

PART - A
INTRODUCTORY

**1. DEFINITION, MEANING, EVOLUTION,
CONCEPT, NATURE AND THEORIES OF
HUMAN RIGHTS**

(IMPORTANT)

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A. INTRODUCTION:

Human Rights are fundamental and inalienable (non transferable) rights of every human being, which are essential for his living as human being.

These rights are possessed by every human being whether a male or female, a Christian or Muslim, an Indian or American.

Thus these rights are possessed by human beings irrespective of their Caste, Creed, Race, Religion, Nationality, Sex, Colour of the skin, etc. They are inherent rights possessed by virtue of one's existence as a human being.

These are birthrights and are essential to fully develop and use human intelligence and talents. They are also needed to enjoy fundamental freedoms to satisfy physical, spiritual and other needs.

Human rights are also called by names like '**fundamental rights**', '**natural rights**', '**basic rights**', '**birth rights**' or '**inherent rights**'.

In short, the rights which are essential for maintaining human life, liberty, equality and dignity are called Human rights. These are also the minimum rights which every individual must have against the Government or Public authority or Fellow Colleagues.

B. DEFINITION AND MEANING:

I. PROTECTION OF HUMAN RIGHTS ACT, 1993:

Protection of Human Rights Act 1993 - Sec. 2 (d) defines 'Human Rights' as rights relating to life, liberty, equality and dignity of the individual, guaranteed by the Indian Constitution or embodied in the International covenants (legal agreement) and enforceable by the Indian Courts.

The term 'International Covenants' is also defined under Sec. 2 (f) of Protection of Human Rights Act 1993. It means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social & Cultural Rights adopted by the General Assembly of the United Nations on 16th December 1966.

All Human Rights relating to life, liberty, equality and dignity of an individual guaranteed by the provisions of the Indian Constitution (i.e., fundamental rights under chapter III of the Constitution or other rights provided in other chapters) are enforceable rights if they are infringed or violated by any unjustifiable means.

There may be instances where the Human Rights infringed may not come under the provisions of the Indian Constitution, but may be embodied in the above two International Covenants and even for such infringement, an aggrieved person may seek remedy in Indian Courts. In short, Human Rights is a guaranteed right in India.

II. INFRINGEMENT OF HUMAN RIGHTS:

An individual should essentially be protected against the following infringement of Human Rights:

1. He should be protected against unjust and oppressive or degrading ill-treatment.
2. Certain things cannot be done to him against his will.
3. No action can be taken against him by acts of arbitrary power.
4. He cannot be deprived of Civil and Political Rights.
5. He cannot be deprived of the minimum necessities of life and such necessities are specified in the Covenant of Economic, Social and Cultural Rights. It includes the right to sufficient food, clothing, housing, freedom from hunger, right to health, education, employment, social security, etc.

C. CONCEPT OF HUMAN RIGHTS:

The Concept of Human Rights is age-old.

I. JUSTICE P.N. BHAGAWATI:

Justice P.N. Bhagawati in his research on Human Rights submits that Protection of Human Rights could be traced even in the **Babylonian Laws, Assyrian Laws, Hittiti Laws, Greek Laws and the Vedas in India.**

The Human Rights were widely discussed and debated by Greek Philosophers like **Plato, Socrates and Aristotle.** It appears that even in the Ancient Greece, the Right to vote, the Right to trade, Right to Justice were given to the citizens. In Rome, there existed a law called '**Jus Civiliae**', which secured Human Rights to the citizens.

II. SIR HENRY MAINE:

Sir Henry Maine the author of 'Ancient Law' says that **Stoic Rule of Greece** used '**Law of Nature**' to function as legislative source which was named '**Jus Naturalae**' and it recognised equality of men, fairness, justice and highest ideals of nature.

Jus Naturalae later gave birth to '**Jus Gentium**' which was also based on morality, reasons and justice where doctrine of equality was greatly emphasized.

