

Unit 1

Introduction to Human Rights

'I want to live
Amidst the army of human beings
I want to live
In the midst of the rays of the rising sun
Amidst the flowers and foliage of gardens
Of beauty and fragrance
How I wish I could get a little place
Amidst the hearts of living beings'

Rabindranath Tagore

1.1 Introduction

The above poem by Rabindranath Tagore passionately advocates the natural right of human beings to lead a dignified life in nature's lap, enjoying the warmth of humaneness. In fact, the Indian Constitution respects and recognizes the right to life and dignity under Article 21. This right is fundamental to all fundamental rights provided under the Indian Constitution.

Despite these constitutional safeguards, why is discrimination being practiced in the name of caste, religion, gender, etc. Why are these sections of people subjected to humiliation, oppression, harassment, brutal torture and denial of inalienable human rights? Why is

honour killing prevalent in some parts of our country? Why is it that untouchability is still being practiced? Why is there discrimination between men and women born out of the same womb? How does the Indian Constitution protect Human Rights? Having internalized these questions, let us now look at what are Human Rights.

Human Rights are certain basic rights that are essential for human existence and the entitlement of every individual. The starting point of Human Rights lies in the fundamental belief of the ethical core of being human, that is, human dignity. The idea of Human Rights reinforces the connection of the word "human" with the term "rights". The

Human Rights Law recognizes the respect for the basic dignity of each person by the state. It safeguards the core rights to life, liberty, equality and dignity. In this unit we will study about the basic notion of Human Rights, its importance and implementation.

1.2 Objectives

After studying this unit, you will be able to,

- Understand what is Human Rights.
- Appreciate the meaning, importance and elements of Human Rights.
- Explain Civil and Political Rights and Economic and Social Rights.
- Learn the developments in International Human Rights Law.

1.3 What is Human Rights?

Before we understand the basic meaning and concept of Human Rights, let us know what is a right and the different forms of rights. Rights are reasonable claims of persons recognized by society and guaranteed by law. Rights are of three types: (a) Legal Rights (b) Fundamental Rights and (c) Human Rights. Legal rights are provided under



different legislations passed by the Parliament or State Legislature. The Fundamental Rights are provided in Part III of Indian Constitution and can be enforced through courts.

Formally, Human Rights were proclaimed in the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948. Section 2(1) d of the Protection of Human Rights Act, 1993 defines Human Rights as "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India". The modern concept of Human Rights is comprehensive in its nature and content. It includes three types of rights: *civil and political, economic, social and cultural* and the emerging *collective or group rights*.

CASE ONE

Let us look at the case of Raju, who had a boundary dispute in his agricultural field with Sanjay. Raju complained about this boundary dispute to the police. One day a police constable came to Sanjay's house and informed him that a complaint had been filed against him by Raju. The constable demanded one hundred rupees as bribe from Sanjay with a promise that the case would be closed. Sanjay paid the money. After one week, the constable again visited Sanjay demanding more money.

This time Sanjay got angry and refused to pay more money to him. He also complained about this to the superintendent of police of that district. The superintendent of police sent Sanjay's complaint for enquiry to the same police station. The next day the same constable again visited Sanjay's house and took him to the police station and beat him up severely,

resulting in multiple injuries. Sanjay was not able to walk and he was carried by the police and taken to the court to obtain judicial remand.

The magistrate while signing the remand papers asked the police to produce Sanjay before him. The police informed the magistrate that Sanjay was unable to walk and was lying in the court verandah. The magistrate walked towards the verandah to see Sanjay. He was shocked to see Sanjay's physical condition who was just about to die.

Human Rights are basic to every human being that is natural, universal, and indivisible. These rights are what each human being is entitled to the freedom to live a dignified life and secure liberty and dignity of their choice.

- Article 21 of the Indian Constitution guarantees the right to life and states that a person's life or liberty can be taken away only by following a reasonable and just legal procedure.
- Article 22 of the Constitution and criminal law guarantees to every arrested person the following Fundamental Rights:
 - The right to be informed at the time of arrest of the offence for which the person is being arrested.
 - The right to be presented before a magistrate within 24 hours of arrest.
 - The right not to be ill-treated or tortured during arrest or in custody.
 - Confessions made in police custody cannot be used as evidence against the accused.

Activity 1

In the above circumstances, which rights of Sanjay are being violated by the police? Do you think Sanjay was deprived of life, liberty and dignity? Does Sanjay have the right to life and liberty? What about his right not to be tortured? Right against torture is a non-derogable right which cannot be violated under any circumstances, including National Emergency.

