HUMAN RIGHTS

VI SEMESTER

CORE COURSE

BA POLITICAL SCIENCE

(ADDITIONAL LESSONS – MODULE I)

(2013 Admission)

UNIVERSITY OF CALICUT

SCHOOL OF DISTANCE EDUCATION

Calicut University P.O, Malappuram Kerala, India 673 635.

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STUDY MATERIAL

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HUMAN RIGHTS

Prepared by: **Sri. Salin C Simon**
P.G Department of Political Science,
Sree Kerala VarmaCollege, Thrissur

Scrutinized by: **Dr.G.Sadanandan**
Associate Professor and Head. P.G Department of Political Science
Sree Kerala VarmaCollege, Thrissur

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Module I:

Concept of Human Rights: Meaning, evolution and importance.

Approaches: Western, Marxian and Third World, Feminist Perspective.

Concept of Human Rights: Meaning, evolution and importance.

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, religion, language, or any other status. All are equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

MEANING OF HUMAN RIGHTS

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all human individuals by virtue of their humanity alone. These claims are articulated and formulated in what we today call human rights, and have been translated into legal rights, established according to the law-creating processes of societies, both national and international. The basis of these legal rights is the consent of the governed that is the consent of the subjects of the rights. The values of dignity and equality of all members of the human race, like many other basic principles which underlie what we today call human rights, can be found in virtually every culture and civilization, religion and philosophical tradition.

Characteristics of Human Rights

Human rights are founded on respect for the dignity and worth of each person; Human rights are universal, meaning that they are applied equally and without discrimination to all people; Human rights are inalienable, in that no one can have his or her human rights taken away; they can be limited in specific situations (for example, the right to liberty can be restricted if a person is found guilty of a crime by a court of law); Human rights are indivisible, interrelated and interdependent, for the reason that it is insufficient to respect some human rights and not others. In practice, the violation of one right will often affect respect for several other rights. All human rights should therefore be seen as having equal importance and of being equally essential to respect for the dignity and worth of every person.

Universal and inalienable

The principle of universality of human rights is the cornerstone of international human rights law. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems. All States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to universality. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations. Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

Interdependent and indivisible

All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

Equal and non-discriminatory.

Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.”

Both Rights and Obligations

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others.

Evolution of Human Rights

The ideas of elaboration and protection of rights of human beings have been gradually transformed into written norms. Many important landmarks may be mentioned on this way, such as, in England Magna Carta (1215), the Petition of Right (1628) and the Bill of Rights (1689). During the eighteenth century, the early ideas of natural law developed into an acceptance of natural rights as legal rights, and these rights for the first time were written

into national constitutions, thus reflecting an almost contractual relationship between the State and the individual which emphasized that the power of the State derived from the assent of the free individual. The French Declaration of the Rights of Man and of the Citizen of 1789 and the American Bill of Rights of 1791 were based on this premise. During the nineteenth century this principle was adopted by a number of independent States and social and economic rights also began to be recognized. Despite the recognition accorded to human rights in national constitutions, these rights were sometimes curtailed or eliminated by legislation or by arbitrary means and, perhaps generally, by informal social mechanisms. Moreover, human rights, in spite of their status as legal rights, were often violated by States themselves.

The first international treaties concerning human rights were linked with the acceptance of freedom of religion (e.g. the Treaties of Westphalia of 1648) and the abolition of slavery. Slavery had already been condemned by the Congress of Vienna in 1815 and a number of international treaties on the abolition of slavery appeared in the second half of the nineteenth century (e.g. the Treaty of Washington of 1862, documents of the Conferences in Brussels in 1867 and 1890 and in Berlin in 1885). Another field of international co-operation was the elaboration of the laws of war (e.g. the Declaration of Paris of 1856, the First Geneva Convention of 1864 and the Second of 1906 and the Hague Conventions of 1899 and 1907). The creation of the International Committee of the Red Cross (ICRC) in 1864 contributed greatly to these developments. Since the end of the First World War, there has been a growing belief that governments alone cannot safeguard human rights, which require international guarantees. Though the mandate of the League of Nations, the first universal intergovernmental organization created after the First World War, did not mention human rights, the League tried to undertake the protection of human rights through international means. However, its concerns were limited mainly to the establishment of certain conditions for the protection of minorities in a few countries.