Sir Hendry Maine compared the **Roman XII Tables** with the **Manu Code** and in the process, compared the Human Rights as existed in Rome and Hindu Laws. He judged Roman Laws as superior to Hindu Legal system on three areas of Human Rights:

1. Women were denied equality with men. They did not have property rights. They could not perform religious functions.
2. The custom of Sati, i.e., a woman being burnt along with the husband's dead body was prevalent in the Hindu legal system.
3. Caste system prevailed in the ancient society and there were discriminations based on caste systems.

III. THEORIES OF HUMAN RIGHTS:

There are **two** basic theories (schools) of human rights,

(a) Relative Theory (School)

(b) Universal Theory (School)

a. Relative Theory (School):

The Relative Theory says that while human rights are necessary, they **vary according to acceptable culture.**

Thus the standard of human rights is as per the given culture of the society.

It means that all cultural practices have a purpose in the culture and therefore, fulfill some purpose and hence should be accepted on face value.

b. Universal Theory (School):

Universal Theory says that 'human rights' needs to be applied uniformly throughout the world.

The followers of this theory strongly support the efforts of the UNO in developing standard human rights through international covenants and treaties on the basis of international dialogue and consensus.

Among the two theories, the Universal Theory is more practical, as it has been acknowledged by U.NO., in all its International Covenants, Delcarations and Conventions and the Member States, in turn, have incorporated the international human rights in their respective Constitutions to make them legal and binding on their citizens.

D. NATURE OF HUMAN RIGHTS:

Human Rights are fundamental and inalienable (non transferable) rights of every human being. These are essential for living as human being. These rights are possessed by human beings irrespective of Caste, Creed, Race, Religion, Nationality, Colour of the skin, etc. They are inherent rights possessed by virtue of one's existence as human being.

Human Rights are birthrights and are essential to fully develop and use human intelligence and talents. They are also needed to enjoy fundamental freedoms to satisfy physical, spiritual and other needs.

NATURE OF HUMAN RIGHTS: COMMONLY ACCEPTED PRINCIPLES

A number of widely accepted principles exist in defining human rights.

1. Human rights represent both individual and group demands for political power, wealth, enlightenment, and other cherished values or capabilities.
2. The most fundamental aspect the human rights represent is -"Respect and Reciprocal Tolerance and Mutual Forbearance in the pursuit of all values or capabilities of life".
3. Human rights imply both claims against persons and institutions including the State for the realization of human rights.
4. Human rights refer to, "fundamental claims or goods." Thus human rights emphasize "basic needs" and rule out "mere wants."
5. Due to varying environmental circumstances, human rights include both justiciable (or enforceable) and aspirational rights.

6. Most of the individual or group human rights are restricted to secure the comparable rights of others and the aggregate common interest of societies.
7. If a right is determined to be a human right, it is essentially general or universal in character, i.e., equally possessed by all human beings everywhere.

E. EVOLUTION (SOURCES) OF HUMAN RIGHTS:

I. MAGNA CARTA:

King John of England, on 15th June 1215, granted Magna Carta to the English Barons. According to this Charter, the privileges of the English Barons could not be encroached or violated.

It also contained laws protecting the rights of communities which the King was bound to honour and in case he failed to honour, the remedial measures of protecting the rights were also enshrined in the charter.

King Johnson Henry III during **1216 - 17** placed the Magna Carta in the Parliament for confirmation and approval. The Parliament accorded approval in the year **1297**.

The contents of Magna Carta was elaborated in 1297 by **Edward I** during his regime as King of England. Thus the Magna Carta assertively put forth the principle that the Power of the Crown was not absolute.

II. PETITION OF RIGHTS AND BILL OF RIGHTS:

In 1628, the Magna Carta was given a statutory status by the Parliament of England by inserting more rights to the subjects and it was named as '**Petition of Rights**'. The Petition of Rights recognised Parliamentary superiority over the Crown as far as the rights of the subjects were concerned.

The Petition of Rights became '**Bill of Rights**' in the year **1689** which gave the Parliament not only superiority over the Crown but also documentary authority as far as the rights of the subjects were concerned.

III. HUGO GROTIUS, DICEY, THOMAS ACQUINAS, SIR EDWARD COKE:

Hugo Grotius, Dicey, Thomas Aquinas, Sir Edward Coke assertively declared that human beings possess certain eternal and basic rights like equality before law, right to freedom of speech, etc.