The investigation of a criminal case is the complete domain of the police and the police has to conduct it as per law, with due respect to human rights. The police cannot torture or use excessive force during investigation. The police can not inflict any form of punishment on a person even for a petty offence. The Supreme Court of India in D K Basu Case in 1997 laid down a specific procedure to be followed by police for arrest, detention and interrogation of any person. These guidelines will be discussed in detail in Unit-IV Custodial Justice.

Suppose the victim in the above case is a woman or a juvenile below 18 years, can he/she be arrested and detained in the police station?

CASE TWO

Maneka Gandhi's passport was impounded and she was not allowed to go abroad. The passport authorities did not inform her the reasons for impounding her passport. She challenged the decision of the passport authority before the Supreme Court, which resulted in a landmark decision in 1978. In this case the argument of Maneka Gandhi was that the right to go abroad is an integral part of the freedom of speech and expression and its interference will lead to curtailment of this right.

This freedom of speech and expression has been developed over time, and includes the freedom of press and the right to information within itself. It can be interpreted in many different ways - you have the right to publish someone else's views, for example, and not just your own - so long as your freedom of speech and expression is exercised within reasonable limits.

Suppose you want to get together with a few friends to discuss your common interests - these could be anything - music, films, books, or even politics. The next time you walk around the streets of the city or town you live in, look at all the groups standing at the street corners, vehemently arguing this or that the policy of the Government. Perhaps they are unhappy with the rise in prices, or perhaps they think that the Government did a good thing by

passing a new law. Whatever be the topic, it is part of our nature to want to discuss and deliberate upon it with others. Wouldn't it be terrible if we were denied this basic human urge to communicate with others and express ourselves as groups? The makers of our Constitution recognized this, and even inserted the freedom of assembly as a part of our Fundamental Rights. We can take out processions and form groups or trade unions - as long as we do all of this in a peaceful manner, and without the use of weapons.

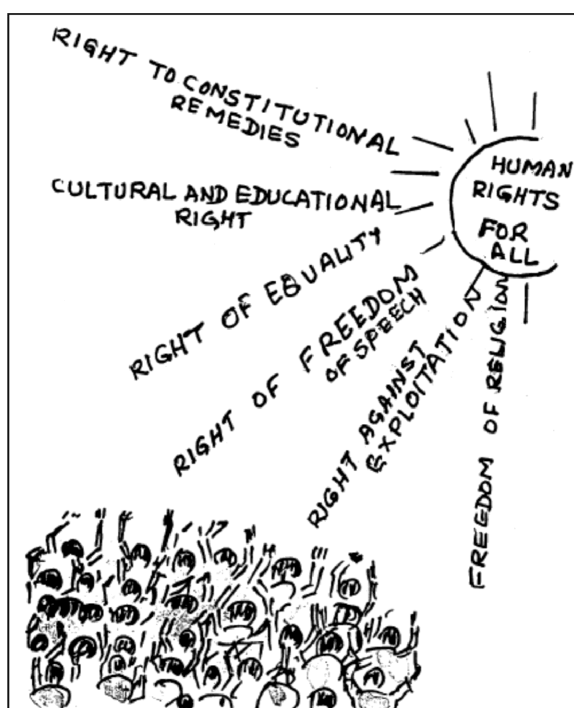
1.4 Elements of Human Rights

In order to understand the essence of Human Rights, let us look at the elements of Human Rights which are given in Table 1.1 below.

Table 1.1: Elements of Human Life

Equality - "All Human beings are born free and equal in dignity and rights", irrespective of caste, religion, gender or wealth. Everyone can enjoy equal opportunities.	Indivisibility - One right cannot be enjoyed at the cost of the other rights.
Universality - Everyone can enjoy human rights and they are applicable across the world.	Interdependency - Human Rights concerns reflect in all aspects of life -at home, school, workplace, courts and everywhere. The Civil and Political Right and Social and Economical rights are interrelated.
Human Dignity - Human rights are enjoyed equally by individuals, regardless of age, culture, faith, ethnicity, race gender sexual orientation, language, disability or social class.	Inalienability - The rights that individuals have cannot be taken away, surrendered or transferred.
Non-discrimination - It ensures that no one is denied the protection of their human rights based on caste, gender, language, religion, political affiliation, nationality and property	Responsibility - The responsibility to protect Human Rights lies with Government and Individual persons. The courts are empowered to implement the rights.

