

**DIRECTORATE OF DISTANCE EDUCATION
UNIVERSITY OF NORTH BENGAL**

**MASTER OF ARTS-POLITICAL SCIENCES
SEMESTER -III**

**HUMAN RIGHTS
OPEN ELECTIVE 305
BLOCK-2**

UNIVERSITY OF NORTH BENGAL

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FOREWORD

The Self Learning Material (SLM) is written with the aim of providing simple and organized study content to all the learners. The SLMs are prepared on the framework of being mutually cohesive, internally consistent and structured as per the university's syllabi. It is a humble attempt to give glimpses of the various approaches and dimensions to the topic of study and to kindle the learner's interest to the subject

We have tried to put together information from various sources into this book that has been written in an engaging style with interesting and relevant examples. It introduces you to the insights of subject concepts and theories and presents them in a way that is easy to understand and comprehend.

We always believe in continuous improvement and would periodically update the content in the very interest of the learners. It may be added that despite enormous efforts and coordination, there is every possibility for some omission or inadequacy in few areas or topics, which would definitely be rectified in future.

We hope you enjoy learning from this book and the experience truly enrich your learning and help you to advance in your career and future endeavours.

HUMAN RIGHTS

BLOCK - 1

Unit 1: Human Rights: The Concept – Origin and Evolution

Unit 2: Theoretical Perspectives of Human Rights- Liberal, Marxist, Feminist

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BLOCK 2: HUMAN RIGHTS

Introduction to the Block

Unit 8: This unit discusses the meaning and importance of the Right to Development: Food, Health and Shelter.

Unit 9: This unit deals with understand the important role that the right to self-determination of peoples has played since the inception of the United Nations
Unit 10: This unit is meant to make you aware about the functions and role NonGovernmental Organizations play in promotion and protection of Human Rights.

Unit 11: This unit deals with the Status of Indigenous People world over, International Communities Concern with their rights and Spread of awareness about Indigenous People, Concerns.

Unit 12: This unit deals with the nature and role of National Human Rights Institutions as mechanisms for promotion and protection of Human Rights by States.

Unit 13: This unit is aimed at introducing you to the idea of Human Rights as it has been emerging through Indian's historical development.

Unit 14: This unit deals with National Commission for Women to review the Constitutional and Legal safeguards for women.

UNIT 8: RIGHT TO DEVELOPMENT AS HUMAN RIGHTS

STRUCTURE

8.0 Objectives

8.1 Introduction

8.2 What is the Right to Development?

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8.9 Suggested readings and references

8.10 Answers to Check Your Progress

8.0 OBJECTIVES

This unit discusses the meaning and importance of the Right to Development: Food, Health and Shelter. Why development in all its forms is important for humans? After going through this Unit, you should be able to:

- To have the knowledge about the Right to Development;
- To know the importance of this basic human right;
- To discuss how this is fundamental for human development; and

- To know the right to Development in India.

8.1 INTRODUCTION

By development is generally meant movement upward both of individuals and the entire social system. Earlier the primary objective of development was considered economic growth. From the 1970s onward the focus has shifted to address non-economic, social and cultural issues of development which consisted in promoting education, healthcare, environmental safeguards, gender sensitivities etc. Now development comes to be seen as no less dependent on just and equitable distribution of goods and services within a society. Thinkers feel that quest for development cannot be confined to only one group of countries, mostly developing ones and concern for Development must be shared by both the rich and the poor countries alike. Accordingly to George Shepherd Jr. The fundamental position of the Right to Development approach is that development must begin and end with a concern for the human conditions and that this is a collective international responsibility. Thus concern for human conditions and a collective international responsibility constitute the two pillars of the concept of right to development. According to Prof. KebaM'Bye, a former president of UN's Commission on Human Rights, overall conception of human rights is marked by the Right to Development since it integrates all economic, social and cultural rights, and also civil and political rights. In this context, while there have been concerns for development as prerogative of every individual and every people for quite some time the formal recognition of collective right to development came in 1986 with the adoption by UN General Assembly the Declaration on the Rights to Development.

8.2 WHAT IS THE RIGHT TO DEVELOPMENT?

The right to development can be rooted in the provisions of the Charter of the United Nations in the following words. The right to development is an inalienable human right by virtue of which every human person and

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all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. (Article 1 (1))

The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. The human person is the central subject of development and should be the active participant and beneficiary of the right to development. Recognizing the right to development as a human right, the Human Rights Commission recommended to the Economic and Social Council that it invite the Secretary-General to undertake a study on "the international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the New International Economic Order and fundamental human needs". This theme was taken up at the International Conference on Human Rights held in Tehran from 22 April to 13 May 1968. The Conference expressed its belief "that the enjoyment of economic and social rights is inherently linked with any meaningful and profound interconnection between the realization of human rights and economic development". It recognized "the collective responsibility of the international community to ensure the attainment of the minimum standard of living necessary for the enjoyment of human rights and fundamental freedoms by all persons throughout the world". In 1969 the General Assembly, in its resolution 2542 (XXIV), adopted the Declaration on Social Progress and Development, which states that "social progress and development shall aim at the continuous raising of the material and special standards of all members of society, with respect towards and the compliance with human rights and fundamental freedoms." One of the objectives of the United Nations Charter is to "promote social progress and better standards of life in larger freedom" and "to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for

fundamental freedoms for all without distinction as to race, sex, language or religion". Through the Charter, Member States undertook to promote "higher standards of living, full employment and conditions of economic and social progress and development" and "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". The Universal Declaration on Human Rights contains a number of elements that became central to the international community's understanding of the right to development. It attaches importance, for example, to the promotion of social progress and better standards of life and recognizes the right to non-discrimination, the right to participate in public affairs and the right to an adequate structure of living. It also contains everyone's entitlement to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized. An important step towards the cognition of the right to development was General Assembly resolution 1161 (XII). In this resolution the General Assembly expressed the view "that a balanced and integrated economic and social development would contribute towards the promotion and maintenance of peace and security, social progress and better standards of living, and the observance of and respect for human rights and fundamental freedoms".

In developing countries, and of national and ink of action to secure the enjoyment of those rights. The unity of political and civil rights and economic, social and cultural rights was broken and the result was different covenants, one on Civil and Political Right and the other on the Economic, Cultural and Social rights. It took the world community many years to come back to the original conception of indivisible Human Rights and the Right to Development was the result of it.

8.2.1 UN Declaration on the Right to Development

The Declaration on the Right to Development was incorporated in the United Nations by a majority, with only United States dissenting, in 1986. It stated that the right to Development is a Human Right. The

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right-based definition of development in the Declaration on the Right to Development sees it as a comprehensive economic, social, cultural and political process. People are at the centre of concerns for sustainable development. The international community has, therefore, pledged to eradicate poverty, to promote full and productive employment, and to foster social integration to achieve stable, safe and just societies for all. A quick look at the Declaration containing eight articles reveals an important development which was in continuity with the economic thinking on human centred development referred earlier. This development consists in the fact that now; almost all state members (the United States casted the negative vote and eight other European countries abstained) have agreed that they have certain duties regarding the individual's and people's right to development. Human rights are now explicitly considered as an essential element of development and must therefore be respected by all States. Article 4 enjoins on the States a duty to formulate international development policies though without making clear the content and the nature of that duty. However, Article 8 identifies some 'means to be employed' by each nation for realization of the Right to Development. Member states are required to guarantee

- a) equality of opportunity for all to access basic resources and services,
- b) ensure active participation of women in development-related decision-making.

Right to Development is declaratory in nature and therefore, " reused as a justiciable right i.e. as a right for which legal claims can be made. This failure has however been sought to be covered by recourse to judicial interpretations of various legal norms in which the Right to Development has been invoked and/or referred to Two such important cases which deserve mention relate to the Maori tribals of New Zealand and another to the fisher-folks of Kerela in India. These relate, incidentally, tu fishing rights of the traditional communities.

The Indian case of fishing by the Kerala fisher folks came up in 1995 before the Supreme Court when some owners of mechanized trawlers challenged the Kerala Government's permission allowing the traditional fisher folks to go for new technologies if that helped raise the quantity of fish more than what they used to do in the past with the help of their country boats. Though a direct reference to the Declaration' on Right to Development is not there, the Court was clearly thinking in those lines when it said: "We are also of the opinion that the Government of Kerala is perfectly justified in adopting the attitude that the public interest cannot be determined only by looking at the quantum of fish caught in a year. In other words, production alone cannot be the basis for determining public interest. The Government is perfectly justified in saying that it is under an obligation to protect the economic interest of the traditional fishermen and to ensure that they are not deprived of their slender means of livelihood. Whether one calls it distributive justice or development with a human face, the ultimate truth is that object of all development is the human being. There can be no development for the sake of development. Priorities ought not to be inverted more the true perspective list in the quest for more production."

Check Your Progress 1

Note: Use the space given below for your answers.

- 1) What is the Right to Development?

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- 2) Which UN Conventions incorporate the Right to Development?

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3) How is the Right to Development "a holistic right"?

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8.3 RIGHT TO FOOD

The right to food is one of the most basic human rights. All human beings have the Right to life and food forms an integral part of life. Despite the fact that the right to food is recognized directly or indirectly by all countries in the world, hunger, whether caused by war, drought natural disaster or poverty continues to cause widespread suffering. And poverty, one of the causes of hunger, is also a consequence of it. Hunger dulls intellects and thwarts productivity, keeping entire societies from realizing their potential. For poor families in developing countries, hunger-related illness adds to household costs and increases the burden of care for healthy family members often already struggling for subsistence. When this has multiplied by millions of families worldwide, it creates a devastating ripple effect that imperils global development. Eradicating hunger is not merely a lofty ideal. Ensuring the right to adequate food and the fundamental right to be free from hunger is a matter of international law, specifically enshrined in a number of human rights instruments to which states around the world have committed themselves.

8.3.1 Food: Fundamental Need for Development of Human Beings

Since its inception, the United Nations has incidental access to adequate food as both an individual right and a collective responsibility. The 1948 Universal Declaration of Human Rights proclaimed that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food". Nearly 20 years later, the International Covenant on Economic, Social and Cultural Rights (1966) developed these concepts more fully, stressing "the right of everyone to ... adequate food" and specifying "the fundamental right of everyone to

be free from hunger". So, what is the distinction between the right to be free from hunger and the right to adequate food? The right to freedom from hunger is fundamental. This means that the state has an obligation to ensure, at the very least, that people do not starve. As such, this right is intrinsically linked to the right to life. In addition, however, states should also do everything possible to promote full enjoyment of the right to adequate food for everyone within their territory - in other words, people should have physical and economic access at all times to food that is adequate in quantity and quality for a healthy and active life. For food to be considered adequate it must also be culturally acceptable and it must be produced in a manner that is environmentally and socially sustainable. Finally, its provision should not interfere with the enjoyment of other human rights - for example, the acquisition of sufficient food for an adequate diet should not be so costly as to threaten the satisfaction of other socio-economic rights, or be fulfilled to the detriment of civil and political rights. The civil, cultural, economic, political and social rights proclaimed in the Universal Declaration are considered interdependent, interrelated, indivisible and equally important. To be able to enjoy the right to food fully, people need access to health care and education, respect for their cultural values, the right to own property and the right to organize themselves economically and politically. Without adequate food, people cannot lead healthy, active lives. They are not employable. They cannot care for their children, and their children cannot learn to read and write. The right to food cuts across the entire spectrum of human rights. Its fulfillment is essential to the fight against poverty, and it is at the heart of FAO's mandate to ensure a world free from hunger.

8.3.2 Important Legislations on Right to Food

Right to an adequate standard of living, including food. Article 25 of the Universal Declaration of Human Rights (UDHR) states: "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food ...". Article 11(1) of the ICESCR states: "the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his

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family, including adequate food ...". Freedom from hunger and right to life. Article 11(2) of the ICESCR recognizes "the fundamental 'right of everyone to be free from hunger", i.e. the right to at least a nutritional intake ensuring survival. This provision is to be read in conjunction with those concerning the right to life (the UDHR; art. 3, the International Convention on Civil and Political Rights (ICCPR), art. 6; the Convention on Rights of the Child (CRC), art. 6). Although there is a widespread narrow interpretation of the right to life merely as a safeguard against arbitrary killing, the Human Rights Committee rejected such restrictive interpretation and invited States to adopt "positive measures" to protect the right to life in a broader sense, including "measures to eliminate malnutrition and epidemics". Deprivation of food and of means of subsistence. Article 1(2) of the ICCPR and of the ICESCR states that "in no case may a people be deprived of its own means of subsistence" In its General Comment 12, the Committee on Economic, Social and Cultural Rights (CESCR) clarified that "the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement" (para. 6). According to the General Comment, the realization of the right to adequate food requires: "the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture" (para. 8); and the "accessibility" of adequate food, including both economic accessibility ("personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised") and physical accessibility (i.e. physical access to food, including for vulnerable groups, such as children, elderly people, physically disabled, etc.) (paras. 8 and 13). A distinction must be made between the right to adequate food and the right to be free from hunger. The right to be free from hunger ensures a minimum daily nutritional intake and the bare survival of the person. The right to adequate food goes beyond freedom from hunger to include also an "adequacy" standard (in terms of quality, quantity and cultural acceptability). At the 1996 World Food Summit, leaders from 185

countries and the European Community reaffirmed, in the Rome Declaration on World Food Security, "the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger". They further pledged to cut the number of the world's hungry people by half by 2015.

8.3.3 Right to Food in India

Article 21 of the Indian constitution guarantees the right to life and liberty. No person shall be deprived of life and personal liberty except according to procedure established by law. On 16th April 2001, People's Union of Civil Liberties (PUCL) submitted a writ petition to the Supreme Court asking three major questions regarding the right to food.

- 1) Starvation deaths have become a national phenomenon and the government godowns have surplus food stock. Does the right to life mean people who are starving and who are too poor to buy food get free food grains from the state particularly when it is rotting and lying unused?
- 2) Does the right to life in Article 21 include the right to food?
- 3) Does not the right to food which has been upheld by the apex court imply that the States have a duty to provide food especially in situations of drought and are affected by it and cannot purchase food?

Order of the Supreme Court 21st July 2001: In this hearing, the bench asked the petitioner to meet representatives of Government of India to discuss the fourth report submitted by the commissioners. The parties were asked to report back to the court in five weeks with the results of the meeting. It also said:

- In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men

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who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them

- By way of an interim order, we direct the States to see that all the PDS shops, if closed, are re-opened and start functioning within one week from today and regular supplies made

The Supreme court in its Order of 28th November 2001 ordered the States the following:

Public Distribution System

- It is the case of the Union of India that there has been full compliance with regard to the allotment of food grain in relation to the PDS. However, if any of the States gives a specific instance of non-compliance; the Union of India will do the needful within the framework of the Scheme.
- The States are directed to complete the identification of BPL families, issuing of cards and commencement of distribution of 25 kgs. Grain per family per month.
- The Delhi Govt. will ensure that PDS application forms are freely available and are given and received free of charge and there is an effective mechanism in place to ensure speedy and effective redressal of grievances.

Antyodaya Anna Yojana

- It is the case of the Union of India that there has been full compliance with regard to the allotment of food grain in relation to Antyodaya Anna Yojana. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

- We direct the States and the Union Territories to complete identification of beneficiaries, issuing of cards and distribution of grain under this Scheme latest by 1st January, 2002.
- It appears that some Antyodaya beneficiaries may be unable to lift grain because of penury. In such cases, the Centre, the States and the Union Territories are requested to consider giving the quota free after satisfying itself in this behalf.

Mid-day Meal Scheme

- It is the case of the Union of India that there has been full compliance with regard to the Mid Day Meal Scheme (MDMS). However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.
- We direct the State Governments/ Union Territories to implement the Mid Day Meal Scheme by providing every child in every Government and Government assisted Primary Schools with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. Those Governments providing dry rations instead of cooked meals must within three months [February 28, 2002] start providing cooked meals in all Govt. and Govt. aided Primary Schools in at least half the Districts of the State (in order of poverty) and must within a further period of three months [May 28, 2002] extend the provision of cooked meals to the remaining parts of the State. • We direct the Union of India and the FCI to ensure provision of fair average quality grain for the Scheme on time.
- The States/ Union Territories and the FCI are directed to do joint inspection of food grains. If the food grain is found, on joint inspection, not to be of fair average quality, it will be replaced by the FCI prior to lifting.

National Old Age Pension Scheme

- It is the case of the Union of India that there has been full compliance with regard to the National Old Age Pension Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.
- The States are directed to identify the beneficiaries and to start making payments latest by 1st January, 2002.
- We direct the State Govts. Union Territories to make payments' promptly by the 7th of each month.

Annapurna Anna Yojana

- The States/ Union Territories are directed to identify the beneficiaries and distribute the grain latest by 1st January, 2002. Integrated Child Development Services
- We direct the State Govts. Union Territories to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as.under - Each child up to 6 years of age to get 300 calories and 8-10 grams of protein; Each adolescent girl to get 500 calories and 20-25 grams of proetin; Each pregnant woman and each nursing mother to get 500 calories & 20-25 grams of protein; Each malnourished child to get 600 calories and 16-20 grams of protein.
- Have a disbursement centre in every settlement.

National Maternity Benefits Scheme

- We direct the State Govts. Union Territories to implement the National Maternity Benefit Scheme (NMBS) by paying all BPL pregnant women

Rs. 500/- through the Sarpanch 8-12 weeks prior to delivery for each of the first two births.

National Fertility Benefit Scheme

- We direct the State Govts. Union Territories to implement the National Family Benefit Scheme and pay a BPL family Rs. 10,000/- within four weeks through a local Sarpanch, whenever the primary bread winner of the family dies.

Other directions

- We direct that a copy of this order be translated in regional languages and in English by the respective States/Union Territories and prominently displayed in all Gram Panchayats, Govt. School Buildings and Fair Price Shops.
- In order to ensure transparency in selection of beneficiaries and their access to these Schemes, the Gram Panchayats will also display a list of all beneficiaries under the various Schemes.

Check Your Progress 2

Note: Use the space given below for your answers.

- 1) What is the Right to Food? Why is it fundamental for human development?

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- 2) What are the important UN legislations regarding the Right to Food?

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- 3) What are the important programmes in India related to the Right to Food?
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8.4 RIGHT TO HEALTH

Universal Declaration on Human Right, apart from other rights asserts the rights that every one has to a standard of living adequate for the health and well being of themselves and their families including, among other things, medical care. Article 25 rightly includes the formulation of the right to health that is referred to in the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and other key international instruments i.e. "the right to the enjoyment of the highest attainable standard of physical and mental health". It is widely accepted that this formulation includes access to health care services, as well as access to those services relating to the underlying determinants of health, such as adequate sanitation and safe drinking water. Indeed, the detailed provisions of ICESCR and CRC explicitly include both health care services and the underlying determinants of health. For example, article 24(2)(b) of CRC refers to "the provision of necessary medical assistance and health care", while article 24(2)(c) refers to "clean drinking water".

8.4.1 Health as Crucial Human Right

The "Right to Health" was affirmed at the international level in the Universal Declaration of Human Rights, Article 25 in 1948. The article states that "Everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family ...". The Preamble to the WHO constitution also affirms that it is one of the fundamental rights of every human being to enjoy "the highest attainable standard of health".

Inherent in the right to health is the right to the underlying conditions of health as well as medical care.

8.4.2 Important Legislations on the Right to Health

The United Nations expanded upon the "Right to Health" in Article 12 of the International Covenant in Economic, Social and Cultural Rights in 1966. Not only did this document guarantee the "right of everyone to the enjoyment of the highest attainable standard of health", but it also specifically called for the "provision for the reduction of ... infant mortality and for the healthy development of the child; the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational, and other diseases; and the creation of conditions which could assure to all medical service and medical attention in the event of sickness. In 2000, the United Nations further expanded upon the "Right to Health" with General Comment No. 14. This more lengthy document expanded upon the original ideas from 1966 by exploring the historical context of this right, further defining the meaning of an adequate health care system, detailing obligations of states and NGO's, defining violations, and discussing the basics of implementation.

8.4.3 Right to Health in India

India has made substantial progress in improving the health status of its population. Between 1970 and 1993, life expectancy at birth has increased from 50 to 61 years and infant mortality has decreased from 137 to 74 per 1,000 live births. India's health policy during this period has been based on the assumption that primary health care is a basic right to which people should not be denied access due to inability to pay or for other socio-economic reasons. Nationwide population-size based norms have determined the establishment of health facilities throughout the country. The National Health Policy (NHP, 1983) expanded this approach by special targets for fertility reduction and emphasized the reduction of preventable mortality and morbidity affecting mothers and

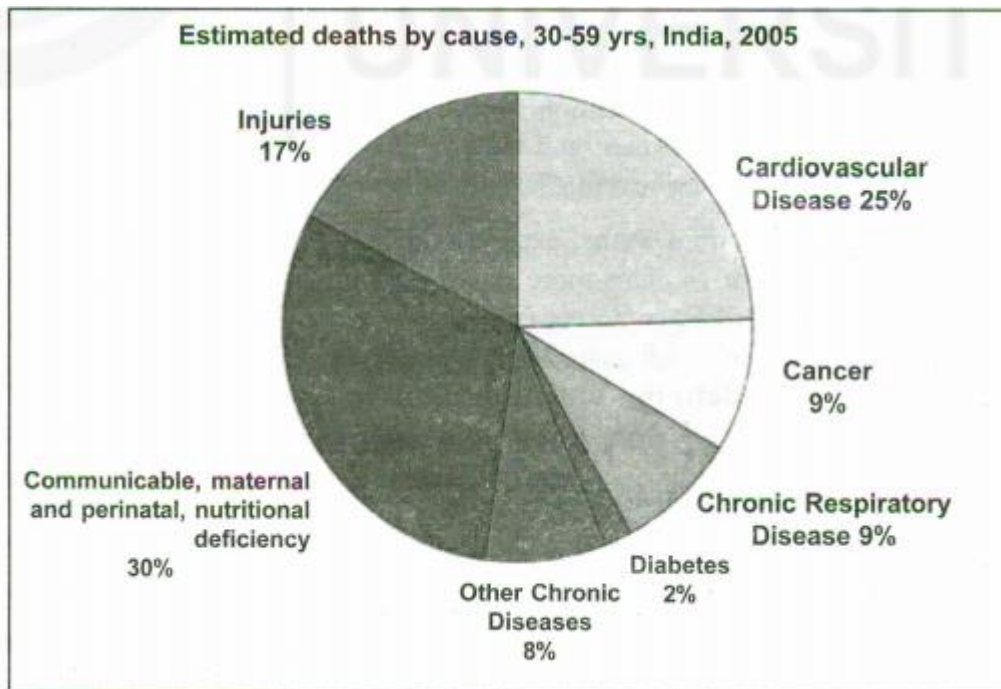
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young children. Greater improvements in health status could have been achieved if these priorities had been framed in accordance with the stated policy. However, public investments in health care have only partially reflected the priorities highlighted in the Government's policy. At the same time, private health services have been inaccessible to the poor and most vulnerable sections of the population and do not address public health issues of national significance. As a result, substantial gaps remain in the effective delivery and quality of health services. The health sector in India, in this period, has been characterized by:

- A government sector that provides publicly financed and managed health services throughout the country, from primary health centers to hospitals, where free curative and preventive health services are made available to a large section of the population. Government-provided services are the dominant source of preventive care, such as immunization, ante-natal care, infectious disease control and hospital-based care, this account for about 22% of overall health spending and 1.3 % of GDP.
- A private sector comprising mainly offor-profit, fee-for-service practitioners, which plays a dominant role in the provision of individual curative care through ambulatory health services, and accounts for about 78% of overall health expenditures and 4.71 % of GDP.
- Private health spending as a share of national income in India is amongst the highest for developing countries. Per capita expenditure is higher than in China, Indonesia and most African countries but lower than in Thailand and Malaysia.

Non- communicable Diseases in India

Scaling up Prevention and Control of Non Communicable Diseases



Source: World Health Organization, India

Non Communicable Diseases contribute to 53% of premature mortality in the most productive age groups in India. WHO has been providing consistent technical support and advocacy for NCD prevention and control? The Ministry of Health and Family Welfare, Government of India, has started a pilot programme for Prevention and Control of Diabetes Mellitus, Cardiovascular Diseases and Stroke (NPDCS). The emphasis is on prevention through health promotion and health system capacity strengthening. Until poor sanitation, contaminated water supply, and lack of adequate facilities for solid and liquid waste management both in urban and rural areas are corrected, it may not be possible to completely prevent periodic outbreaks of infectious diseases. Nevertheless, if outbreaks are detected early enough, it will be possible to control the epidemic and reduce morbidity and fatality rates. The strategy will be to strengthen health surveillance and early alert and rapid response mechanisms at district and sub-district levels. This would necessitate the provision of epidemiological expertise and diagnostic laboratory services as an essential component of existing health care system. It is neither possible nor feasible to initiate and support vertical programmes for control of every non-communicable disease. During the

Ninth Plan period, integrated non-communicable disease control programmes was implemented using the experience gained from pilot projects, such as the diabetes control programme launched during the Eighth Plan. Urban migration over the last decade has resulted in the rapid growth of urban slums. In some cities, the health status of urban slum dwellers is worse than that of the rural population. Appropriate referral linkages between primary, secondary, and tertiary care facilities in defined geographic areas has been established to promote optimal use of all available facilities. Increasing involvement of the Nagar Palikas in the implementation of health, water supply, and sanitation programmes is expected to improve the health status of the urban population, especially slum dwellers and those living below the poverty line.

Programmes and Projects on Health in India:

Some of the National Health Programmes are: National Malaria Eradication Programme; National Tuberculosis Control Programme; National AIDS Control Programme; and National Blindness Control Programme. The "Health for all" strategy is being re-oriented towards Health for the Under Privileged. In view of the importance given to medical and health care in the economic reforms, the Central Plan outlay for programmes of the Department of Health has been increased. The National Health Programmes aimed at prevention, control and eradication of communicable and non-communicable diseases have been accepted by the Government for implementation. Efforts have been made to ensure that the ongoing reforms do not lead to any adverse effect on the provision of essential care to meet the health needs of disadvantaged segments of the population. Some of the measures include allocation of funds under the Social Safety Net Scheme to improve Maternal and Child Health (MCH) infrastructure beginning in a phased manner with 90 poorly performing districts.

Under the Basic Minimum Services scheme, the Government is committed to providing credible primary health care at the 5000 population level. In addition to the Centrally Sponsored Schemes, funds

will be devolved to States for meeting requirements under the Basic Minimum Services, including health and family welfare. The strengthening of rural health infrastructure has been undertaken over the years by the Department of Family Welfare through the provision of buildings, equipment, drugs, vaccines, and training at all personnel levels. For AIDS, a National Control Programme has been established with blood safety measures and sexually transmitted disease (STD) control through the National AIDS Control Organization. During the last four years of implementation of the programme, 154 Zonal Blood Testing Centres have been established all over the country to provide HIV testing facilities. In total, 199 blood banks were modernized during 1995-96. One hundred and twenty eight medical officers, 747 blood bank technicians, and 37 drug inspectors have undergone training under the Programme. The "One World~One Hope" theme that was adopted for the World AIDS Day on December 1, 1996 reflects the coming together of various groups to prevent the spread of HIY.

India Report on AIDS Epidemic

	2003	2005
Adults (15+) and Children	5300	5700
Low estimate	3200	3400
High estimate	8800	9400
Adult (15+)	5200	5600
Low estimate	3100	3400
High estimate	8700	9300
Children (0-14)	N/A	N/A
Low estimate	N/A	N/A
High estimate	N/A	N/A
Adult rate (15-49) (%)	0.9	0.9
Low estimate	0.93	0.91
High estimate	1.5	1.5
Women (15+)	1500	1600
Low estimate	750	820
High estimate	2600	2800

Source: 2006 Report on the Global AIDS epidemic.

As India has the second largest population in the world second only to China. Providing adequate health facility is a big challenge facing the government of India. Though the government has taken many steps as discussed above but a lot needs to be done.

Check Your Progress 3

Note: Use the space given below for your answers.

- 1) Why is the Right to Health so important for development?

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- 2) What is the important United Nations provisions related to the Right to Health?

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- 3) Discuss some programs dealing for improving the condition of health sector in India.

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8.5 RIGHT TO SHELTER

The housing problem can be considered to be universal, since, to date, no country has yet managed to completely meet this basic human need.

Adequate housing serves as the crucible for human well-being and development, bringing together elements related to ecology, sustained and sustainable development. It also serves as the basic unit of human settlements and as an Indicator of the quality of life of a city or a country's inhabitants. It reflects, among other things, the mobilization of resources and the distribution of space, as well as varied social and organizational aspects of the relationship between Government and society. Unfortunately, in spite of its importance, there exists an enormous housing deficit throughout the world. According to the United Nations, more than one billion people are living in precarious shelter conditions, including those who are homeless.

8.5.1 Shelter as Basic Human Need

The human right to adequate housing has a central place within the body of human rights in general. The right to adequate housing was recognized as a basic human right in 1948 in the Universal Declaration of Human Rights of the General Assembly of the United Nations. When the Universal Declaration was written, the right to adequate housing became part of a series of internationally accepted and universally applicable human rights standards. Following that Declaration came the covenant on Economic, Social and Cultural Rights (1966) and the covenant on fact for Civil and Political Rights (1966). These agreements serve as international legal instruments, to be ratified and enforced by Governments; thus they signify important obligations. The recognized importance of the right to housing over time has led to its ratification and reinforcement through other international declarations, conventions and conferences, in which more precise and complex objectives have been developed. Of these declarations, special note should be made of The Habitat I Vancouver Declaration (1976), the International Year of the Homeless. The Global Strategy for Housing Towards the Year 2000, as well as current preparations for the Habitat II Cities Summit Istanbul (1996.) The access to adequate and secure housing significantly strengthens the possibility that individuals and families enjoy other human rights as well as a greater quality of life overall. It is frequently

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assumed that, for this right to be made effective, Governments must provide sufficient public funding and other resources. However, according to the concepts embodied within the economic, social and cultural rights, such a commitment actually implies a broader and more complex series of obligations for States. According to Article 2, Paragraph 1 of the covenant on Economic, Social and Cultural Rights, in relation to housing, Governments are obliged to: a) adopt measures by all appropriate means to make effective the right to housing; b) dedicate the greatest possible amount of available resources; c) achieve these rights in a progressive fashion.

