

Unit 1: Understanding Human Rights

Learning Objectives

What is Human Rights?

After studying this unit, you should be able to:

- Understand what is meant by human rights and what are the guiding principles at the centre of the movement;
- Recognize that values of human rights are an inseparable element of every country's political and cultural heritage;
- Recognize that there is an international consensus on human rights.

Introduction

“Human rights” have been described and defined in countless ways, but over time a consensus has developed over what is meant by human rights. This unit explores this, and explains the nature of human rights concepts. It also discusses the evolution of human rights, its sources in various cultures and traces the most prominent debates.

What Are Human Rights?

The notion of human rights is founded on core values of freedom, equality and justice. It insists on equality of treatment for all and abhors discrimination against anyone. Human rights are the basic guarantees of entitlements and freedoms that every human being must enjoy in order to be able to live a life of dignity and pursue opportunities to realise one's full potential.

What Are Human Rights?

- Live free from fear and want
- Be treated equally without discrimination
- Be protected from cruel, inhuman and degrading treatment
- Have equal opportunities for the pursuit of livelihood
- Be free to own and dispose of property
- Be in good health and receive care and treatment when ill
- Receive education
- Have shelter
- Express one's thoughts and opinion freely
- Pursue the religion of one's choice
- Have access to justice and an effective remedy when entitlements are violated.

Human rights include the rights to live free from fear and want; to be treated as an equal and to not be discriminated against; to be protected from cruel, inhuman and degrading treatment; to have equal opportunities for the pursuit of livelihood; to be free to own and dispose of property; to be in good health and receive care and treatment when ill; to receive education; to have shelter; to express one's thoughts and opinion freely; to pursue the religion of one's choice; and most importantly to have access to justice and an effective remedy when one or more of these entitlements are violated.

Human rights belong to all persons no matter who they are what they do or from where they come, that is to say, they must be enjoyed by every person irrespective of citizenship, nationality, race, ethnicity, language, gender, class, caste, religion, political opinion or abilities.

Human rights are not a privilege that may be granted to a chosen few or a discretionary gift or reward. They are the means and measure that, when fulfilled, will: ensure that human needs are met, human potential realized, equal opportunity is available to all,

The Principles of Human Rights

Inherent to the principles of human rights are that they are:

Universal: which means they apply equally to all people, no matter their religion, race, nationality or socio-economic status;

Interrelated and Indivisible: which means that each right depends upon another for its fulfillment, they must be realized together and no right can be prioritized over another;

Inalienable: which means that these rights are innate to all human beings and cannot be exchanged for something else or traded away.

benefits are equitably shared and the weakest are included and protected. The central notion of equity permits special groups like women, children, minorities and those who have traditionally suffered disadvantage or are vulnerable, to be specifically protected to ensure that their equality of status and opportunity are guaranteed.

However, human rights are not just moral imperatives or noble ideas. They are concrete standards complemented by legal recognition in widely diverse societies. Human rights standards provide a precise yet constantly evolving legal regime, which also provide remedies and cast obligations – especially on those who wield power over the outcomes of people's lives.

Since the State is well recognized as the principal entity mandated to secure the well being of all, it is also seen as the primary duty-holder with the key responsibility of **respecting, protecting, promoting** and **fulfilling** the human rights of all people. Norms and standards for this, as well as the limitations on powers are to be found in the international human rights regime. In addition, States have obligations to undertake under constitutional mandates laid down in their own countries. State institutions, mechanisms and processes are required in order to inform and gear people toward understanding everyone's human rights.

The State is not only accountable for the actions of its agents and employees in the protection of human rights, but it is also responsible for creating and maintaining an atmosphere conducive to the enjoyment of human rights by all, and prohibiting violation by other individuals or groups. Parliaments' lawmaking, executive's policy implementation and day-to-day administration, and judiciary's adjudicator and umpire roles are *all* expected to further the human rights agenda. Together they ensure that there are no violations and achieve the realisation of a culture of rights across the board.

Evolution of Human Rights and the Debates

The present consensus around the legitimacy of human rights, its content, values and priorities has not been reached without contention.

The modern articulation of human rights as a binding agreement between States is a 20th century phenomenon. The crimes against humanity committed during World War II had moved the conscience of the planet. Determined never to allow a repeat of such evil, world leadership sought to craft a new regime based on an international understanding of commonly held principles. Every nation wanting to be a member of the UN is required to adhere to the UN Charter which reaffirms:

"...faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small..." (Preamble)

As a consequence to this commitment to act together for peace and justice, 48 states adopted the Universal Declaration of Human Rights (UDHR) in 1948, laying down

