2 Globalization in India

In the context of India, neo-liberal economic policies have been associated with which is called reform trinity – ‘liberalization, privatization and globalization (LPG).’ These three economic concepts have necessitated a series of ongoing policy reforms by the Union and State governments. The architects of globalization in India have conceived of an India-centric globalization in which the content, sequence, and timing of policy measures are regulated to contain potential setbacks, while maximizing the positive outcomes of global economic integration.

In the context of India, it is important to harness the force of globalization to benefit human welfare and try to limit its adverse effects. Kaushik Basu in 2001, echoed a similar view when he observed that Globalization will bring with it many ills. But on balance it will open up more windows of opportunity for India than close. India has advantages to use globalization as a force for development and poverty reduction. This demands a high order of political commitment and management. Dwelling upon globalization’s social impact, Prof. Pranab Bardhan in 2001 commented: all around the world today many advocates of social justice are in some state of despair. Some of them fear that social justice is a lost cause in a global economy. Thus the LPG as conceptualized in India has been so far durable, but is somewhat distinct from its third world counterparts.

Notwithstanding the above, it is very pertinent to uncover the relationship between economic globalization and its impact on human rights, particularly of the poor. Those critics who tend to view globalization from the human rights perspective conclude that human rights have been adversely affected by globalization. In this connection, the critics cite human development indices of the United Nations Development Programme (UNDP), independent reports brought out by international civil society organizations such as the Amnesty International, Human Rights watch, and others.

16.4.3 Globalization Trade and Investment

The rapid increase in trade and investment over the last 20 years has offered new hope to create growth and the resources needed to promote the full enjoyment of human rights and to eradicate poverty.

Office of the High Commissioner of Human Rights (OHCHR) work on “human rights, trade and investment” has sought to analyse rules and policies on trade and investment with the objective of identifying the broad areas of action at the national and international levels that would promote fairer trade that can improve the enjoyment of human rights.
The seven areas of particular relevance to human rights include:

- agriculture
- government procurement
- intellectual property protection
- investment
- services
- social labelling for fair trade
- public morals and general exceptions to trade and investment rules.

Human rights principles and goals of particular relevance to trade include:

- equality and non-discrimination
- participation
- accountability
- international cooperation

As a practical measure to devise trade reform that promotes the enjoyment of human rights, OHCHR has on several occasions encouraged States to undertake human rights impact assessments of trade rules and policies both during the process of trade negotiations as well as after a period of implementation of trade rules and policies. Such assessments should be public and participatory and focus in particular on the effects of trade reform on disadvantaged and vulnerable groups as well as the gender effects of trade rules and policies.

However, many observers point out that in practice the development of a global economy has not been matched by the development of a global society.

International institutions are not strong enough to prevent war or large scale abuse of human rights in individual countries where TNCs are operating and they can exploit the situation for their profit motives. They can also exploit the bio-diversity and environment, running both in the long run. Global financial markets being largely beyond the control of national or international authorities, the TNCs and financial markets have grown so very powerful that they can impinge upon, human rights of individuals in the society and sovereignty of the State in actual practice.

Globalization has, thus, led to the weakening of State and rendered the relationship between the community, the State and the corporation totally fluid. It has entrenched the powers and widened the freedoms of corporations eroding the powers and freedom of people in their diverse community settings. Social scientists have begun to talk of ‘reinventing government’ because the State is turning more one-sided in representing corporate interest and failing to represent citizen and community interest.

For citizens and communities, the erosion of State power implies withdrawal of two protective umbrellas” to the individual citizens and the community. The first is the protection available through the regulation of (commercial) profit-seeking behaviour so that destruction of livelihoods, environment and people’s health, can be prevented. The second is the protection built into traditional environment rights and rights to knowledge and culture, rights which are often customary, indigenous and not written in law, but which are central to secure livelihood and survival options, especially of
marginal groups such as women, tribal, landless and small peasants, farmers, traditional healers and craftsmen etc.