8.5.2 Right to Shelter in India

"Every woman, man and child has the right to a secure place to live in peace and dignity". This though accepted by the Government of India within the UN forum has remained a mere platitude on paper in its dealings with its people. A roof over the head assures a family the security and opportunity to concentrate on other aspects necessary for its healthy development, such as employment and education. The right to shelter is a fundamental human right but no state has been able to completely fulfill this need of the people. In India too, the problem of shelter is acute. A person sleeping on pavements is a regular sight in the cities. One of the causes is population growth. But apart from rise in population India has witnessed large scale migration from rural areas to the cities. This migration has led to acute problem of housing in the cities and the clustering of slums in the cities. The right to shelter is not directly recognized as a fundamental right. There is acute poverty and unemployment in India which is one of the greatest causes of homelessness.

Check Your Progress 4

Note: Use the space given below for your answers.

- 1) Why is homelessness a major concern?

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- 2) How is right to shelter related to migration from rural area to urban areas in India?

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8.6 LET US SUM UP

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. People are at the centre of concerns for sustainable development. The international community has therefore pledged to eradicate poverty, to promote full and productive employment, and to foster social integration to achieve stable, safe and just societies for all. The right to food is one of the most basic human rights. All human being have the Right to life and food forms an integral part of life. Despite the fact that the right to food is recognized directly or indirectly by all countries in the world, hunger, whether caused by war, drought, natural disaster or poverty, continues to cause widespread suffering. And poverty, one of the causes of hunger, is also a consequence of it. The United Nations expanded upon the "Right to Health" in Article 12 of the International Covenant on Economic, Social and Cultural Rights in 1966. Not only did this document guarantee the "right of everyone to the enjoyment of the highest attainable standard of health", but it also specifically called for the "provision for the reductions of ... infant mortality and for the healthy development of the child; the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational, and other diseases; and the creation of conditions which could assure to all medical

service and medical attention in the event of sickness. In 2000, the United Nations further expanded upon the "Right to Health" with General Comment No. 14. This lengthier document expanded upon the original ideas from 1966 by exploring the historical context of this right, further defining the meaning of an adequate health care system, detailing obligations of states and NOO's, .defining violations, and discussing the basics of implementation. "Every woman, man and child has the right to a secure place to live in peace and dignity". This though accepted by the Government of India within the UN forum has remained a mere platitude on paper in its dealings with its people. A roof over the head assures a family the security and opportunity to concentrate on other aspects necessary for its healthy development, such as employment and education.

8.7 KEY WORDS

Development:Economic development is the process by which the economic well-being and quality of life of a nation, region or local community are improved. The term has been used frequently in the 20th and 21st centuries, but the concept has existed in the West for centuries.

Shelter:a place giving temporary protection from bad weather or danger.To be protected.

Right to Food:The right to food, and its non variations, is a human right protecting the right for people to feed themselves in dignity, implying that sufficient food is available, that people have the means to access it, and that it adequately meets the individual's dietary needs.

Convention:A convention, in the sense of a meeting, is a gathering of individuals who meet at an arranged place and time in order to discuss or engage in some common interest. The most common conventions are based upon industry, profession, and fandom.

Right to Development:The right to development was first recognized in 1981 in Article 22 of the African Charter on Human and Peoples' Rights as a definitive individual and collective right.

8.8 QUESTIONS FOR REVIEW

- 1) What is the Right to Development?
- 2) Which UN Conventions incorporate the Right to Development?
- 3) How is the Right to Development "a holistic right"?
- 4) What is the Right to Food? Why is it fundamental for human development?
- 5) What are the important UN legislations regarding the Right to Food?
- 6) What are the important programmes in India related to the Right to Food?
- 7) Why is homelessness a major concern?
- 8) How is right to shelter related to migration from rural area to urban areas in India?

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8.10 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

- 1) Right to development integrates all economic, social and cultural rights and also civil and political rights. This also implies the full realization of the right of people to self-determination, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.
- 2) U.N. Charter, Universal Declaration of Human Rights, and International Covenant on Economic, Social and Cultural Rights reflect the right to development. The Declaration on the Right to Development was incorporated in the United Nations in 1986.
- 3) Right to Development is based on the view that development must begin and end with a concern for the human conditions and that this is a collective international responsibility. It also highlights the indivisibility of Civil and Political and Economic, Social and Cultural Rights.

Check Your Progress 2

- 1) Right to food means recognition of the right of everyone' to an adequate standard of living for himself and his family, including adequate food, clothing and housing. It is important for human development as the very

basic right to life is not possible in the absence of minimum requirements of food.

- 2) Article 25 of UDHR, International Covent on Economic, Social and Culture Rights, International Covent on Civil and Political Rights and several declarations.
- 3) See sub-section 8.3.4

Check Your Progress 3

- 1) A dignified human living means healthy life. The state has an important role to play in prevention and control of diseases.
- 2) See sub-section 8.4.2
- 3) See sub-section 8.4.3

Check Your Progress 4

- 1) Adequate housing serves as the crucible for human wellbeing and development. However, there exists an enormous housing deficit throughout the world.
- 2) Large scale migration from rural areas to the cities leads to acute problem of housing in the cities

UNIT 9: RIGHT TO SELF-DETERMINATION

STRUCTURE

- 9.0 Objectives
- 9.1 Introduction
- 9.2 Self-determination of Peoples in the United Nations Charter
- 9.3 Self-determination in UN Resolutions and Human Rights Instruments
 - 9.3.1 The Declaration on Granting of Independence to Colonial Peoples (1960)
 - 9.3.2 The Declaration on Friendly Relations (1970)
 - 9.3.3 Human Rights Instruments and Right to Self-determination
- 9.4 Meaning of the Right to Self-determination
 - 9.4.1 External Self-determination
 - 9.4.2 Internal Self-determination
 - 9.4.3 The Right to Secession: Is it Part of Right to Self-determination?
- 9.5 Human Rights Committee and Right to Self-determination
- 9.6 The Right to Self-determination and Minorities
- 9.7 Relevance of Right to Self-determination in Post-colonial Era
- 9.8 Let us sum up
- 9.9 Key Words
- 9.10 Questions for Review
- 9.11 Suggested readings and references
- 9.12 Answers to Check Your Progress

9.0 OBJECTIVES

After studying this Unit you will be able to:

- To understand the important role that the right to self-determination of peoples has played since the inception of the United Nations;
- To know its place in the UN Charter, historic/significant UN resolutions, major human rights treaties - both international and regional;

- To explain the meaning, nature and scope of the right to self-determination;
- To describe the interpretation of this right by the Human Rights Committee and Committee on the Elimination of Racial Discrimination; and
- To examine its relevance in post-colonial and post-cold war era.

9.1 INTRODUCTION

Historically, self-determination evolved as a political principle before becoming one of the central rights of the contemporary human rights system. It was at the heart of both the American and the French Revolutions of the 19th century. The claim of self-determination was for government of the people by the people; in this regard it is often associated with the notion of democracy. Self-determination was also one of the corner-stones of Lenin's political ideology. At the end of the Right to Self-determination First World War, one of the most resounding consequences of President Woodrow Wilson's 14-point speech remains his reference to the principle of "national" for the ethnic groups that were carved out by the fall of the Ottoman, Austro-Hungarian, Russian and German empires. The right to self-determination has played an important and historic role in post World War II international relations. No principle of the law of the United Nations has played so significant a role as did the principle (now the right) of peoples. It gave inspiration to millions of African and Asian peoples/nations, who were living under colonial rule, to make the claim of right to self-determination and independence. It worked as "dynamite" in exploding the colonial empires, which changed the entire course (in fact the map) of the contemporary world history. The fact that the membership of the United Nations has more than tripled during the last 62 years (from 51 in 1945 to 192 in February 2008) confirms this truth. The two UN Covenants on human rights - the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) - by placing the right to self-determination of peoples in the very first Article has not only given primacy to this right over all other rights but has also transformed it from its status of being a

"principle" in the UN Charter into a fundamental right of the people - though a collective right. This right has been included in the Helsinki Final Act of 1975 and the African Charter of Human and Peoples' Rights, 1981. It must be noted that this right has found its relevance in both the post-colonial context (as Bangladesh became the first country to exercise it) and in post-Cold War context. It is also relevant and applicable to various groups / minorities / indigenous peoples within the independent States, as most of them have ratified the ICESCR and ICCPR.

9.2 SELF-DETERMINATION OF PEOPLES IN THE UNITED NATIONS CHARTER

The principle of self-determination is mentioned at two places in the UN Charter. Article 1(2) mentions as one of the purposes of the United Nations: "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace". Article 55 mentions: "the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations based on respect for the principle of equal rights and self-determination of peoples". It must be noted that both these references in the Charter were due to the initiative of the Soviet Union. The Soviet delegate stated that the principle was borrowed from the Russian Constitution of 1936) it is important to note that the Charter speaks of the "principle" of self-determination and not a right to self-determination. The Charter simply records a political principle. It keeps this principle distinct from human rights. Its passages relating to human rights do not even refer to "self-determination of peoples". These Charter references are made in the context of developing friendly relations among States. It is interesting to note that self-determination is not included or referred in Article 1 (3) and Article 55 (c) of the Charter, which talk about promoting human rights.

Check Your Progress 1

Note: Use the space given below for your answers.

- 1) Discuss the importance of the concept of self-determination since 18th century.

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- 2) Name the human rights instruments which specifically provide the right of self-determination.

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- 3) Which Articles of the UN Charter talk about self-determination of peoples?

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9.3 SELF-DETERMINATION IN UN RESOLUTIONS AND HUMAN RIGHTS INSTRUMENTS

The Universal Declaration of Human Rights (UDHR), 1948, did not include the right to self-determination, although an attempt was made to include it in this historic document. A Soviet amendment requiring its inclusion was rejected. Since 1950 the UN General Assembly began recognizing that the right of peoples and nations to self-determination was a fundamental human right. The Assembly adopted scores of resolutions on self-determination. Though these resolutions are not binding, they have made self-determination as a perennial and peremptory norm of international law and have established it as a legal right. Moreover, it was included in many human rights treaties as a basic human right. With these developments, the principle of self-

determination was gradually emerging as a human right. Let us elaborate these developments.

9.3.1 The Declaration on Granting of Independence to Colonial Peoples (1960)

The UN General Assembly has adopted two most important documents, which establish the right of self-determination as a human right. First, on 14 December, 1960, the Assembly adopted the famous Declaration on the Granting of Right to Self-determination Independence to Colonial Peoples [GA. Resolution 1514]. This Declaration represented an important milestone in the struggle against colonialism. It reaffirmed, for the first time, the right of all peoples to self-determination. It stated that "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". The Declaration "solemnly proclaimed the necessity of bringing to speedy and unconditional end colonialism in all its forms and manifestations [*italics added*]" and it urged immediate steps to transfer all powers to the peoples of non-self-governing territories (colonies) which were not yet independent. It stated that inadequacy of preparedness of the people for self-governance should not be a pretext for delaying the exercise of the right of self-determination in these territories. Although, the Declaration is non-binding, some scholars consider that it regards the principle of self-determination as a part of the obligations stemming from the UN Charter, and is not a "recommendation", but is in the form of an authoritative interpretation of the Charter.

9.3.2 The Declaration on Friendly Relations (1970)

Ten years later (in "1970), the General Assembly adopted another historic resolution: the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations (GA. Resolution 2625). This Declaration is another landmark in the development of the

right to self-determination. It constitutes the most authoritative explication to date of the right to self-determination. It proclaims seven principles of international law relating to the friendly relations and cooperation among States. One of these principles pertains to the right of self-determination: "By virtue of the principle of equal rights and self-determination of peoples all peoples has the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development". The Declaration spelled out that the right of self-determination was applicable not only to peoples under colonial rule, but also to peoples subject to foreign or alien subjugation, domination and exploitation. Those supporting this clause of the Declaration clearly had two very different circumstances in mind. The first concerned South Africa - an independent State, but one perceived by many as subject to "alien domination", and foreign support for that minority white domination in apartheid regime (before 1994). The second was a very different matter - the status of occupied territories upon termination or suspension of military hostilities. It was felt that the position of peoples in such territories was to be protected not just by humanitarian law, but by insistence upon their right to self-determination. To uphold the right of the people of Palestine, the United Nations resolutions talked about the inalienable right of Palestinians to exercise their right to self-determination.

9.3.3 Human Rights Instruments and Right to Self-determination

Many human rights instruments have referred to self-determination in their texts. They are: "1966 'Covenants on Human Rights'. The inalienable right of all peoples to self-determination was first proclaimed in legally binding treaties - the TCCPR and the ICESCR - adopted in 1966. Both these Covenants contain an identical Article 1 on the subject, which reads as follows: Article 1

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- 1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- 2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence,
- 3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

It must be noted that both the Covenants provide human rights to "individuals", and not to "groups" or "collectives". Even the rights of persons belonging to "minorities" (Article 27 of ICCPR) are formulated in the terminology of rights of individuals. Common Article 1 in the Covenants is the only exception to this general rule of all human rights instruments. This Article talks about the rights of peoples. It is a group or collective right. The African Charter on Human and Peoples' Rights, 1981, in Article 20 stipulates that "all peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen". The African Charter further states in Article 21 that all peoples shall freely dispose of their wealth and natural resources. States Parties to the Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources; Article 22 of the Charter provides that all peoples shall have the right to their economic, social and cultural development. The Final Declaration of the World Conference on Human Rights in Vienna, adopted on 25 June 1993, also contains a clear passage in support of the right of self-

determination. Like Article 1 of the Covenants, it states: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development". The Vienna Declaration, by using a tough language, further states that the right of self-determination is inalienable, and that the denial of its effective realization is a violation of human rights. The UN Declaration on the Rights of Indigenous People, 2007. On 13 September 2007, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples following more than two decades of negotiations between governments and representatives from Indigenous Peoples (IPs). This instrument too recognizes the right of IPs to self-determination, but it is concerned with only "internal dimension". The preamble of the Declaration categorically Right to Self-determination states that nothing in this Declaration may be interpreted as authorizing or encouraging any action which would dismember totally or in part, the territorial integrity or political unity of sovereign and independent states. It is thus confirmed that the Declaration does not provide IPs with special treatment regarding "External self-determination" and thus the right of self-determination that the IPs may exercise has, essentially, an internal dimension. In this respect, it should also be noted that the preamble paragraph "recognizing that IPs have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect", has been removed from the Preamble of the Declaration. Yet, Article 5 of the Declaration has remained unchanged, notably as to participate in the political, economic, social and cultural life of the State, which suggest that the extent of IPs' right to internal self-determination has not been altered. Additionally, it is worth highlighting that the provisions concerning IPs' rights over traditional lands and resources has remained unchanged, except for the deletion of the adjective "their" before resources at Article 32 (2), reflecting the controversial status of the issue of ownership of natural resources.

9.4 MEANING OF THE RIGHT TO SELF-DETERMINATION

It is true that the right of self-determination has emerged as one of the most important and fundamental human rights. It plays an important part in the realization of the other human rights and freedoms, by creating the general framework and foundation for the implementation and promotion of human rights. At the same time, respect for each individual human right contributes to the exercise of the right to self-determination. Despite these facts, there is little consensus among scholars and the community of States over the precise definition of self-determination and over other complex questions such as who constitutes "people"; is it a principle or a right; is it an individual right or a group right; is it only a political or moral right or is it a legal right; is it enforceable; or should it be enforced; or is it none of these, or all of these at the same time, and more. Is the right to secession a part of the right to self-determination? It is neither possible nor desirable to answer all these questions. However, an attempt is made here to understand the meaning of the right to self-determination while discussing its various phases or aspects. There is a controversy among scholars and States regarding the meaning and content to be given to the right of self-determination. Defining self-determination as a theoretical concept and with a view to give broad meaning, the scholars of 1970s and 1980s have adopted a flexible approach. For instance, Alfred Cobban defined self-determination as "the right of a nation to constitute an independent state and determine its own government for itself". Elaborating further he said, "any territorial community, the members of which are conscious of themselves as members of a community, and wish to maintain the identity of their community is a nation". Robert Friedlander stated that "self-determination implies the freedom of a dissident people to establish on its own initiative a viable independent national entity and whatever political and social structure it chooses for the preservation of that entity". Rupert Emerson, one of the authorities on self-determination, defined the concept as "the right of peoples to determine the internal structure and functioning of their society without interference". Ian Brownlie viewed it as "the right of cohesive national groups (people) to

choose a form of political organization and their relation to other groups". Elaborating further, he said, "the choice may be independence as a state, association with other groups, in a federal state, or autonomy or assimilation in a unitary state". Thus, the above definitions identify self-determination with a broad meaning such as self-government, autonomy, and to some extent secession. The emergence of Bangladesh in 1971 can be justified in the light of the meanings given by Friedlander and Brownlie. On the other hand, scholars like Hans Kelsen give a narrow interpretation of the concept of self-determination. In his view it means the sovereignty of states and nothing more than that. His view cannot be accepted as his conclusion was based on five years practice of the UN Charter. One wonders whether he would have arrived at such conclusion at the beginning of the 21st century. States too had divergent views on the meaning and content of "self-determination". Question of definition was discussed while drafting an Article on the right of self-determination for inclusion in the UN Covenants. Pointing to the undefined content of the concept, some States demanded that the concept be first defined before it is applied. It is interesting to note that France had once proposed that the International Law Commission study the nature of self-determination, its political, economic, social and cultural content and its relationship with other concepts of international law - specially the concept of the state and nation. A similar proposal came from the United States, which sought to establish an ad hoc Commission to study the concept of peoples and nations, the application of the principle of equal rights and self-determination, the relationship between self-determination and other principles of the UN Charter. In contrast to these views, States opposing colonialism felt that the definition of the concept of self-determination was not essential for its recognition and application. Under their pressure, the UN concentrated its efforts to the application (rather than definition) of the concept of self-determination. Without bothering much about defining it, the General Assembly approved at its tenth session the text of Article 1 for inclusion in both the Covenants. The Human Rights Committee, established to supervise the implementation of the ICCPR, has issued very little jurisprudence on the meaning of self-determination. This is partly due to its refusal to

admit Article 1 complaints under the First Optional Protocol to ICCPR. Furthermore, its General Comment on Article 1 fails to give any clear definition beyond reiteration of the express words of Article 1. The term "peoples" has not been defined; hence it continues to remain controversial. Much contemporary scholarship on self-determination divides the right into a right of external self-determination (ESD) and a right of internal self determination (ISD). The definition of "peoples" in terms of the ICCPR becomes less contentious if one recognizes that all peoples are entitled to some form of self-determination, though not all peoples are entitled to the most radical manifestation of the right, ESD. In this respect, a "people" may be broadly defined, in the opinion of McCorquodale, as a group with a common racial or an ethnic identity, or a cultural identity (which could incorporate political, religious, or linguistic elements) built up over a long period of time. Let us now turn to the discussion of ESD and ISD.

9.4.1 External Self-determination

Although there is no explicit Article on self-determination in the first major human rights treaty - International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965, the monitoring Committee of the Convention, i.e., Committee on the Elimination of Racial Discrimination (CERD) has adopted General Recommendation 21 on the topic. In fact, Article 5 (c) of the ICERD deals with the right of every citizen to take part in the conduct of public affairs at any level. Similarly, the HRC has also issued General Comment 12 on Article L. Both these comments elaborate the meaning of ESD and ISD. However, it must be noted that the CERD General Recommendation is far more detailed and useful than the HRC Comment. The CERD Recommendation states that the external self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by. The liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination, and exploitation.

From this Recommendation it is clear that a claim of ESD equates with a claim by a people to certain territory. ESD is exercised by maintaining existing State boundaries, or changing the boundaries of the existing States. The first form of ESD arises where the relevant "self-determination unit" is the population of an existing State. The latter arises where the relevant "self-determination unit" wishes to break away from an existing State. The most controversial mode of exercising ESD is by way of secession. During the 1950s and 1960s, the right of secession, and indeed the notion of self-determination, was intertwined with the notion of decolonization. However, in the post-Cold War era, a number of non-colonial peoples have successfully seceded, including the peoples of the former USSR, the former Czechoslovakia, the former Yugoslavia, Eritrea, and East Timor. Furthermore, the text of Article I of the ICCPR does not expressly confine the right to colonial peoples. Indeed, the HRC has now confirmed (through its Concluding comments on Azerbaijan report in 1994) that the principle of self-determination, and possibly the right of secession in some instances, "applies to all peoples, and not merely to colonised peoples". It must be noted that the right of ESD is politically controversial, as it clearly threatens the territorial integrity of States.

9.4.2 Internal Self-determination

ISD refers to the right of peoples to choose their political status within a State, or of exercising a right of meaningful political participation. For example, the institution of democratic rule in South Africa constituted an exercise of ISD by the black majority in South Africa. The notion of ISD overlaps considerably with the rights guaranteed in Articles 25 (right of political participation) and 27 (minority rights) of the ICCPR. Indeed, Antonio Cassese describes ISD as a "manifestation of the totality of rights embodied in the Covenant". According to CERD General Recommendation, the right to self-determination has an internal aspect, i.e. the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there

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exists a link with the right of every citizen to take part in the conduct of public affairs at any level (Article 5 (c) of the ICERD). In consequence, governments are to represent the whole population without distinction as to race, colour, descent, national, or ethnic origin. Further, the Recommendation stated that in accordance with Article 2 of ICERD, governments should be sensitive towards the rights of persons of ethnic groups, particularly their right to lead lives of dignity, to preserve their culture, to share equitably in the fruits of national growth, and to take part in the government of the country of which its members are citizens. Self-determination is therefore a complex right, entailing an "internal" and an "external" form.

According to some scholars the right can be conceptualized at a sliding scale of different levels of entitlement to political emancipation, constituting various forms of ISD up to the apex of the right, the right of ESD, which vests only in exceptional circumstances. Different "peoples" are entitled to different "levels" of self-determination. It is contended that a people are entitled to ESD by way of secession, when it lives under colonial or neo-colonial domination, or when it is so severely persecuted, and its human rights so systematically violated, that ESD is necessary to remedy such violations, and preserve its long-term viability as a people. Alternatively, peoples may reach free agreements to secede from each other, as occurred when Czechoslovakia peacefully split into the Czech and Slovak Republics in 1993. Finally, peoples which are not entitled to ESD are nevertheless entitled to ISD.

The HRC considers that self-determination is of continuing applicability. The Committee, when examining the report of a State party to the ICCPR, asks not only about any dependent territories that such a State party may be responsible for (ESD) but about the opportunities that its own population has to determine its own political and economic system (ISD). Virtually, no States refuse to respond to probing comments and questions on ISD and the Committee is not told that no such right exists. Rather, it is accepted that the right exists and the debate most frequently is about the forms that it can take.

9.4.3 The Right to Secession: Is it Part of Right to Self-determination?

There is no agreement among States to regard "secession" as part of self-determination. Most of the Declarations or human rights documents categorically state that there is no such right of secession. The Declaration on Decolonization sets forth a fundamental limiting principle, without which one almost never finds a reference to self-determination: "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations". Similarly, the Declaration on Friendly Relations places the goal of territorial integrity or political unity as a principle superior to that of self-determination. The Vienna Declaration of the World Conference on Human Rights, 1993, also states that the notion of self-determination should not be construed as authorizing or encouraging any action "which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States...." In other words, the right of secession was explicitly not recognized, which has greatly limited the right of peoples to self-determination.

Check Your Progress 2

Note: Use the space given below for your answers.

- 1) What is the contribution of the 1960 Declaration on Decolonization concerning right to self-determination?

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- 2) Discuss the nature of the right of self-determination in the 2007 UN Declaration on the Rights of Indigenous People.

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- 3) Distinguish between internal and external self-determination

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- 4) Does international human rights law recognize the right to secession? Explain how.

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9.5 HUMAN RIGHTS COMMITTEE AND RIGHT TO SELF-DETERMINATION

On 12 April 1984 the HRC adopted a General Comment on Article 1 of the ICCPR (right to self-determination), which takes a broader view of its 29 Specific Human Rights 30 applicability. The Committee noted that "it imposes specific obligations on States Parties not only in relation to their own peoples but vis-a-vis all peoples which have not been able to exercise or have been deprived of the possibility of their right to self-determination". This Comment makes it clear that the right is universal. The promotion of self-determination must be consistent with other provisions of international law: "in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right. ... "Self-determination in the two Covenants includes internal self-determination. The Comment alludes to this: "With regard to paragraph 1 of Article 1, States Parties should describe the constitutional and political processes which in practice allow the exercise of [self-determination]." The HRC complains that many States in their periodic reports "completely ignore Article 1, provide inadequate information in relation to it or confine themselves to a

reference to election laws". According to Patrick Thornberry, the General Comment makes no contribution to the elucidation of any people and minority distinction. The assumption appears to be that Article 27 of ICCPR (concerning rights of persons belonging to minorities) covers minorities.

Self-determination may still be relevant to the minorities, even when they are not regarded as "people" in the Covenants, especially with regard to its internal dimension. Antonio Cassese, while discussing the relationship between democratic entitlements and self-determination has stated that internal self-determination means self-government and autonomy and external self-determination means secession and statehood. In the 'internal' context, self-determination is understood as the right to participate in the democratic process of governance and to exercise some form of autonomous development within the State boundaries. Certainly the most challenging claim to self-determination comes from indigenous peoples. Their claim relies on the fact that they have traditional form of government and have specific rights over their traditional territories and thus are 'people' entitled to self-determination. Since in most countries they are living on the margins of society facing discrimination, exploitation and dispossession, indigenous peoples seem particularly entitled to claim their right to selfdetermination. The Committee has recognized that based on their right to selfdetermination, indigenous people have the right to access their natural resources as a right to subsistence. In the Committee's view this Article 1 of the Covenants entails their right to participate in decisions affecting their natural resources.

9.6 THE RIGHT TO SELF-DETERMINATION AND MINORITIES

Self-determination, included in the Covenants, is usually described as a right of peoples and is a collective right. It is not considered as a right of minorities. The UN has no examples where genuine minorities have claimed self-determination before it. Self-determination is now an

accepted principle of international law, but a restricted principle for minorities. Any serious work on minority rights could plausibly omit reference to it. Ermacora says that unless the UN has not developed clear-cut ideas about the holder of the right to self-determination, his opinion is that minorities also can be considered holders of this right. Minorities must be considered as people. Jeremie Gilbert on the other hand holds a radical position and opines that self-determination has been qualified as a "remedial Right to Self-determination right", i.e., a people would have a right to secede from a State that is discriminating or committing gross human rights violations. It has been interpreted as meaning a right to break away from a government that excludes people of any race, creed or colour from political representation. However, GrosEspuell and Cristescu categorically declare that minorities have no right to self-determination. According to Thomberry, this however would not be justified entirely. He writes that there is slipperiness in the concept of a "people", which makes for uncertain attribution of rights. Some brief account of the interpretation of this concept in human rights documents and its relation to minorities is instructive. Moreover, whether States like it or not, minorities and indigenous groups have often appropriated the term self-determination to express the essence of their political claims.

9.7 RELEVANCE OF RIGHT TO SELF-DETERMINATION IN POST-COLONIAL ERA

One important question arises: whether the right of self-determination has an application beyond the colonial context? Can States tolerate secession of minority groups in the name of self-determination? the answer is no. It must be noted that the right of self-determination in the Covenants is universal. The text and drafting history of the Article 1 support the view that the Covenants reach beyond the colonial situation. The International Law Commission in 1988 expressed its view that the right of self-determination is of universal application. However, there are indications of narrower views. The Declaration made by India to Article 1 of both the Covenants is intended to give restricted meaning to the concept. It read: "the Government of the Republic of India declares that

the words 'right of self-determination' ... apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of the people or nation-which is the essence of national integrity". Other States have objected to the declaration, which clearly curtails the scope of the Article. The Netherlands objection reads, in part: "Any attempt to limit the scope of [the] ... right or to attach conditions ... would undermine the concept of self-determination itself and would ... seriously weaken its universally acceptable character". France indicated that the Indian reservation attached conditions to the self-determination that were not provided in the UN Charter and Germany considered the reservation incompatible with the object and purpose of the Covenant. It is worth noting that Patrick Thornberry, Frank Thomas and Nigel Rodley express the opinion that the position of India is marked by inconsistency as it had supported the creation of Bangladesh. It must also be recalled that India's delegate had earlier stated in the General Assembly's Third Committee that: "although there were good reasons to make special reference to the peoples of non-self-governing territories, it must be recognized that the field of application of the principle of self-determination was wider than that". Thus there is little reason to doubt that Article 1 of both the Covenants applies to all peoples and is not confined to colonial territories. In spite of the clarity of the legal position, until the symbolic fall of the Berlin wall in 1989 self-determination was mainly invoked and relied upon by colonial peoples eager to gain full control of their own destiny. With the fall of communism in Eastern Europe, however, a new era seems to have begun. Ethnic groups within many States invoke the right to self-determination, claiming political rights which range from internal autonomy to a right of secession pure and simple. Increasingly, self-determination, instead of uniting popular (unification of East and West Germany being an exception), is becoming divisive force. Hence, Indian reservation to Article 1 seems to be relevant in context. The former communist States like the USSR and Yugoslavia are affected by this new development. However, there are few examples to suggest that application of self-determination finds relevance outside colonial

context. Only Bangladesh (East Pakistan) and Eritria (seceded from Ethiopia) have successfully claimed self-determination.

Check Your Progress 3

Note: Use the space given below for your answers.

- 1) Examine the interpretation of the right to self-determination attempted by the Human Rights Committee.

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- 2) Is self-determination applicable to minorities?

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- 3) What is the relevance of the right to self-determination in the post-colonial era?

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9.8 LET US SUM UP

We sum up with three conclusions. (1)The right of self-determination has played a dynamic role in world politics since 1945. It has liquidated all colonial empires. It has liberated many peoples and nations. With the adoption of many important Declarations and human rights instruments, the "principle" of self-determination has now emerged as one of the most important human rights. (2)There is no agreement on its precise meaning. It is many things to many people. It has many phases, levels or manifestations. Two of its important forms are ESD and ISD. Right to Self-determination The General comment of HRC on this right has not

shed enough light to clarify its meaning, content, scope and applicability for all times. Many scholars and States think that it can be exercised by Indigenous people, minorities, peoples and the people (within the State). However, majority of States are reluctant to consider secession as part of self-determination. (3) Thus, self-determination has emerged as a super human right and has found its relevance beyond colonialism, although it has not been precisely defined by the United Nations. We can conclude our discussion by agreeing with Werner Levi, who said that the "vagueness" of concept had made it serviceable for a multitude of political purposes, including anti-racism and decolonization.

9.9 KEY WORDS

Apartheid: Officially pursued policy of racial discrimination. It was followed by South Africa, where black majority was ruled by white minority government till 1994.

Declaration: A State may choose or required to make a declaration concerning a treaty to which it has become a party. There are several types of declarations, such as interpretative declarations, optional and mandatory declarations, and derogation.

Final Act: An agreement or treaty

General Comment: A treaty body's interpretation of the content of human rights provisions, either related to a specific article or to a broader thematic issue. General Comments often seek to clarify the reporting duties of States Parties with respect to certain provisions and suggest approaches to implementing treaty obligations.

