

## SOS POLITICAL SCIENCE & PUBLIC ADMINISTRATION

### M. A PUBLIC ADMINISTRATION II SEM

### CONSTITUTIONAL SYSTEM IN INDIA II 204

#### UNIT-V

#### TOPIC NAME- HUMAN RIGHTS

##### **Introduction**

In terms of life sciences humans are primates of the family of homosapiens where they belong to the genus, homo and species, sapiens. In history, human beings have been described as civilized living beings capable of communicating with the help of language and those who started the system of living in an organized society. IN political science, human beings have been defined as those social or political living beings who developed the system through which a human society would function in an organized and lawful manner. Human beings are the most evolved and therefore the most complex among the living organisms on the earth. We are known to be social beings and cannot live without society. Peaceful coexistence is the basis of our life and thus it is important to have respect as well as protect the life of each other. What is special about being human? As humans, we can think and articulate thoughts, we also have a sense of right and wrong, which is our conscience. Human beings may be different in colour, gender, caste, size and even shape but we are still human and have the same basic human rights

##### **CONCEPT OF HUMAN RIGHT**

Human rights and fundamental freedoms allow us to develop fully and use of qualities , our intelligence, our talents , our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human beings will receive respect and protection . The denialofhuman rights and fundamental freedoms not only is 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.

The concept of human right is based on the assumption that human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all human beings by virtue of the member of the humanity alone. Today these claims are articulated and formulated and then called as human rights.

All human beings are born free and equal in dignity and rights. But man has made him not equal in many ways. Some were made privileged and some were not. Oppression and slavery were there. It made him hundreds of years of toil and struggle to get legal protection of their basic human rights. Various laws were enacted for the protection of the rights relating to life, liberty, equality and dignity of the individual. They are made and unmade on the crucible of experience and through irreversible process of human struggle for freedom. Equal dignity of all persons is the central concept of all human rights. These rights have been designated to be universal in application, inalienable in exercise and inherent to all persons. Human beings are entitled to some basic and natural rights otherwise their life would be meaningless.

Human Rights are those minimal rights which are available to every human being without distinction of language, religion, caste, nationality, sex, social and economic conditions of the society. Human rights are on the increasing demands of the mankind for a life in which the inherent dignity and worth of each human being will receive respect and protection. These rights enable individuals to fully use their intelligence, talents and conscience to satisfy spiritual and other needs..

## **MEANING**

A right is a multi-dimensional dynamic concept, embracing almost all areas of life like social, cultural economic and political fields. According to Prof. H.J. Laski, "Rights are those conditions of social life, without which, no man can be his best self". Prof Green defines "a right as a power, claimed and recognized as contributory to common good". Human rights are referred as a fundamental rights, basic rights, inherent right, natural rights and birth rights. Human rights are rights of exceptional importance and belong to every individual by virtue of being a human. These rights are necessary to ensure dignity of every person as a human being irrespective of race, religion, language, caste, sexier any other reason. The concept of Human right is based on the notion of equality of human being.

The features of human rights are they are universal incontrovertible and subjective. Human rights are universal means they belong to each of us regardless of ethnicity, race, gender, sexuality, age, religion, political conviction or type of government. They are incontrovertible means they are absolute and innate. Human rights are subjective means they are properties of individual subjects who possess them because of their capacity of rationality, agency and autonomy. The notion of universality has been criticized for its blindness towards the issues of cultural differences. When human rights are guaranteed by a written constitution they are known as fundamental rights because a written constitution is the fundamental law of the state.

## **Nature of Human Rights**

The fact that nobody gives us these rights nor can any one take away these rights from us, human rights are said to be 'inalienable'. Human rights are also recognized as being 'universal, interrelated and indivisible'. This means that they belong to everyone irrespective of one's religion, community, caste, class, gender, and age, social or economic status. Furthermore, respect for civil and political rights cannot be divorced from economic, social and cultural rights. In other words, economic and social development cannot be achieved without the political freedom to participate in that process, including the freedom to dissent. The nature and characteristics of Human Rights can be further understood as under:

### 1. Human Rights are Essential and Necessary

In the absence of human rights, the ethical, natural, societal and spiritual welfare of an individual is impossible. Human rights are also indispensable as they provide a conducive environment to augment the physical and moral life of society.