In view of the alarming situation created by the power and reach of the TNCs, it has become imperative to re-examine the efforts of agencies and instruments promoting world trade and global economic system. Rubens Recupero is right in warning that if “globalization is to deserve its name, it has to include and not to exclude, to integrate and not to marginalize”. TNCs must generate enough jobs with adequate pay and must help reduce poverty of host and home countries. They should not rush headlong into heady philosophy of market profitability and economic efficiency but must bring about human development and social protection into equation. After all the United Nations which drew up the Charter of Human Rights also created World Bank and IMF to help revamp the war ravaged economies of its member countries. The denial of these rights and fundamental freedoms is not only an individual and personal tragedy, but also creates conditions of social and political unrest sowing the seeds of violence and conflicts within and between societies and nations. In a global society regional and local conflicts threaten to engulf the world community. But IMF and World Bank in their haste to create a new world economic order failed to take notice of the activities of TNCs. However their role in promoting international trade and reducing trade barriers cannot be discounted.

Check Your Progress 3

1) Explain the interrelationship between globalization and human rights?

2) Distinguish between politics of human rights and politics for human rights?

3) Explain the relationship between the neo-liberal idea and globalization.

4) How is trade and investment relevant to human rights?
16.5 LET US SUM UP

In this unit you have read that The ‘Fourth Estate’ refers to the media. It has a right and a duty, as a check on the power of the state to inform, to report truthfully about government misconduct and to expose abuses of public authority. In the post-Cold war era, the key element has been the rapidity with which information can flow throughout the world. States are now confronted with the glare of global public scrutiny into their human rights practices. A state that violates human rights norms, accepted by the global community in a variety of international treaties, may attract the condemnation of other countries as well that of international organizations, of international audiences, and of its own citizens. The global sharing of information can not only provide victimized groups access to supporters throughout the world but it can also increase the costs to the state for its domestic repressive policies towards its citizens. The media coverage of human rights violations is likely to prevent violations by exposing the violators. News coverage of human rights shapes public opinion, affects foreign policy, and serves as an informal means of documenting abuse. Global media can be used by human rights activists and NGOs to publicise human rights violations in order to bring about behavioural change among the perpetrators.

We also live in a period of constant change. One root of this change is technology, another source is knowledge and information. The rise of information technology has brought with it the dawn of a new era often christened as the ‘Age of Information’. Governments will face important economic, technological and political challenges in order to succeed in the deployment of Internet generation. A grand challenge for the 21st century has been to access Internet facilities to all in the present context of globalization. Internet has become a very important tool for dissemination of information and coordination for promotion and protection of human rights.

The international human rights movement is an integral part of globalization. Both globalization and human rights claim to be universal ideas. Richard Falk identifies two forms of globalization: “globalization from above” and globalization from below”. The politics of human rights as distinct from politics for human rights is clearly observable at the international level. Human rights at the latter level have become the function of power dynamics. Powerful states did not care for the UN when they perceived that it was not of any use to them. On the other hand, the growing activism of non-governmental organizations (NGOs) has led to domestic social and political struggles. The neo-liberal idea stresses domestic reduction in government’s economic role, deregulation, privatization, and global reductions on tariffs, opening up of capital markets, liberalization of foreign investment regimes, etc., in the context of an overall enhanced reliance on market mechanisms. The faith in market as a panacea for all the economic ills of society has led critics to condemn neo-liberal globalization as ‘market fundamentalism’. Perhaps much of the discourse on globalization is an alibi for neo-liberal policies for which “there is no alternative” (TINA). The Third world nation state plays an active and contradictory role in neo-liberal globalization. It is made to propagate the ideology of neo-liberalism because of TINA; it is also constrained by dictates of imperial powers, because it is in the periphery of international order.

16.6 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) The ‘Fourth Estate’ refers to media, the other three pillars being the organs of the
The media have a right and a duty, as a check on the power of the state to inform, to report truthfully about government misconduct and to expose abuses of public authority.

2) The key feature of media in the post-Cold war era has been the rapidity with which information can flow throughout the world. Increased information flows, rapidity of transmission, and transparency characterized, *inter alia*, the contemporary world. Over the years, the presence of news anchors, reporters, photo journalists, and other media actors in human crises has become a common occurrence.