General Recommendations: They are General Comments of a treaty body.

Instruments: Treaties, conventions, covenants, protocols and declarations.

9.10 QUESTIONS FOR REVIEW

- 1) What is the contribution of the 1960 Declaration on Decolonization concerning right to self-determination?

- 2) Discuss the nature of the right of self-determination in the 2007 UN Declaration on the Rights of Indigenous People.
- 3) Distinguish between internal and external self-determination
- 4) Does international human rights law recognize the right to secession?
- 5) Examine the interpretation of the right to self-determination attempted by the Human Rights Committee.
- 6) Is self-determination applicable to minorities?
- 7) What is the relevance of the right to self-determination in the post-colonial era?

9.11 SUGGESTED READINGS AND REFERENCES

- Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge, 1995).
- Jeremie Gilbert, "The Right to Self-determination", in Rhona Smith (ed.), *The Essentials of Human Rights* (London, 2005), pp. 316-19.
- Abdulrahim P. Vijapur, *The United Nations at Fifty - Studies on Human Rights* (New Delhi, 1995), Chapter 6 & 7.
- R. McCorquodale, "Self-determination: A Human Rights Approach", *International and Comparative Law Quarterly* (London), Vol. 43, 1994.
- Cindy Holder, "Self-determination as a Universal Right", *Human Rights Review*, July - September 2006.

9.12 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1) Self-determination was at the heart of 18th century revolutions. It led to the governments of the people and by the people. It was one of the corner stones of Lenin's political philosophy and Woodrow Wilson's 14-point speech. It worked as dynamite in exploding colonial empires. As a result, the UN membership increased from 51 to 192. (See section 9.1)

2) Self-determination is included in UN Covenants on human rights, the Helsinki Final Act, 1975, The African Charter on Human Rights, 1981

and the UN Declaration on the Rights of Indigenous People, 2007 see section 9.1

3) Article 1 (2) and 55 of the UN Charter. See section 9.2

Check Your Progress 2

1) It solemnly proclaimed the necessity of bringing to speedy and unconditional end colonialism in all its forms and manifestations. The Declaration was more than a resolution. It was an authoritative interpretation of the UN Charter. See sub-section 9.3.1

2) 2007 Declaration on the Rights of IPs does not permit ESD. Their ISD refers to participation in the political, economic, social and cultural life of the State. IPs has traditional land rights but do not explicitly hold ownership of natural resources. See sub-section 9.3.3

3) ESD involves independence from colonial status or secession from independent States, whereas, ISD refers to internal autonomy, participation in political, economic, social and cultural development of the people. .See sub-section 9.4.1 and 9.4.2

4) In theory right to secession has not been explicitly recognized, but in practice a combination of many factors enable a people to exercise it, e.g. Bangladesh, Eritrea. See sub-section 9.4.3

Check Your Progress 3

1) Scholars differ on the application of self-determination to minorities. Some say yes. Some say no to the question. See section 9.6

2) In many instances, self-determination finds relevance in post-colonial situations. See section 9.7

3) Mostly deals with forms of ISD. See section 9.5

UNIT 10: IMPLEMENTATION OF HUMAN RIGHTS- NON-GOVERNMENTAL ORGANIZATIONS

STRUCTURE

- 10.0 Objectives
- 10.1 Introduction
- 10.2 NGOs: Definitional Debates
- 10.3 NGOs and Human Rights
 - 10.3.1 Functions of Human Rights NGOs
- 10.4 The U.N. and NGOs
- 10.5 International Organizations
 - 10.5.1 Amnesty International
 - 10.5.2 Human Rights Watch
 - 10.5.3 The Commonwealth Human Rights Initiatives
 - 10.5.4 Anti-slavery International for the Protection of Human Rights
- 10.6 NGOs Movement in India
 - 10.6.1 The Emergency of 1975 and the Rise of NGOs
 - 10.6.2 NGO; and the Promotion of Human Rights in India
- 10.7 Conditions Necessary for Effective Working of NGOs
- 10.8 Critical Analysis of NGO Activities
- 10.9 Let us sum up
- 10.10 Key Words
- 10.11 Questions for Review
- 10.12 Suggested readings and references
- 10.13 Answers to Check Your Progress

10.0 OBJECTIVES

This unit is meant to make you aware about the functions and role NonGovernmental Organizations play in promotion and protection of Human Rights.

After going through the unit you will be able to:

- To define the meaning of Non-Governmental Organizations;
- To know the functions and role of NGOs;
- To understand the relationship between the United Nations and NGOs;
- To be aware of International NGOs;
- To know about the emergence of NGOs in India and their role; and
- To understand the critical evaluation of NGOs.

10.1 INTRODUCTION

The concept of human rights gained currency in the twentieth century. As is well known it was the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948 that provided for universal recognition and codification of Human Rights. However the momentum gained for human rights advocacy was largely a contribution of the Non-Governmental Organizations (NGOs). Non-Governmental Organizations are private or volunteer, non-profit professional organizations with a distinct legal character concerned with public welfare goals. These organizations exert influence over legislative and public policy making through generation of public awareness and mobilization. However, there are differences of opinion about the acceptable definition of NGOs and their role. As argued by UpendraBaxi, in the early part of the twentieth Century international NGO focused on, "creation of regimes of international humanitarian law".

Moreover these initial NGOs were not very different from social movements and were associated with anti-slavery, labour and suffragette mobilizations. Yet the character of NGOs has evolved during the course of the last century. Often a distinction is made between social and political action groups on the one hand and NGOs on the other. The former aim at promoting human rights by manner of mobilizing people, while the latter address "conventional programmes of community development" such as health, agriculture, drinking water and others. Thus the former are geared towards people's activism while the latter are more in the manner of service-delivery agencies. While scholars do

debate the efficacy of various human rights groups it is essential to stress that firstly there has been phenomenal proliferation of NGOs both at the international and national level in the second half of the twentieth century.

Secondly this proliferation has also led to increasing diversity in the issues that they address, their organizational structure, lobbying strategies and goals that they aim to achieve.

Thirdly given the global march of neo-liberalism and retreat of the welfare State, developmental initiatives and implementation have in a way been outsourced to civil society organizations. Non-governmental organizations and social action groups hence have a pivotal role to play in representing and empowering individuals and groups in society. The objective of this lesson would be to look at the changing character and role of NGOs with regard to human rights advocacy. This would involve a look at the various terminological debates associated with human rights, study of the historical context which marked the emergence of NGOs followed by an analysis of the various human rights issues that they have come to be associated with.

10.2 NGOS: DEFINITIONAL DEBATES

As mentioned in the introduction, literature on voluntary organizations often makes a distinction between groups that are mobilization or radical in character and those that are reformist and status-quoist in their functioning with NGOs being placed in the latter category. This distinction became popular amongst intellectuals and political activists following criticism of the functioning of NGOs during the 1980s. Given the criticism many commentators have attempted to distinguish NGOs from other voluntary organizations. For instance, Siddharth Sen makes a distinction between Community Based Organizations (CBOs), Grassroots Organizations (GROs) and NGOs. However the distinction assigns a middle class professional status to NGOs which is often not acceptable to the latter. Further, not all middle class urban associations are NGOs as Resident Welfare Committees often serve limited private

needs. Another distinction made by SangeetaKamat is that between groups engaged in 'struggle-based politics' and those working for 'constructive development'. However in criticizing such a "strict binary Opposition" Rob lenkins quotes the example of the Rajasthan based MazdoorKisan Shakti Sangathan (MKSS). This organization apart from being engaged in struggling for the rights of cultivators also operated fair-price shops thereby helping in speedy and transparent distribution of basic goods. Therefore he argues that social action is not always pursued to the exclusion of developmental initiatives. The purpose of introducing these debates to you is to outline the shift in identity witnessed by NGOs. While there is no consensus on what exactly defines an NGO, for our purpose we can rely on the definition of a Non-Profit Organization (NPO) as outlined by the Society for Participatory Research in India (PRIA). According to this definition an NGO must meet five criteria i.e. it has an institutional identity, it is separate from the government, is non-profit distributing, self-governing and has been set up voluntarily.

Non-governmental organizations, or NGOs, were first called such in Article 71 in the Charter of the newly formed United Nations in 1945. While NGOs have no fixed or formal definition, they are generally defined as nonprofit entities independent of governmental influence (although they may receive government funding).

As one can tell from the basic definition above, the difference between nonprofit organizations (NPOs) and NGOs is slim. However, the term "NGO" is not typically applied to U.S.-based nonprofit organizations. Generally, the NGO label is given to organizations operating on an international level although some countries classify their own civil society groups as NGOs.

NGO activities include, but are not limited to, environmental, social, advocacy and human rights work. They can work to promote social or political change on a broad scale or very locally. NGOs play a critical part in developing society, improving communities, and promoting citizen participation.

"The diversity of NGOs strains any simple definition. They include many groups and institutions that are entirely or largely independent of government and that have primarily humanitarian or cooperative rather than commercial objectives. They are private agencies in industrial countries that support international development; indigenous groups organized regionally or nationally; and member-groups in villages. NGOs include charitable and religious associations that mobilize private funds for development, distribute food and family planning services and promote community organization. They also include independent cooperatives, community associations, water-user societies, women's groups and pastoral associations. Citizen Groups that raise awareness and influence policy are also NGOs"

- World Bank

10.3 NGOS AND HUMAN RIGHTS

Human rights NGOs are groups of organized people engaged in protecting and promoting (civil) security against excesses of the state agencies. But should one remain content with 'civil' aspect of security or one should also assert and struggle for social security as well? In so far as human rights movements are concerned struggle for social security like right to food security, shelter, an adequate standard of living, right to education, cultural rights, etc. are no less important. Human Rights NGOs, however, are not to be confused as products of the UN system only. P. Archer identified the Anti-slavery Society founded in 1837 as the first human rights NGO but the creation of Amnesty International in 1961 marked the real beginning of development of an international human rights movement trend which visibly peaked up with over 1500 NGOs participating in the Vienna Congress in 1993. The effective strength of this NGO led movement began to make its presence felt with the beginnings of 1990s. It focused on basic needs of the people with coming into evidence of the ever-widening inequality and rampant authoritarian political governance in most of the developing countries. Political repressions spawned grass-roots movements as the Third World

walked blithely into the debt trap laid by the World Bank and the International Monetary Fund. Fall of a superpower (former Soviet Union) broke the balance, and thus entered aggressive forces of globalization (especially economic and financial) led by the Trans National Corporations (TNCs). In this era of globalization, human rights movements have a bigger responsibility than before. In order to undertake them successfully, the same Informational Communication Technologies which have destroyed global distance for financial capital, can be intelligently put to use for 'consolidation of the democratic forces all over the world. The latter in turn, will give rise to a global civil society over years of consolidated human struggle. A widespread human rights movement of these characteristics will constitute globalization-from-below which can resist mindless invasions by globalization from-above represented by aggressive capitalism (especially the speculative and financial) of the TNCs.

“Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law...

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– Paragraphs 2 and 3 of the Preamble, Universal Declaration of Human Rights

10.3.1 Functions of Human Rights NGOs

Human Rights Organizations perform the following functions:

1) Monitoring of Human Rights Violations: The utmost duty of human rights NGOs is to monitor the violation of human rights in countries. By monitoring the violations, the NGOs bring the issue before the world community and help create an international opinion so that the government of that country initiate a dialogue with the voluntary groups and take appropriate action regarding the same.

2) Documentation: The second most important task human rights NGOs perform these days is to document the events of atrocities. For this, they not only depend on their own first hand reports but also depend on the local organization, regional newspapers, and the reports of other organizations including the official reports if there are any. Documentation helps the NGOs to formulate their strategies and present a better understanding of the problem.

3) Lobbying: Lobbying is another important task that human right NGOs have been involved in. Most of the cases of lobbying are where the third party is involved. After the globalization process began in the third world countries, a large number of projects began to be funded by the developed world. In many countries local NGOs and people's movements have been waging a war against some of the projects which have been funded either by the developed countries or global institutions like the World Bank or International Monetary Fund. In this case, the human rights organization' lobby for the people if there is any kind of human rights violation 'due to the funding of a project. For example, the SardarSarovar Project on Narmada, the Project has been funded by the German government and the World Bank. It is reported that after persuasion of the Narmada BachaoAndolan, these, institutions have withdrawn from the project and the Indian government is doing the same on entirely on its own efforts.

4) Preparing Parallel Report: All the Governments who have ratified the two International Covenants on Civil and Political Rights, and Economic Social and Cultural Rights are supposed to submit their reports on human rights situation in their respective countries to monitoring bodies. We know how government reports are prepared and how the documents are fudged. Keeping this in view and to ensure more transparency, the UN Human Rights Commission has allowed the NGOs to prepare independent reports of the countries. These are called Parallel Reports. Reports of NGOs are always taken seriously because there are always doubts over the reports presented by the government agencies about the conditions related to human rights in their countries.

5) Human Rights Education: An important work the human rights NGOs have been taking up these days is 'human rights education programme'. The programme is aimed at the vulnerable sections of society as well as to educate those in the power who are supposed to implement the national laws. Due to their ignorance as well as arrogance they often violate their own framed laws, hence the human rights groups take up such educational programmes to teach these individuals/sections their duties towards the vulnerable sections. Human rights education is not only the national and international laws but also they discuss about the social movement in various countries.

6) Campaigning: International and National human rights organizations have found campaigning a very important and effective tool to sensitize people on human rights issues. Even the government bodies such as police and Panchayats have started campaigning for their cause. After the human rights organizations take up certain causes which they consider important to create public awareness and opinion so that government acts on that. For example, Human Rights watch in collaboration with Ford Foundation and various Dalit groups have launched a campaign about the Dalits rights: 'Dalit rights' are Human Rights. Similarly, FLAN has organized International Solidarity day with the landless peasants of Brazil who were the victims of highhandedness of their government. On April 19th, 1998, FLAN activists all over the world staged protest march

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and handed over memorandum to Brazilian embassies in their respective countries. The result was that the Brazil government became serious about the issue and issued notices to their own agencies.

7) Case Studies: Sometimes the NGOs ask their representatives to do a case study of certain situations which cause human rights violation. Human Rights Watch report on Dalits is a compilation of case studies. FIAN International also involve itself in case studies and last year the Tamilnadu section of FIAN did extensive work on the suicide of farmer in Andhra Pradesh and Karnataka.

Check Your Progress 1

Note: Use the space given below for your answers.

- 1) What are the different ways in which NGOs have been defined?

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- 2) What do you understand by Human Rights NGOs?

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- 3) What functions Human Rights NGOs are expected to perform?

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10.4 THE U.N. AND NGOS

The United Nations and various other international organizations recognize the importance of NGOs. However they have special

procedures and requirements for the official recognition of NGOs, and on the fieldwork of accredited NGOs to supplement the work of the NGO bodies. In the United Nations system, the ECONOMIC AND SOCIAL COUNCIL, CHARTER, has made arrangements for consultation with non-governmental organizations concerned with matters falling within its competence (Council resolution 1296 (XLIV)). This resolution provided for certain principles to be applied in the establishment of consultative relations, among them:

- 1) The organization shall be concerned with matters falling within the competence of the Economic and Social Council with respect to international economic, social, cultural, educational, health, scientific, technological, and related matters and to questions of human rights;
- 2) The aims and purposes of the organization shall be in conformity with the spirit, purposes, and principles of the Charter of the United Nations;
- 3) The organization shall undertake to support the work of the United Nations and to promote knowledge of its principles and activities, in accordance with its own aims and purposes and the nature and scope of its competence and activities;
- 4) The organization shall be of representative character and of recognized international standing;
- 5) The organization shall be international in its structure;
- 6) The basic resources of the international in its structure; shall be derived in main part from the contribution of the national affiliated or other components or from individual members.

This final stipulation is to ensure that no NGO is government-supported or dependent in any way on financing from a governmental source they may seek to influence the NGO. In addition, NGOs also supply information concerning allegations of violations of human rights to

bodies authorized to supervise the application of various international instruments in the field. Under these arrangements the UN COMMITTEE ON NON-GOVERNMENTAL ORGANIZATIONS divides such organizations into three groups: Category I, which is made up of NGOs having a basic interest in most of the Council's activities; Category II, which is made up of those having a special competence but are concerned with only a few of the Council's activities; and The Roster, which contains the names of NGOs that can made occasional and useful contributions to the Council's work. 60 All the organizations in "consultative status" may send observers to public meetings of the Council and its subsidiary bodies. They can submit written statements for circulation and present their views orally. As regards human rights, more than 100 NGOs regularly attend and participate in meetings of the UN COMMISSIONS AND COUNCILS.

10.5 INTERNATIONAL ORGANIZATIONS

International non-governmental organizations are those organizations which do not have any national identity and which have chapters in various countries. Apart from various groups supporting them, these international NGOs have individuals support also in different countries who show solidarity with their cause. The solidarity could be in the form of working, writing protest letters, campaigning etc. The international human rights groups have also been supporting the UN human rights system and bringing out various reports. There are a number of international human rights groups but we would be discussing some of the very prominent human right organizations:

- 1) Amnesty International
- 2) Human Rights Watch
- 3) Commonwealth Human Rights Initiative
- 4) Anti Slavery International for the Protection of Human Rights

10.5.1 Amnesty International

Amnesty International was founded in 1961 by a British Lawyer Peter Benenson who urged people everywhere to work impartially and peacefully for the release of 'prisoners of conscience'. Within months thousands of people from various countries sent in offers of practical help - many were prepared to help to collect information on cases, publicize them and approach the governments - and what started of as a brief publicity effort became the most influential and highly respected human rights organization of the world. Today, AI has about one million members spread over 150 countries. It has a research staff in London of about 320 persons (plus above 100 volunteers) which is much larger than the staff of the UN Human Rights Centre in Geneva. As its primary mandate, AI seeks to release 'prisoners of conscience' - those detained for their beliefs, colour, sex, ethnic origin, language, or religion who have not used or advocated violence. Through the network of members, supporters, AI takes up individual cases, mobilizes public opinion, and seeks improved international standards for treatment of prisoners. Observers are sent to various countries on fact-finding missions and verify the government version of the report. In 1977, Amnesty International got Nobel Peace Prize, for its contribution 'to securing the ground for freedom, for justice and thereby for peace in the world'. On the occasion of the 30th anniversary of Universal Declaration of Human Rights (1978) Amnesty International was awarded the UN Human Rights Award. To publicize its concerns and activities, Amnesty International supports a large scale publication programme. The most influential and widely disseminated of its many reports is the annually published Amnesty International report, which provides a country by country survey of AI's work. The Amnesty International Newsletter, a monthly bulletin brings out updated monthly reports of fact-finding missions, details of arrest and release of political prisoners and reliable reports of torture and executions. Amnesty reports on Kashmir conflict and the coldblooded killings of Muslims in Maliana (Hashimpura) township of Meerut by PAC (Provincial Arms Constabulary) in 1982, are classic. Amnesty's reports on Afghanistan, Kosovo, China, South Africa and East Timor are eye openers and have been widely appreciated by world human rights fraternity.

10.5.2 Human Rights Watch

Based in New York, Human Rights Watch (HRW) was initially known as Helsinki Watch when it began its journey in 1978 with foundation offices in Europe and Asia. The objective of Human Rights Watch is dedicated to protecting Human rights of the people around the world. "We stand with the victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in war time and to bring offenders to justice." The organization investigates and exposes human rights violations and holds abusers accountable. They challenge the governments and those who hold power to show examples of ending abusive practices and respecting international human rights law. The organization also enlists support of the public and the international community to fight for the cause of human rights for all. Apart from New York, the HRW has its offices in Washington DC, London, Belgium, Moscow, Dushanbe, Rio de Janeiro and Hong Kong. It has its divisions covering Asia and Africa, Americas and the Middle East. In addition it includes three thematic divisions on Arms, Children's Right and Women's Right. In 1998, Human Rights Watch brought out an excellent report on the plight on India's 160 million untouchables. It was the first time that an international organization did spend its energy and time to investigate the plight of Dalits in India in which the research head of the HRW Ms. Smita Narule did travel all over India and met about 300 Dalit activists and organizations and presented a huge report which exposes the so called democratic power being delegated to Dalits. The report is an eye-opener. The credibility of HRW lies in its proven and total commitment to the cause of human rights and in its persistent stand for not taking any government and official support in various campaigns.

10.5.3 The Commonwealth Human Rights Initiatives

It is an independent international NGO mandated to promote the practical realization of human rights in the countries of the

Commonwealth. It aims to promote awareness of, and adherence to the internationally recognized human right norms, the Commonwealth Harare Principles of 1991 as well as domestic instruments supporting human rights in Commonwealth member states. Launched in 1987 by six Commonwealth associations and originally based in London, in 1983 CHRI moved its headquarters to New Delhi. It happened when these activists decided to from FLAN in order to go to the roots of the problems of poverty and related violations of human rights. CHRI adopts an approach similar to that of AI in the sphere of civil and political rights, to make available right to food security to the hungry and under-nourished. CHRI is one of few international human rights organizations which have been head quartered in the developing south. Human Rights education and advocacy are the core themes of CHRI's activities the aims and ends of all its reports and investigations. Which lays emphasis on working in close collaboration with human rights commissions, understanding their functioning, disseminating information about them and encouraging interaction between them and the communities they protect? Besides addressing issues of capacity building (like these), CRRI has also launched initiatives for targeted human rights education for police and common people. CHRI's fact finding mission not only highlight growing and continuing violations of human rights in a specific Commonwealth country, but also accesses the nature of infringements, and advocate for early adherence to international norms. Every two years since 1991, CHRI publishes its report on the human right situation in Commonwealth States which is kept ready before the Commonwealth Summit. CRRI Quarterly Newsletter is a reflection and review of CRRI's on-going activities.

10.5.4 Anti-slavery International for the Protection of Human Rights

An International NGO in Consultative Status with UN ECOSOC (Category II), ILO, UNESCO, UNICEF, is also known as the Anti-Slavery Society. The organization was amalgamated in 1909 with the Aborigines Protection Society. The Society works to eliminate all:

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- Forms of slavery, including forced labour,
- To promote- wellbeing and defend the interests of the oppressed and threatened indigenous and other peoples,
- To promote human rights in accordance with the principles of UDHR.

The society participated in activities that led to the adoption of the League of Nations Convention on Slavery and the UN Convention on Slavery (1956) and in the appointment of the Working Group on Contemporary Forms of Slavery. In 1989 Session, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (Resolution 1989/1940) congratulated the Anti-Slavery Society, 'the oldest human rights organization in the world', on the occasion of its 150th anniversary noting 'the great contribution that the Anti-Slavery Society has made to the cause of the human rights over the last century and a half by its tireless advocacy, research and concern for indigenous people as well as those suffering from the abuses of slavery and slavery like practices' 'the important and continuing vital work the Society does in maintaining its global programmes and providing information to the Sub-commission' And the need for these valuable sources to be maintained.

Check Your Progress 2

Note: Use the space given below for your answers.

- 1) Describe the principles prescribed for grant of consultative status to NGOs by the United Nations.

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- 2) What do understand by International NGOs? What important role Amnesty International has been playing in the field of Human Rights?

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- 3) Describe the nature and functions of Human Rights Watch and The Commonwealth Human Rights Initiative.

10.6 NGOS MOVEMENT IN INDIA

The rise of NGOs in India has been a recent event with the National Emergency of 1975 acting as a trigger for their emergence and increased activities. Earlier, particularly during the Nehruvian era from 1947 to the mid-1960s most of the social and political activism which aimed at representing certain interests emerged from political parties or from groups and movements within the national or State level parties. The Congress party at this time mooted a developmental trajectory which attempted to balance democratic Socialism with Capitalist growth. Such a holistic development strategy found favour with the conservatives and the leftists within the opposition such as the Swatantra party, the Jan Sangh as also the Communists and the Socialists because they all found their interests echoed within the party. The Congress was therefore also able to curb early dissent such as that from the labour sector simply by co-opting the latter within the umbrella organization. Ray and Katzenstein argue that during the first phase of social activism in India, "distributive movements made few disruptive demands".

10.6.1 The Emergency of 1975 and the Rise of NGOs

However by the late 1960s it had become evident that economic inequalities not only persisted but had sharpened. Economic growth had

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not reduced wealth inequalities and efforts at redistribution including land reforms had largely failed. The ability of the State to restore the democratic channels of communication and representation of the citizens was further dealt a blow with the imposition of the Emergency in 1975. The Emergency was unique to the growth of NGOs as government excesses reached unprecedented levels. The government suspended all fundamental freedoms. Further, public dissent was curbed by censorship of the media and at times even involved torture and imprisonment of political activists. This phase also marked the political assertion of plural identities such as those of caste, gender, tribe and ethnicity. The electoral landscape also witnessed change as the domination of the Congress party at the level of the States was 'challenged by regional political formations. The State was seen as incapable of fulfilling the promise of equitable growth and development. The initiative for the same as well as that of restoring democratic rights and freedoms was thus taken over by social action groups and the NGOs. Growth of NGOs during this period was also a result of many erstwhile political party associations such as women's wings, students' unions as well as kisan and labour organizations breaking free from the parent organization. Non-Governmental Organizations The increasing efficacy of NGOs, financially as well as in the domain of civil society was evident from the fact that the government initiated an official association with them. This association was initially in the manner of greater control and scrutiny of NGOs particularly during the early 1980s when Indira Gandhi returned to power. The government even went as far as to establish an enquiry commission (Kudal Commission) to look into instances of corruption amongst the NGOs. The groups investigated were those that had been critical of the Emergency and included the Gandhi Peace Foundation as well as the AVARD (Association of Voluntary Agencies for Rural Development) apart from others. The government's stance changed later and apart from monitoring the NGOs they also attempted to make use of the organizational capacity of this newly emergent voluntary sector.

10.6.2 NGO: and the Promotion of Human Rights in India

'During the initial period of their formation NGOs were mainly involved in traditional developmental tasks including welfare, charity and providing relief. However the 1980s marked a shift in the issues addressed by NGOs. It is during these decades that gender, law, environment and human rights came to be added to the NGO agenda. Harsh Sethi refers to the early successes achieved by NGOs in the field of law. These included redrafting of the rape and of the dowry law, stalling of the forest bill, launching of a national campaign on housing rights, introduction of a private bill on child labour in the Parliament and the successful innovation of Public Interest Litigation. The 1990s marked a great increase in the number of NGOs operating in India, as also many more issues being added to the category of 'human rights'. Women's rights organizations which during the earlier period of their protests had been targeting the State now diverted their attention to providing support to victims and changing long standing social biases against women. In 2005, women's organizations successfully campaigned for the formulation of a bill on domestic violence. The issue of domestic violence was posited as a human rights violation requiring legal remedy. The act so passed allowed NGOs to file complaints on behalf of the victims with the protection officer. Moreover the latter were expected to work in tandem with NGOs and other civil-society groups to help the aggrieved party. Efforts are also on to campaign for a bill on sexual harassment. In this case to the National Commission for Women (NCW) has recommended that NGOs be allowed to head the complaints committee, Women's organizations continue to campaign for reservation of seats for women in Parliament. The text on human rights by the South Asian Human Rights Documentation Centre, Human Rights, refers to the invaluable role played by NGOs in promoting environmental rights. NGOs are said to have bridged the legislative gap by regularly taking claims to court asserting the, "rights of the people to a clean, healthy and regenerative natural environment". Amongst NGOs working for protection of the environment the World Wide Fund for Nature (WWF) India was the first to advocate conservation of nature on a national basis.

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Further, through the Conservation Action Programme run by WWF, support is extended to smaller NGOs working at the grassroots level. Another example is that of the National Toxics Movement in India. The movement was inspired by a coalition of NGOs called Toxics Link that campaigned with the government and members of industry to provide for safe disposal of toxic waste. The SAHRDC text also refers to the recent success achieved by Toxics Links in lobbying for a ban on use of mercury-based equipment in Delhi hospitals. As a result of the efforts of the environmental lawyer, M.C.Mehta many 'green judgments' were passed by the court. These included protection of the Taj Mahal, reduction in levels of vehicular pollution in Delhi and relocation of polluting industrial units, also in Delhi. However the court's decision in the latter case was seen as a denial of the right to livelihood of all those workers who were retrenched on account of closure of these industries. Many NGOs that opposed the decision argued that the pollution prevention burden should not be shifted to the lowest class in society. One must note therefore that the category of human rights is also conflict ridden. In this case one person's right to a clean environment is juxtaposed against another's right to work and earn a living. Both rights have been provided judicial sanctity by a broad interpretation of the 'fundamental right to life' making it imperative for the State to secure the same for its citizens.

A similar instance is that of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The act refers to tribal stake and rights in forests and promises to safeguard the same. Yet again NGOs are pitted against one another with regard to implementation of the act. A federation of tribal and forest dwellers' organizations from eleven States supported by the Campaign for Survival and Dignity, an NGO have been supporting the act. On the other hand, conservationist NGOs such as Vanshakti has been opposing the act on the basis that it would undermine forest protection and wildlife conservation. NGOs have also had considerable success in the arena of political rights such as campaigning for electoral reform. The SAHRDC text refers to NGO coalitions which since the year 2000 have been

petitioning the government to provide citizens with information on the educational, criminal and financial background of electoral candidates. Through a series of court rulings and inspite of opposition from political parties, .political representatives have been made accountable to the people. The right to Information, which is perhaps one of the most empowering of citizens' rights, was campaigned for by the civil society organization, the MKSS.

The campaign which gave birth to the National Campaign for People's Right to Information (NCPRI) was based on the slogan that the 'right to know is the right to live'. The 'right to health' campaign is being led by the Jan SwasthyaAbhiyan, a national level platform of health and social organizations working on health issues with rights based approach. Access to health facilities, it is argued is not just a, " a human need, a right of citizenship and a public good, but it is also a pre-requisite to good health " (<http://www.cehat.org/rhcseminar.html>). 6,6 While there are many groups engaged in opposing violation of civil liberties, NGOs have more often than not focused on research, documentation and dissemination of information regarding violations of civil liberties by the government and other armed groups. An NGO, which has consistently been engaged in producing human rights literature, is the South Asia Human Rights Documentation Centre. SAHRDC is a "network of individuals across the region. It seeks to investigate, document and disseminate information about human rights treaties and conventions, human rights education, refugees, media freedom, prison reforms, political imprisonment, torture, summary executions, disappearances and other cruel, inhuman or degrading treatment. SAHRDC has Special Consultative Status with the Economic and Social Council of the United Nations". (<http://www.hrdc.net/sahrdc/>). People's Union for Civil Liberties, that came into existence as a reaction to emergency rule in 1975-77 is also active all over India in the cause of Human Rights. Action Aid.is another NGO which actively participates in people's campaigns such as on food rights and livelihood, women's rights and gender equality, rights of persons with HIV and AIDS, right to

education, right to health, right to shelter, right to peace and human security.