Discrimination happens when people act on prejudice. It is practiced in many ways such as preventing some people from taking water from the same well or hand pump, stopping some people to take part in certain activities and taking up jobs or preventing some people to live in certain neighbourhoods. Some people are discriminated, because they belong to a group whose culture is not valued. These practices of discrimination will lead to the violation of Human Rights.



Activity 2

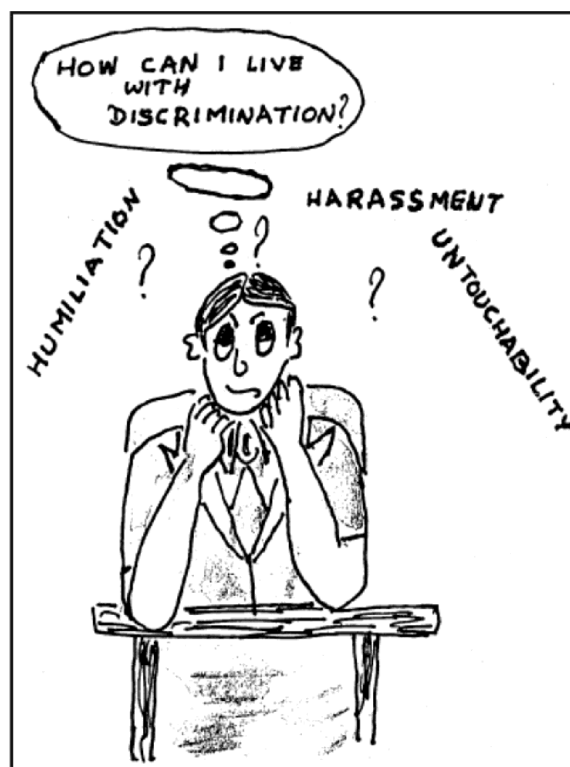
From the above description on discrimination, how do you think a person who is discriminated against might feel? Does the practice of discrimination as mentioned above lead to Human Rights violation? If so, explain?

Take a newspaper of your choice and read it carefully. Identify and classify the different elements of Human Rights discussed above and point out how the elements of Human Rights have been reported in that newspaper.

1.5 Protection of Human Rights under the Indian Constitution

Let us look at the Indian Constitution that protects the Human Rights. These rights are called Fundamental Rights.

Right to Equality - It means that no one is above law or has a special privilege under the law. At the same time, everyone is to be treated equally by law. It also means that the state shall not discriminate against any citizens on grounds of race, religion, caste, sex or place of birth. However the state can make special provisions for reservation of posts for members of any backward class or citizens not adequately represented in the services or for Scheduled Castes and Scheduled Tribes. It also asserts that untouchability is punishable by law.



Right to Freedom - confers on all citizens, freedom of speech and expression with the limits/ restrictions as explained in the respective articles of

the Indian constitution. The six freedoms provided under the Indian Constitution are freedom of speech and expression, freedom to form associations or unions, freedom of movement, freedom to reside in any part of India and freedom of trade, profession, occupation or business. A new article (Article 21 A) promises the right to education to all children of the ages between six and fourteen.

Right against Exploitation - The state prohibits traffic in human beings and forced labour. Moreover children below 14 years may not be employed in factories, mines and other hazardous jobs.

The Constitution of India has elaborate provisions to prevent exploitation of children. Child labour, forced/bonded labour is prohibited. Article 23 of the India Constitution prohibits forced (bonded) labour. Any child employed as labour can equally be categorized as forced labour. Article 24 prohibits employment of children up to the age of fourteen years in factories or mines or engagement of children in any other hazardous employment

Right to Freedom of Religion - All persons are equally entitled to freedom of conscience and the right to profess, practice and propagate any religion, subject to public order, morality and health.

Cultural and Educational Rights - These are aimed at the benefit of minorities, in the sense that any section of people in India or any part of it has the right to preserve their language, script and culture.

Right to Education - The state shall provide free and compulsory education for children between the age group of 6 and 14.

The Government of India passed a law in 2009, giving the right to free and compulsory

Education for children between 6 and 14 years .