IV. DECLARATIONS AND CONSTITUTION BENCHES:

Declarations and Constitution Benches of many Nations supported the Bill of Rights by their exposition as the fundamental rights of their nationals.

V. THE AMERICAN DECLARATION OF INDEPENDENCE 1776, VIRGINIA BILL OF RIGHTS 1776 & CONSTITUTION RIGHTS 1776:

The American Declaration of independence 1776, Virginia Bill of Rights 1776, Constitution Rights 1776 and subsequent amendments and statutes recognised the fundamental rights of men and women.

VI. FRENCH REVOLUTION IN FRANCE:

The French Revolution in France accelerated the growth of human rights especially by the **writings of Rousseau** and others. In 1789, the French declaration of the rights of the man was enacted which enumerated the human rights and also the provisions for their protection.

VII. DAWN OF 19TH CENTURY:

The dawn of 19th Century was the beginning of rapid progress of human rights. The value of human personality and its worthiness was given much importance after the I and II world wars.

The loss of lives and the heinous Crimes committed against the humanity in these two world wars taught the world the human values, dignity and moralities that have to be kept at any cost.

President Roosevelt proclaimed four types of freedom namely **freedom of speech, freedom of religion, freedom from wants and freedom from fear** as the most basic freedom on earth. He declared '**freedom means the supremacy of human rights every where**'.

The entire world must support those who struggle to gain these rights and/or keep them. After the II world war, the growth of human rights in the international sphere has gained a remarkable momentum through several treaties and covenants.

E. KINDS OF HUMAN RIGHTS:

According to **Universal Declaration of human rights**, all human rights are equal and inherent and there cannot be division in these rights. These rights are inseparable, indivisible and inter-dependent.

These rights can only be enumerated but cannot be classified. However, as per United Nations Charter, Human rights can be broadly classified into **two types**. They are:

1. Civil and Political Rights
2. Economic, Social and Cultural rights

1. CIVIL AND POLITICAL RIGHTS:

a. Civil Rights:

Civil rights are rights related to protection of the right to life and right to personal liberty. Right to life means that no individual can be deprived of his life against his will except by way of punishment for the offences he is proved to have committed.

However he has the right to end his life and this act is an offence (attempt to commit suicide) in some countries, whereas in other countries, it is not so.

The right to personal liberty means rights against arbitrary detention and arrest, right to be informed of the grounds of the arrest etc.

The right to life includes the following rights also - the right to privacy, right to home, right to own property, etc.

The right to personal liberty includes freedom from torture, freedom from inhuman and degrading treatment, freedom of thought, conscience and speech, freedom of religion, freedom of movement, freedom to form associations, etc.

b. Political Rights:

Political rights are rights to participate in the governance of a State. It includes right to vote, right to be elected as people's representative, right to take part in politics, etc.

Though the Civil and Political rights are enumerated separately as above, they are inseparable rights and hence it is not correct to artificially differentiate them.

2. ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

These are rights relating to assurance of minimum necessities of life for human existence, lest the human existence itself should be a question.

These rights include right to adequate food, clothing, housing, standard of living and also freedom from hunger, right to work, favourable and reasonable conditions of work, right to social security, i.e, social insurance, right to family motherhood, childhood, free consent to marriage, physical and mental health, right to education, right to take part in cultural life, right to enjoy benefits of scientific progress and its applications, etc.

F. CONCLUSION:

By virtue of human rights, every human being has the right to freedom, dignity, material, moral, social and spiritual rights.

However the human rights can be in existence and be invoked only in an organized society and not in a barbaric environment where there would be a state of anarchy.

Thus, the protection of human rights is a concept of relationship between a person and an organized society only.

UNIVERSITY QUESTIONS FOR REVIEW:

1. *Define 'Human Rights'.*
2. *State whether Human Rights of individuals is a subject of 'International Law'.*
3. *Explain 'Human Right' and its kinds.*
4. *Define 'Human rights' and trace its evolution.*
5. *Human rights are the fundamental and inalienable rights essential for life as Human Being - Comment.*
6. *Write short note on: (a) Civil and Political Rights
(b) Economic, Social and Cultural rights.*