10.7 CONDITIONS NECESSARY FOR EFFECTIVE WORKING OF NGOS

To be effective and useful in the task of promotion and protection of Human Rights following conditions are considered essential for NGOs.

Reliability

Providing reliable information is a foremost requisite since, nowadays, dependence on NGO information has become credible. They help various UN experts committees to make their questioning more precise, factual and less abstract. "For any theme or issue-based examination, NGO supplied information is mostly used. No less than 74% of the cases taken up by the UN Working Group on Arbitrary Detentions in 1994 were brought by international NGOs, another 23% came from national NGOs and 3% from the families. Collection of reliable information demands that NGOs should have professional expert staff. Amnesty International with a professional staff of almost 300 individuals in its International Secretariat in London compares easily with the Office of the UN High Commissioner in Geneva. Other organization with good expert staff strength includes International Commission of Jurists, Human Rights Watch Committee (USA), Article XIX (which works for freedom of expression all over the world). Reliability is closely linked to credibility. An NGO to remain credible and maintain its reputation must be extremely careful and guard itself against charges with regard to its objectives, financial sources and methods of work. In any case, if such information relates to new areas of human rights violations (like 'ethnic cleansing' taking place in former Yugoslavia, Rwanda, Kosovo, etc.) protection of international human rights standards is considerably strengthened.

Access vs. Independence

This sums up the foremost dilemma facing human rights NGO. For an NGO, it is important to have access to government as much as it is important for that NGO to remain independent of it when it comes to processing and passing relevant information to the higher human rights bodies of the UN, for example. In politically open societies like the Netherlands and Norway access to government is easy but it is really not so in politically not so open societies. In some countries, former NGO executives hold positions in national governments and the NGO representatives are routinely included in official delegations to sessions of the General Assembly of the UN or the Special Conferences. Australia provides a bright example: members of parliament (including members of government) serve on the committee suggestively called "Parliamentarians for Amnesty International". Yet another interesting experiment is the two-day consultations with the NGOs which the Canadian Ministry of Foreign Affairs conducts once a year. Weiss and Gordenker would identify an important channel of access in the pioneering human rights defenders like former President Jimmy Carter, former Norwegian Prime Minister Gro Harlem Brundlandt and former Dutch Foreign Minister Peter Kooijrans. Each country has such famous figures: Rajni Kothari, Soli Sorabjee, Justice RajinderSachar, JusticeKrishanIyer, SunderlalBahuguna, Baba Amte, MedhaPatekar, IllaBhatta, Swami Agnivesh, among many other active in India, Asma Jahangir LA. Rahman in Pakistan, KamlHossan. Mohammad Yunus of Bangladesh, RadhikaCoomanswmy and A.T. Arairatne of Sri Lanka bring to bear considerable importance of their personalities on the human rights because they may be advocating or campaigning for.

Representativeness

NGOs may provide instruments and facilities which, whether invited or not by the governments, emphasize participation of the majority usually beyond the delivery reach of the state. As Bratton commented in the context of planning of projects: once the question was 'how can development agencies reach the poor majority?' now it is 'how can the

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poor majority reach the makers of public policy?' Various studies have confirmed strong correlation between projects success and the participation of grass-roots organizations. NGOs have now become known for their distinctive contributions in the following sectors:

- a) their ability to reach poor people, especially in inaccessible areas,
- b) their capacity for innovation and experimentation in areas difficult for official agencies
- c) their close links with the poor and marginalized communities - phenomenon now becoming known as 'representatives'.
- d) For a rich variety of skills to promote participation out there. NGOs thus have constituted 'the Third System' (the other two being international and national commissions] dedicated to 'representing' interests of the majority of people out there beyond the delivery reach of the state.

For one of these reasons, John Clark has estimated that a significant portion (12%) of development assistances from the North is now in the conduit of the NGOs. 68 NGOs may contribute to expanding representativeness in performance on public policies, but not infrequently, they are also known for "grass-roots apathy" - a phenomenon (Fowler has coined the term) of NGOs remaining busy in national and international seminars, conferences, meetings, or remaining confined to working in state capitals, etc. and losing sight of their goals of empowerment in the process. One of the principles laid down to decide 'representative' nature of the NGOs may be found in ECOSOC's considerations for granting consultative status to the NGOs. According to this principle, the organization should have a "representative structure" and possess appropriate mechanisms of accountability so that control over its policies and actions can be ensured through exercise of voting rights or other appropriate democratic and transparent decision-making processes. Criteria for judging such representativeness have not however been spelt out while this has given opportunities to make a

virtue of this ambiguity. This unholy advantage has been taken as much by the rich Northern NGOs as by a good majority of Southern NGOs which have been reduced to personal freedoms by not so scrupulous 'human rights activists', taking shelter behind pompous formalities and high-sounding rhetorical.

10.8 CRITICAL ANALYSIS OF NGO ACTIVITIES

As stated earlier, since the late 1980s NGOs have faced flak on many counts and from many quarters including the State, other 'non-NGO' voluntary organizations, and commentators and even from within the NGO community. Sethi has argued that NGOs are currently pressurized from two sources. Firstly, they have to meet three different kinds of expectations i.e. from the grassroots, those of the donor and that of the government. They are thus plagued by what he calls the 'overload factor'. Secondly and contrary to popular perceptions, it is becoming very difficult for NGOs to court donor agencies. NGOs are said to be in the midst of a 'recessionary' market. In the IMF-World Bank vision of a free-market economy, NGOs are seen as having only nuisance value as they unnecessarily raise issues of justice and equity. It is also argued that often external-donor concerns come to dominate the functioning of NGOs such that critical self-assessment takes a back seat. In an attempt to woo foreign funding agencies, NGOs often style themselves around the ideological and organizational matrix of the former. This results in loss of autonomy and commercialization of the whole idea of social service. Issues of financial accountability and transparency continue to plague NGOs. Mahi Pal (Mahi Pal, 'Voluntary Sector and Credibility Issues', *Economic and Political Weekly*, vol. 39, no. 26, June 26-July 02) mentions that in 2004, The Council for Advancement of People's Action and Rural Technology (CAPART), stopped assistance to and blacklisted about 600 voluntary organizations nationwide. The year before the Central Social Welfare Board blacklisted 3,000 NGOs for unsatisfactory progress. VimalaRamchandran (VimalaRamchandran, 'Voluntary Organizations: Professional Agency or Sub-contractor', from M.L.Dantwala, Harsh Sethi and PravinVisaria (eds.), *Social Change*

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through Voluntary Action, Sage Publications, New Delhi, 1998) refers to the fact that 30- 40% of funds meant for development are spent on 'administration, consultant fees, overheads of donors etc.' Another 20-30% of funds are used up by the voluntary agency for infrastructural purposes. Thus only about 20% of the total funds reach the targeted beneficiaries.

Check Your Progress 3

Note: Use the space given below for your answers.

- 1) Trace the growth of NGOs in India since Independence

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- 2) What role NGO have played for promotion and protection of Human Rights in India?

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- 3) Describe the necessary conditions for effective working of NGOs.

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- 4) Critically evaluate the role and place of NGOs in society

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10.9 LET US SUM UP

In summing up the role of NGOs in implementation of human rights, it is evident that there is no conclusive opinion in favour of or against the organizations. NOOs are said to have bureaucratized the activity of voluntarism such that it has become dissociated from society. Voluntary action is no longer spontaneous but contrived and commercialized. Thus

it's potential to mobilize people and transform social structures and ideology is also limited. Moreover the language of 'rights' being used by NGOs is said to reflect a value orientation which is western in nature. The idea of 'human rights' undermines community values and norms. As Jenkins argues, commentators often say that the 'disembodied approach' of NGOs to rights have led them to ignore issues of caste, environmental and gender justice. Yet on the other hand one must also acknowledge that the 'language of 'rights' have helped NGOs to move beyond 'welfares' approaches towards strategies that are inherently 'empowering'. From being mere service delivery agencies NOOs are increasingly involved in mobilizational efforts. Also, notwithstanding increased government scrutiny, there is greater collaboration between the government and NGOs not only for implementation of programmes but also to impart local level training as well as monitoring of government schemes. A well prepared regulatory mechanism as well as periodic impact assessment will help NOOs become more effective and efficient. One may then say that NOOs form an invaluable and inseparable part of the human rights movement in India.

10.10 KEY WORDS

NGOs: Non-governmental organizations - commonly referred to as NGOs, are usually non-profit independent of governments, many are active in humanitarian etc. areas, however, NGOs can also be as lobby groups for corporations, such as the World Economic Forum.

Mobilization: the action of a country or its government preparing and organizing troops for active service. "mobilization of the army in 1941 brought 2,500,000 men under arms"

2.the action of making something movable or capable of movement.

"mobilization of the shoulder can be resumed within 10 days following injury"

10.11 QUESTIONS FOR REVIEW

- 1) What are the different ways in which NGOs have been defined?
- 2) What to do you understand by Human Rights NGOs?

- 3) What functions Human Rights NGOs are expected to perform?
- 4) Trace the growth of NGOs in India since Independence
- 5) What role NGO have played for promotion and protection of Human Rights in India?
- 6) Describe the necessary conditions for effective working of NGOs.
- 7) Critically evaluate the role and place of NGOs in society

10.12 SUGGESTED READINGS AND REFERENCES

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10.13 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1) NGOs are private, non-profit professional organizations involved in public welfare or interest activities. There are some differences about the real nature of these organizations. For these differences see section 10.2.

2) Human Rights NGOs are volunteer organizations active in the course of promotion and protection of Human Rights. For details see section 10.3.

3) See sub-section 10.3.1

Check Your Progress 2

1) NGOs are recognized by the Economic and Social Council of the UNO as authorized by Article 71 of the United Nations Charter. For principles applied for recognition see section 10.4.

2) International NGOs are those NGOs which operate in many countries and take up issues both general in nature and country specific. For Amnesty International see sub-section 10.5.1.

3) See sub-section 10.5.2 and 10.5.3.

Check Your Progress 3

1) NGOs, particularly Human Rights NGOs in India started emerging more prominently after proclamation of National Emergency in 1975. To begin with these NGOs were suspected by the government but later government itself started associating with them.

2) NGOs in India have played important role in the field of civil and political rights, women's rights, environmental rights etc. They have influenced enactment of various legislative measures and policy decisions. For further details see sub-section 10.6.2

3) See section 10.7

4) See section 10.8

UNIT 11: HUMAN RIGHTS AND ETHNO-CULTURAL MOVEMENTS

STRUCTURE

- 11.0 Objectives
- 11.1 Introduction
- 11.2 Indigenous People
 - 11.2.1 Indigenous Peoples' Rights at Stake
- 11.3 International Instruments for the Protection of Indigenous Peoples' Rights
 - 11.3.1 United Nations Instruments
 - 11.3.2 United Nations Conferences
 - 11.3.3 Regional Groupings Declarations
- 11.4 United Nations Organs for Indigenous Peoples' Human Rights
- 11.5 Awareness Generation and Education
- 11.6 Let us sum up
- 11.7 Key Words
- 11.8 Questions for Review
- 11.9 Suggested readings and references
- 11.10 Answers to Check Your Progress

11.0 OBJECTIVES

This unit deals with the Status of Indigenous People world over, International Communities Concern with their rights and Spread of awareness about Indigenous People, Concerns.

After going through this unit you will be able to:

- To recognize the indigenous people;
- To know what is their status in terms of exploitation and neglect of recognition of their identity;
- To understand what are international Communities at UN level and at regional levels has been doing to promote and protect their identity and rights; and

- To know various sources that are available to understand status of Indigenous People and what is being done to improve their position.

11.1 INTRODUCTION

Indigenous People are known as the first nation people, tribals, aboriginals, adivasis, vanavasis, girijans, etc. Indigenous or aboriginal peoples are so called because they were living on their lands before settlers came from elsewhere; they are the descendants-according to one definition - of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means. They have historical continuity with pre-invasion and pre-colonial societies that developed in their territories. They consider themselves as distinct from other sections of society in their homeland.

The United Nations has increasingly taken up the cause of these aboriginal who are considered as the World's most disadvantaged group. Excluded from the decision-making process many of these people are marginalized, exploited, assimilated and subjected to repression, torture and murder when they speak out in defense of their rights. Fearing persecution they often become refugees or mask their identity abandoning their language, traditional costumes and clothing. In recent years these people have become quite aware of their exploitation. They have been organizing themselves to defend their rights and dignity. United Nations, particularly Human Rights commission and its sub-commission have been engaged in protection and promotion of their rights, identity and due place in societies they live in.

The international legal system has a contradictory and somewhat paradoxical nature as far as indigenous peoples are concerned. While traditional international law played a highly significant role in the dramatic history of the conquest of indigenous peoples, the usurpation of their sovereignty, and the dispossession of their lands, territories and resources, post-1945 international law has been increasingly used by

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indigenous peoples as a privileged avenue for framing their claims as human rights, calling for reparation of the historical injustices perpetrated against them, and fostering the recognition of their ethno-cultural diversity. The main aim of this chapter is to shed light on the function of international law as a legitimizing tool of colonialism and cultural imperialism in all its forms, thus paving the way for the physical annihilation and cultural alienation of indigenous peoples worldwide. The structural oppression still suffered by indigenous peoples has been defined by Latin American postcolonial theorists as the colonialism of power. Against this background, we will explore the potential of contemporary international law and international institutions to become tools of emancipation instead of sources of neo-colonial attitudes and practices.

Early Legal Scholars and Natural Law Pioneers of international law such as Francisco de Vitoria (1486–1547), Bartolomé de las Casas (1484–1566) and Hugo Grotius (1583–1645)² considered the Indians ‘discovered’ by Christopher Columbus as international legal subjects. These scholars defended the position that “indigenous peoples’ societal structures constituted distinct polities that possessed political rights under international law”.³ As a consequence, Vitoria rejected both the authority of the Spanish Crown and the authority of the Pope to acquire title over indigenous lands. Therefore, the Indians were regarded as “true owners of their lands”. The only legitimate title to enter into relations with the Indians was the is communications, the right to travel and trade with the Indians, and the right to preach the Catholic faith. All these rights were derived from core principles of natural law. But if the Indians interfered in the efforts to develop these activities, the Spanish Crown could resort to ‘just war’ and conquest. According to Anaya, “the theory of just war ... provided enduring support for patterns of colonization and empire that exerted control over indigenous peoples and their lands”.

11.2 INDIGENOUS PEOPLE

People who inhabited land before it was conquered by colonial societies and who consider themselves distinct from the societies currently

governing those territories are called Indigenous Peoples. As defined by the United Nations Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Indigenous communities, people and nations are those which having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system. Indigenous Peoples worldwide number between 300-500 million, embodies and nurtures 80% of the world's cultural and biological diversity, and occupies 20% of the world's land surface. The Indigenous Peoples of the world are very diverse. They live in nearly all the countries on all the continents of the world and form a spectrum of humanity, ranging from traditional hunter-gatherers and subsistence farmers to legal scholars. In some countries, Indigenous Peoples form the majority of the population; others comprise small minorities. Indigenous Peoples are concerned with preserving land, protecting language and promoting culture. Some Indigenous Peoples strive to preserve traditional ways of life, while others seek greater participation in the current state structures. Like all cultures and civilizations, Indigenous Peoples are always adjusting and adapting to changes in the world. Indigenous Peoples recognize their common plight and work for their self-determination; based on their respect for the earth. Despite such extensive diversity in Indigenous communities throughout the world, all Indigenous Peoples have one thing in common - they all share a history of injustice. Indigenous Peoples have been killed, tortured and enslaved. In many cases, they have been the victims of genocide. They have been denied the right to participate in governing processes of the current state systems. Conquest and colonization have attempted to steal their dignity and identity as indigenous peoples, as well as the fundamental right of self-determination.

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Indigenous rights belong to those who, being indigenous peoples, are defined by being the original people of a land that has been conquered and colonized by outsiders. Exactly who is a part of the indigenous peoples is disputed, but can broadly be understood in relation to colonialism. When we speak of indigenous peoples we speak of those pre-colonial societies that face a specific threat from this phenomenon of occupation, and the relation that these societies have with the colonial powers. The exact definition of who are the indigenous people, and the consequent state of rights holders, varies. It is considered both to be bad to be too inclusive as it is to be non-inclusive. In the context of modern indigenous people of European colonial powers, the recognition of indigenous rights can be traced to at least the period of Renaissance. Along with the justification of colonialism with a higher purpose for both the colonists and colonized, some voices expressed concern over the way indigenous peoples were treated and the effect it had on their societies. In the Spanish Empire, the crown established the General Indian Court in Mexico and in Peru, with jurisdiction over cases involving the indigenous and aimed at protecting Indians from ill-treatment. Indians' access to the court was enabled by a small tax which paid for legal aides.

The issue of indigenous rights is also associated with other levels of human struggle. Due to the close relationship between indigenous peoples' cultural and economic situations and their environmental settings, indigenous rights issues are linked with concerns over environmental change and sustainable development. According to scientists and organizations like the Rainforest Foundation, the struggle for indigenous peoples is essential for solving the problem of reducing carbon emission, and approaching the threat on both cultural and biological diversity in general

11.2.1 Indigenous Peoples' Rights at Stake

Despite international recognition and acceptance of the Universal Declaration of Human Rights, which guarantees the fundamental rights of all human beings, in practical fact Indigenous Peoples' human rights

remain without specifically designated safeguard. To this day, Indigenous Peoples continue to face serious threats to their basic existence due to systematic government policies. In many countries, Indigenous Peoples rank highest on such underdevelopment indicators as the proportion of people in jail, illiteracy rate, unemployment rate, etc. They face discrimination in schools and are exploited in the workplace. In many countries, they are not even allowed to study their own languages in schools. Sacred lands and objects are plundered from them through unjust treaties. National governments continue to deny Indigenous Peoples the right to live in and manage their traditional lands; often implementing policies to exploit the lands that have sustained them for centuries. In some cases, governments have even enforced policies of forced assimilation in efforts to eradicate Indigenous Peoples, cultures, and traditions. Over and over, governments around the world have displayed an utter lack of respect for Indigenous values, traditions and human rights. In international discussions on the protection and promotion of Indigenous Peoples' human rights, some States have argued that a more conscientious application of human rights standards would resolve the issue. On the other hand, Indigenous Peoples argue that such international human rights standards have consistently failed to protect them thus far. What is needed, they argue, is the development of new international documents addressing the specific needs of the world's Indigenous Peoples. Although the Universal Declaration of Human Rights is designed to protect the human rights of all individual human beings. International law concerning collective human rights remains vague and can fail to protect the group rights of Indigenous Peoples.

Check Your Progress 1

Note: Use the space given below for your answers.

- 1) Who are known as Indigenous people?

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- 2) What rights of indigenous people are under challenge?

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11.3 INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF INDIGENOUS PEOPLES' RIGHTS

You have read earlier that International legal instruments take the form of a treaty (also called agreement, convention, covenant, protocol), which may be binding, on the Contracting States. When negotiations are completed, the text of a treaty is established as authentic and definitive and is "signed" to that effect by the representatives of States. There are various means by which a state expresses its consent to be bound by a treaty. The most common are ratification or accession. A new treaty is "ratified" by those states that have negotiated the instrument. A state, which has not participated in the negotiations, may, at a later stage, "accede" to the treaty. The treaty enters into force when a pre-determined number of states have ratified or acceded to the treaty. When a state ratifies or accedes to a treaty, that state may make reservations to one or more articles of the treaty, unless reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time. In some countries, international treaties take precedence over national law; in others, a specific law may be required to give an international treaty, although ratified or acceded to, the force of a national law, Practically all states that have ratified or acceded to an international treaty must issue decrees, amend existing laws or introduce new legislation in order for the treaty to be fully effective on the national territory. Not all International instruments are legally binding treaties. For example, some of the most important human rights instruments are declarations. A declaration does not have any legal power to enforce compliance, but rely purely on the moral weight it carries. Indigenous Peoples' rights overlap with many other human rights. Many important Indigenous Peoples' rights are not framed in specific Indigenous Peoples' rights treaties, but are part of

more general treaties, like the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide. There are various such instruments that either mention or proclaim the rights of Indigenous people. These include both evolved by the United Nations Organization and other international bodies.

The rights, claims and even identity of indigenous peoples are apprehended, acknowledged and observed quite differently from government to government. Various organizations exist with charters to in one way or another promote (or at least acknowledge) indigenous aspirations, and indigenous societies have often banded together to form bodies which jointly seek to further their communal interests.

International organizations

There are several non-governmental civil society movements, networks, indigenous and non-indigenous organizations whose founding mission is to protect indigenous rights, including land rights. These organizations, networks and groups underline that the problems that indigenous peoples are facing is the lack of recognition that they are entitled to live the way they choose, and lack of the right to their lands and territories. Their mission is to protect the rights of indigenous peoples without states imposing their ideas of "development". These groups say that each indigenous culture is differentiated, rich of religious believe systems, way of life, sustenance and arts, and that the root of problem would be the interference with their way of living by state's disrespect to their rights, as well as the invasion of traditional lands by multinational corporations and small businesses for exploitation of natural resources.

United Nations

Indigenous peoples and their interests are represented in the United Nations primarily through the mechanisms of the Working Group on Indigenous Populations. In April 2000 the United Nations Commission

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on Human Rights adopted a resolution to establish the United Nations Permanent Forum on Indigenous Issues (PFII) as an advisory body to the Economic and Social Council with a mandate to review indigenous issues.

In late December 2004, the United Nations General Assembly proclaimed 2005–2014 to be the Second International Decade of the World's Indigenous People. The main goal of the new decade will be to strengthen international cooperation around resolving the problems faced by indigenous peoples in areas such as culture, education, health, human rights, the environment, and social and economic development.

In September 2007, after a process of preparations, discussions and negotiations stretching back to 1982, the General Assembly adopted the Declaration on the Rights of Indigenous Peoples. The non-binding declaration outlines the individual and collective rights of indigenous peoples, as well as their rights to identity, culture, language, employment, health, education and other issues. Four nations with significant indigenous populations voted against the declaration: the United States, Canada, New Zealand and Australia. All four have since then changed their vote in favour. Eleven nations abstained: Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russia, Samoa and Ukraine. Thirty-four nations did not vote, while the remaining 143 nations voted for it.

ILO 169

ILO 169 is a convention of the International Labour Organization. Once ratified by a state, it is meant to work as a law protecting tribal people's rights. There are twenty-two physical survivals and integrity, but also the preservation of their land, language and religion rights. The ILO represents indigenous rights as they are the organisation that enforced instruments the deal with indigenous rights exclusively.

Organization of American States

Since 1997, the nations of the Organization of American States have been discussing draft versions of a proposed American Declaration on the Rights of Indigenous Peoples. "The draft declaration is currently one of the most important processes underway with regard to indigenous rights in the Americas" as mentioned by the International Work Group for Indigenous Affairs.

11.3.1 United Nations Instruments

Since its establishment, the United Nations has, as part of its overall human rights work, addressed some situations which affect indigenous people. The concerns of indigenous people find their place in a number of instruments and studies prepared over the years, and in the activities of human rights organs. Important of these are discussed below.

Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous People was adopted by the United Nations General Assembly during its 61st session at UN Headquarters in New York City on 13 September, 2007. While as a General Assembly Declaration it is not a legally binding instrument under international law, according to an UN press release, it does "represent the dynamic development of international legal norms and it reflects the commitment of the UN's member states to move in certain directions"; the UN described it as setting "an important standard for the treatment of indigenous peoples that will undoubtedly be a significant tool towards eliminating human rights violations against the planet's 370 million indigenous people and assisting them in combating discrimination and marginalization". The Declaration sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. It also "emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and

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aspirations". It "prohibits discrimination against indigenous people", and it "promotes their full and effective participation in all matters that concern them and their rights to remain distinct and to pursue their own visions of economic and social development". Originally drafted in 1985 by the Working Group on Indigenous Populations, the world's largest human rights forum, the draft Declaration was adopted by the United Nations Sub-Commission on the Promotion and Protection of Human Rights in 1994. From there, the draft was submitted to the Commission on Human Rights, which established the Working Group on the draft Declaration on the Rights of Indigenous Peoples. The Working Group, in which more than 200 Indigenous organizations participate, meets once a year. Its goal has been to facilitate the General Assembly's adoption of the Declaration by 2004, the final year of the International Decade for the World's Indigenous Peoples. The U.N. General Assembly finally adopted the declaration on the rights of Indigenous People on 17 Sep. 2007. Australia, Canada, New Zealand and the United States voted against the declaration.

Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights is the first international document that states that all human beings are "equal in dignity and rights". (Article 1) Everybody is entitled to the rights in the Declaration, "without disintitled to the rights in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". (Article 2) From the above clause it is quite clear that like other individuals indigenous peoples are entitled to enjoy all existing human rights. Therefore, United Nations Committees which oversee the implementation of binding agreements - the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child, which includes specific provisions relating to indigenous people - consider indigenous issues when examining reports by States on their performance under these treaties.

Convention on the Prevention and Punishment of the Crime of Genocide (1951)

Genocide means any of the following acts which have the intention of destroying, in whole or in part, a national, ethnical, racial or religious group: "killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of like calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent birth within the group; forcibly transferring children of the group to another group." (Article 2). Since indigenous people form a group and have been so recognized, they are covered by this convention.

International Covenant on Civil and Political Rights (1966)

This Covenant outlines the basic civil and political rights of individuals. There are also provisions for collective rights. "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language," (Article 27). As already mentioned the Human Rights Committee constituted to monitor implementation of ICCPR.

International Covenant on Economic, Social and Cultural Rights (1966)

This Covenant describes the basic economic, social, and cultural rights of individuals. It also has provisions for collective rights, under which category indigenous people are also covered.

Convention on the Elimination of All Forms of Racial Discrimination (1966)

"Racial discrimination" is defined as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." (Article 1)

International Labour Organization (ILO) Convention (1989)

The ILO Indigenous and Tribal Peoples Convention was the first international convention to address the specific needs for Indigenous Peoples' human rights. The convention outlines the responsibilities of governments in promoting and protecting the human rights of Indigenous Peoples.

Convention on the Rights of the Child (1990)

The Convention contains regulations and suggestions relevant to Indigenous Peoples on the non-discrimination of children (Article 2), the broadcasting of information by the mass media in minority languages (Article 17), the right to education, including education on human rights, its own cultural identity, language and values (Article 29). Article 30 states that children of minorities or indigenous origin shall not be denied the right to their own culture, religion or language. (Article 30)

Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

This Declaration deals with all minorities, which includes many of the world's Indigenous Peoples. It concerns only individual rights, although collective rights might be derived from those individual rights. The Declaration deals both with states' obligations towards minorities as well as the rights of minority people. Topics that are dealt with include the national or ethnic, cultural, religious or , linguistic identity of minorities

(Article 1); the free expression and development of culture; association of minorities amongst themselves; participation in decisions regarding the minority (Article 2); the exercise of minority rights, both individual and in groups (Article 3); and education of and about minorities. (Article 4)

Convention on Biological Diversity (1992)

The Convention calls upon its signatories to "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;" (Article 8(j))

11.3.2 United Nations Conferences

Rio Declaration on Environment and Development and Agenda 21 (1992)

These two documents are connected to the Earth Summit in Rio de Janeiro. In them, the special relationship between Indigenous Peoples and their lands is acknowledged. Indigenous Peoples have a vital role in environmental management and development because of their traditional knowledge and practices. (Rio Declaration, Principle 22) In order to fully make use of that knowledge, some Indigenous Peoples might need greater control over their land, self-management of their resources and participation in development decisions affecting them. (Agenda 21, Chapter 26.4)

Vienna Declaration and Programme of Action (1993)

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As you know the Vienna Declaration is the closing declaration of the 1993 World Conference on Human Rights held in Austria. Apart from other aspects it also "recognizes the inherent dignity and the unique contribution of indigenous people [sic] to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being." (1.20) Furthermore, the declaration called for the completion of the draft Declaration on the rights of Indigenous Peoples, the renewal and updating of the mandate of the Working Group on Indigenous Populations and the proclamation of the International Decade of Indigenous Peoples. (1.28 - 32). The Conference called upon States to take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination and recognize the value and diversity of their distinct identities, cultures and social organizations.

Report of the International Conference on Population and Development (1994)

At this Conference in 1994 it was agreed that the perspectives and needs of Indigenous Peoples should be included in population, development or environmental programs that affect them, that they should receive population and development-related services that are socially, culturally and ecologically appropriate. (Paragraph 6.24) Another important decision was that Indigenous Peoples should be enabled to have tenure and manage their land, and protect the natural resources and ecosystems on which they depend. (Paragraph 6.27)

Durban Declaration and Programme of Action (2001)

The Durban Declaration and Programme of Action have a specific section dealing with Indigenous Population issues. Perhaps more important than all the recommendations is the fact that the Declaration is the first United Nations documents that uses the phrase "Indigenous Peoples" rather than "Indigenous People".

11.3.3 Regional Groupings Declarations

European Union (EU)

Council Resolution on Indigenous Peoples within the Framework of the Development Cooperation of the Community and Members States (1998)

This resolution provides the main European Union guidelines for support of Indigenous Peoples. It calls for the integration of Indigenous Peoples' interests at all levels of development cooperation and the full and free participation of Indigenous Peoples in the development process. The resolution states: "Indigenous cultures constitute a heritage of diverse knowledge and ideas, which is a potential resource for the entire planet."

Organization for Security and Cooperation in Europe (OSCE) High Commissioner on National Minorities

The Office of the OSCE High Commissioner on National Minorities was established in 1992 to identify and seek early resolution of ethnic tensions that might endanger peace, stability or friendly relations between OSCE participating States. The High Commissioner has no specific Indigenous Peoples mandate, but treats Indigenous Peoples like any other national minority.

Organization of American States (OAS)

Proposed American Declaration on the Rights of Indigenous Peoples (1997) The draft Declaration outlines the human rights that are specific to Indigenous Peoples. Items covered include, among others, the right to self-government, indigenous law and the right to cultural heritage. A Working Group of the OAS is still discussing the Declaration.

World Bank

World Bank Operational Directive (1991)

This Operational Directive outlines the World Bank's definition of and interest in Indigenous Peoples. It also addresses economic issues (technical assistance and investment project mechanisms) concerning Indigenous Peoples. The Bank's narrow definition of Indigenous Peoples and ambiguity concerning its role in their economic development has resulted in much criticism from Indigenous Peoples' human rights advocates. Consequently, the World Bank is currently in the process of revising it.

Check Your Progress 2

Note: Use the space given below for your answers.

- 1) How do various U.N Human Rights Conventions protect Indigenous people?