Adopters of the UDHR

Afghanistan	Denmark	Iraq	Paraguay
Argentina	Dominican Republic	Iran	Peru
Australia	Ecuador	Lebanon	Philippines
Belgium	Egypt	Liberia	Siam
Burma	El Salvador	Luxembourg	Sweden
Bolivia	Ethiopia	Mexico	Syria
Brazil	France	The Netherlands	Turkey
Chile	Greece	New Zealand	United Kingdom
China	Guatemala	Nicaragua	USA
Colombia	Haiti	Norway	Uruguay
Costa Rica	Iceland	Pakistan	Venezuela
Cuba	India	Panama	

commonly accepted norms and standards necessary to ensure a dignified life for all human beings.¹ Subsequently, human rights became part of international law through

¹ Though the UDHR has no binding value it has come to be recognized as the first universally accepted policy statement on human rights. All subsequent human rights instruments draw from and build upon the

legally binding agreements that furthered the principles contained in the UDHR. The stage was set to codify human rights norms and standards and breach the previously accepted notion that sovereign States are safe within their borders. In order to prevent the tragedies of the past from reoccurring, these treaties made the States amenable to international scrutiny for the first time.

Criticism of the Early UDHR

Critics point out that the process of drawing up the international human rights instruments was dominated by the victors of World War II, and that the views of millions from the developing world went unrepresented since most were then under colonial domination at that time.

However, these claims are not entirely true. By the early 20th century many countries already had explicit provisions in their constitutions and/or laws for the protection of the rights of their people. These include Latin American countries like Mexico, Uruguay and Columbia, which after several conflicts launched by peasants and workers, had provided legal protection to life, property and some basic liberties. The influence of Latin American and Asian countries that were formerly colonies is most visible in the recognition accorded to the right to self determination. The rights to work and social security were important contributions of countries like Panama, Cuba and Chile and international trade unions and labour organisations, which sent representatives to the drafting committee of the UDHR. Labour related rights found strong proponents in countries with Communist regimes. The gender sensitive phrasing of the very first Article of the UDHR came about at the insistence of women delegates from India and Pakistan.² Afghanistan, Pakistan, Saudi Arabia, Syria and Turkey played an active role in voicing the views of the Islamic world. Irrespective of geography and size, countries as small as Haiti, Costa Rica, Lebanon and the Philippines participated as equals in the

basic norms and standards contained in it. The UDHR is referred to in hundreds of court judgments on human rights issues, thereby attesting to recognition accorded to its norms in domestic law.

² Dr. Hansa Mehta and Lakshmi Menon prevailed over the committee to change the original draft which read- "All men are born free and equal in dignity and rights" to the current reading - "All human beings are born free and equal in dignity and rights."

debates and brought their own experiences to be reflected in the wording of the UDHR. In fact, before consensus was reached every word, every article and every nuance of the UDHR was debated by the members of the UN, the majority of who were from developing countries.

Nevertheless, the notion of human rights is criticised for privileging western thought to the exclusion of experiences of Asian, African and Pacific societies. This position, however, ignores the fact that human rights are the outcome of battles against the tyranny of power. Whether waged in the Americas, Europe, Africa or elsewhere, aspiring nations folded their experiences of struggle into the modern articulation of human rights. From Europe and America came the experience of forced labour, serfdom, oppressive taxes, lack of representation in 'elected' bodies, witch trials and religious persecution. Their expression of protest against such institutions resonates with the struggles of the developing world.

The contribution of colonial Africa and the Caribbean communities to the human rights discourse finds its strongest and finest expression in the movement to abolish slavery. Even though the abolitionist movement is best documented in America and Western Europe, the participation and influences of those from Western Africa are undeniable. Thinkers and journalists from Ghana, Nigeria, Sierra Leone, Liberia, Trinidad, Antigua and beyond travelled to the West to advocate for an end to slavery even as they struggled to secure rights to land, equal treatment and most importantly self-determination within their own countries. The movement to secure freedom from colonial domination informed the international debate on human rights. These important contributions to the human rights movement from the developing world often get left out in popular narratives of the evolution of human rights resulting in the perceived unfamiliarity with the concept.

Much criticism of human rights has centred around the fear that the concept of the 'individual' - shorn of all other socio-political and religious-cultural identities except that of being 'human' as the holder of rights - digressed from religion and culture. However, the core values of human rights such as respect for a fellow being, equality and non-

discrimination are also the professed values of all major and contending religions. For example, Islam provides for the protection of the rights of people of other faiths. Buddhism voiced one of the earliest protests against institutionalised discrimination in South and Southeast Asian cultures and envisioned a society based on compassion, love and justice for all – the same aims of human rights.

Traditionalists also argued that the individualism of human rights detracts from the valuable cohesion provided by membership of a cultural group and that the interests of the community should take precedence over that of the individual. This was sharply delineated in the struggle for recognition of women's rights as human rights. Women, who have long faced deeply entrenched discrimination in all societies, called for special protection of their interests and the seemingly irreconcilable could be resolved only through the values human rights.