### 2. Human Rights Support and Advocate

Human Dignity To treat others with dignity irrespective of whether that person is a male or female, rich or poor etc. is the basic concern of human dignity. For eg. In 1993, India had enacted a law that forbade the practice of an individual carrying human excreta. This law is called 'Employment of Manual Scavengers and Dry Latrines (Prohibition) Act.' However this practice is still prevalent in some parts of the country.

### 3. Human Rights are Universal

No one class of people however privileged they may be, have monopoly over human rights. They are essentially universal without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.

### 4. Human Rights are Inalienable

Inalienable' means unable to be taken away. When we say human rights are inalienable we are saying that the rights are inherent in us and we cannot give it away or renounce it. For example if an individual gives, even in writing, telling the police that he should be arrested for a crime that he had committed and locked up without a trial. It cannot be considered a valid statement. This would be a violation of his/her basic human right of life and personal liberty i.e. Article 21 of Indian Constitution. These rights should be the same for individuals irrespective of their caste, creed, religion, sex and nationality. As a matter of fact human rights are conferred on an

individual even after his death. The various rituals in different religions bear testimony to this fact

#### 5. Human Rights are Dynamic

Human rights are ever changing, constantly dependent on the change in the political, economic, social or environmental structures of the State. For example the right to be cared for in time of sickness has now been stretched to include free medical treatment in public hospitals under different schemes of the Government of India. Free medical examination in schools and also especially equipped schools for the physically handicapped have been included.

#### 6. Human Rights are Essential for Gratification of Aspirations

Every human life has a purpose. The term 'human right' is applied to those conditions which are essential for the fulfilment of this purpose. No government has the power to curtail or take away the rights which are sacrosanct, inviolable and immutable.

#### 7. Human Rights are Never Absolute

Man lives in a society which invariably establishes some limitations on the enjoyment of rights and freedoms. Human rights are those restricted privileges or prerogatives, which subscribe to the common good. These are acknowledged and attested by the state through its legislation. Each of these rights comes with restrictions.

#### 8. Human Rights Restrains State Power

Human rights imply that all citizens have rightful demands upon his or her society for certain freedoms and assistance. Thus we could say that human rights limit the State's power. These may be in the form of restrictions on the powers of the State from violating the inalienable freedoms of the individuals, or it may be in the obligations of the State to not interfere in the citizen's personal life in as far as the six freedoms mentioned in the Right to freedom in the Indian Constitution. i.e. Article 19

### **CHARACTERISTICS**

1. Human rights represent claims which individual or groups make on the society.
2. These rights are inalienable and human beings are entitled to them by birth.
3. These rights are the basic minimum requirement for survival of human beings in society.
4. It is universal in character but not absolute.
5. It is protected and enforced by the authority of the state.
6. These rights are meant to uphold human dignity.

7. These rights are essential and necessary for the development of the people.
8. It is irrevocable and equal to all
9. These rights are natural rights based on the law of nature.
10. Human rights are dynamic and evolutionary in nature.
11. These rights are protected and enforced by the authority of society or state at all levels.

## **IMPORTANCE OF HUMAN RIGHTS**

Human rights are, in the first instance, moral rights and they derive their strength unethical grounds. Human rights are inconceivable without the primary right of freedom of thought and expression which recognizes dignity and individuality of every human being and derives its justifiability from moral and ethical consideration. It has been appreciated that without human right, humanity cannot progress. That is why, over the past sixty years, the individual human being has gradually acquired an increasing

### **Human rights include civil and political rights, such as:**

- The right to freedom of expression
- The right to freedom of religion or conscience
- The right to property
- The right to freedom of assembly
- The right to privacy
- The right to vote.

### **Human rights also cover economic and social rights, such as:**

- The right to an adequate standard of living
- The right to adequate food, housing, water and sanitation
- The rights you have at work
- The right to education.

Human rights belong to everyone, everywhere, regardless of nationality, sexuality, gender, race, religion or age. The foundation of modern human rights is the Universal Declaration of Human

Rights (UDHR). The 30 articles of the Declaration were adopted in 1948 by the United Nations General Assembly, and over time these have been integrated into national laws and international treaties. The core values of the UDHR - human dignity, fairness, equality, non-discrimination - apply to everyone, everywhere.

#### A Legal framework about Child Prostitution:

The United Nations Convention on the Rights of the Child, 1990: It defines 'child prostitution' as sexual exploitation of a child below the age of 18 for remuneration in cash or kind.