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- 2) What are the basic contents of Declaration on the Rights of Indigenous People?

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- 3) On what criticism some countries in U.N. General Assembly voted against the Declaration?

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11.4 UNITED NATIONS ORGANS FOR INDIGENOUS PEOPLES' HUMAN RIGHTS

United Nations and its subsidiary bodies have established following organs specifically to work on issues concerning indigenous peoples and their rights.

UN Working Group on Indigenous Populations

The United Nations Working Group on Indigenous Populations, a subsidiary organ of the Sub-Commission on the Promotion and Protection of Human rights is the first and only UN body involved exclusively with matters concerning the human rights of Indigenous Peoples. It reviews national developments concerning the promotions and protection of Indigenous Peoples' human rights and develops international standards for their rights and freedoms. The Working Group also undertakes studies on a variety of issues affecting Indigenous Peoples. Nearly 700 persons regularly attend the Working Group sessions, including observers for Governments, Indigenous Peoples, non-governmental organizations, and scholars. In reviewing national developments, the working group receives and analyses written information submitted by Governments, specialized agencies and other organs of the United Nations, other international and regional inter-governmental organization, non-governmental bodies and the indigenous people themselves. The Working Groups mandate, however, does not authorize it to examine specific complaints of alleged violations of human rights with the purpose of making recommendations or taking decisions on such cases; other United Nations complaints channels are available for that purpose.

UN Permanent Forum on Indigenous Issues

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In 2000, the Economic and Social Council (ECOSOC), one of the six main organs of the United Nations, established the Permanent Forum on Indigenous Issues to consider a wide range of issues affecting Indigenous Peoples. The Forum, which includes eight Indigenous experts, is the first and only international body in the United Nations that has Indigenous Persons as specified members. It meets once a year for ten working days and submit annual reports to the Economic and Social Council. The first meeting was held on May 13-24, 2002. The Permanent Forum serves as an advisory board to the Economic and Social Council, discussing Indigenous issues relating to economic and social development, culture, the environment, education, health, and human right. From these discussions, the Forum provides expert advice and recommendations to the Council, raises awareness of Indigenous issues within the UN system, and prepares and disseminates information on Indigenous issues.

UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples

Rodolfo Stavenhagen was appointed as the first Special Rapporteur on Indigenous Peoples on 24 April 2001. His mandate is as follows: to gather information on violations of human rights and fundamental freedoms of Indigenous Peoples, to formulate recommendation to prevent and remedy such violations and to work together with other experts of the UN Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human rights. The Rapporteur cooperates closely with the Permanent Forum on Indigenous Issues and the Working Group on Indigenous Populations.

Indigenous rights are those rights that exist in recognition of the specific condition of the indigenous peoples. This includes not only the most basic human rights of physical survival and integrity, but also the preservation of their land, language, religion, and other elements of cultural heritage that are a part of their existence as a people. This can be used as an expression for advocacy of social organizations or form a part of the national law in establishing the relation between a government and

the right of self-determination among the indigenous people living within the borders of Canada, or in international law as a protection against violation of indigenous rights by actions of governments or groups of private interests.

There are several non-governmental civil society movements, networks, indigenous and non-indigenous organizations whose founding mission is to protect indigenous rights, including land rights. These organizations, networks and groups underline that the problems that indigenous peoples are facing is the lack of recognition that they are entitled to live the way they choose, and lack of the right to their lands and territories. Their mission is to protect the rights of indigenous peoples without states imposing their ideas of "development". These groups say that each indigenous culture is differentiated, rich of religious believe systems, way of life, sustenance and arts, and that the root of problem would be the interference with their way of living by state's disrespect to their rights, as well as the invasion of traditional lands by multinational corporations and small businesses for exploitation of natural resources.

11.5 AWARENESS GENERATION AND EDUCATION

Various agencies, organs and NGOs working for the promotion and protection of Indigenous peoples rights are also actively engaged in spreading awareness and education about their conditions and rights. For that purpose some specific websites have also been created which discriminate useful information concerning Indigenous people's issues.

Principal Websites Devoted to Indigenous Peoples' Human Rights Center for the World's Indigenous Peoples

The Center for the World's Indigenous Peoples is a-research and education organization dedicated to appreciation of the knowledge of indigenous peoples. It serves to promote greater understanding of the social, economic and political realities of indigenous nations. The Center aims to foster better understanding between peoples and to establish

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cooperation between nations as well as between nations and states. The Center's website contains information on education programs and conferences, publications research and domestic and international policy concerning Indigenous Peoples. The website also includes links to The Center for Traditional Medicine, The Fourth World Institute, The Fourth World Journal, and The Center for the World's Indigenous Peoples' Bookstore.

Native Web

Native Web is an international educational organization that uses telecommunications to disseminate information about indigenous nations, peoples, and organization around the world. Native Web enables indigenous communities all over the world to communicate, share resources, and coordinate on projects and initiatives. Native Web's on-line resource Center includes a nation's index, geographic regions index, news/events, legal issues, books and music. Links at this site provide pathways to detailed information concerning nearly any Indigenous issue. Cultural Survival Cultural Survival is an organization dedicated to developing new strategies for responding directly to the critical needs of the world's indigenous populations, It analyses and publicizes examples of how indigenous peoples have successfully . ' responded to the serious crises. These case studies ate the central issues of Cultural Survival's research, education and advocacy program. They are discussed in Cultural Survival's conferences, in its publications and on its web site.

The Indigenous and Tribal Peoples Centre

The Indigenous and Tribal Peoples Centre aims to foster a better understanding of Indigenous Peoples' values, knowledge, practices and education. The Website provides links to resources that enhance understanding of current development on relevant issues and provide information important for informed participation between various sectors of society and in decision-making processes. Four of the Website's main topics are: promoting sustainability, traditional cultures and values, legal

frameworks and Indigenous Peoples, and Indigenous, Peoples, Mother Earth and the Spirituality Project.

Indian Law Resource Center

The Indian Law Resource Center engages in legal advocacy for the protection of Indigenous People' human rights, cultures and traditional lands. On the site are descriptions of the Center's casework, archives to newsletters and links to relevant organizations and documents. The Center deals with cases in North and Central America.

Survival International

Survival International is a worldwide organization supporting tribal peoples. It stands for their right to decide their own future and helps them protect their lives, lands and human rights. Survival works by educating the people of 'The West' about Indigenous People and by providing Indigenous People with the information and means they need to preserve their way of life in the face of contacts with the Western world and Western companies.

United Nations Office of the High Commission for Human Rights

The Office of the High Commission for Human Rights' Indigenous Peoples website provides an extensive overview of Indigenous Peoples and the UN systems. This site also provides links to the Working Groups, the Permanent Forum, Special Rapporteur, UN documents, funding, and the UN system.

United Nations Development Programme - Indigenous Peoples

This site details how the UNDP works together with Indigenous Peoples. It includes information on Indigenous Peoples' issues, the UNDP's programs and objectives regarding Indigenous Peoples, and a resource center containing documents, information on conferences and contacts at the UN.

World Conference Against Racism UN Guide for Indigenous Peoples

The United Nations Guide for Indigenous Peoples includes twelve leaflets on indigenous Peoples and the UN system. Some of these include: Indigenous Peoples, the UN and Human Rights, Human Rights Treaty Bodies and Indigenous People, Indigenous Children and Youth, and Indigenous Peoples and the Environment.

Indigenous Peoples and the European Union European

Union Human rights and Democratization Policy – Promoting and protecting the rights of Indigenous Peoples

The website has a link to the EU Council Resolution on Indigenous Peoples. It also contains information on some of the EU programs that affect indigenous peoples. It lists names and email addresses of relevant EU people and has links on international organizations and indigenous NGOs.

Indigenous Peoples and the Organization of American States

Inter-American Commission on Human Rights

This is the website of the Human Rights Commission of the Organization of American States. Most information relates to human rights in general, but under the heading 'Publications' there is a link to the Proposed American Declaration on the rights of Indigenous Peoples.

The People's Decade of Human Rights Education

The People's Decade of Human Rights Education (PDHRE) is dedicated to increasing awareness of human rights in order to strengthen and invigorate efforts for change. PHDRE teaches how the human rights framework can be used to address social and economic injustices throughout the world. The Indigenous Peoples' component of the

PDHRE website provides a concise overview of Indigenous Peoples' human rights and a comprehensive explanation of governments' obligations and commitments to ensuring" the human rights of Indigenous Peoples with specific text citations. It also includes a wide variety of lesson plans and strategies for human rights education.

Check Your Progress 3

Note: Use the space given below for your answers.

- 1) What role U.N. Permanent Forum on Indigenous people performs?

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- 2) Write about some voluntary organizations working for the course of Indigenous people?

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11.6 LET US SUM UP

Discussions in the Working Group on Indigenous Populations and in other human rights bodies indicate that, despite certain progress made, a great deal remains to be done in order to resolve outstanding issues coming between indigenous peoples' interests and national or private development, between the livelihoods and lifestyles of the peoples concerned and public policies and projects. The positive contribution, which indigenous groups can make to environmental protection, has already been mentioned. The land issue remains crucial. National economic development generates pressure on territory still in the hands of indigenous peoples. Barren wastelands or forested hinterlands once thought to have little economic, political or military value have been identified as areas of vital importance.

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These developments could affect the economies and habitats, and the social, religious and cultural systems of indigenous peoples. The world community has long acknowledged that the distinct cultures and languages of indigenous peoples form part of the cultural heritage of humankind and deserve protection. Much more important than a means of everyday communications, language is the vehicle of culture and identity. Yet organizations defending indigenous peoples' rights cite cases where educational systems are being used to forge nations with one language, history and culture.

Many Governments have stated that they are aware of the serious problems faced by indigenous peoples living in their territories and of the factors, which have placed them among the most vulnerable groups in national societies. In some parts of the world, a permanent dialogue is taking place. In other places, direct negotiations between indigenous peoples and Governments have been instituted and are moving forward, with the aim of improving relations and guaranteeing better protection of indigenous peoples' rights. Some countries have introduced autonomous institutions as well as other programmes specially designed for indigenous peoples at the local and regional levels. These moves are designed to improve conditions in such areas as health, housing, labour and education, and contribute, as far as possible, to the maintenance of traditional ways of life and culture. In recent years, several Governments have amended their constitutions and legislation to take into account the multi-cultural character of national society. Some progress has also been made in returning and guaranteeing collective ownership; lands.

The involvement of the United Nations in the promotion and protection of the rights of indigenous peoples has progressed rapidly. This role will be enhanced by public awareness and understanding, of the principal issues involved. The International Decade offers an opportunity to raise public awareness and interest and to develop an international plan of action for the improvement of the living conditions of indigenous peoples.

11.7 KEY WORDS

Tribal:In anthropology, a tribe is a human social group. Exact definitions of what constitutes a tribe vary among anthropologists. The concept is often contrasted with other social groups concepts, such as nations, states, and forms of kinship.

Indigenous:Indigenous peoples, also known as First peoples, Aboriginal peoples or Native peoples, are ethnic groups who are the original owners and caretakers of a given region, in contrast to groups that have settled, occupied or colonized the area more recently.

11.8 QUESTIONS FOR REVIEW

- 1) Who are known as Indigenous people?
- 2) What rights of indigenous people are under challenge?
- 3) How do various U.N Human Rights Conventions protect Indigenous people?
- 4) What are the basic contents of Declaration on the Rights of Indigenous People?
- 5) On what criticism some countries in U.N. General Assembly voted against the Declaration?
- 6) What role U.N. Permanent Forum on Indigenous people performs?
- 7) Write about some voluntary organizations working for the course of Indigenous people?

11.9 SUGGESTED READINGS AND REFERENCES

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11.10 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1) People who inhabited land before it was occupied or conquered by colonial societies or settlers from outside. They have historical continuity with reinvasion and pre-colonial societies.

2) See sub-section 11.2.1

Check Your Progress 2

1) Human Rights provided in various U.N. treaties are available to all human beings without discrimination of race, religion, sex, nationality etc. As such they are also available to indigenous people. In addition

indigenous people are protected by specific rights provided to them as group.

- 2) See sub-section 11.3.1
- 3) These relate to issue of rights to self-determination, land claims etc. For details see sub-section 11.3.1

Check Your Progress 3

- 1) The forum serves as an advisory board to the Economic and Social Council. It discusses indigenous issues relating to economic and social development, culture, environment, education, health and human rights.
- 2) See Section 11.5

UNIT 12: STATE AND HUMAN RIGHTS

STRUCTURE

- 12.0 Objectives
- 12.1 Introduction
- 12.2 Human Rights and Law
- 12.3 National Human Rights Institutions
 - 12.3.1 Origin and Concern for National Institutions
 - 12.3.2 Workshops and Meetings on National Institutions
- 12.4 National Institutions: Nature and Functions
 - 12.4.1 Principles and Functions
- 12.5 Types of Institutions
 - 12.5.1 Human Rights Commissions
 - 12.5.2 The Ombudsman
 - 12.5.3 Specialized Institutions
- 12.6 National Institutions: An Assessment
- 12.7 Let us sum up
- 12.8 Key Words
- 12.9 Questions for Review
- 12.10 Suggested readings and references
- 12.11 Answers to Check Your Progress

12.0 OBJECTIVES

This unit deals with the nature and role of National Human Rights Institutions as mechanisms for promotion and protection of Human Rights by States. It also deals with responsibilities of state to implement Human Rights standards by adopting appropriate legislative measures and providing for Redressal of complaints. After going through this unit you will:

- To understand importance of domestic laws for the implementation of human rights standards;

- To appreciate United Nations concern for independent national institutions for promotion and protection of human rights;
- To know about origin, nature and types of National Institutions; and
- To be able to assess the working, importance and relevance of National Institutions for Promotion and Protection of Human Rights.

12.1 INTRODUCTION

Universal Declaration of Human Rights and various international treaties have been accepted by states. Therefore they stand committed for protection of Human Rights. Of course the structures and activities of the United Nations permit it to play a pivotal standard-setting and leadership role in the struggle for human rights and fundamental freedoms. The task of promoting and protecting human rights, however, is not one which could be assumed by only one organization. United Nations practice in the field of human rights is based on the fundamental premise that universal respect for human rights requires the concerted efforts of every Government, every individual, every group and every organ in society. In fact the practical task of protecting and promoting human rights is primarily a national one. At the national level, rights can be best protected through adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and provision of appropriate institutions for their promotion and protection. Therefore apart from providing necessary laws for enforcement of human rights states are expected to establish independent institutions for either effective enforcement. Below we discuss the two aspects that's legislative measures and instruments of national institutions which in recent years have become quite popular.

Regional human rights system is an intermediary system between the global human rights system established by the United Nations and the national or domestic legal framework. Regional human rights systems provide additional and desirable mechanism for the individual besides the national system. They are desirable because they provide avenues for redress when the domestic law is unable to do so. Regional systems are also beneficial because they are more easily accessible to the individual

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in comparison to the global system. They take into account legal systems, cultural specificities, and social and moral values unique to that region while defining the human rights norms. There are three regional systems in the world that have an elaborate system of protection of human rights adopted by the specific regional political organization, namely, the European Convention on Human Rights adopted by the Council of Europe, the Inter-American Convention on Human Rights by the Organization of American States (OAS) and the African Charter of Human and Peoples' Rights adopted by the Organization of African Unity (OAU, replaced by the African Union in 2002).

The ECHR was adopted in 1950 and entered into force in 1953. There were two important reasons why ECHR was adopted. First, its preamble notes that the European states are like-minded and have a common heritage of political traditions, ideals, freedoms and the rule of law, Second, it was a regional response to the atrocities committed in Europe during the Second World War. It is an assertion of the belief that governments respecting human rights are less likely to wage war on their neighbours. It is the most important regional human rights treaty in the world adopted by the Council of Europe. Following are the main features of the Convention.

- i) It was the first comprehensive treaty, though regional, in the world in the field of human rights;
- ii) It established the first international complaints procedure and the first international court for the determination of human rights issues;
- iii) It remains the most developed of the three regional human rights treaties;
- iv) It has generated a more extensive jurisprudence than any other part of the international system; and
- v) Initially this treaty was designed for western democratic European States of the Council of Europe and these States ratified it. However, with the collapse of communism in the 1990s, several former communist States like Bulgaria, Hungary, Poland, Romania and Russia have become party to this system. As of February 2007, 46 States have ratified the Convention. Besides the ECHR, the Council of Europe has adopted the European

Social Charter in 1961, the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment in 1987 and the Framework Convention for the Protection of National Minorities in 1994.

12.2 HUMAN RIGHTS AND LAW

You have already read that in the preamble to the charter of the United Nations, "the people of the United Nations declare their determination to save succeeding generations from the course of war to reaffirm faith in fundamental human rights and to protect social progress and better standards of life in larger freedom." Accordingly, article 1 of the charter proclaims that one of the purposes of the United Nations is to achieve international cooperation promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. For this purpose United Nations has developed a comprehensive strategy through body of international rules and standards which now cover virtually every sphere of human activity. Apart from Universal Declaration of Human Rights a number of International Conventions and covenants that is treaties for specific human rights have been formulated and adopted. Many countries have become parties to the major human rights treaties, thereby incurring a legal obligation to implement the human rights standards to which they subscribe at the international level, As you have already read that when states ratify a human rights instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligation contained in the instrument. As human rights involve relationships among individuals, and between individuals and the state, it is important that this relationship is defined by law. Therefore, universal human rights standards and norms today find their expression in the domestic laws of most countries. The most effective way of legal guarantees is placing rights in the Constitution itself as Bill of Rights or Fundamental Rights as is the case in India. Constitution of India through Chapter III on Fundamental Rights guarantees to all many of the rights contained in UDHR or International covenant on Civil and Political Rights and International Covenant on Economic, Social and

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Cultural Rights. In addition to constitutional guarantees specific laws are also enacted to promote specific human rights or human rights of various groups. In the second course of the programme you will study some such laws enacted by Parliament of India to protect the rights of women, children, disabled, aged etc. In general the countries which have ratified various human rights treaties, for their effective implementation have to put those in domestic legislations, Law as you know give citizens some kind of assurance of implementation and go to courts in cases of violation. Of course it depends from state to state, how much guarantee laws provide and upto what extent their violations can be, challenged in courts. Nevertheless, being responsible for protection of human rights, particularly those to which they have committed by ratifying the treaties, states are expected to provide necessary legislative framework to fulfill their obligations. As already mentioned in last six decades of United Nations existence many countries have become parties to the major human rights treaties, thereby incurring a legal obligation to implement the human rights standards to which they subscribe.

The UN has helped to make human rights a matter of concern to people everywhere - one which Governments find increasingly difficult to ignore. The UN created the first global Bill of Human Rights comprising the 1948 Universal Declaration of Human Rights and the two 1966 International Human Rights Covenants (on civil and political rights, and on economic, social and cultural rights), which make many of the Declaration's provisions legally binding on States. The UN has helped negotiate more than 80 international treaties fostering political, civil, economic, social and cultural rights. Universality means that all people have human rights, even if resource constraints imply prioritization. It does not mean that all problems of all people must be tackled at once. The ongoing reform of the UN has enhanced the role of human rights promotion. In this an important role has been played by various conferences on Human Rights related issues. The principle theme of 1993 Vienna Conference was centred on the promotion and protection of human rights as the birthright of all human beings and the responsibility of governments at all levels. The preparatory process included three key

regional meetings - Tunis, San Jose and Bangkok. The resulting document of the conference was the Vienna Declaration and Programme of Action (VDPA), which outlines a comprehensive plan for strengthening the implementation of human rights and focuses on the links between development, state, and the promotion of human rights. The International Conference on Population and Development (ICPD), Cairo, 1994, offered an outline for all people to become aware of their own and their children's health and well-being. The World Summit for Social Development (WSSD), Copenhagen, 1995, exhorted the international community to formulate people-centric programmes of social development. The initiatives taken by India on the implementation of the Copenhagen Declaration designed under the eighth national plan.

The Beijing World Conference on Women (1995) stems from previous conferences in Mexico City 1975, Copenhagen 1980, Nairobi 1985, and the Vienna Congress in 1993. The conference focused on from the perspective of women's human rights. The resulting document was the Beijing Declaration and Platform for Action (BDPA) setting out measures for national and international action on the subject. The UN Conference on Human Settlements (Habitat II: The City Summit) held in Istanbul in 1996 committed itself to provide adequate shelter for all, sustainable settlements, gender equality, financing of settlements, international co-operation, and the assessment of progress. The World Food Summit, Rome (1996) addresses the problems of hunger and malnutrition. The first Earth Summit was held in Rio de Janeiro, Brazil in 1992 (officially known as the World Summit on Sustainable Development). Three agreements and two legally binding conventions were agreed at the 1992 Earth Summit. The Earth Summit II in Johannesburg (2002) identified following issues and priorities: Corporate accountability, trade and food, climate, forests and biodiversity, and The Durban-Conference against racism, racial discrimination, xenophobia and related intolerance 2001 took place after 50 years of international anti-racism campaign, beginning with the adoption of the United Nations Charter in 1945. The Conference Programme of Action calling on member-states to accede to the International Convention on the

Elimination of Racial Discrimination. The programme urges them to promote the use of public and private investment to eradicate poverty in areas predominantly inhabited by victims of discrimination. The Programme among other issues further urges States to implement policies and measures designed to prevent and eliminate discrimination on the basis of religion or belief that many people of African descent experience.

12.3 NATIONAL HUMAN RIGHTS INSTITUTIONS

" National human rights institutions are a relatively recent development among , the mechanisms for the promotion and protection of human rights. They are a means whereby states can more effectively work to guarantee human rights. They are a means whereby states can effectively work to guarantee human rights within their own jurisdictions. They do not replace the role of the courts and judiciary, legislative bodies, relevant government agencies, parliamentary committees, political parties or religious or non-governmental organizations. Rather they are a unique and important complement to the other elements of state administration and civil society. They are independent authorities established by law to protect the human rights of the people of their country.

12.3.1 Origin and Concern for National Institutions

While the world-wide interest in national institutions is a relatively recent phenomenon, the original concern of the United Nations with such institutions dates back to 1946 when the issue was first addressed by the Economic and Social Council. The council asked Member States to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission' on' Human Rights. In 1960 the Economic and Social Council, in a resolution which recognized the unique role national institutions could play in the protection and promotion of human rights, invited Governments to

encourage the formation and continuation of such bodies as well as to communicate their ideas and information on the subject to the Secretary-General. The Professional Training book on National Human Rights Institutions issued by the United Nations points out that as standard-setting in the field of human rights gained momentum during the 1960s and 1970s, discussions on national institutions became increasingly focused on the ways in which such bodies could assist in the effective implementation of these international standards. In 1978, the Commission on Human Rights decided to organize a seminar on national and local institutions to draft guidelines for the structure and functioning of such bodies. The seminar was held in Geneva from 18 to 29 September 1978 during which a series of guidelines was approved. The guidelines were subsequently endorsed by the Commission on Human Rights and the General Assembly. Throughout the 1980s, the United Nations continued to take an active interest in this topic and a series of reports prepared by the Secretary General were presented to the General Assembly. In 1990, the Commission on Human Rights called for a workshop to be convened with the, 42 participation of national and regional institutions involved in the promotion and protection of human rights.

12.3.2 Workshops and Meetings on National Institutions

The first international workshop on National Institutions for the promotion and protection of Human Rights was held in Paris from 7 to 9 October 1991. Its conclusions were endorsed by the Commission on Human Rights in 1992 as the Principles relating to the status were subsequently endorsed by the General Assembly also in December 1.993. Thereafter a number of important meetings have been convened. During preparations for the 1993 Vienna World Conference on Human Rights, it was decided to organize a meeting of national institutions parallel to the conference itself. This meeting examined the inter alia, the purposes of national institutions; the key requisites for appropriate and effective functioning, including representative nature and accessibility;

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and mechanisms for coordinating inter-institutionalized activities. The Vienna Conference encouraged the establishment and strengthening of national institutions and recognized the right of each state to choose, the framework, which is best suited to its particular needs at the national level. After Vienna Conference many more countries including India established national institutions. In India by an act of Parliament in 1993 National Human Rights commission was established and thereafter by many states state level Human Rights Commissions. About these you will read in detail in the course CHR-12. The second International workshop on National Institutions for the promotion and protection of Human Rights was held at Tunis from 13 to 17 December 1993. The workshop attended by 28 institutions discussed a number of topics of mutual concern, including relations between the state and national institutions, between national institutions themselves and between national institutions and the center for Human Rights. Since 1993 National Institutions have become quite popular all over the world. These are playing an important role in protection and promotion of Human Rights.

Check Your Progress 1

Note: Use the space given below for your answers.

- 1) Why states need to enact domestic laws for implementation of Human Rights?

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- 2) When and why the idea of National Institutions for promotion and protection of Human Rights emerged?

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- 3) Describe some of the important workshops and conferences held to discuss the working of National Institutions.

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12.4 NATIONAL INSTITUTIONS: NATURE AND FUNCTIONS

There are various agencies engaged in promotion and protection of Human Rights at International, Regional and National levels. As already mentioned national governments bear the primary responsibility for the protection and promotion of the human rights of their own people. National human rights institutions established in conformity with the principles relating to the status of national institutions are among the most important domestic mechanisms through which governments can ensure these obligations are met. These institutions are in addition different from established governmental organs like legislature and judiciary and from Non-Governmental or civil society organizations. In the fact sheet on National Institutions issued by Centre for Human Rights, the concept of a national human rights institution is referred to as a body whose functions are specifically defined in terms of the promotion and protection of human rights. While the nature of institutions may differ from country to country, a number of similarities can be identified which serve to separate these institutions from other mechanisms. Primarily the national institutions are administrative in nature in the sense they are neither judicial nor law-making. As a rule, these institutions have on going advisory authority in respect to human rights at the national and/or international level. Their purposes are pursued either in a general way, through opinions and recommendations, or through the consideration and resolution of complaints submitted by individuals or groups. In some countries, the constitution will provide for the establishment of a national human rights institution. More often, such institutions are created by legislation or degree. While many national institutions are attached, in some way or another, to the executive branch

of governments, the actual level of independence which they enjoy will depend on a number of factors including membership and the manner in which they operate.

12.4.1 Principles and Functions

You have read above about 1978 seminar and 1991 workshop organized by U.N. Human Rights Commission on National Institutions. In these meetings broad guidelines for the functioning of such institutions were prepared. The 1978 seminar held a Geneva suggested the following functions of national institutions:

- To act as a source of human rights information for the Government and people of the country;
- To assist in educating public opinion and promoting awareness of and respect for human rights;
- To consider, deliberate upon and make recommendations regarding and particular state of affairs they may exist nationally and which the Government may wish to refer to them;
- To advise on any questions regarding human rights matters referred to them by the Government;
- To study and keep under review the status of legislation, judicial decision and administrative arrangements for the promotion of human rights, and to prepare and submit reports on these matters to the appropriate authorities;
- To perform any other function which the Government may wish to assign to them in connection with the duties of the State under those international instruments in the field of human rights to which it is a party;

As regards the structure of such institutions; the guidelines recommended that they should:

- Reflect in their composition wide cross-sections of the nation, thereby bringing all parts of the population into the decision-making process in regard to human rights;
- Function regularly, and that immediate access to them should be available to any member of the public or any public authority;
- In appropriate cases, have local or regional advisory organs to assist them discharging their functions.

The guidelines were subsequently endorsed by the D.N. Human Rights Commission and the General Assembly. The Assembly invited States to take appropriate steps for the establishment, where they did not already exist, of national institutions for the promotion and protection of human rights, and requested the Secretary-General to submit a detailed report on existing national institutions. The first International workshop on National Institutions for the promotion and protection of human rights held at Paris in 1991 refined and extended the guidelines developed in 1978.

According to these: known as Paris principles, national institution shall inter alia have the following responsibilities:

- To submit recommendations, proposals and reports on any matter relating to human rights (including legislative and administrative provisions and any situation of violation of human rights) to the Government, parliament and any other competent body;
- To promote conformity of national laws and practices with international human rights standards;
- To encourage ratification and implementation of international standards;

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- To contribute to the reporting procedure under international instruments;
- To assist in formulating and executing human rights teaching and research programmes and to increase public awareness of human rights through information and education;
- To cooperate with the United Nations, regional institutions, and national institutions of other countries.

The Principles also recognized that a number of national institutions have been given competence to receive and act on individual complaints of human rights violations. They stipulate that the functions of national institutions in this respect may be based on the following principles:

- Seeking an amicable settlement of the matter through conciliation, binding decision or other means;
- Informing the complainant of his or her rights and of available means of redress and promoting access to such redress;
- Hearing complaints or referring them to a competent authority;
- Making recommendations to the competent authorities, including proposals for amendment of laws, regulations or administrative practices which obstruct the free exercise of rights.

The Principles also include detailed guidelines on the composition of national institutions and the appointment of members; on guarantees of independence and pluralism; and on methods of operation. The Principles provide that a national institution must have as broad a mandate as possible, be independent, pluralistic, accessible, and characterized by regular, effective functioning and a representative composition and have adequate funding. The National Human Rights Institutions, therefore, are expected to be established and function

according to above mentioned guidelines and principles. Of course each country is free to follow its own system, but unless national institutions are not free and independent they cannot serve the desired purpose.

Check Your Progress 2

Note: Use the space given below for your answers.

- 1) What do you understand by National Institutions for promotion and protection of Human Rights? How are they different from judiciary and legislature?

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- 2) Describe the guidelines prescribed by 1978 Geneva Seminar for functioning of National Institutions.

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- 3) What responsibilities Paris Principles prescribe for national institutions?

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12.5 TYPES OF INSTITUTIONS

Existing national institutions in various countries have generally been divided into two broad categories. "Human rights commissions" and "ombudsmen". In many countries there also exist specialized national institutions which function to protect the rights of a particular vulnerable group.

12.5.1 Human Rights Commissions

Human Rights Commissions are bodies established generally by law, as independent institutions to monitor the implementation of Human Rights standards and receive complaints and grievances of individuals and groups regarding violation of rights. In most countries such commissions work independently from other organs of state, especially the executive. In keeping with their independent nature, commissions are generally composed of members who are experts in the field and also represent various interests. Human Rights Commission's primary functions include promotion and protection of human rights of the citizens of the country. Specific functions in each country are specified by the legislative act or decree by which these are established. Some commissions concern themselves with alleged violations of any rights recognized in the constitutions. Others may be able to consider cases of discrimination on a broad range of grounds including race, colour, religion, sex, national or ethnic origin, disability, social condition, sexual orientation, political convictions and ancestry. United Nations fact sheet on National Human Rights Institutions also suggest that one of the most important functions vested in a human rights commission is to receive and investigate complaints from individuals (and occasionally from groups), alleging human rights abuses committed in violation of existing national laws.