Right to Constitutional Remedies - The Supreme Court has been given the power to enforce the Fundamental Rights by appropriate remedies to their violation. It can issue writs commanding the detaining authorities to bring a detained person to the court for trial, ordering a government to do its duty, stopping an authority from violating someone's right, asking an official body of authority under which power has been exercised and taking over a case from a lower court by a higher court

CASE THREE

To understand the concept of rights relating to life and liberty, let us look at the case of Mr Kharak Singh, who was arrested for dacoity but was released as there was no evidence against him. Even after his release, the police constable used to frequently visit his house and wake him up during the night causing disturbance to his sleep. In addition to this, police used to keep surveillance over him by posting police near his house and watching his movements.

In this case, what are the rights of Mr Kharak Singh that are being violated? Do you think this is a violation of Freedom of his movement, right to life and liberty, including right to privacy?

1.5 Civil & Political Rights and Social, Economic Cultural Rights

Human rights are classified broadly into two categories, civil and political and social, economic and cultural rights. The civil and political rights are based on natural laws, according to which all human beings are born

free and equal in dignity and inalienable rights. These rights and the machinery to monitor them are contained in the International Covenant on Civil and Political Rights. The civil and political rights provide for the protection of the right to life and dignified existence of individuals. Therefore these specify that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, that no one shall be subjected to arbitrary arrest or detention, that all persons deprived of their liberty shall be treated with humanity.

Economic, Social and Cultural rights are designed to ensure the protection of people as full human beings, based on a perspective in which people can enjoy rights, freedom and social justice simultaneously. According to the UNDP Report, "a fifth of the developing world's population goes hungry every night, a quarter lack access to even a basic necessity like safe drinking water and a third lives in a state of abject poverty". In these contexts, the commitment to economic, social and cultural rights becomes important.

Article 21 of the Indian Constitution safeguards the right to life and personal liberty of citizens. It includes

- Right to education
- Right to clean environment
- Right to basic human dignity

Let us look at a very simple question: what does the term 'life' mean to you? Just a basic day-to-day existence, with air, food, water, and shelter? But wouldn't that just be 'survival'? 'Life' means a lot more, and the courts have interpreted Article 21 in a very broad manner over the years.

Without all of these, 'life' would be meaningless indeed, and Article 21 includes all of these necessities of life within its scope. In fact, Article 21 A was recently added to the Fundamental Rights by way of an amendment, and now, all children between the ages of 6 and 14 have the fundamental right to free and compulsory education.

CASE FOUR

The right to food case was brought before the Supreme Court by an NGO from Rajasthan that deals with the hunger situation there (as well as in the states of Orissa, Maharashtra and Gujarat). The Indian court orders interpret the right to food as a part of the right to life, which is a fundamental right in the Indian Constitution.

The core content of the right to food contains the fundamental right of protection from hunger. This right is the only human right that is called a fundamental right in the International Bill of Human Rights. Nevertheless, this human rights standard is currently not guaranteed for one billion undernourished people, although there is no doubt that adequate resources are available. The availability of resources, however, could become an acute problem in future, unless the community of states succeeds in setting up a sustainable global food system. Such a system would have to be based on sustainable agriculture feeding the vulnerable rural (and urban) populations, and - of course - on a stabilization of world population at around 10 to 12 billion before the end of this century.

The main arguments in the PIL are: (1) Article 21- the right to life includes the right to food and water as basic human and fundamental rights; (2) This right is threatened at times of

scarcity; (3) It is the duty of the state to prevent scarcity and to immediately provide relief when scarcity arises.

The petition demanded immediate release of food stocks for drought relief, provision of work for every affected able-bodied person and PDS quota be raised to 10 kg per person. The Supreme Court has accepted the petition and asked the respective states to submit their affidavits

CASE FIVE

Suman Behera, 22 years of age, was taken from his home by the police in connection with investigation of a theft case and detained at the police outpost. The next day, his dead body was found on the railway track near a bridge at some distance from the railway station. There were multiple injuries on the body of the deceased. Suman Behra's father Mr Nilabati Behra sent a letter to the Supreme Court in 1998 which was treated as a writ petition.

In this case the Supreme Court observed that prisoners and detainees are not denuded of their fundamental rights under Article 21. The court further observed that "there is a great responsibility on the police or prison authorities to ensure that the citizens in its custody are not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and, therefore, his interest in the limited liberty left to him is rather precious. The duty of providing care on the part of the State is called for, if the person in custody of the police is deprived of his life, except according to procedure established by law". In

this case the court has clearly spelt out the importance of right to life and liberty, even when the person is in custody.