India: the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2017 was drafted in order to bring new reforms and additions to the currently existing measures against trafficking. The bill is to identify various "aggravated forms" of trafficking and bestows a 10 year imprisonment penalty for those indulging in such practices.

#### Historical Development of Human Rights

Human rights are the rights a person has simply because he or she is a human being. Human rights are held by all persons equally, universally, and forever. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Kant said that human beings have an intrinsic value absent in inanimate objects. To violate a human right would therefore be a failure to recognize the worth of human life. Human right is a concept that has been constantly evolving throughout human history. They have been intricately tied to the laws, customs and religions throughout the ages. Most societies have had traditions similar to the "golden rule" of "Do unto others as you would have them do unto you." The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the Analects of Confucius are five of the oldest written sources which address questions of people's duties, rights, and responsibilities.

Human rights are fundamental to the stability and development of countries all around the world. Great emphasis has been placed on international conventions and their implementation in order to ensure adherence to a universal standard of acceptability. With the advent of globalization and the introduction of new technology, these principles gain importance not only in protecting human beings from the ill-effects of change but also in ensuring that all are allowed a share of the benefits. The impact of several changes in the world today on human rights has been both negative and positive. In particular, the risks posed by advancements in science and technology may severely hinder the implementation of human rights if not handled carefully. In the field of biotechnology and medicine especially there is strong need for human rights to be

absorbed into ethical codes and for all professionals to ensure that basic human dignity is protected under all circumstances. For instance, with the possibility of transplanting organs from both the living and dead, a number of issues arise such as consent to donation, the definition of death to prevent premature harvesting, an equal chance at transplantation etc. Genetic engineering also brings with it the dangers of gene mutation and all the problems associated with cloning. In order to deal with these issues, the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application and Medicine puts the welfare of the human being above society or science.

However the efficacy of the mechanisms in place today has been questioned in the light of blatant human rights violations and disregard for basic human dignity in nearly all countries in one or more forms. In many cases, those who are to blame cannot be brought to book because of political considerations, power equations etc. When such violations are allowed to go unchecked, they often increase in frequency and intensity usually because perpetrators feel that they enjoy immunity

### Women Rights are Human Rights: Is it a rhetoric

The world has never yet seen a truly great and virtuous nation because in the degradation of woman the very fountains of life are poisoned at their source. ~Lucretia Mott

As a gender and an integral part of Humanity, women have suffered much and without any fault of their own. They have toiled and contributed ceaselessly, they have laboured and produced continuously and they have been discriminated, invariably.

The history of this discrimination is as old as the history of civilization itself. The women have suffered so much, for merely being women, from all recognized social institutions that have existed so far that if we dare write a book on the tortures and cruelty and biases they have faced, it may run in thousand volumes. If we try to trace the origin of this sorry state of affairs we will find that the discrimination has already started when the society was in its nascent stage. Patriarchal societies have a long history of treating women as inferior being though matriarchal societies have generally been found to treat women with a little bit more respect.

Primary reasons and instrument of implementing this bias has been the deprivation from the property and violence. At the dusk of tribal societies when the man first started to understand the nuances of private property, Man because of his stronger physique and because he had not to reclude himself from the production due to maternity became the prime bread earner of the family. From this point of time started the formation and consolidation of the male dominated

society as we see it. This consolidation continued till the dark ages and first rays of light in the dungeon of solitude and bereavement of the women begin to fall with renaissance. The industrialization with its craving for cheaper and abundant labour helped in making women more economically and socially powerful. It can not, however, be denied that all this progress would still have left women as the inferior sex had they not tenuously and vehemently fought for their own rights.

Gender inequality, which remains pervasive worldwide, tends to lower the productivity of labour and the efficiency of labour allocation in households and the economy, intensifying the unequal distribution of resources. It also contributes to the non-monetary aspects of poverty lack of security, opportunity and empowerment that lower the quality of life for both men and women. While women and girls bear the largest and most direct costs of these inequalities, the costs cut broadly across society, ultimately hindering development and poverty reduction, ~ Gender and Development Group -World Bank, from the report "Gender Equality and the Millennium DevelopmentGoals"(2003).