While there are considerable differences in the procedures followed by various human rights commissions in the investigation and resolution of complaints, many rely on conciliation and/or arbitration. At the same time it is not unusual for human rights commissions to have authority to impose a legally binding outcome on parties of a complaint. Generally the powers of commissions are recommendatory in nature. Another important function of a human rights commission is systematically to review the government's human rights policy in order to detect shortcoming in human rights observance and to suggest ways of improving it.

Human Rights Commissions may also monitor the states compliance with its own and with international human rights laws and if necessary, recommend changes. The ability of a commission to initiate enquiries on its own behalf is an important measure of its overall strength and probable effectiveness. This is particularly true with regard to situations which involve persons or groups who do not have the financial or social resources to lodge individual complaints. One very important function generally performed by Human Rights Commissions is that of generation of awareness. As is well known that the realization of human rights cannot be achieved solely through declarations-and legislations. Awareness among citizens is very important for exercise of rights. Human Rights Commissions help in this by various means which include organizing public meetings, publishing and disseminating information, encouraging NGOs, supporting educational institutions etc. As already mentioned Human Rights Commissions themselves are different from NGOs and state institutions like judiciary but they do supplement and compliment their task in the field of promotion and protection of human rights.

12.5.2 The Ombudsman

An ombudsman is a unique institution established in various forms in a number of countries to protect individuals against unjust acts, on the part of government officials or agencies. Ombudsman is said to have been originated in Sweden in early nineteenth century for redressal of public grievances by an independent agency. It is an independent mediator and in some cases a collegiate body-whose primary role is to protect the rights of the individual who believes that he/she is the victim of unjust acts on the part of the public administration. Edward Lawson points out that it would be difficult to classify the ombudsman as a legislative, judicial or administrative organ. It is indeed, an institution of a sui generis, nature, having a multi-faceted character. While the institution of ombudsman is not exactly similar in various countries, generally they follow similar procedures in the performance of their duties. The ombudsman receives complaints from members of the public and

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investigates these complaints provided they fall within the ombudsman competence. In the process of investigation, the Ombudsman is generally granted access to the documents of all relevant public authorities and may also be able to compel witnesses, including government officials to provide information. He or she will then issue a statement or recommendations based on this investigation. This statement is generally transmitted to the person lodging the complaint as well as to the office or authority complained against. In general, if the recommendation is not acted on, the ombudsman may submit a specific report to the legislature. This will be in addition to an annual report to the same body, which may include information on problems which have been identified and contain suggestions for legislative and administrative change. While any citizen who believes that his or her rights have been violated may submit a complaint to the ombudsman, many countries require that the complainant first exhaust all alternative legal and administrative remedies.

In many countries the ombudsman is not always restricted to acting on complaints and may be able to begin an investigation on his or her own initiative. As with human rights commission, self-initiated' investigations by ombudsman offices often relate to issues which the ombudsman may be determined to be of broad public concern or issues which affect groups rights and are therefore not likely to be subject of an individual complaint. From the above description it may appear that in many respects, the powers of the ombudsman are quite similar to those of human rights commissions with competence to receive and investigate complaints. Both are concerned with protecting the rights of individuals and, in principle, neither has the power to make binding decisions. There are nevertheless some differences in the functions of the two bodies. As explained above, the primary function of most ombudsmen is to ensure fairness and legality in public administration. In contrast, commissions are more generally concerned with violations of human rights, particularly discrimination. In this respect, human rights commissions will often concern themselves with the actions of private bodies and individuals as well as of the government. In general, the principal focus

of activity for an ombudsman is individual complaints against public entities or officials. However, distinctions are becoming more and more blurred as ombudsman offices engage in a wider range of activities for the promotion and protection of human rights. Increasingly, offices of the ombudsman are assuming responsibilities in the area of promoting human rights, particularly through education activities and the development of information programmes.

12.5.3 Specialized Institutions

In general human rights belong to individuals and it is individuals whose human rights are violated. However, there are cases where individuals suffer violation of rights because they belong to certain group. Such groups are known as vulnerable groups. Members of these groups that can be based on race, colour, descent or national or ethnic origin may face discrimination as inequality in treatment, imposition of disabilities or odious obligations. Discrimination that individuals belonging to groups face may be economic, power, status, access to education, career opportunities etc. For example, persons belonging to so-called lower castes in India face discriminatory treatment in society. Such vulnerable groups, therefore, need special protection. In many countries specialized institutions are established for protection of the rights of members of such groups. Members of the community who are most often recognized by government as needing specialized human rights institutions to protect their interests are persons belonging to ethnic, linguistic and religious minorities, indigenous populations, aliens, migrants, immigrants, refugees, children, women, the poor and the disabled.

In general terms, such specialized institutions are established to promote government and social policy which has been developed for the protection of that particular group. For the most part, these institutions perform functions similar to those of the less specific human rights commissions and ombudsman described above. They are usually authorized to investigate instances and patterns of discrimination against individual in the group and against the group as a whole. While generally

able to investigate complaints brought by a member of the group against another person or against a government body, these specialized agencies, like, other national human rights institutions rarely are empowered to make binding decisions or initiate legal action. In India examples of such institutions are National Commission for women, National Commission for Scheduled Castes and Scheduled Tribes, National Minorities Commission etc. These have been found useful in many ways including monitoring of welfare policies for vulnerable groups and Redressal of their grievances.

12.6 NATIONAL INSTITUTIONS: AN ASSESSMENT

National institutions for the promotion and protection of human rights in last two decades have become increasingly important in many countries. They have begun to fill the gaps that existed, one at the international level and the other at the national level, which had earlier contributed to the lack of capacity to make progress in the implementation of various human rights instruments adopted under the auspices of the United Nations. The surge in the number of National Institutions since Vienna has been accompanied by a growing, even if sometime, grudging acceptance by governments that, to be credible, such institutions must be based on the principles relating to the Status of National Institutions as described in Paris principles. While not all National Institutions are equal in their functions, capacities, talents or resources, the growing interaction and cooperation between these has strengthened the hands of those who have had to face special obstacles in the discharge of their responsibilities, whether, financial, political or otherwise. As such the national institutions provide an alternative route and in many respects, a more promoting route for the promotion and protection of human rights than has hitherto been available. While it is true that over the last twenty or so years many governments have established human rights commissions to monitor the status of human rights to ' provide effective remedies for violation to educate and inform citizens and to ' propose means to ensure respect f0f·il1ehuman rights of everyone-it is found that the work of national human rights institutions is not easy. Even though

established by law, with guarantees of independence, they may have to pay price for doing their work quite independently. The governments may not provide sufficient funds, necessary administrative support or infrastructure facilities for their effective working. In addition, as has been explained earlier, in most cases national institutions are recommendatory bodies. Their recommendations are not binding, nor can they themselves redress the grievances. Some critics point out that many governments have established national institutions just as formalities without providing them sufficient powers or facilities to work. In many cases, it is pointed out national institutions are established as sub-servant to' governments to cover up the acts of commissions and commissions of the government.

In view of the above criticism, it is pointed out that an effective national institution will be one which is capable of acting independently of government, of party politics and of all other entities and situations which may be in a position to affect its work. United Nations manual on National Human Rights Institutions points out that independence is a relative concept. The very fact that a national institution is granted a certain independence of action distinguishes it from government instrumentalities. At the same time it is also true that any institution can only be as independent as the individuals of which it is composed. The granting of legal, technical and even financial autonomy to a national institution will be insufficient in the absence of specific measures to ensure that its members are, individually and collectively, capable of generating and sustaining independence of action. As such it is essential that national institutions can perform well if these are established with good intentions, are given sufficient autonomy, provided necessary financial and administrative support and are treated with respect. Of course these institutions cannot be allowed to have conflict of jurisdiction with other, particularly state organizations including judiciary and legislature. Also these have to accept the legitimate powers of the state for emergency situations. In conclusion it can be said that national institutions are quite relevant. According to a former member of National Human Rights Commission of India VirenderDayal these

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institutions play an active role in promotion and protection of human rights because of following characteristics:

- By being national such institutions can be forthright and effective in ways that others cannot hope to be. They can act without fear of being considered intrusive or worse, alien, patronizing or unpatriotic. This can be their greatest strength.
- By functioning at the ground level, they can and must increasingly give meaning to the concept that human rights are universal, indivisible, interrelated and inter-dependent. While standing fearlessly for civil and political rights, the complaints they receive and the realities of the circumstances in which they function, compel National Institutions to pay equal respect to economic, social and cultural rights and to urge policies of equity and justice at home, no less than at the global level. In so doing, National Institutions are enriching the understanding of rights; they are bringing new hope and breaking new ground in seeking to ensure that all human rights are treated "globally in a fair and equal manner, on the same footing and with the same emphasis" .
- By being concerned with the realization of rights through practical measures at the ground-level, national institutions are retrieving these rights from the often sterile, denunciatory and politically motivated debates that have hindered their furtherance, first during the decades of the East-West schism and more recently, of the North-South divide.

Check Your Progress 3

Note: Use the space given below for your answers.

- 1) What do you understand by Human Rights Commissions? Describe the functions they generally perform.

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2) What is meant by Ombudsman? As a body to protect Human Rights how it similar and different from Human Rights Commissions?

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3) Why are specialized Institutions required for protection of vulnerable groups?

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4) Write an essay on the role of National Human Rights Institutions.

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12.7 LET US SUM UP

In this unit we have studied that for promotion and protection of human rights provided in the Universal Declaration of Human Rights and various treaties there are needed appropriate mechanisms at the state level. Primarily it is the duty of each state that the persons being there are able to exercise their rights. First requirement for that is that human rights are incorporated in the domestic laws. In this way citizens can have guarantee of availability of rights legally: In fact when states ratify a human rights instrument, they either incorporate its provisions directly into their domestic legislation or understand to comply in other ways with the obligation contained in the instrument. Therefore human rights standards today find place in the domestic laws of most of states.

While putting human rights standards in domestic laws is important, the more important aspect is their implementation and monitoring of their violation. That means the effective enjoyment of human rights calls for

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the establishment of national institutions for their promotion and protection. Generally this task is performed by the judiciary. But, as an effective and quick mean, the United Nations has been actively involved for several years in promoting and strengthening independent, effective national human rights institutions. In recent years, many countries have established institutions with the express function of protecting human rights.

While the specific tasks of such institutions may vary considerably from country to country, they share a common purpose, and for this reason are referred to collectively as national human rights institutions. These institutions, generally established by law, are concerned with educational and promotional activities; the provision of advice to government on human rights matters; and the investigation and resolution of complaints of violations committed by public (and occasionally also private) entities. In practice, such institutions are administrative in nature. They are neither judicial nor law making. They play a supplementary role to the executive legislative and judicial arms of government. . In fact they are endowed with ongoing, advisory authority in respect of human rights at the national and/or international level. Three types of institutions have been established in various countries. These can be called as

- (i) Human Rights Commissions
- (ii) The Ombudsman and
- (iii) Specialized institutions.

A country can have only one of these types or more than one. All of them bear the primary responsibility for the protection and promotion of the human rights of their people. They are also able to investigate and shed light on longstanding patterns of human rights violations. As full realization of human rights cannot be achieved solely through the development of protective law and the establishment of mechanisms to implement that law, national human rights institutions, along with intergovernmental organizations, can play an important role in promoting human rights at the domestic level. It is, therefore, important that these

institutions are provided sufficient autonomy and independence in their work and are allowed to function without political or governmental interference.

12.8 KEY WORDS

Commission: Commissions are a form of variable-pay remuneration for services rendered or products sold. Commissions are a common way to motivate and reward salespeople. Commissions can also be designed to encourage specific sales behaviors. For example, commissions may be reduced when granting large discounts.

Committee: A group of people appointed for a specific function by a larger group and typically consisting of members of that group.

12.9 QUESTIONS FOR REVIEW

- 1) Why states need to enact domestic laws for implementation of Human Rights?
- 2) When and why the idea of National Institutions for promotion and protection of Human Rights emerged?
- 3) Describe some of the important workshops and conferences held to discuss the working of National Institutions.
- 4) What do you understand by National Institutions for promotion and protection of Human Rights? How are they different from judiciary and legislature?
- 5) Describe the guidelines prescribed by 1978 Geneva Seminar for functioning of National Institutions.
- 6) What responsibilities Paris Principles prescribe for national institutions?

12.10 SUGGESTED READINGS AND REFERENCES

- United Nations, National Human Rights Institutions Professional Training Series No.4, Geneva, Centre for Human Rights.
- National Institutions For the Promotion and Protection of Human Rights. Fact Sheet No. 19 Geneva, Centre for Human Rights.

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- The Asia Pacific Forum of National Human Rights Institutions, published by. The Secretariat at the Australian Human Rights Commission.
- VirendraDayal, Statement to the 54th Session of the Commission on Human Rights, Geneva April, 1998.

12.11 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1) States need to enact domestic laws to fulfil their obligations towards international treaties and assured citizens about their rights. (Develop this point)

2) Original concern of the United Nations dates back to 1946. In 1960 Economic and Social Council recognized the unique role of national institutions. 1993 Vienna Conference stressed upon the States to have such institutions.

3) See sub-section 12.3.2.

Check Your Progress 2

1) National Human Rights institutions are bodies specifically created for promotion and protection of human rights. These, generally, are not legislative or judicial bodies but administrative in nature. These, however, supplement the judicial and legislative organs in a recommendatory manner.

2) See sub-section 12.4.1.

3) See sub-section 12.4.1.

Check Your Progress 3

1) Human Rights Commissions are independent bodies established by law, to promote and protect human rights by generation of awareness, receiving complaints against violations, investigating the case of violation or discrimination and making recommendations for better enforcement and Redressal of grievance.

2) Ombudsman is in the nature of mediator. It is considered an independent and neutral organ to receive complaints and mediate for Redressal of grievances. It is similar to Human Rights Commissions, 'so far as it also receives complaints and investigates. But it is different from Human Rights Commission as its primary concern is with legality and fairness in administration not with general violation of human rights.

3) As there are vulnerable groups with special needs and prone to discrimination, both by state agencies and non-state persons, there is need to provide special measures to take care of violation of rights of individuals that occur because of individuals being members of that group. Also there are issues of rights of groups collectively.

4) See section 12.6.

UNIT 13: INDIA AND HUMAN RIGHTS – NATIONAL HUMAN RIGHTS COMMISSION

STRUCTURE

13.0 Objectives

13.1 Introduction

13.2 Ancient Indian Traditions

13.2.1 Hinduism: Rights as Dharma

13.3 Buddhism

13.3.1 Human Rights and War: Ashoka's Rajdharma

13.3.2 Jainism

13.3.3 Lokayata

13.4 The Idea of the Human Rights in Medieval India

13.4.1 The Bhakti and Sufi Movements

13.5 The History of Human Rights in Modern India

13.6 Gandhian Concept of Rights

13.7 Environmentalist Traditions

13.8 National Human Rights Commission

13.8.1 Composition of NHRC

13.8.2 Functions of NHRC

13.8.3 Working of the NHRC

13.9 Let us sum up

13.10 Key Words

13.11 Questions for Review

13.12 Suggested readings and references

13.13 Answers to Check Your Progress

13.0 OBJECTIVES

This unit is aimed at introducing you to the idea of Human Rights as it has been emerging through Indian's historical development. After going through this unit you will

- To understand the idea and status of rights in ancient Hindu order;
- To know about the contributions of Buddhism and Jainism in the development of equality and liberty;
- To appreciate the contributions made by Bhakti and Sufi movements towards recognition of individual's identity and his or her equality; and
- To know the concerns for human rights that emerged during modern period.
- To discuss National Human Rights Commission (NHRC) important and crucial role in terms of India's safeguard of Human Rights.

13.1 INTRODUCTION

In the European tradition, human beings are entitled to certain rights that are essential for leading a meaningful and dignified life. Such entitlements are called Human Rights. Human rights refer to a special kind of moral entitlements that are applicable to everyone equally, by virtue of their human condition, irrespective of their ethnic origin, nationality, or membership of any particular social group. As human rights depend directly on the natural condition of being human, i.e., on their ontological condition, these rights are alternatively called Natural Rights. They are also natural in the sense that no authority, however superior or powerful, can bestow these rights because those are always naturally given, *per se*. If we logically extend the idea mentioned in the previous paragraph, we could say that human rights are also independent of the rights provided by the State. The state cannot create or give human rights to the citizens because these rights are *a priori*. In fact, the state has the obligation to guarantee the fulfillment of the natural rights of its citizens. The Indian State is obliged to guarantee certain civil liberties, which are specified in Part III of the Constitution of India. These rights are called Fundamental Rights of the Indian citizen. These may be further subdivided into personal, social, cultural and economic rights. Such rights may also be called legal rights because it is guaranteed by the law of the land. As you have already read in course CHR-11, while modern concept of Human Rights is primarily a 20th Century idea and has been formulated after the end of Second World War with the

establishment of United Nations, concerns and norms for Human Rights are traced back to the development of civilization. In India too there have been traditions of mention and concerns for rights and duties of citizens as individuals and groups. In this unit we will learn about such concerns and norms during periods of historical developments and different socio-religious cultures.

13.2 ANCIENT INDIAN TRADITIONS

In a substantial sense, The Constitution of India belongs to the European legal tradition. This does not mean that the various Indian traditions did not influence the members of the Constituent Assembly as they drafted this extremely important legal document. In fact, the Indian traditions did have a significant effect. For example, SarvepalliRadhakrishnan had defended the republican nature of the Indian Constitution by arguing that the idea of the republic was not foreign to the genius of this country for we have had it from the beginning of our history. However, those parts of the Constitution that deal with human rights belong strictly to the European tradition of rights. How could we explain this? The idea of human rights as entitlements or claims to an extent was alien to the ancient Indian traditions. This was so because these traditions were predominantly non-anthropocentric. Although the human life was believed to be more evolved, other forms of life enjoyed equal respect. The human being was conceived of as yet another of the many creatures that inhabited the world. In fact, certain traditions like Jainism maintained the belief that even non-living matter possessed a soul. Therefore, ancient Indian thought laid emphasis on the performance of one's dharma (duty, obligation) and this makes duty taking precedence over the 'claims or entitlements' (rights) of the individual human being. However, these duties also in some ways are related to concerns for the rights of others. In the next few paragraphs, we will look at various systems of thought that incorporated the broad traditions of ancient Indian world views.

13.2.1 Hinduism: Rights as Dharma

Hinduism is one of the oldest religious traditions that have survived to our days. However, it is neither a monolithic tradition nor is it an organized religion. Instead, it has many contrasting currents contained within itself. The principal texts of ancient Hinduism are the Vedas, which contain polytheistic hymns, monistic tendencies, ethical guidelines and even a ridicule of the gods. The Vedic age was followed by a period which witnessed a systematization of philosophical thought, enshrined in the Upanishads. The problems towards the Hindu mind during the later-Vedic or Vedantic period were the nature, "that", the meaning of human life and the possibility of true knowledge. Thereafter, the theistic tendencies resurfaced as is evident from the popularity of the Bhagavad-Gita. In the various phases of the history of ancient Hinduism, the idea of the 'self' was important and much debated. Consequently, a discourse of rights of an individual failed to concretize within this tradition. Rather, it was a sense of duty or dharma located within the social structure that gained ground. Dharma and karma are the two most important ethical principles of Hindu philosophy. While the former implied doing certain things and avoiding certain other acts, the latter was not always conceived of as fatalistic, instead it was also considered as a naturalistic law of causation. In the Rig veda, virtue is in conformity with the cosmic law, where fidelity and rectitude in human relationships are the goals. Besides the Vedas, there were a group of texts dedicated entirely to various duties and these are called the Dharmasastras. They emphasize the adherence to established norms of ancient Indian social order by stressing the renunciation of one's familial and social obligations for the sake of attaining enlightenment or liberation from the cycle of rebirth. The most famous of the Dharmasastras was the Manavadharmasastra (Laws of Manu). The ancient Hindu social order was organized on the basis of labour, thus forming, groups of priests, warriors, tradesmen and servants. This organization of work crystallized into a near endogamic-system of castes. Since then, duties depended on one's relation to the caste-structure. Consequently, such an idea of duty came to be described as varndshramadharm. A human life was divided into four stages: bhramacharya, grihastashrama, vanaprashta, sanyasa. The first two stages were viewed as seen in terms of duties of a student and that of a house-

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holder, while the latter two were considered as phases seeking liberation from the mundane world. However, it was impossible to accede the third and the fourth stages without having passed through the first two stages. The unjust nature of the caste-system was evident because such a way of leading the life was prescribed only for the first three varnas. Nonetheless, the Dharmasastras also dealt with immoral duties or virtues to be sought after by all individuals, sarvdsramadharma, like patience, compassion, non-violence, non-stealing, non-lying etc. In another way some of these values are connected with the spirit of human rights. Two statements in the Rig Ved contain vital clues to any enquiry into the nature of truth and justice to be pursued by anyone". Truth is one. Wise men interpret it differently" and "Let noble thoughts come from everywhere". These two might well represent the oldest philosophical acknowledgement of the plurality of ways in which the universal truth can be interpreted and understood. The second statement in addition attempts to create a pool of wisdom to which everybody should contribute and which is in the end beneficial to all. Any human right activist would do well to begin his enquiry from these twin concerns laid down in the Rig. Ved. The Hindu concepts of dharma, thus sets forth the responsibilities and rights of individuals in terms of their membership in a human community for which individuals are responsible and from which they derive much of their value as human beings. As Harold Coward points out, there is no notion of rights of the individual alone. In Hinduism the rights of the individual person are always the rights of individual in a community and consequently cannot be discussed without reference to one's community, duties and responsibilities (Dharma). For Hinduism, the dignity and worth of the individual is safeguarded through the fulfillment of duties to the larger community of which he or she is a part.

Check Your Progress 1

Note: Use the space given below for your answers.

- 1) What is the importance of Dharma and Karma in Hindu tradition?

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2) In Hindu traditions how rights are related to duties?

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13.3 BUDDHISM

The thought of Siddhartha Gautama (Buddha) is an important element in the history of Indian ethical and politico-philosophical thought. Although, there are many Buddhist traditions and these reached their peak in the 11th century BC before its influence slowly waned within India. The principle teaching of the Buddha was regarding the role of desire as the cause of human discontent. To resolve the problem of frustration and sadness, Buddha returned to a study of human nature. His thought was critical of the existing social norms of caste, purity and hierarchy. Buddha concluded that discontent was the consequence of desires based on false beliefs like one's own existence was more important than those of others' as well as the belief that the right to acquire and possess property would bring security. The answer according to the Enlightened One was that all beings have the same nature and the idea of ownership was the root cause of all conflicts amongst living beings. The radical element of Buddhist thought lied in the ability to demonstrate that individuals do not have a permanent fixed identity. Buddhism forms an important part of non-Brahmin or non-Sanskritic traditions that stood up for the downtrodden in society. Buddha himself debunked the Brahmanical claims to any spiritual superiority on the basis of birth. During the Buddhist period,. Interest in man, in his image, and man's affairs on this earth, unlike interest in gods and goddesses and good life in heaven after death, this earth being a vale of tears, became the primary concern of thoughtful men and women. Buddha rejected the caste system for it was based upon inequality and treated some

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individuals as morally superior purely on grounds of birth. Buddha rejected the infallibility of the Vedas as well as Brahman, without which no opposition to Brahmin-upanishidic domination was possible. His Nirvana (liberation from the cycle of life and death) was to be attained in this very world, and it could be attained by anyone, should he or she follow the right conduct. He came out' strongly against elaborate Brahmanical rituals and rites involving animal sacrifices on the grounds of non-violence and compassion to all beings. The important philosophical contribution made by Buddhism that should inspire any human right activists beautifully contained in the famous story about Buddha's life that he narrated to his disciples in the following words:

I was born in Kapilvastu. My father, King Sudhodana brought me up in comfort and luxury. One day I was walking in the garden. Suddenly a white swan fell from the sky at my feet. An arrow had pierced its wing. It was gasping for breath. Its eyes were filled with tears and it was unsuccessfully fluttering its wing. I was overcome with pity. I took him in my lap and carefully removed the arrow. As I was taking him for dressing, my cousin Devadutta came' over. He said: "I have shot the swan. A prey belongs to the person who shoots it. Please give it to me". I said: "This swan fell in front of me. I will look after him until his wounds heal so that he can fly again." Devadutta was very angry. He complained to the king that I had stolen his swan. The king called both of us. I told the whole story. The king said: "One who saves a life is greater than the one who destroys it. So, the swan shall stay with you." All the noble souls gathered here remember this story. Do not spill blood. Do not destroy life. Respect your elders and do not oppress your slaves. Good conduct is more meaningful than any sacrifice. Do not live in so much of a luxury that you lose fellow feelings with your friends and nature. At the same time do not unnecessarily punish your body by not eating and overexertion. Follow the middle path.

Conversations with the Buddha

Thus have I heard Vaccha, the wandering ascetic, spoke to the Blessed One as follows- "How is it, Gautama? Do you hold that the world is eternal, and that this view alone is true, and every other false." "No, Vaccha. I do not hold that the world is eternal, and that this view alone is true, and every other false." "How is it, Gautama? Do you hold that the world is not eternal, and that this view alone is true, and every other false." "No, Vaccha. I do not hold that the world is not eternal, and that this view alone is true, and every other false." (...) "But, Gautama, where is the priest reborn who has attained to this deliverance for his mind?" "Vaccha, to say that he is reborn would not fit the case." "Then, Gautama, he is not reborn." "Vaccha, to say that he is not reborn would not fit the case." "Then, Gautama, he is both reborn and is not reborn." "Vaccha, to say that he is both reborn and not reborn would not fit the case." "Then, Gautama, he is neither reborn nor not reborn." "Vaccha, to say that he is neither reborn nor not reborn would not fit the case ... " "Gautama, I am at a loss what to think in this matter, and I have become greatly confused, and the faith in Gautama inspired by a former conversation has now disappeared. " (..)

"But has Gautama any theory of his own?" "The Tathagata, O Vaccha! is free from all theories; but this, Vaccha, does the Tathagata know: the nature of form, and how form arises and perishes; the nature of sensation, and how sensation arises and perishes; the nature of perception, and how perception arises and perishes; the nature of predisposition, and how predisposition arises and perishes; the nature of consciousness, how consciousness arises and perishes. Therefore, I say that Tathagata has attained deliverance and is free from attachment, in as much as all imaginings, or agitations, or false notions concerning an ego or anything pertaining to an ego have perished, have faded away, have ceased, have been given up and relinquished." Source: S. Radhakrishnan and Charles Moore, ed., 1971,

A sourcebook in Indian Philosophy, Princeton University Press, New Jersey.

13.3.1 Human Rights and War: Ashoka'sRajdharma

An important aspect of human rights concerns the treatment of human beings during war as well as prisoners of war. The evolution of humanitarian law and the international law of war have focused on the rights of men, women and children in armed conflicts. The Indian tradition of human rights during war is best exemplified in the work of the converted emperor Ashoka. His story is narrated as below: The 'Beloved-of-the-Gods', King Piyadasi, conquered the Kalingas eight years after his coronation, One hundred and fifty t' and were deported, one hundred thousand were killed and many more died (from "mer causes). After the Kalingas had been conquered, the 'Beloved-of-the-Gods' came to feel a strong inclination towards the Dhamma, a love for the Dhamma and for instruction in Dhamma. Now, the 'Beloved of-the-Gods' feels a deep remorse for having conquered the Kalingas. Indeed, the 'Beloved-of-the-Gods' is deeply pained by the killing, dying and deportation that take place when an unconquered country is conquered. But Beloved of-the-Gods is pained even more by this - that Brahmans, ascetics, and householders of different religions who live in those countries, and who are respectful to superiors, to mother and father, to elders, and who behave properly and have strong loyalty towards friends, acquaintances, companions, relatives, servants and employees - that they are injured, killed or separated from their loved ones. Even those who are not affected (by all this) suffer when they see friends, acquaintances, companions and relatives affected. These misfortunes befall all (as a result of war), and this pains the 'Beloved-of-the-Gods'. (...) Therefore the killing, death or deportation of a hundredth, or even a thousandth part of those who died during the conquest of Kalinga now pains the 'Beloved-of-the-Gods'. Now, the 'Beloved-of-the-Gods thinks that even those who do wrong should be forgiven where forgiveness is possible. Even the forest people, who live in the 'Beloved-of-the-Gods' domain, are entreated and reasoned with to act properly. They are told that despite his remorse the 'Beloved-of-the-Gods has the power to punish them if necessary, so that they should be ashamed of their wrong and not be

killed. Truly, the 'Beloved-of-the-Gods' desires non-injury, restraint and impartiality to all beings, even where wrong has been done.

Now it is conquest by Dhamma that the 'Beloved-of-the-Gods' considers to be the best conquest. And it (conquest by Dhamma) has been won here, on the borders, even six hundred yajanas away, where the Greek king Antiochos rules, beyond there where the four kings named Ptolemy, Antigonos, Magas and Alexander rule, likewise in the south among the Cholas, the Pandyas, and as far as Tamrapami. Here in the king's domain among the Greeks, the Kambojas, the Nabhakas, the Nabhapamkites, the Bhojas, the Pitinikas, the Andhras and the Palidas, everywhere people are following 'Beloved-of-the-Gods' instructions in Dhamma. Even where 'Beloved-of-the-Gods' envoys have not been, these people too, having heard of the practice of Dhamma and the ordinances and instructions in Dhamma given by the 'Beloved-of-the-Gods', are following it and will continue to do so. This conquest has been won everywhere, and it gives great joy - the joy which only conquest by Dhamma can give. But even this joy is of little consequence. The 'Beloved-of-the-Gods' considers the great fruit to be experienced in the next world to be more important. "I have had this Dhamma edict written so that my sons and great-grandsons may not consider making new conquests, or that if military conquests are made, that they be done with forbearance and light punishment or better still, that they consider making conquest by Dhamma only, for that bears fruit in this world and the next. May all their intense devotion be given to this which has a result in this world and the next?" Selected from the English translation of the 13th Rock Edict at Kalinga, Orissa by Ven. S. Dhammika.

13.3.2 Jainism

The most important ethical aspect of Jainism is non-violence to life and elements, like air, water, fire and earth. The rationale for stressing on the principle of non-violence is based on the belief that violent acts accumulate maximum karma. If every being carries jive and if goal of all human beings was the liberation of the soul from further rebirth, this

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would be possible only through the exercise of certain ethical principles. It is in the exercise of these ethical principles that Jainism advocates the fulfillment of five vows common to all human beings. These include ahimsa, i.e., not killing or injuring a living being intentionally; satya, i.e., to say the truth, asteya, i.e., not to steal, i.e., not to take what is not given, brahmacharya, i.e., to live in chastity, parigraha-tyaga, i.e., not to desire, but to remain be satisfied within the limits one has set for oneself. Like Buddhism Jainism also show how a virtuous life is possible without the necessity of the idea of God, and how the idea of rights is subsumed within an ethical code that an individual legislates for oneself. Another important contribution made by the Jain tradition in the search for truth was evolving a philosophical system known as SyadVad. The term Syad means perhaps. SayadVad argued that truth cannot be perceived in totality by anyone and so one should always provide enough space for the possibility of a different understanding and interpretation of truth. A famous Jain story of seven blind men and the elephant expresses this sense very well.