3) The media coverage of human rights violations is likely to prevent violations by exposing the violators. News coverage of human rights shapes public opinion, affects foreign policy, and serves as an informal means of documenting abuse. The globalized communications system can provide human rights groups with information, assistance, and support in their crusade against oppression. Global media can be used by human rights activists and non-governmental organizations to publicise human rights violations in order to bring about behavioural change among the perpetrators.

4) Article 10 of the Universal Declaration of Human Rights (UDHR), 1948, states that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Check Your Progress 2**

1) We live in a period of constant change. One root of this change is technology, another source is knowledge and information. In this Internet has emerged a very important tool for communication and dissemination. It can be used to have more information about Human Rights, get connected to others with similar interests. NGOs can use for networking and fast communication people. The Internet provides an environment where these changes are constantly happening, enabling new social realities to emerge.

2) Internet can be used by Terrorists and Fundamentalists to propagate hate and violence by exploiters to use children as sex objects and vested interest to practice discrimination.

3) Information and Communication Technology (ICT) – one among many tools – helps in securing broader and lasting availability of world information resources, which has been grossly overlooked by the industrial society. Its transmission rules don’t follow those of consumerism, but it might greatly enhance the digital environment if it adapted those rules. In order to fully exploit ICT for creating local and relevant content, people need far wider skills than simple web page creation. To sustain information society, adequate attention needs to be geared towards intellectual and human requirements, capabilities and values. Learning how to apply ICT is necessary to better one’s life. In a few decades, there have been advances in the general application of ICT and some societies have developed a notably superior ICT infrastructure. A basic ICT infrastructure is obviously one of the requisites for interaction, though it does not necessarily mean that each adult should be equipped with all the devices in existence. But to access to and use of ICT should in the first place be autonomous, voluntary, and natural. The idea of building an overall knowledge-sharing instrument at the initiative of a single authority should be avoided.
1) The international human rights movement is an integral part of globalization. Globalization draws people more closely into global networks than ever before. Both globalization and human rights claim to be universal ideas. However, each one of these universalizing processes evokes resistance. Globalization has inbuilt tendencies to shift decision making processes away from governments and peoples to globalized economic institutions and transnational corporations that have only a negligible interest in the human rights of people in the developing world. Richard Falk identifies two forms of globalization that operate simultaneously: “globalization from above” and globalization from below”. While the former is imposed from the outside and is controlled and led by transnational corporations (TNCs) and international financial institutions, with states facilitating the process, the latter is local at grassroots, and enjoys broader mass support as it mobilizes global civil society. While globalization from above is inherently homogenizing and hegemonic in its tendencies, globalization from below is essentially pluralistic.

2) The politics of human rights as distinct from politics for human rights is clearly observable at the international level. Human rights at the latter level have become the function of power dynamics. Powerful states did not care for the UN when they perceived that it was not of any use to them. They took unilateral actions in the realm of international relations, impacting very gravely on the state of human rights, besides other areas. On the other hand, the growing activism of non-governmental organizations (NGOs) has led to domestic social and political struggles. NGOs are keen on building a culture of human rights from below and this globalization is a product of local agency rather than global hegemony. Focusing on grassroots empowerment and education, NGOs have become agents of change. NGOs often construct their sorts of universalism that conform to those advocated by transnational networks.

3) The neo-liberal idea stresses domestic reduction in government’s economic role, deregulation, privatization, and global reductions on tariffs, opening up of capital markets, liberalization of foreign investment regimes, etc., in the context of an overall enhanced reliance on market mechanisms. The faith in market as a panacea for all the economic ills of society has led critics to condemn neo-liberal globalization as ‘market fundamentalism’. Global capitalism in its neo-liberal global garb results in ever increasing inequality, immiseration, and alienation-'globalization’s discontents’. The instruments of neo-liberal globalization, the International Monetary Fund (IMF), World Trade Organization (WTO), and United Nations Conference on Trade and Development (UNCTAD)- have ensured its peripheral role.

4) The human rights, trade and investment has sought to analyse rules and policies with the objective to promote fairer trade that improve the enjoyment of human rights. The seven areas of particular relevance to human rights include:

a) Agriculture
b) government procurement
c) intellectual property protection
d) investment
e) services
f) social labelling for fair trade
g) public morals and general exceptions to trade and investment rules.