

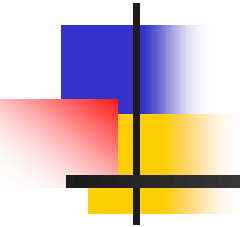
Human Rights

Constitutional & Legal Perspectives

-Dr.G.B.Reddy

Professor, Department of Law
Osmania University, Hyderabad

gbredlaw@gmail.com





Meaning & Evolution

- Basic rights and freedoms to which all humans are entitled
- Include civil and political rights
- History covers thousands of years
- Draws upon religious, cultural, philosophical and legal developments
- Constitution of Medina, also known as the *Charter of Medina*, drafted by Muhammad in 622 &
- *Magna Carta* - English charter originally issued in 1215



Meaning & Evolution

- Virginia Declaration of Rights of 1776 states "*that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.*"
- French Declaration of the Rights of Man and Citizen (1789).
- Reference to Fundamental Human Rights in UN Charter, 1945



Meaning & Evolution

- United Nations has played an important role in international human rights law since its creation
- **Universal Declaration of Human Rights, 1948**
- In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) **were adopted by the United Nations**, between them making the rights contained in the UDHR binding on all states that have signed this treaty
- came into force on March 23, 1976



the International Bill of Human Rights

- The UDHR, 1948 - not a legally binding document- lacked enforcements- major deficiency
- Removed by the U.N. General Assembly by adopting in December, 1966, the two Covenants, viz, 1. International Covenant on Civil and Political Rights (ICCPR) and 2. International Covenant on Economic, Social and Cultural Rights (ICESCR).
- The two International Covenants, together with the Universal Declaration and the Optional Protocols, comprise the International Bill of Human Rights.
- The International Bill of Human Rights represents a milestone in the history of human rights.
- It is a modern Magna Carta of human rights



ICCPR

- The ICCPR recognizes inherent dignity of each individual and undertakes to promote conditions within states to allow the enjoyment of civil and political rights.
- Countries that have ratified the Covenant are obligated “to protect and preserve basic human rights... [and] “compel[ed] to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.
- **The rights protected under the ICCPR(Art.6 to 27) include:**
- Right to life, Freedom from torture,Right to not be enslaved,Right to liberty and security of the person,Rights of detainees,Freedom of movement and choice of residence for lawful residents, Rights of aliens
- Equality before the courts and tribunals,Right to a fair trial, No one can be guilty of an act of a criminal offence which did not constitute a criminal offence. Right to recognition as a person before the law. Freedom from arbitrary or unlawful interference.
Right to freedom of thought, conscience and religion. Right to hold opinions without interference. Propaganda for war shall be prohibited by law. Right of peaceful assembly. Right to freedom of association with others. Right to marry. Children’s rights
Right to political participation. Equality before the law. Minority protection.



ICSECR

- Adopted by the United Nations General Assembly on 16 December 1966, and in force from 3 January 1976
- It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to the Non-Self-Governing and Trust Territories and individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living.
- As of 2015, the Covenant has 164 parties .
- A further six countries, including the United States, have signed but not ratified the Covenant
- Articles 6–15 lists the rights including rights to work, under "just and favourable conditions", with the right to form and join trade unions; social security, including social insurance ;family life, including paid parental leave and the protection of children ; an adequate standard of living, including adequate food, clothing and housing, and the "continuous improvement of living conditions" ;
- health, specifically "the highest attainable standard of physical and mental health" ;
- education, including free universal primary education, generally available secondary education and equally accessible higher education. This should be directed to "the full development of the human personality and the sense of its dignity", and enable all persons to participate effectively in society ;participation in cultural life.
- Many of these rights include specific actions which must be undertaken to realise them.



Meaning & Evolution

- Convention on the Prevention and Punishment of the Crime of Genocide (adopted 1948, entry into force: 1951)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD) (adopted 1966, entry into force: 1969)
- CEDAW w.e.f. 1981
- United Nations Convention Against Torture (CAT) (adopted 1984, entry into force: 1984)
- UNCRC (adopted 1989, entry into force: 1989)

International bodies



- UN General Assembly
- **UN Human Rights Council**-created at the 2005 World Summit to replace the United Nations Commission on Human Rights
- **United Nations Security Council**
- **the UN High Commissioner for Human Rights (UNHCHR)**
- **International Committee of the Red Cross**