Right to Information (RTI) is an important step towards making the institution of governance more accountable to the people. Without information, people cannot adequately exercise their rights and responsibilities as citizens or make informed choice. In the case of *State of Uttar Pradesh vs Raj Narain*¹, the Supreme Court has interpreted right to information as being derived from the right to freedom of speech and expression and therefore, it is also a fundamental right under the Constitution of India. Despite the judicial recognition of the right, the executive continues to deny citizens access to government information.

The main purpose of this legislation is for public authorities, including the police, to provide maximum disclosure of information with minimum exemptions. Police is specifically included in the RTI. It comes under section 2-definition of "public authority". But there are some agencies that are excluded from the purview of this Act. Freedom of Information is a fundamental human right and the touchstone of all the freedoms as expressed in the United Nations 65th Plenary meeting, held on 14 December 1946.

Mazdoor Kisan Shakti Sangathan (MKSS) movement which began in Rajasthan, led to nationwide campaign for a law to guarantee the right to information to every citizen. Thus the central Right to Information Act, 2005 became operational from 12 October 2005.

¹ AIR 1975 SC 865

Activity 3

1. Identify five cases in your police station, wherein the civil and political rights have been violated?
2. Who all are entitled to apply for RTI? Is the police covered under RTI? What is the procedure of applying for information under the RTI Act?
3. Do citizens have the power to use RTI to know the functioning/activities of a police station?

Right to Work

Article 41 of the Indian Constitution states that, "the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want." Further, the right is contained under the Directive Principles of State Policy.

Directly related to the right to work are the rights at work, rights that protect persons selling their labor to earn their living. Rights at work include the right to adequate remuneration, right to equal pay for equal work, right to equal treatment, right to safe and hygienic working conditions and the right to a limited workday and adequate periods of rest. These rights ensure dignified working conditions and closely tie up with the right to health and the right to life. They also tie up with prohibitions on slavery, servitude and forced labour.

The Indian Government, as a part of its State Policy has instituted a number of schemes like the Employment Assurance Scheme, Mahatma Gandhi National Rural Employment

Programme, Jawahar Rozgar Yojana, Sampoorna Grameen Rozgar Yojana, National Food for Work Programme to provide employment to the deprived sections of society, especially people living in poverty.

Activity 4

1. What are the goals of MG-NREGA and what does it guarantee? Apart from employment, mention two other potential benefits of the MG-NREGA, 2005.
2. Identify a particular group/ section of people from your locality, whose economic social and cultural rights have been violated?
3. What is the difference between civil and political rights and the economic, social and cultural rights?

Right to Housing

On the Right to Housing, the Supreme Court has relied on Article 21 of the Indian Constitution - the Right to Life- and has read it together with Articles 38, 39, 42 which are from Part IV of the Constitution, collectively known as the Directive Principles of State Policy. The Supreme Court has also in some cases relied on Article 19(1) (e), the right to reside in any part of India.

A significant change in housing policies occurred as a followup of Global Shelter Strategy adopted by the United Nations (UN) in November 1988. The main objective of the Global Shelter Strategy was to ensure social, economic and environmental sustainability while simultaneously upgrading living conditions. This has led the Indian Government to draft its first National Housing Policy in 1992 and it was adopted by Parliament in August 1994. Subsequently, the National Urban Housing and Habitat Policy was adopted in 2007.

1.6 What is Human Rights Violation?

Human Rights are claimed against the State. Thus, if the State fails to stop and punish the violators, then it becomes a human rights violation. However, if an individual violates the other person's right relating to life, liberty, equality or dignity, then the victim can approach the State for taking action.

Suppose if a constable has caught a thief who has snatched a gold chain from a woman at a bus stand. The constable starts beating up the thief in public and then ties the thief to his motor bike and drags him to the police station.

Activity 5

What are the human rights violations that had been done by the constable? Do the human rights of a thief need to be protected? If so, what could have been the appropriate way of handling this case by protecting the human rights of the thief?

Some of the human rights violations as classified by the National Human Rights Commission are:

- Custodial deaths
- Unlawful detention
- Custodial violence
- Illegal arrest
- Encounter deaths
- Harassment of prisoners; Adverse living conditions in jails
- Atrocities on SCs and STs
- Bonded labour, child labour
- Child marriage
- Communal violence

- Dowry death or its attempt; dowry demand
- Abduction, rape and murder
- Sexual harassment and indignity to women, exploitation of women.
- Failure of police in filing an FIR.