Including Women in Human Rights Agreements

"The objective of the Platform for Action, which is in full conformity with the purposes and principles of the Charter of the United Nations and international law, is the empowerment of all women. The full realization of all human rights and fundamental freedoms of all women is essential for the empowerment of women. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. The implementation of this Platform, including through national laws and the formulation of strategies, policies, programmes and development priorities, is the sovereign responsibility of each State, in conformity with all human rights and fundamental freedoms, and the significance of and full respect for various religious and ethical values, cultural backgrounds and philosophical convictions of individuals and their communities should contribute to the full enjoyment by women of their human rights in order to achieve equality, development and peace."

(Article 9, Beijing Declaration and Platform for Action, 1995)

The division of the international community into Capitalist and Communist blocs and their rivalries created an artificial divide between civil and political rights on the one hand, and economic, social and cultural rights on the other. The Communists prized economic and social rights such as the right to work, right to education, right to health and other basic entitlements over civil liberties such as freedom of speech and expression and the right to freedom of movement and the right to protection of private property. The developed countries of the West were vocal in the protection of these latter freedoms at the core of democracy. This divergence of opinion led to the creation of two separate international covenants: 1.) The International Covenant on Civil and Political Rights and, 2.) The International Covenant on Economic, Social and Cultural Rights— and delayed their adoption by almost two decades.

The debate on the primacy of one set of rights over another had disastrous outcomes such as providing dictators with an excuse to deny fundamental rights and freedoms on the pretext of realising economic, social and cultural rights. These were themselves 'postponed' under the pretext of lack of adequate resources to fulfil them.

The Vienna Declaration and Programme of Action, 1993

Though objections to human rights continue to be voiced – often by those keen to defend themselves from its disciplines – much of the debate has been put to rest in the modern consensus that has grown around human rights.

At the World Congress on Human Rights in Vienna in 1993, more than 7000 delegates from 171 UN member States and representatives of 840 NGOs gathered to set out a revitalised programme of action to make human rights a reality for all. All agreed that the civil, political, economic, social and cultural rights included in the UDHR and other international instruments were universal, indivisible, interdependent and interrelated, which must be treated globally by the international community in a fair and equal manner, on the same footing, and with the same emphasis. While recognising the importance of the right to development of all peoples and nations, the right of all people

to a safe environment and sustainable development, and the claims of marginalised communities to special treatment the signatory states agreed that even in these contexts the individual is the ultimate beneficiary of human rights. The rights of the collective cannot be realized without also recognizing the detriment of the rights of its individual member.

Once again a broad consensus was forged across the globe with the active participation of representatives of diverse countries. The Vienna Declaration and Programme of Action provides the international community with a reinforcing framework for planning, dialogue and cooperation that enables an integrated approach to promoting human rights. Most particularly, human rights were reaffirmed as central to the work of all UN organs. States agreed to increase cooperation among them to promote these rights. The consensus on human rights evolved at the time of the adoption of the UDHR was sealed. The global conferences of the 1990's reconfirm the universal worth accorded to human rights. The argument that they are 'alien' cannot be an excuse for non-performance.

Conclusion

Whatever the debates that ebb and flow around human rights, the greatest endorsement of its universalism lies in its echo through the imagination of peoples across the world. The modern articulation has captured the essence of justice, which though expressed differently in different cultures, is deeply held by all humankind. Validation of human rights lies in the repeated global endorsements from individuals and collectives, governments and civil society. The ability of the human rights regime to nuance itself in response to the complexities of technological innovation and to encompass non-state actors such as, militants, multinationals and multilateral institutions shows its lasting value.

There is common acknowledgement that human rights is both a useful tool for governance with which to balance and umpire power relations, and also a fair set of

rules to live by in a diverse, changing, interrelated and interdependent world. Governments are today seen as legitimate by their own people and the international community only when they abide by human rights benchmarks. As well, the endeavours of governance and development are premised on always seeking to promote, protect and fulfil human rights. Rights advocates would argue that in a globalising interconnected world where borders mean little, the realisation of human rights is the very *raison d'être* for the continued existence of the State. Perhaps this is part of the reason why the UDHR has been expanded upon and refined into legally binding obligations, and why these reiterations are to be found seeping into universal consciousness in all regions of the world via myriads of regional, constitutional and domestic instruments.

Unit 1 Questions

Please answer each of the following questions. If you are taking this course in a group you may then meet to discuss your answers.

1. What principles and values lie at the heart of human rights?
2. What responsibility does the State have in relation to human rights?
3. What are some of the counter-arguments to claims that human rights are just western constructs?
4. Why was the 1993 World Conference important in the development of human rights?

Relevant Internet Resources

ETC Human Security Manual on Understanding Human Rights:

<http://www.etc-graz.at/human-security/manual/modules/Manual%20komplett.pdf>

International Covenant on Civil and Political Rights

<http://www.ohchr.org/english/law/ccpr.htm>

International Covenant on Economic, Social and Cultural Rights

<http://www.ohchr.org/english/law/cescr.htm>

UN Charter

<http://www.un.org/aboutun/charter/index.html>

Universal Declaration of Human Rights
<http://www.udhr.org/>

Vienna Declaration and Program of Action
[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)