Regional human rights



- African Commission on Human and Peoples' Rights (ACHPR) & African Court on Human and Peoples' Rights
- Organization of American States (OAS)
- **American Declaration of the Rights and Duties of Man**
- **American Convention on Human Rights**
- South Asian Association for Regional Cooperation (SAARC)
- **European Court of Human Rights in Strasbourg-
only international court with jurisdiction to deal
with cases brought by individuals (rather than
states)**



Classification of Human Rights

- Civil and Political rights, and economic, social and cultural rights.
- Civil and Political rights are enshrined in Articles 3 to 21 of the Universal Declaration of Human Rights and in the ICCPR
- Economic, social and cultural rights are enshrined in Articles 22 to 28 of the Universal Declaration of Human Rights and in the ICESCR
- **Without Civil and Political Rights the public cannot assert their Economic, Social and Cultural Rights (*full belly thesis*)**



Nature of Human Rights

- All human rights are **universal**, **indivisible**, **interdependent** and **related**
- Human rights - "inalienable rights." i.e., "a set of human rights that are **fundamental**, are **not awarded by human power**, and **cannot be surrendered**

Three generations of human rights



- Initially proposed in 1979 by the Czech jurist Karel Vasak at the International Institute of Human Rights in Strasbourg
- His divisions follow the three watchwords of the French Revolution: *Liberty, Equality, Fraternity*
- **First-generation human rights** (FGHR) deal essentially with liberty and participation in political life
- FGHR include, among other things, freedom of speech, the right to a fair trial, freedom of religion, and voting rights.



Three generations of human rights

- **Second-generation human rights** are related to equality and began to be recognized by governments after World War I
- Ensure different members of the citizenry equal conditions and treatment
- **Third-generation human rights**
- Go beyond the mere civil and social rights
- "remain largely unofficial, and thus houses an extremely broad spectrum of rights "



Third generations of human rights

- include:
 - Group and collective rights
 - Right to self-determination
 - Right to economic and social development
 - Right to a healthy environment
 - Right to natural resources
 - Right to communicate
 - Right to participation in cultural heritage
 - Rights to intergenerational equity and sustainability

Currently debated rights



- **Reproductive rights**
- **Fetal rights**
- **Environmental rights**
- **liberation of Information & IPRs
will become the **Fourth Generation
of Human Rights****



Human Rights in India

- Can be traced to Hinduism, Islam & Christianity
- **Hinduism**- Dharma, Vedas & emphasis on duties
- **Budhism & Jainism**-Salvation
- **Christianity**-fatherhood
- **Islam**-Brotherhood



Constitutional Perspectives

- **Preambular objectives**- Liberty, Equality, Justice ,Fraternity & Dignity of Individual
- **Fundamental Rights** (Part-III)- Express & Implied
- **Directive Principles** (Part-IV)
- **Fundamental duties** (Part-IV-A)- Human Duties
- **Judicial structures** (Art.32 and 226)
- **State Liability** (Art.299 & 300) etc

Legal Perspectives of Human Rights



- IPC, Cr.P.C., Police Act etc
- Laws relating to **Women**
- Laws relating to **Children**
- Laws relating to **Workers**
- Laws relating to **Disabled**
- Laws relating to **Refugees**
- Laws relating to **vulnerable sections** etc



Legal Perspectives

- The Protection of Human Rights Act, 1993
- **Human Rights** - Rights rel.to life, liberty, equality and dignity of individual guaranteed by constitution or embodied in international covenants and enforceable by courts
- **Enforcement Mechanism:** NHRC, SHRC, Human Rights, Courts, NCW, NCM, NCSC, NCST etc



Powers of NHRC & SHRC Etc

- To order/conduct inquiry into violation of human rights (commission/negligence etc by public servants/others etc)
- To 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;
- To approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary; and
- To recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary etc



Judicial response to Human Rights

- Position before Maneka Gandhi -1978
- Position after Maneka Gandhi -1978
- Judicial Activism
- Expansion of Part-III & Art.21 particularly
- Prisoners Rights
- Free Legal Aid
- Right to Privacy
- Right to Health

Judicial response to Human Rights



- Sexual Harassment
- Compensation to rape victims
- Rights of arrested persons
- Environmental protection
- Entitlement of non-citizens to certain human rights
- Reading international instruments as part of national law

Human Rights Agenda for 21st century



- **Human rights** –central concern of justice and governance
- **Focus** on distributive justice, inclusive democracy, substantive equity, gender justice, poverty eradication, sustainable development and human resource development.
- **Greater & proactive role** of the State to protect human rights
- **Human Duty** of citizens to respect the human rights of others

Conclusion



*Thank you for your
Attention*