### Anti-Terrorism Laws: The Reality

what exactly is terrorism? Terrorism has often been understood variously as both a tactic and a strategy; a heinous crime and a holy duty; a reasonable response to oppression and an inexcusable abomination. Different organizations have different definitions to offer when it comes to explaining this term. The Code of Federal Bureau of Investigation (the FBI) in U.S.A defines it as "the illegal use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives." The FBI further explains terrorism as either domestic or international, depending on the origin, base, and objectives of the terrorists. On the other hand, the European Union defines "terrorism" as the aim of "destabilising or destroying the fundamental, political, constitutional, economic or social structures of a country." But ordinarily, it's understood as 'an act of terror which influences an audience beyond the immediate victim'. A terrorist attack is not only an attack on innocent individuals but it is an attack on our sovereignty, unity and integrity and our feeling of nationalism. Unlawful Activities (Prevention) Act, 1967:

Some laws enacted due to Terrorism

Terrorist and Disruptive Activities (Prevention) Act, 1987:

Maharashtra Control of Organised Crime Act, 1999

Prevention of Terrorism Act, 2002

Two years from the enactment of the POTA, a number of issues as to the possibilities of misuse of the provisions of the anti-terror law including the targeting of minorities and using it against



political opponents had arisen. In Gujarat, all except one of the POTA detainees are from the Muslim community and in Tamil Nadu and UP too, the superficial anti-terror law has been abused to book, without lucidity and accountability, political opponents and underprivileged communities respectively - -

### Right to Clean Environment: A basic Human Right

At present, all of us all over the globe face grave environmental problems. The continuing deterioration of earth's ecological reserves poses a serious threat to the pollution free environment. One of the most complex challenges facing our generation is to maintain a workable synergy between sustainable economic development and pollution free environment.

#### The factors which have contributed most directly to the excessive pressure on the environment and natural resources in India are:

A doubling of the region's population over the past four decades. A tripling of economic output, and The persistence of poverty.

The movements are massive and legal manoeuvres stupendous, but much appears to be yet in store. The children and the layman have all become endowed with the consciousness for a halcyonic environment. However, positive results are not forthcoming. The prospects are murky and future is unsafe but pessimism is no cult to advocate and human dedication to combat pollution has to march ahead undaunted. IN this scenario, India needs a global war on environmental degradation that is as aggressive and well - funded as the war on terrorism. More than ever need to take necessary steps to ensure that the environment remains at the top of our agenda. - - Aditi Singh

### Science and Technology in human rights: An Indian perspective

The major historic milestones of the Indian Council of Medical Research reflect, in many ways, the growth and development of medical research in the country over the last nine decades. First meeting of the Governing Body of the Indian Research Fund Association (IRFA) was held on November 15, 1911 at the Plague Laboratory, Bombay, under the Chairmanship of Sir Harcourt Butler. At the 2nd meeting of the Governing Body in 1912, a historic decision was taken to start a journal for Indian Medical research. Between 1918--20, several projects on beriberi, malaria, kala azar and indigenous drugs were initiated. In 1945, a Clinical Research Unit the first research unit of IRFA attached to a medical institution- was established at the Indian Cancer Research

Centre, Bombay. In 1949, IRFA was re-designated as the Indian Council of Medical Research. Over next 60 years, ICMR established many national research centers in the fields of nutrition, tuberculosis, leprosy, viral disease, cholera, enteric disease, reproductive disorders, toxicology, cancer, traditional medicine, gas disaster, genetics, AIDS etc. - - Aditi Singh

Genocide derives from the Greek "genus," meaning "race, nation, or tribe," and from the Latin *caedere*, meaning to kill. The Nuremberg trials (1945-1946) did not widely employ the term "genocide." It was one Raphael Lemkin first proposed the term "genocide" in his 1944 book *Axis Rule in Occupied Europe*. Within months of its origin, the word started being used widely. Raphael Lemkin was a Polish-Jewish lawyer whose family was decimated by the Nazis.