Activity 6

1. *Identify any of the above mentioned human rights violation case and follow up. Examine the lacunae and submit a report by identifying what are the rights that are being violated.*
2. *As a policeman, what is the preventive role that you could play when you come across these types of human rights violations in your police station?*

1.7 Selected International Human Rights Standards

Following are some of the landmark developments at the international level, which have brought the protection of human rights on the agenda of international politics and law. These include:

- (a) Universal Declaration of Human Rights (UDHR)

The activities of the United Nation on international human rights standards, flow from and relate to the UDHR. It was adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948 as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of the society, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure



- their universal and effective recognition and observance.
- (b) International Covenant on Civil and Political Rights (ICCPR 1966)
 - (c) International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
The UN General Assembly adopted the ICESCR on 16 December 1966. The ICESCR comprises a preamble and 31 articles. It consists of the right to work, social security, right to form trade unions and join trade unions of his/her choice, right to education, etc. The basic characteristics of ICCPR are: (a) The states freedom of action is limited, as the state is obliged to respect such rights (b) The rights are primarily individual in nature (c) All states have the responsibility to respect these rights, irrespective of the political system and level of development (d) The rights covered under this covenant are justiciable.
 - (d) Convention on Elimination of all forms of Discrimination Against Women (CEDAW 1979)
The signatories to this Convention agreed to pursue policies aimed at elimination of discrimination against women. The state will take necessary legislative and other measures to establish equality between men and women, and will repeal all such laws as tend to discriminate against women.
 - (e) Convention Against Torture (CAT 1984)
This came into force on 26 June, 1987. The basic idea is to protect a person against any pain or suffering (except those that are part of lawful punishments), since individual dignity is considered most important. There is a committee against torture which monitors implementation of this convention.
 - (f) International Convention on the Rights of the Child (1989)
The Convention embodies four general principles for guiding the implementation of child rights. They are (a) Non-discrimination ensuring equality of opportunity (b) When the authorities of a State take decisions, which affect children, they must give prime consideration to the best interests of the child (c) The right to life, survival and development, which includes physical, mental, emotional, cognitive, social and cultural development (d) Children should be free to express their opinions, and such views should be given due weightage, taking the age and maturity of the child into consideration. The other provisions that are included in this convention are (a) Free and compulsory primary education (b) Protection from economic exploitation, sexual abuse and protection from physical and mental harm and neglect (c) The right of the disabled child to special treatment and education.
 - (g) International Convention on the Elimination of all forms of Racial Discrimination (CERD 1965)
 - (h) The Geneva Red Cross Conventions (1949) and Protocols (1977)
These include four major international treaties dealing with improving the conditions of the wounded and sick members of the armed forces in the battle zone, treatment of prisoners of war (POWs) and protection of civilian in times of war.
 - (i) The Convention Relating to the Status of Refugees (1951)
This convention defines who is a refugee and spells out the rights of individuals who are granted asylum as well as the responsibilities of nations that grant

asylum. It also specifies those who do not qualify as refugees, such as war criminals etc.

This Convention is based on the principle of the dignity and equality inherent in all human beings. It promotes and encourages universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

Activity 7

- From the above conventions, find out those that have been ratified by India? Take one convention/covenant and explain its importance and application with a case study?
- Identify issues in policing, where as a police officer, you could protect the Human Rights, while dealing with accused. Make presentations group-wise and discuss?
- Form groups and identify one case/ judgment of the Supreme Court that upheld the concept of the principle of rule of law and present it group-wise.

Check Your Progress

- What do you understand by the term 'Human Rights'?
- What are the salient features of Human Rights?
- What is the difference between Fundamental Rights, Legal Rights and Human Rights?
- Why did the makers of our Constitution provide the chapter on Fundamental Rights?
- Explain any five major violations of human rights after reading this unit?

Let us sum up

After going through this unit, the learner would be able to understand what are Human Rights and meaning and elements of Human Rights. This unit also explains civil and political rights and economic and social rights. These are explained through some case studies, for a better practical realization and understanding. Some aspects of the Indian Constitution that reflect human rights are also specified in this unit. Right to Information, Right to Work, Right to Housing are described briefly with some examples and their applications. It also points out the Human Rights violation and makes the learner to think and internalize Human Right practices at his/her work place. The unit is concluded with some selected international human rights standards. This unit would only introduce the learner to Human Rights and the learner would be able to internalize these only when s/he does all the activities and questions with commitment and passion.