Seven Blind Men and the Elephant One day an elephant made its presence among seven blind men who could not see the whole elephant but only feel its parts. They were all curious to know what this strange object was. The first blind man felt the feet of the elephant and declared that the strange object was a pillar. The second blind man felt the trunk of the elephant and declared that it was a snake. The third blind man felt the tusk of elephant and concluded that the strange thing was a spear. The fourth blind man felt the head of the elephant and informed everybody that it was a great cliff. The fifth blind man felt the ear of the elephant and told everybody that it was a fan. The sixth blind man felt the tail of the elephant ' and declared that It was indeed a rope. But the seventh blind man refused to conclude on the basis of a partial enquiry. He felt the strange object up and down, left and right and indeed from all other possible angles. Finally he ' concluded that the strange new object was indeed sturdy as a pillar, supple as a snake, wide as a cliff, sharp as a spear, breezy as a fan or a rope but. ... And . 'elephant. All the other blind

men agreed with him. They also agreed that knowing in part might give a partial truth but real wisdom comes from seeing, the whole.

13.3.3 Lokayata

Long before the advent of Buddhism, Indian society had been exposed to another philosophical system called Lokayata, which offered a different and a very radical interpretation of reality. It was a system which persistently rejected the conception, of a creator or anything existing prior to matter in one or another form. It however 'kept company with simple religious beliefs, rites and even cult in daily life. The Lokayata school of thought was founded by Charvak, who denounced' categorically the Karma.Punarjanam, Moksha and Varna System. Some of the " Sutras from Lokayatdarshan clearly show their humanist and rationalist nature: "The body, the face and all limbs of all people being similar, how can there be any distinctions of Vama and caste? Such distinctions are unscientific and cannot be defended." Lokayata rejected the superiority of ritualistic Brahmanical functions over others: "Agriculture, cattle breeding, trade, state service etc, are occupations of the' wise. They should be followed.' But those who smear their bodies with ashes and perform Agnihota and other religious rites are devoid of intelligence and manhood. "Lokayata also provided a humanitarian as against an other-worldly, interpretation of Moksha (liberation from this world): "Real bondage lies in servitude. Real Moksha lies in freedom." The driving impulse of the lokayat was social and not philosophical which is evidenced in various ways. Many of their Sutras were directed against, Brahrilanical domination embedded in the concept of Chaturvarna, I There were many other non-Vedic-sects -like the Nath Yoga, Siddha who, too; like, the Buddhists, found the key to all religious mysteries in the human body itself. The position of the Nath-panthi siddhas and jogis in Hindu society needs to be understood, Most of the Nathpanthi siddhas and Yogis belonged to the low castes, opposed caste-based inequalities, denounced the religion espoused, by the Brahmins, and did not favour image worship. Another important feature of these

sects was that Women played a significant part in these sects, particularly in the Tantra.’

Check Your Progress 2

Note: Use the space given below for your answers.

- 1) How do basic tenets of Buddhism favour rights of individuals?
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- 2) Describe the contribution of King Ashoka in development of Human Rights concerns.
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- 3) What has been the contribution of Jain tenets in inclusion of rights in ethical code?
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13.4 THE IDEA OF THE HUMAN RIGHTS IN MEDIEVAL INDIA

the educational syllabus by introducing, contrary to the prevailing norms, secular subject like Mathematics, Agriculture, Geometry, Astronomy, Logic, History etc. Perhaps Akbar's greatest contribution lay in building an institution called Ibadat Khanna (literally hall of prayers), at Fatehpursikri in 1575, as a place for conducting religious debates. These debates convinced Akbar that all religions contained elements of truth. From this he evolved his Universalists ideas on religion contained in the .concept of Sulh-I-kul or peace between all religions. It is this spirit of religious universalism and unity of all men during medieval times that

should be of interest to a human rights activist today. However, it is important to keep in mind that the initiative for unity of all religions and syncretism was not just confined to the kings but had powerful roots in the society. Bhakti and Sufi, two powerful social movements did more than anybody else to promote and spread these ideas in the society. Let us now look at the tenets of some of the Bhakti and Sufi saints.

13.4.1 The Bhakti and Sufi Movements

the Bhakti Movement, whose origins may be traced back to the 4th B.C, played a very important role in furthering the evolution of the idea of human equality despite differences of caste, creed, religion and gender. It gained greater momentum in the medieval period and was an expression of an intense and passionate relation with the divine. In the process, this tradition challenged established social conventions, including family life, religious rituals and traditional economic and political values. The poetsaints of the Bhakti tradition sang in praise of the divine in various vernacular languages, especially Marathi, Tamil and Hindi. Some of the more recognized individuals of the age are Chaitanya, Jnanadeva and Meera. However, we shall look at a few others as well, who played a role in emphasising the dignity and equality of all human beings. The Bhakti tradition also witnessed a parallel current in Sufism, which was an expression of the mystical Islam. Sufism stressed on a belief in a mystical union between the individual soul and God. This was in contrast to the orthodox emphasis on law and tradition. The appeal of the Sufi saints, particularly of the Chisti order was great among the poor because they emphasized care of the needy as a religious act. The devotional Bhakti and the Sufi traditions (the first Sufi teacher, Khwaja Moinuddin Chishti came to India in 1193) had much in common. In medieval north India, mysticism was the product of both the Bhakti movement and the tradition of Sufis. One important aspect of this mysticism was its complete independence from orthodox scriptures. These teachers practised and taught tolerance. The interaction of Bhakti and Islam, specially the Sufi idea, gave rise to a number of progressive movements with the core philosophy of tolerance. Human Rights

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educationists should give utmost importance to this aspect. It is regrettable that it has, with some notable exceptions, been generally studied in isolation. It should, therefore, be emphasised in our text books that relations between Islam and the religions of India were marked by mutual understanding and tolerance. This spirit of mutual understanding, tolerance and cooperation were, to large extent, promoted by the rise and spread of Sufi and Bhakti ideas. Namdeva and Tukaram from Maharashtra, the former a tailor and the latter a peasant made the Bhakti movement increasingly acceptable to the people. Namdeva spread the virtues of simplicity and argued forcefully against rituals and superstitions. He said: "The stone image speak not, see the lord within, the Tirthas (holy pilgrimage) cannot wash away sins, clean your heart instead. Fasting and other observance are futile unless your being is purified. What can ceremonies do if love awake not in your heart?" In Bengal, the well-known Vaishnava poets Jaidev, Vidyapati and Chandidas, as also Chaitnaya popularised the Bhakti movement. It spread to almost all parts of India. Though the movement did not succeed in completely breaking through caste barriers, the very fact that many of its leaders belonged to lower castes-and also that it believed in the equality of men, must be taken note of by human right educationists. In the fourteenth-fifteenth century, Ramananda (1370-1440) challenged caste divisions, revolted against traditional religious rituals started preaching in local dialects, and non Sanskrit which was the preserve of the upper castes. His thought is well reflected in his following words: " In vain do they seek You in the Vedas." Ramananda had 12 important disciples. They all belonged to low castes. One of the them, Ravidas was a cobbler. "The recitation of the Vedic Mantras, even for many millions of time will not satisfy the pangs of the longing (to see you)", sang Ravidas. The most famous disciple of Ramananda was Kabir, who combined in his writings the essence of Sufi and Bhakti traditions. He struck at the roots of ritualism and superstition. "Oh God, Whether Allah or Rama, I live by thy name.", sang Kabir. Since Kabir composed songs for the common people he chose his own language which was a combination of many local dialects. He said: "Sanskrit is like water in a well, the language of the people is a flowing stream." He practiced and preached the gospel of

universal tolerance and was one of the exponents of the idea of India with full religious freedom for all. Kabir gave utmost importance to human equality and denounced inequality based on caste, religion and wealth. The founder of the great Sikh religion, Guru Nanak, was greatly influenced by Bhakti and Sufi ideas. Both Kabir and Guru Nanak found a common link between Hinduism and Islam. To Guru Nanak religion meant much more than mere pious man's life here and here after, ensuring a complete and happy life in this world and bliss and salvation in the next. Guru Nanak therefore, also laid down for his follower's broad rules of conduct for daily life and generally defined even their social, economic and political relationships, Guru Nanak, to begin with acquired first-hand knowledge of the conditions of the people and the behaviour of the ruling class towards their .subject people at that time. He saw the prevailing social evils like untouchablity, sati, child marriage, sexual indulgence and perversion and slavery in their worst forms as also the tyranny of rulers. He strongly condemned social inequality, economic exploitation and political despotism of his times. He was moved by the suffering of women. He condemned the tyrannical rulers of the times; and fearlessly criticized them. The society Guru Nanak visualized was based on the ideas of Truth, Contentment and Intellect. He was in search of a society in which equality, freedom and fraternity could be established in the real sense. He rejected caste system and subordinate position of women. He thus advocated a new social order, based on in present day terminology, human rights.

Bauls are not known outside Bengal. The philosophy of the Baul movement lays in the simple man's (sahaj) search for the "Man of his heart" - his God. The movement traces its origin to the fall of Buddhism and Vaishnavism. Bauls are like the wind (Baul means wind, Vayu)-always free, not tied to any religious traditions. They accepted no caste division, they did not worship any special deity nor did they accept any temple or mosque. Baul devotees belonged to the lowest strata of both Hindus and Muslims. "What need have we of other temples, when our body is the temple where the spirit has its abode", they sang. They did not observe asceticism, nor did they believe in celibacy. Earthly love,

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they argued, helps them to feel divine life, and harmony between material and spiritual needs.

Check Your Progress 3

Note: Use the space given below for your answers.

- 1) Briefly describe Akbar's policy of tolerance?

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- 2) What do you understand by Bhakti movement? What role it played in creating a culture of tolerance?

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- 3) Describe Kabir's role as a representative of Bhakti and Sufi traditions.

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- 4) Write a short note on Guru Nanak's ideas on justice.

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13.5 THE HISTORY OF HUMAN RIGHTS IN MODERN INDIA

The history of the evolution of human rights in independent India is tied to the struggle against British imperialism, which was based on a racist ideology. A time line that includes some of the prominent landmarks in the Indian struggle for human rights under colonial rule is offered below.

In the next unit you will read in detail about status and movement for rights during colonial period.

1883-84

The Ilbert Bill is the popular name for the Criminal Procedure Amendment Code Bill introduced in the Central Legislative Council by Sir Courtney Ilbert during the administration of Lord Ripon (1880-1884). The Ilbert Bill in its original form proposed giving even Indian magistrates the power to try British subjects in criminal cases. The members of the Indian Civil Service serving as District Magistrates and Sessions Judges, irrespective of colour, caste and creed could try European as well as Indian offenders. The opposition from the British and European community in India led to the failure to pass this bill in its original form. The bill was reformed to allow a compromise by which British and European offenders could demand trial by jury in which half the members would be European.

1918

The special session of the Indian National Congress at Bombay adopted a Declaration of Rights, which included elemental) safeguards of the freedoms of speech, expression and assembly, the right to be tried according to law and, above all, the freedom from racial discrimination.

1919

S. Satyamurthy, a Congress leader from Madras wrote The Rights of Citizens in a response to the draconian Rowlatt Act. He lucidly enunciated on the 'Declaration of Rights' and defined certain concepts related to civil liberties.

1925

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A new declaration was adopted at the Kanpur Convention of the Indian National Congress that contained the rights to free primary education, the equality of the sexes, freedom of conscience and of religion. The list of rights was expanded to include social and cultural rights.

1928

Motilal Nehru was charged with reporting on the principles of a constitution for independent India. The Nehru Report included the rights to freedom of conscience, profession and practice of religion, free primary education and the equality of sexes. The inclusion of the right to private property sparked off an interesting debate with the Socialist bloc' in the Indian National Congress, which called it a bourgeois right.

1936

Jawaharlal Nehru played a leading role in the establishment of the Indian Civil Liberties Union, whose objective was to create consciousness and to expand and extend the scope and content of the civil liberties. The ICLU whose branches were set up in Bombay, Calcutta, Madras and Punjab investigated cases of political imprisonment and harassment, police brutalities, bans and extensions on citizens' rights, not only by the British Raj but also by the rulers of the princely states. It brought out reports and lodged protests on the basis of these investigations. Making a strong opposition to feudalism and autocracy, Nehru asserted that the subjection and deprivation of human rights of many Indians could not be tolerated under any circumstances. The ICLU was involved in attempts to spread the consciousness about civil rights within the Congress. When it came to power in some provincial governments, circulars were sent to all its ministries regarding the preservation of civil rights, The failure to successfully implement the preservation of rights in these provinces led to divisions within the ICLU, which eventually led to the organization losing its momentum that had marked its initial stages.

13.6 GANDHIAN CONCEPT OF RIGHTS

Before we discuss Mohandas Gandhi's thoughts on human rights and duties, we must have an understanding of his conception of human nature. The Gandhian conception of human nature was born out of a cosmopolitan world-view because he was open to all kinds of beliefs. It was predominantly influenced by Hindu, Jain and Christian traditions. The Mahatma believed that the mankind was part of the cosmos and that every human being was dependent on every other individual. The human nature was therefore interdependent. The British-Indian scholar Bhikhu Parekh has elaborated on Gandhi's ideas of human interdependence. Human beings are interdependent in the sense that we have involuntarily inherited debts. We are indebted for having inherited a world to which our contribution is nil. Therefore, it is impossible to repay except by contributing to collective well-being of the entire humanity. For Gandhi then, human life was *yajna*, a life to be spent in service of others and this service was not only a duty but a right. Only if the duty of service was performed human beings could lead meaningful and dignified lives. To describe such a conception of duty, Gandhi used the word *dharma*. Just as Gandhi discovered that human nature was interdependent, he also understood that each individual was unique. The singularity arose from the very particular psychological and moral constitution of each individual. Such a difference explained the need for personal autonomy, which was necessary to fulfill one's *dharma*. Thus, the Gandhian idea of individual rights was characterized within the framework of human interdependence; or in other words, within a socially responsible framework. Although Gandhi had differences with the idea of rights in the European liberal tradition of his time, certain contemporary developments in the study of rights seem to have bridged the Western differences with the Gandhian tradition.

13.7 ENVIRONMENTALIST TRADITIONS

An acute environmental awareness has been the feature of our social life for the last four or five decades. It is generally believed that the 1970s and 1980s brought about an anxiety that the natural resources of the earth were getting depleted as a result of excessive consumption of natural resources in some parts of the world and an increasing population in

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some other parts. An accompanying anxiety was that mindless developmental activities in the world were polluting the entire earth making it an unsafe place to live. It was felt that the modern man had proved himself unfit to live in harmony with nature as well as man. A powerful environmental movement has now grown throughout the world around these ideas. As a result the environmental awareness has become a considerable part of any human rights activity. In this context, it is crucially significant to point out that although an environmental perspective is completely alien to any western or European tradition, it finds ample references in Indian history and tradition. The Ancient Indian philosophy did not place man at the apex or the centre of the universe but only as one of the many elements. At the same time every element biotic or non-biotic was perceived to be a living being with a life of its own. Therefore, all the trees, forests, mountains, rivers, birds, animals and other species were considered as much a part of nature as man was. It was his duty, therefore, to live along with them and not at their expense. The nature was not placed at the service of man and he was not privileged over other species in any way. This philosophical position proved enough of a safeguard against a man-centred view of nature. It is possible to trace the philosophical origins of the modern environmental awareness to the Ancient Indian tradition. A crucial aspect of this tradition was that it did not just remain confined to the realm of philosophy but was manifested in concrete practice at the level both of the rulers and the people. Among the rulers, Ashoka is perhaps the earliest one to have prohibited the killing of certain birds and animals in his kingdom. These instructions were inscribed on his pillar edicts. He set up hospitals and reserves for wild animals and birds and also implemented various species-specific protection measures. Much more than the rulers, the observance of environment friendly practices by some of the local communities is quite remarkable. In this context, mention must be made of Bishnois (followers of Bishnoi faith), a community that has been living in the state of Rajasthan for centuries. Bishnois have, as a matter of practice and routine, used their natural resources judiciously and shown tremendous respect for the environment around them. The community has maintained very strict rules regarding the protection of

wildlife and the trees in their area. The penalty for violating any of these community rulers in very severe. There is a remarkable and well-known incidence in the history of Bishnois. In 1730, the Maharaja of Jodhpur ordered his men to fetch some wood from a Bishnoi area. The Bishnoi men were away at work. All the Bishnoi women and children got together and decided to protect their trees. They hugged their trees in order to save them from being felled by the king's men. Over 360 women and children were hacked to death in the process but they did not allow their trees to be cut. The king had to finally ask his men to stop killing innocent women and children, offer atonement for the killings and undertake not to cut any Bishnoi tree. This, glorious saga of protecting the environment by laying down their lives inspired the famous Chipko movement centuries later in 1973 in the hills of U.P. The bishnois still practice the same life-style and treat their environment as sacred. Any human rights activist interested in the environmental question would do well to observe and study some of the Bishnoi practices.

Check Your Progress 4

Note: Use the space given below for your answers.

- 1) Write a note on Indian Civil Liberties Union.

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- 2) What is meant by Gandhi's ideas of interdependence?

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- 3) Describe contribution of Bishno's in the protection of environment.

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13.8 NATIONAL HUMAN RIGHTS COMMISSION

National Human Rights Commission is a statutory body responsible for the protection and promotion of human rights in the country. The National Human Rights Commission was established in the year 1993 by the Protection of Human Rights Act, 1993 passed by the Parliament. It must be headed by the retired chief justice of India. The National Human Rights Commission is responsible for the protection and promotion of human rights in India. The Protection of Human Rights Act, 1993 states that the commission is the protector of "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants".

13.8.1 Composition of NHRC

NHRC comprises of a chairman and four members. The chairman should be a retired chief justice of India. The other members should be

- (i) One Member who is, or has been, a Judge of the Supreme Court of India
- (ii) One Member who is, or has been, the Chief Justice of a High Court
- (iii) two Members to be appointed from among persons having knowledge of, or practical experience in, matters related to human rights

Apart from these members, the Chairpersons of National Commission for Minorities, National Commission for SCs, National Commission for STs and National Commission for Women serve as ex officio members.

President appoints the chairperson and members of the NHRC on the recommendation of a six member committee consisting of

- (i) The Prime Minister (chairperson)
- (ii) The Home Minister

- (iii) The Speaker of the Lok Sabha
- (iv) The Leader of the Opposition in the Lok Sabha
- (v) The Deputy Chairman of the Rajya Sabha
- (vi) The Leader of the Opposition in the Rajya Sabha

13.8.2 Functions of NHRC

According to the protection of Human Rights Act, 1993, below are the functions of NHRC:

- (a) Inquire suo motu or on a petition presented to it, by a victim, or any person on his behalf into complaint of violation of human rights or negligence in the prevention of such violation by a public servant.
- (b) Intervene in any proceeding involving any allegation of violation of human rights before a Court with the approval of such Court.
- (c) Visit any jail or detention places to study the living conditions of the inmates and make recommendations thereon
- (d) Review the safeguards provided by or under the constitution of any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
- (e) Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- (f) Undertake and promote research in the field of human rights.
- (g) Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights.
- (h) Encourage the efforts of Non-Governmental organizations and institutions working in the field of human rights.
- (i) Undertake such other functions as it may consider necessary for the promotion of human rights.

13.8.3 Working of the NHRC

Headquarter of the commission is located at Delhi.

- The commission is vested with the power to regulate its own procedure.

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- It has all the powers of a civil court and its proceedings have a judicial character.
- It may call for information or report from the central or any state government or any other authority subordinate thereto.

However, the commission has its own staff to investigate into complaints of human rights violations. It is also empowered to utilize the services of any officer or investigating agency of the central government or any state government for the purpose. The commission also cooperates with various NGOs for the information regarding human rights violations.

The commission can look into a matter within one year of its occurrence.

The commission may take any of the following steps during or upon the completion of an inquiry:

1. It may recommend to the concerned government or authority to make payment of compensation or damages to the victim;
2. It may recommend to the concerned government or authority the initiation of proceedings for prosecution or any action against the guilty public servant;
3. It may recommend to the concerned government or authority for the grant of immediate interim relief to the victim;
4. It may approach to the Supreme Court or the high court concerned for the necessary directions, orders or writs.

In order to make NHRC more effective, its powers could be increased in various ways to increase its effectiveness and efficiency in delivering justice to the victims. The commission should be empowered to provide interim and immediate relief including monetary relief to the victim. In addition, the commission should be empowered to punish the violators of the human rights, which may act as deterrent to such acts in the future. The interference of the government and other authorities in the working of commission should be minimum, as it may influence the working of commission. Therefore, the NHRC should be given power to investigate

into the cases related to human rights violation by the members of the armed forces.

Check your Progress 5

Note: Use the space given below for your answers.

1) Discuss the Composition of NHRC

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2) Write the Functions of NHRC

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3) How to do working of the NHRC

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13.9 LET US SUM UP

In this Unit you have read about the ideas and inspiration for Human Rights in; different periods of Indian History. Obviously the concept of Human Rights as it is seen in the present declarations and theories is not visible in ancient and medieval periods. However various spiritual values do provide basis for the respect of rights of individuals. In ancient Hindu scriptures it is more through emphasis on duties of individuals as members of communities. However, even in ancient period we see Buddhism standing up for the downtrodden in society. During the Buddhist period, interest in man, his image and man's affairs on this earth became the primary concern of thoughtful men and women. Buddhism and Jainism also constituted non-Sanskrit tradition that carries forward

compassion for all human beings. During medieval period Bhakti and Sufi movement in particular gave rise to a number of progressive movements with the core philosophy of equality and tolerance. Saints and Sufis of this period tried to bring society out of orthodoxy and spoke against exploitation of human beings on the basis of caste and gender. The outset of modern period in India coincided with the advent of British rule and the English education. In this period there started emerging a clear concern for civil liberties as a part of National movement. This was reflected through various movements.

How National Human Rights Commission (NHRC) plays an important and crucial role in terms of India's safeguard of Human Rights that has been also included here in this Unit 13.

13.10 KEY WORDS

NHRC: National Human Rights Commission

Ancient India: The following outline is provided as an overview of and topical guide to ancient India: Ancient India is the Indian subcontinent from prehistoric times to the start of Medieval India, which is typically dated to the end of the Gupta Empire.

13.11 QUESTIONS FOR REVIEW

- 1) What is the importance of Dharma and Karma in Hindu tradition?
- 2) In Hindu traditions how rights are related to duties?
- 3) How do basic tenets of Buddhism favour rights of individuals?
- 4) Describe the contribution of King Ashoka in development of Human Rights concerns.
- 5) What has been the contribution of Jain tenets in inclusion of rights in ethical code?
- 6) Briefly describe Akbar's policy of tolerance?
- 7) What do you understand by Bhakti movement? What role it played in creating a culture of tolerance?
- 8) Describe Kabir's role as a representative of Bhakti and Sufi traditions.
- 9) Write a short note on Guru Nanak's ideas on justice.

- 10) Write a note on Indian Civil Liberties Union.
- 11) What is meant by Gandhi's ideas of interdependence?
- 12) Describe contribution of Bishno's in the protection of environment.
- 13) Discuss the Composition of NHRC
- 14) Write the Functions of NHRC
- 15) How to do working of the NHRC

13.12 SUGGESTED READINGS AND REFERENCES

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13.13 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1) Dharma and Karma are the two most important ethical principles of Hindu Philosophy. While the former implied doing certain things and avoiding other acts. The karma primarily means outcomes of deeds in terms of law of causation.

2) In Hindu philosophy rights are in community. Individuals enjoy rights by performing duties. Duties of one in a way imply rights of others and the community.

Check Your Progress 2

1) Buddhism preached equality of human beings. It opposed social norms of caste and purity and hierarchy. It's ideal of non-violence also means respect for the right to life of all. By rejecting the idea of only one truth it also favored freedom of thought and expression.

2) King Ashoka rejected the killing of human beings in war. He also favored the principle of forgiveness thus suggesting the need for reconciliation. See subsection 13.3.1.

3) See sub-section 13.3.2.

Check Your Progress 3

1) Akbar's policy included treatment to the population without making any discrimination on the grounds of religion. He believed in promotion of brotherhood of all men. He also forbade the enslavement of wives and children of rebellions villages and abolished jiziya a tax levied on Hindus.

2) Bhakati movement was opposed to the existing ritual orthodoxy of religion. It played an important role in furthering the evolution of the idea of human equality despite differences of caste, creed, religion and

danger. It thus contributed in the culture of tolerance by supporting the values of equality and freedom.

3) Kabir struck at the roots of ritualism and superstition. He preached the gospel of universal tolerance and religious freedom, human equality.

4) Guru Nanak condemned prevailing social evils like untouchability, sati, child marriage and slavery. He favored a society based on equality, freedom and fraternity.

Check Your Progress 4

1) The Indian Civil Liberties Union was founded in 1936 to create consciousness and to expand and extend the scopes and content of civil liberties. For details see section 13.5.

2) Mahatma Gandhi believed that the mankind was part of the cosmos and that every human being was dependent on every other individual. He, therefore, believed that it was each human being's duty to serve others. This service is considered not only a duty but a right.

3) Bishnoi's have used their natural resources judiciously and shown tremendous respect for the emancipated around them, they have maintained very strict rules .regarding the protection of wildlife and trees in their area.

Check Your Progress 5

1) See Sub section 13.8.1

2) See Sub Section 13.8.2

3) See Sub Section 13.8.3

UNIT 14: INDIA AND HUMAN RIGHTS – NATIONAL COMMISSION FOR WOMEN

STRUCTURE

- 14.0 Objectives
- 14.1 Introduction
- 14.2 National Commission for Women
- 14.3 THE NATIONAL COMMISSION FOR WOMEN ACT, 1990
- 14.4 Let us sum up
- 14.5 Key Words
- 14.6 Questions for Review
- 14.7 Suggested readings and references
- 14.8 Answers to Check Your Progress

14.0 OBJECTIVES

After this unit we can able to understand:

- To review the Constitutional and Legal safeguards for women;
- To recommend remedial legislative measures;
- To facilitate redressal of grievances and
- To advise the Government on all policy matters affecting women.

14.1 INTRODUCTION

National Commission for Women became statutory body and kept taking many steps for the protection of women. It also makes a point to work under the National Commission for Women Act, 1990 which is the key guideline for this Commission to suggest and explore initiatives meant for women and their overall growth. This Commission takes into consideration many common issues associated with women and their repression from dowry to religious or political factors and most

importantly their equal representation in job market and other exploitations.

14.2 NATIONAL COMMISSION FOR WOMEN

The National Commission for Women (NCW) is a statutory body of the Government of India, generally concerned with advising the government on all policy matters affecting women. It was established in 31 January 1992 under the provisions of the Indian Constitution, as defined in the 1990 National Commission for Women Act. The first head of the commission was Jayanti Patnaik. As of 30 November 2018, Rekha Sharma is the chairperson.

The objective of the NCW is to represent the rights of women in India and to provide a voice for their issues and concerns. The subjects of their campaigns have included dowry, politics, religion, equal representation for women in jobs, and the exploitation of women for labour. They have also discussed police abuses against women.

The commission regularly publishes a monthly newsletter, RashtraMahila, in both Hindi and English

14.2.1 Composition National Commission For Women

The Commission shall consist of

- (a) A Chairperson, committed to the cause of women, to be nominated by the Central Government.
- (b) five Members to be nominated by the Central Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry potential of women, women's voluntary organizations (including women activist), administration, economic development, health, education or social welfare;

Provided that at least one Member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes respectively;

14.2.2 Functions of National Commission For Women

1. The commission shall perform all or any of the following functions, namely :-
 - a. Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
 - b. present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguard;
 - c. make in such reports recommendations for the effective implementation of those safeguards for the improving the conditions of women by the Union or any state;
 - d. review, from time to time, the exiting provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;
 - e. take up cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;
 - f. look into complaints and take suomoto notice of matters relating to:-
 - deprivation of women's rights;
 - non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;
 - non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities;
 - g. call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;
 - h. undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors

responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;

- i. participate and advice on the planning process of socio-economic development of women;
 - j. evaluate the progress of the development of women under the Union and any State;
 - k. inspect or cause to inspected a jail,remandhome,women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;
 - l. fund litigation involving issues affecting a large body of women;
 - m. make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;
 - n. any other matter which may be referred to it by Central Government.
2. The Central Government shall cause all the reports referred to in clause (b) of sub-section (1) to be laid before each House of Parliament along with memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any such recommendations.
 3. Where any such report or any part thereof relates to any matter with which any State Government is concerned, the Commission shall forward an copy of such report or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any such recommendations.
 4. The Commission shall, while investigating any matter referred to in clause (a) or sub-clause (i) of clause (f) of sub-section (1), have all the powers of a civil court trying a suit and, in particular in respect of the following matters, namely :-
 - a. summoning and enforcing the attendance of any person from any part of India and examining him on oath;
 - b. requiring the discovery and production of any document;

- c. receiving evidence on affidavits;
- d. requisitioning any public record or copy thereof from any court or office;
- e. issuing commissions for the examination of witnesses and documents;
and
- f. any other matter which may be prescribed.

14.2.3 Procedure for dealing with complaints

PROCEDURE FOR DEALING WITH COMPLAINTS

1. General The complaint shall disclose complete picture of the matter leading to the complaint. The Commission may seek further information/affidavit as may be considered necessary in the matter.

2. Complaints not ordinarily entertainable The Commission may summarily dismiss complaints of the following nature: i) Complaints illegible or vague, anonymous or pseudonymous; or ii) The issue raised relates to civil dispute, between the parties such as contractual rights obligations and the like; iii) The issue raised relates to service matters not involving any deprivation of women's rights; iv) The issue raised relates to labour/industrial disputes not involving any deprivation of women's rights; v) Matter is sub judice before a Court/Tribunal; vi) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force. vii) Matter already decided by the Commission viii) Matter is outside the purview of the Commission on any other ground;

3. Receipt and Registration of Complaints a. All communications/complaints in writing (by whatsoever mode they are received) addressed to the Commission, its Chairperson, Members or other officers of the Commission, either by name or designation, shall be received by the C&I (complaints and investigation) cell, who shall enter the complaints in the complaints register containing particulars such as,

date of receipt, diary number, sender's name, address, case number and category and State, as per the following Proforma:-

Such registration of complaint shall be done within 24 hours from the date of the receipt of the complaint c. An acknowledgement shall be sent to the complainant within 3 days of the receipt of the complaint d. Without prejudice to the Chairperson's power to set up an Investigating Committee, complaints on which cognizance has been taken shall be serially noted and allocated as per roster amongst the members and the counselors assigned to each case to assist the member in the matter.