Jurists list the following examples of genocide: "the denial of ethnic Hawaiian culture by the American run public school system in Hawaii, government policies letting one race adopt the children of another race, African slavery by whites, South African Apartheid, any murder of women by men, death squad murders in Guatemala, deaths in the Soviet gulag, and, of course, the Jewish Holocaust." The following actions have also received the label "genocide": "'race mixing' (integration of blacks and non-blacks); drug distribution; methadone programs; the practice of birth control and abortions among Third World people; sterilization and 'Mississippi appendectomies' (tubal ligations and hysterectomies); medical treatment of Catholics; and the closing of synagogues in the Soviet Union. Justice Robert Jackson in his planning memorandum which he distributed at the beginning of the London Conference in 1945 had outlined the evidence he planned to adduce in the trial. Referring to "proof of the defendant's atrocities and other crimes," he included, "genocide or destruction of racial minorities and subjugated populations by such means and methods as (1) underfeeding; (2) sterilization and castration; (3) depriving them of clothing, shelter, fuel, sanitation, medical care; (4) deporting them for forced labor; (5) working them in inhumane conditions. - - Meera Mathew

## Women and housing rights in Human Rights

Housing is now recognised as a fundamental human right of all human beings in many international human rights instruments. The most significant instrument on right to housing is Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). According to it, "The State Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions"

A comprehensive understanding of the right to housing has been established over the years

through several efforts made both within and outside the UN mechanisms towards interpreting and substantiating the legal concept of housing.

In December 1991, the UN Committee on Economic, Social and Cultural Rights adopted its General Comment No. 4 on the right to housing, stressing on its adequacy. This is the first General Comment adopted on a specific right contained in the Covenant and indicates the importance given to the right by the Committee. The Committee guides State Parties not to interpret the right to housing narrowly or restrictively as “merely having a roof over one’s head or as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity (para. 7). It reflects both the holistic conception of the right.

### Why Must Human Rights Be Protected by the Rule of Law

Human Rights have a projection of universality but as a matter of ground reality they are not the same for all people and societies. For some, especially the well-advanced west, they are predominantly matters of civil and political liberty while for others, the developing and under-developed Asian, Africa and Latin America, predominantly they are also matters of survival. Human Rights are therefore about being citizen of the earth, being part of an earth family. Human Rights in my view are exercised to their fullness through participating in earth democracy-the democracy of all life. And as earthrety.

All humanity is one undivided and indivisible family, and each one of us is responsible for the misdeeds of all others. I cannot detach myself from the wickedest soul. Mahatma Gandhi

### Tribal Laws in India & Tribal Conventions on Rights of Indigenous People Worldwide

India’s population includes nearly one hundred million tribal people. These numbers are matched only by the remarkable diversity of India’s tribes.

Children In Armed Conflict: Indian Perspective The Hague Conventions (1899-1907) consisted of laws governing war on land were better defined with respect to both civilians and soldiers.

But after the atrocities of the Second World War, the international community felt a pertinent need to protect civilians from the horrors of future wars. Thus were developed treaties that specifically protected civilians. Two treaties now exist, which explicitly provide for the protection of children in times of war.

## The Convention on the Rights of the Child.

In case of armed conflict, either international or non-international, children benefit from the general protection provided for civilians not taking part in the hostilities. Non-combatant civilians are guaranteed humane treatment and covered by the legal provisions on the conduct of hostilities. Given the particular vulnerability of children, the Geneva Conventions of 1949 (hereafter GCIII and GCIV) and their Additional Protocols of 1977 (API and APII) lay down a series of rules according them special protection. Children who take direct part in hostilities do not lose that special protection. The Additional Protocols, the 1989 Convention on the rights of the child and its recent Optional Protocol, in particular, also set limits on children's participation in hostilities.

§ The Geneva Conventions provide various protections to civilians, but Geneva Convention IV (1949) is specifically designed to protect children and civilians in times of war. Additional Protocols I and II (1977) provide children with special protection and, for the first time, deal with their participation in hostilities. Most of Geneva Convention IV and Additional Protocol I apply during international armed conflicts. Common Article 3 to the Geneva Conventions and Additional Protocol II apply during non-international armed conflicts.

### Protective Discrimination

Protective discrimination is the policy of granting special privileges to the downtrodden and the underprivileged sections of society, most commonly women. These are affirmative action programs, most visible in both the United States and India, where there has been a history of racial and caste discrimination. The practice is most prominent in India, where it has been enshrined in the constitution .

### Corruption in Governance: Human Rights Dimensions

Corruption threatens the rule of law, democracy and human rights; undermines good Governance, fairness and social justice; distorts competition, hinders economic development, and endangers the stability of democratic institutions and moral foundations of society. The Preamble of the Council of Europe Criminal Convention on Corruption.