4. Scrutiny of complaints (a) On receipt of the complaint by the Counselor, he/she shall prepare the BTR/ (Bill Transmission Report) and submit the same to the DS (b) The (BTR) shall be prepared as per the format at Annexure I – BTR shall disclose the course of action to be adopted in the complaint Such BTR shall be placed before the DS within 24 hours from the date of receipt of the complaint. The DS shall decide whether the complaint is cognizable or not and shall forward the complaint which has been taken cognizance of to the members after getting full information and reports as necessary. DS will be deemed to be act on behalf of the Commission for getting full information and reports on behalf of the Commission. (c) Subject to the provisions above, complaints and other communications requiring urgent attention shall be placed expeditiously before the member or the chairperson as the case may be. (d) All complaints and other communications which are not in English/Hindi and which are required to be placed before the Commission shall be got translated into English/Hindi with utmost expedition. Provided that only the gist of the complaint shall be prepared in English if the complaint is not entertainable or is of an urgent nature, requiring immediate attention. (e) Any complaint directly received by the chairperson or any member shall be sent to the C&I Cell who shall process the same as per the provisions here in above provided. (f) In case of any suomoto action taken or proposed to be taken by either the chairperson or any Member the procedure as described shall be followed.

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5. Placing complaints before the Commission A brief data of the complaints registered, whether taken cognizance or not shall be placed before the commission for its information and consideration. Any member/Member Secretary to whom a complaint is forwarded and on which cognizance has been taken shall be deemed to act on behalf of the commission. 6. Manner of dealing with complaints Subject to such special or general orders of the Chairperson, all complaints shall be initially dealt with by a Member of the Commission. However, the Chairperson may, having regard to the importance of the matter, place the case / complaint requiring a detailed enquiry before two or more members or a Committee appointed in this behalf or set up a Investigating Committee for the said purpose.

INQUIRY INTO COMPLAINTS The Commission while Inquiring into the complaints may- (i) Call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto within such time as may be specified by it: Provided that if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own; (ii) If, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly; (iii) Without prejudice to anything contained in clause (I), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry. (iv) Call for further particulars or information from any person or authority. 8. Preliminary consideration, Issue of Notice, etc. (a) If on consideration of the complaint, the Commission dismisses the complaint in limited, the said order shall be communicated to the complainant and the case shall be treated as closed. (b) If on consideration of the complaint along with the BTR, the DS admits/takes cognizance of the complaint, she may direct issue of notice to any authority including the complainant, calling upon, to furnish information/ report, or calling for further particulars. This shall be issued in the form at ANNEXURE II enclosing a copy of the

complaint there to. Such notice shall be signed by the DS. (c) If, however, the Commission issues any other direction or order, action shall forthwith be taken accordingly. (d) If the reports/information is not received from the concerned authority within the given time, or received late or not complete in all respects, the case shall be placed before the Member for further direction. Procedure for conducting enquiry (A) On receipt of information/report called for as per provision of Regulation 7 or 8 the Chairperson or Member concerned may, if so considered necessary proceed with the complaint in the manner hereinafter provided. (B) Where no further action is called for, the complaint may be: (a) Closed, under intimation to the complainant. (b) Complaint may be sent to the appropriate Government/other authorities for their consideration (c) May be referred to concerned State Police/State Govt. Provided that where the action has been taken as (b) (c) above, the same shall be monitored till the issue/matter has been decided/settled. (C) Where cognizance of the complaint is taken or on suo-moto action. - The proceedings in the form of an enquiry may be initiated. - On suo-moto or any urgent action, the CP may direct setting up of Investigating Committee U/Sec.8 of Act 10. Preliminary hearing of the complaint (a) At the preliminary hearing, the Member shall ascertain from the complainant whether he/she admits the allegations made by him/her. (b) Such complainant may be examined on Oath (Annexure-III) or May file an affidavit supporting the facts of the case or may be directed to produce list of witnesses/documents proposed to be relied upon, if any, to support her claim. (c) Thereafter the witnesses on behalf of the complainant shall be examined and the opposite party shall have the right to cross examine. (d) The opposite party against whom the complaint has been made would then be required to submit his written statement of defense either on oath or on affidavit and produce list of documents/witnesses, if any, relied on. (e) The committee or any member investigating or inquiring into a complaint may issue a commission for examination of any witnesses in accordance with the provisions of the CPC 11. When a complaint has been filed before the Commission, Summons (as per ANNEXURE - IV / V) may be issued to the opposite party/parties to appear & answer the claim on the day to be therein specified.

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12. The opposite party/parties to whom summons have been issued may appear in person or by a pleader duly authorized, if so permitted by the commission, & able to answer all material question relating to the complaint.

13. Every summons shall be accompanied by a copy of the complaint or by a concise statement. Such summons shall be signed by the DS or the Law Officer.

14. Circumstance for issuance of summons. To afford an opportunity of being heard in person and/or to adduce evidence in support of the complaint. Cause production of the records. Examine as a witness To afford an opportunity of being heard as in the opinion of Commission his/her reputation is likely to be prejudicially affected by the decision that the Commission may give in the above proceedings. To afford an opportunity of being heard in the matter as your conduct in connection with subject matter of the above proceedings is being enquired into. Where the Commission sees reason to require the personal appearance of the defendants/opposite party, 8 the summons shall order him to appear in person on the day therein specified.

15. Investigation.- The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize the services of any officer of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be or any retired officer or any other person and co-opt such officer or such person as a Member of the investigating committee.

16. Powers relating to inquiries.- (i) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and in particular in respect of the following matters, namely:- (a) Summoning and enforcing the attendance of witnesses and examining them on oath; (b) Discovery and production of any document; (c)

Receiving evidence on affidavits; (d) Requisitioning any public record or copy thereof from any court or office; (e) Issuing commissions for the examination of witnesses or documents; (f) Any other matter which may be prescribed.

17. Steps after inquiry.- The Commission may take any of the following steps upon the completion of an inquiry held under these regulations, namely- (i) where the inquiry discloses, the commission of violation of any rights or negligence in the prevention of violation of any rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons; (ii) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary; (iii) Recommend to the concerned Government or authority for the grant of such immediate relief to the victim or the members of his family as the Commission may consider necessary; (iv) Subject to the provisions of Sub clause (v) provide a copy of the inquiry report to the petitioner or her representative; (v) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission; (vi) The Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

Misc provisions

18. Recording of Orders / Proceedings The order sheet is the mirror to the proceedings and hence the counselor has to ensure that right from the date of the receipt of the complaint, its enquiry / investigation till its final disposal, the gist of the proceedings are reflected in the order sheet and

therefore shall ensure that - (a) All orders, notices, summons, day to day proceedings etc issued in the matter are legibly recorded in the Order Sheet; provided that the orders which are lengthy shall be recorded on separate sheets and appended to the order Sheet. (b) The order sheet shall invariably reflect the brief of the proceedings conducted which shall be signed by the counselor, member concerned/ committee and the parties if any. (c) No routine inter office correspondence or any deposition shall be recorded in the order sheet. Such correspondence should be made separately in an annexed file.

19. Mode of Communication Unless otherwise directed, all summons and notices from the Commission shall be sent by registered post

20. Procedure regarding SuoMotu Action. The procedure contained in this Chapter shall mutatis Mutandis apply to suomoto action taken by the Commission.

14.2.4 Procedure for closure of complaints

1. OBJECTIVE: The huge pendency of complaints with the Complaint & Investigation Cell has been a major concern in the past years. This fact has repetitively been noticed with great concern by our parents Ministry i.e., the Ministry of Women & Child Development and the Parliament of India as well, as the various reports / feedbacks / inputs furnished by NCW tend to hint towards voluminous pendency of complaint. There are complaints which are pending since past many years despite of the receipt of Action Taken Reports from the concerned authorities. The sole objective of this part is to facilitate the closure of complaints after the receipt of Action Taken Reports (Here-in-after referred to as “ATRs”) through a simple and unambiguous procedure. This procedure shall be called as “Procedure for Closure of Complaints, (Complaints & Investigation Cell)” and the same has been issued in exercise of powers vested with the Commission U/s 9 of the National Commission for Women Act, 1990.

2. **APPLICABILITY:** This procedure shall be applicable to all the complaints (Which also includes matters in which the Commission has taken suo motu cognizance in exercise of its power U/s 10 (1) of the National Commission for Women Act, 1990, Press Monitor Cases, etc.) wherein the Commission is in receipt of ATRs from the concerned authorities.

3. **PROCEDURE FOR CLOSURE OF COMPLAINTS:** The following shall be the procedure for the closure of complaints after the receipt of ATRs : (i) That, all the Action Taken Reports (ATR) thus received at the Commission from the various authorities in complaints wherein ATRs had been sought, shall be entered into at the Registration Desk of the Complaint and Investigation Cell, in the manner & format here-in-below prescribed : Sr. No. Case No. Name of the Official from whom ATR is Received ATR Dated The Registration Desk of the Complaint & Investigation Cell shall maintain a year-wise database of complaints in which ATRs have been received that shall be readily available for reference of the Commission as and when required. After the ATRs are entered into the same shall be forwarded to the concerned Counsellor without any further delay whatsoever; (ii) That, after the concerned Counsellor receives the ATRs, it shall be linked to the corresponding files / complaints so that the same may be processed further. It shall be the responsibility of the Counsellor to link ATRs to their respective parent files within two days of the receipt of ATRs; (iii) That, after the ATRs are linked to their corresponding files, the Counsellor shall prepare the ATR Transmission Form (Here-in-after referred to as "ATRT Form") clearly mentioning the particulars therein along with a brief gist of the ATRs as regards the action taken / outcome in the matter. The format of the ATR Transmission Form shall be in the prescribed format appended herein as Annexure: A 1. The Counsellor shall also categorically state the further course of action to be taken in the matter along with the reasons to be recorded in writing by her / him; (iv) That, the Counsellor shall process the filled in ATRT Form along with relevant files to the Co-ordinator, complaint & Investigation Cell, who shall after recording her / his comments in writing, shall forward the files to the Joint Secretary /

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Deputy Secretary, NCW; (v) That, the Joint Secretary / Deputy Secretary, NCW; (Here-in-after referred to as “JS / DS”) shall examine the ATRT Form, the report submitted thereof and the complaint / grievances of the complainant where after she / he shall decide upon the further course of action to be taken in a particular case along with the reasons thereof to be recorded in writing by her / him. The JS/DS through Members shall be the final and the competent authority to decide upon the further course of action. The Members are free to seek further Legal opinion or to over-rule the recommendations of JS/DS; (vi) That, the JS while deciding upon the complaints forwarded to her / his office in the manner here-in-above prescribed, shall take into consideration the following guidelines for the closure of complaints : a. The complaints wherein the ATRs depicts that the matter has already been chargesheeted / presented before the concerned Court, the same shall be ordinarily closed as being subjudice before a Court (Reason to be recoded tin writing). The closure of such complaints shall not be communicated of the complaints; b. In complaints related to the alleged commission of heinous crimes on women like that of rape, gang rape, dowry death, acid attacks, etc., the ATRs received should be examined in detail and if necessary, further status reports from the concerned authorities (Unless otherwise the matter is subjudice). Such matters shall necessarily be monitored till they are presented before the concerned court. Regardless of any fact whatsoever, the decision in such cases shall also be necessarily communicated to the complainants for her/ his view within 90 days of the receipt of ATRs. If no communication is received back from them in within the prescribed period, the complaint will be closed; c. The complaints where in the ATRs depicts that the allegations leveled in the complaints could not be not substantiated on investigation, or that the complaint was of frivols or like nature, vague, etc., such complainants shall be closed under intimation to the complainants ; (vii) That, all such complaints which are closed in the manner here-in-above prescribed, shall be sent back to the co-ordinator, complaint & Investigation cell, who shall in turn get such complaints entered into the database of the complaints & investigation cell and also into excel sheets which she/ he shall necessarily maintain in this regard for keeping a

record of the complaints closed. The co-ordinator complaint & investigation cell, shall also ensure that all such closed complaints are properly sent to the record room and shall also supervise their proper upkeep. All such complaints closed in the manner here-in above prescribed shall be weeded-out after 5 years of the closure of the complaint atomically and recorded in database as such; (viii) That, a monthly report containing a list of all such complaints closed in a particular month in the manner here-in-above prescribed, shall be necessarily place before the commission in its meeting for information.

14.2.5 National Commission for Women (Procedure) Regulations, 2016 for Dealing with Complaints in NRI Cell

National Commission for Women under section 9(2) of the National Commission for Women Act, 1990 (20 of 1990) formulated “The National Commission for Women(Procedure)Regulations,2016” for appropriate and effective handling of complaints registered in the NRI Cell of the Commission as per the provisions of Sec 10(4) of the National Commission for Women Act, 1990. 1. Complaint The complaint shall disclose complete picture of the matter leading to the complaint. The Commission may seek further information/affidavit as may be considered necessary in the matter. 2. Complaints not ordinarily entertain able The Commission may not entertain the complaints of the following nature: i) Complaints illegible or vague, anonymous or pseudonymous ; ii) Matters not related to marital disputes, involving NRI/PIO couples; iii) Matters not related to cross-country marriage issues as per sub clause (v) of clause 3 of procedure of NRI Cell; iv) Issues related to civil dispute between the parties such as contractual rights obligations ; v) Issues related to division of property ; vi) Issue related to service matters ; vii) Issue related to labour/industrial disputes ; viii) Issues concerning civic issues and civic agencies; ix) Matter sub judice before a Court/Tribunal. Provided that the Commission may co-ordinate such matters as would facilitate the complainant to get justice ; x) Any matter pending before a State Commission or any other

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Commission duly constituted under any law for the time being in force; xi) Matter already decided by the Commission ; xii) Matter outside the purview of the Commission on any other ground ; xiii) Matters where only financial help is sought for travel tickets or stay in foreign countries; xiv) Matters relating to visa requests as visa issuance as it relates to the jurisdiction of foreign Governments. 3. Receipt and registration of complaints i) All communications/complaints in writing (by whatsoever mode they are received) addressed to the Commission, its Chairperson, Members or other officers of the Commission, either by name or designation, shall be received by the NRI Cell, who shall enter the complaints in the online complaints registration system containing particulars such as, complainants name, address and relevant details, victims name, address and relevant details, respondents name, address and relevant details, date of receipt, file number etc. ii) An acknowledgement shall be sent to the complainant within three days of the registration of the complaint, when complaint is received by post. Complainants registering online receive an acknowledgement immediately in their emails. 4. Processing the complaints i) Subject to such special or general orders of the Chairperson, all complaints shall be initially dealt with by Members of the Commission. However, the Chairperson may, having regard to the importance of the matter, place the case /complaint requiring a detailed enquiry before two or more members or a Committee appointed in this behalf or set up an Inquiry Committee for the said purpose. ii) The complaint shall disclose complete picture of the matter leading to the complaint. The Commission may seek further information/affidavit as may be considered necessary in the matter. iii) On receipt of the complaint a file shall be created as per the file number provided in the online logins along with a Note sheet of the brief gist of the complaint. Simultaneously, in cases where no details have been provided for, e-mails or phone calls shall be made. File would then be forwarded to the Counsellor for opinion. iv) Particulars or information may be sought from any person or authority. The proceedings shall be informed to the complainant accordingly. v) Any complaint directly received by Chairperson, Members or other officers of the Commission, either by name or designation, shall be received by the

NRI Cell, who shall process the same as per the provisions provided. vi) Matter not related to cross country marriage if registered in the NRI Cell within the mandate of the Commission, shall be transferred to the appropriate section of the Commission for appropriate action. vii) If on consideration of the complaint, the complaint is not found to be as per mandate, it shall be so recorded and sent to the Deputy Secretary/ Joint Secretary for closure. viii) Complaints may be sent to legal officer for comments, opinions and recommendations.

5. Manner of dealing with complaints

I. Communications with Identified Appropriate Authority

POLICE: i) Letter may be written to the concerned police station for Action Taken Reports, where any matter is pending investigation or there has been any failure on their part to take appropriate action with regard to the complaint registered. The concerned authorities may be asked to intimate the Commission of the action taken within 4 weeks. Such letter shall be signed by concerned Member/any authorised officer. ii) The concerned police authorities may also be called in person to furnish information/ report on receiving a notice from the Commission, to the concerned Police authority.

INDIAN EMBASSY ABROAD: i) Where the Commission is satisfied that the complaint requires to be referred to concern Indian Embassy abroad, it shall be so done, under intimation to the complainant. A complaint shall be forwarded to Indian Embassy abroad when: A. Both the complainant and respondent being NRIs are residing in the concerned country. B. Both the complainant and respondent being Indian Citizens are residing in the concerned country for the time being and there is a prima facie case made out that the aggrieved wife cannot travel to India. C. Where the husband having deserted his wife is residing abroad with scanty information as to his whereabouts and his relatives if existing in India, have given so in writing that they have no idea as to the whereabouts of the accused and that they are not in touch with him at all. D. Any other reasons which deems fit. Provided that follow ups shall be done of such complaints till an appropriate reply is received from the concerned Embassy. ii) Letters for appropriate action on their part as per the law of the land with due approval from the appropriate authority in the Commission.

MINISTRIES: i) The Commission may communicate with the Division

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of Overseas Indian Affairs of Ministry of External Affairs, Ministry of Home Affairs and the Ministry of Law and Justice may be duly written to expedite service of summons, warrants issued or any orders passed, by the appropriate Court of Law and for other relevant matters, whenever and wherever required. ii) The Commission may communicate with Indian Embassies abroad and Division of Overseas Indian Affairs of Ministry of External Affairs to provide legal and financial assistance to victim as per their scheme “Legal and Financial Assistance to Indian Women Deserted by their Overseas Indian Spouses” iii) The Commission may communicate with concern Passport authorities for any matter relating to passports . MISCELLANEOUS i) The Commission may communicate with employers of the respondent husband through Indian Embassies abroad to take appropriate action as per law/procedure. ii) The Commission, depending upon the nature of the complaint may communicate with any other department/Ministry II. Inquiry into the Complaints I. Preliminary consideration, Issue of Notice, etc. i) If on consideration of the complaint cognizance of the complaint is taken, notice will be issued to the opposite party/parties calling upon, to furnish information or further particulars within 15 days. This shall be issued by enclosing a copy of the complaint thereto. Such notice shall be signed by the concerned Member/any authorised officer. ii) If the reports/information is not received from the party within the given time, notices shall be reissued enclosing a copy of the complaint, calling upon to furnish information or further particulars within stipulated period. Such notice shall be signed by the concerned Member/any authorised officer. iii) If no reply is received notices/summons as per Clause III shall be issued. iv) If acceptance of such notice is refused by the opposite party/parties then said notice shall be served through the Police of the area concerned. v) On receipt of the reply to the complaint the same shall be sent to the complainant for rejoinder to the reply. III. Notices/ Summons for Appearance before the Commission i) When a complaint has been filed before the Commission, summons shall be issued to the opposite party/parties to appear and answer the claim on the day to be therein specified. ii) Such summons shall be issued on failure of the opposite party/parties to reply to the Notices sent the second time. The

opposite party/parties to whom summons have been issued shall appear in person or by a pleader duly authorized, if so permitted by the Commission and able to answer all material question relating to the complaint. vi) Every summons shall be accompanied by a copy of the complaint or by a concise statement. Such summons shall be signed by the concerned Member/any authorised officer. iii) On failure of response to the summons sent, such summons shall be served through the Police.

IV. Hearing of the complaint i) On the receipt of rejoinder under Clause 5, the parties to the complaint may be called for a preliminary hearing in front of the Members/ any authorised officer¹ . The Co-ordinator, Counsellor and an expert member shall be present for the hearing. The proceeding and the result of the hearing shall be duly recorded by the counsellor. ii) Whenever a second hearing or more hearings are required, the same may be continued by the concerned Appropriate Authority. 2 iii) At the preliminary hearing, Appropriate Authority shall ascertain from the opposite party/parties whether he/she admits the allegations made by him/her. iv) Such complainant may file an affidavit supporting the facts of the case or may be directed to produce list of witnesses/document proposed to be relied upon, if any, to support her claim. v) Thereafter the witnesses on behalf of the complainant shall be examined and the opposite party shall have the right to cross examine. vi) The opposite party against whom the complaint has been made would then be required to submit his defence and produce list of documents/witnesses, if any, relied on. vii) Where no further action is called for, the complaint may be: A. Closed, under intimation to the complainant B. Complaint may be sent to the appropriate Government/other authorities for their consideration C. May be referred to concerned State Police/State Govt

6. Inquiry into complaints If any urgent intervention or investigation is required, the Commission can constitute an Inquiry Committee under section 8 of the NCW Act, 1990 with the approval of Chairperson I. The Commission while inquiring into the complaints may- 1 Subject to approval 2 *ibid* i) Call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto within such time as may deem fit. Provided that if the information or report is not received

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within the time stipulated by the Commission a reminder shall be sent after which if no reply is received action as per the mandate of the Commission would be taken. ii) If, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and appropriate help shall be given as to facilitate the complainant in pursuing her case. II. Powers relating to inquiries i) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and in particular in respect of the following matters, namely:-

- a) Summoning and enforcing the attendance of witnesses and examining them
- b) Discovery and production of any document
- c) Receiving evidence on affidavits
- d) Requisitioning any public record or copy thereof from any court or office
- e) Issuing commissions for the examination of witnesses or documents
- f) Any other matter which may be prescribed.

ii) The Commission may require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code (45 of 1860). iii) When any offence as is described in section 175, section 178, section 179, section 180 of the Indian Penal Code (Act 45 of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence, forward the case to a Magistrate having jurisdiction to try the same. III. Steps after inquiry The Commission may take any of the following steps upon the completion of an inquiry held under these regulations, namely:-

- i) Where the inquiry discloses, the Commission of violation of any rights or negligence, in the prevention of violation of any rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons.
- ii) Approach the

Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary iii) Recommend to the concerned Government or authority for the grant of such immediate relief to the victim or the members of his family as the Commission may consider necessary. iv) Subject to the provisions of Sub clause (v), provide a copy of the inquiry report to the petitioner or her representative. v) The Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission. vi) The Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

7. Recording of Proceedings The note sheet is the mirror to the proceedings and hence the NRI Cell has to ensure that right from the date of the receipt of the complaint, its proceedings till its final disposal, the gist of the proceedings are reflected in the note sheet and therefore shall ensure that :-

- a. All orders, notices, summons, day to day proceedings etc issued in the matter are legibly recorded in the Note Sheet.
- b. The order sheet shall invariably reflect the brief of the proceedings conducted which shall be signed by the Member concerned/authorised officer/ committee and the parties, if any.
- c. No routine inter office correspondence or any deposition shall be recorded in the order sheet. Such correspondence should be made separate an annexed file.

8. Mode of Communication Unless otherwise directed, all summons and notices from the Commission shall be sent by registered post/courier/email.

9. Procedure regarding SuoMotu Action The procedure contained in this procedure shall mutatis mutandis apply to suomotu action taken by the Commission.

Check Your Progress 1

Note: Use the space given below for your answers.

Notes

- 1) Write about the composition of National Commission for Women.

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- 2) What are the functions of National Commission for Women?

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14.3 THE NATIONAL COMMISSION FOR WOMEN ACT, 1990

An Act to constitute a National Commission for Women and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the National Commission for Women Act, 1990.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “Commission” means the National Commission for Women constituted under section 3;

- (b) “Member” means a Member of the Commission and includes the Member-Secretary;
- (c) “prescribed” means prescribed by rules made under this Act.

CHAPTER II

THE NATIONAL COMMISSION FOR WOMEN

3. Constitution of the National Commission for Women.—(1) The Central Government shall constitute a body to be known as the National Commission for Women to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Commission shall consist of—

(a) a Chairperson, committed to the cause of women, to be nominated by the Central Government;

(b) five Members to be nominated by the Central Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organisation committed to increasing the employment potential of women, women’s voluntary organisations (including women activists), administration, economic development, health, education or social welfare:

Provided that at least one Member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes respectively;

(c) a Member-Secretary to be nominated by the Central Government, who shall be—

(i) an expert in the field of management, organisational structure or sociological movement, or

(ii) an officer who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union with appropriate experience.

4. Term of office and conditions of service of Chairperson and Members.—

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(1) The Chairperson and every Member shall hold office for such period, not exceeding three years, as may be specified by the Central Government in this behalf.

(2) The Chairperson or a Member (other than the Member-Secretary who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union) may, by writing and addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of the Member at any time.

(3) The Central Government shall remove a person from the office of Chairperson or a Member referred to in sub-section (2) if that person—

(a) becomes an undercharged insolvent;

(b) gets convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude;

(c) becomes of unsound mind and stands so declared by a competent court;

(d) refuses to act or becomes incapable of acting;

(e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or

(f) in the opinion of the Central Government has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest: Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination.

(5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

5. Officers and other employees of the Commission.—(1) The Central Government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

6. Salaries and allowances to be paid out of grants.—The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the officers and other employees referred to in section 5, shall be paid out of the grants referred to in sub-section (1) of section 11.

7. Vacancies, etc., not to invalidate proceedings of the Commission.—No act or proceeding of the Commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

8. Committees of the Commission.—(1) The Commission may appoint such committees as may be necessary for dealing with such special issues as may be taken up by the Commission from time to time.

(2) The Commission shall have the power to co-opt as members of any committee appointed under sub-section (1) such number of persons, who are not Members of the Commission, as it may think fit and the persons so co-opted shall have the right to attend the meetings of the committee and take part in its proceedings but shall not have the right to vote.

(3) The persons so co-opted shall be entitled to receive such allowances for attending the meetings of the committee as may be prescribed

9. Procedure to be regulated by the Commission.—(1) The Commission or a committee thereof shall meet as and when necessary and shall meet at such time and place as the Chairperson may think fit. (2) The Commission shall regulate its own procedure and the procedure of the committees thereof. (3) All orders and decisions of the Commission shall be authenticated by the Member-Secretary or any other officer of the Commission duly authorized by the Member-Secretary in this behalf.

CHAPTER III FUNCTIONS OF THE COMMISSION

10. Functions of the Commission.—(1) The Commission shall perform all or any of the following functions, namely:— (a) investigate and

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examine all matters relating to the safeguards provided for women under the Constitution and other law; (b) present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards; (c) make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State; (d) review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations; (e) take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities; (f) look into complaints and take suo motu notice of matters relating to— (i) deprivation of women's rights; (ii) non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development; (iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities; (g) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal; (h) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity; (i) participate and advise on the planning process of socio-economic development of women; (j) evaluate the progress of the development of women under the Union and any State; (k) inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action, if found necessary; (l) fund litigation involving issues affecting a large body of women; (m) make periodical reports to the Government on any matter pertaining to

women and in particular various difficulties under which women toil; (n) any other matter which may be referred to it by the Central Government.

4 (2) The Central Government shall cause all the reports referred to in clause (b) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any of any of such recommendations. (3) Where any such report or any part thereof relates to any matter with which any State Government is concerned, the Commission shall forward a copy of such report or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations. (4) The Commission shall, while investigating any matter referred to in clause (a) or sub-clause (i) of clause (f) of sub-section (1), have all the powers of a civil court trying a suit and, in particular, in respect of the following matters, namely:— (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath; (b) requiring the discovery and production of any document; (c) receiving evidence on affidavits; (d) requisitioning any public record or copy thereof from any court or office; (e) issuing commissions for the examination of witnesses and documents; and (f) any other matter which may be prescribed.

CHAPTER IV FINANCE, ACCOUNTS AND AUDIT

11. Grants by the Central Government.—(1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act. (2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

12. Accounts and audit.—(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of

accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. (2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General. (3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission. (4) The accounts of the Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Commission. 13. Annual report.—The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government. 5 14. Annual report and audit report to be laid before Parliament.—The Central Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to the Central Government, and the reasons for the non-acceptance, if any, of any of such recommendations and the audit report to be laid as soon as may be after the reports are received, before each House of Parliament.

CHAPTER V MISCELLANEOUS

15. Chairperson, Members and Staff of the Commission to be public servants.—The Chairperson, the Members, officers and other employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860). 16. Central

Government to consult Commission.—The Central Government shall consult the Commission on all major policy matters affecting women. 17. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:— (a) salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members under sub-section (5) of section 4 and of officers and other employees under sub-section (2) of section 5; (b) allowances for attending the meetings of the committee by the co-opted persons under sub-section (3) of section 8; (c) other matters under clause (f) of sub-section (4) of section 10; (d) the form in which the annual statement of accounts shall be maintained under sub-section (1) of section 12; (e) the form in, and the time at, which the annual report shall be prepared under section 13; (f) any other matter which is required to be, or may be, prescribed. (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Check Your Progress 2

Note: Use the space given below for your answers.

- 1) Discuss the act of National Commission for Women.

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14.4 LET US SUM UP

National Commission for Women is to strive towards enabling women to achieve equality and equal participation in all spheres of life by securing her due rights and entitlements through suitable policy formulation, legislative measures, effective enforcement of laws, implementation of schemes/policies and devising strategies for solution of specific problems/situations arising out of discrimination and atrocities against women. It has its vision the Indian Woman, secure in her home and outside, fully empowered to access all her rights and entitlements, with opportunity to contribute equally in all walks of life. National Commission for Women is also one of the significant statutory bodies established by the Government of India. It was established in 1992 under the provisions of the National Commission for Women Act, 1990.

The Central Government took the initiative to establish this Commission by keeping in view the provisions of India's constitution to strengthen the women in country through addressing plights, suppressions and other types of violence they use to face.

National Commission for Women also takes the initiatives for overall development of women community in whole country.

Main aim of National Commission for Women is to raise the concern for the women and to represent itself for their rights. This Commission takes into account the **issues and concerns of women community and advises for the authentic solution of all the problems they face.**

14.5 KEY WORDS

NCW: National Commission for Women

Rights: **Rights** are legal, social, or ethical principles of freedom or entitlement; that is, **rights** are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory.

14.6 QUESTIONS FOR REVIEW

- 3) Write about the composition of National Commission for Women.
- 4) What are the functions of National Commission for Women?
- 5) Discuss the act of National Commission for Women.

14.7 SUGGESTED READINGS AND REFERENCES

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14.8 ANSWERS TO CHECK YOUR PROGRESS

Check you Progress 1

- 1) See sub section 14.2.1
- 2) See Sub Section 14.2.2

Check your Progress 2

- 1) See section 14.3