The standards determining the conditions of industrial workers established in the beginning of the twentieth century became the subject of further international agreements elaborated by the International Labour Organization (ILO), created in 1919. The International Slavery Convention, signed in Geneva on 25 September 1926, ended lengthy efforts aimed at the abolition of slavery. Relevant conventions for the protection of refugees were adopted in 1933 and 1938. However, despite all these developments, human rights Saw did not emerge in the inter-war period.

The totalitarian regimes established in the 1920s and 1930s grossly violated human rights in their own territories. The Second World War brought about massive abuse of human life and dignity, and attempts to eliminate entire groups of people because of their race, religion or nationality. Thus it became clear that international instruments were needed

to codify and protect human rights, because respect for them was one of the essential conditions for world peace and progress.

The task of drawing up an International Bill of Human Rights, defining the human rights and freedoms referred to in the Charter, was charged upon the Commission on Human Rights, and established in 1945, which is a subsidiary body of the Economic and Social Council (ECOSOC), one of the United Nations principal organs. A major step in drafting the International Bill of Human Rights was realized on 10 December 1948, when the General Assembly adopted the Universal Declaration of Human Rights 'as a common standard of achievement for all peoples and nations'.

Importance of Human Rights

Concept of Human Rights Adopted by the General Assembly on December 10, 1948, the Universal Declaration of Human Rights (UDHR) is one of the first major achievements of the United Nations. The United States is a charter member of the United Nations and the U.S. Representative to the U.N., Eleanor Roosevelt, was a lead drafter of the UDHR. The author States of Declaration, from different regions of the world, sought to ensure that the text would incorporate values common to all communities. The States affirmed the universal respect for inalienable rights and fundamental freedoms of each and every person, including the principles of the prohibition against arbitrary detention, the right to due process and other civil and political rights as well as social, cultural and economic rights.

Significant development in thinking about human rights had already taken place in the seventeenth and eighteenth centuries. Indeed, the American Declaration of Independence of 1776 stated: "We hold these truths to be self-evident, 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." While itself a non-binding document, the UDHR arguably is part of customary international law, reflecting the almost universal vision of nations about the universal human rights of all the people. These fundamental human rights should be "a common standard of achievement for all peoples and nations" - UDHR Preamble. They are the basic rights that all human beings should enjoy, respect and protect.

The UDHR, together with the International Covenant on Civil and Political Rights (ICCPR), its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), form what is known as International Bill of Human Rights. International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights.

The obligation to **respect** means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to **protect** requires States to protect individuals and groups against human rights abuses. The obligation to **fulfil** means that States must take positive action to facilitate the enjoyment of basic human rights. Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. Universal human rights should be applied to all persons without distinction of any kind: we are all human beings, so we are all entitled to enjoy these rights.

"Human rights are what reason requires and conscience demands. They are us and we are them. Human rights are rights that any person has as a human being. We are all human beings; we are all deserving of human rights. One cannot be true without the other." - Kofi Annan, Secretary-general of the United Nations Remember that, as Eleanor Roosevelt said, "the destiny of human rights is in the hands of all our citizens in all our communities."

Universal Declaration of Human Rights Dec. 10, 1948 (UDHR)

The most famous text is the Universal Declaration of Human Rights (UDHR) which the UN General Assembly approved on 10 December 1948. International Human Rights Day is now celebrated on 10 December every year. The statement of principles in the Declaration has had a great influence all over the world, although governments are not forced by law to obey them. However, many lawyers would argue that because of the way the international world works, human rights have become legally binding and that government now do have to obey some of the principles.

These rights can be broadly divided into two kinds. The first refer to civil and political rights, which include: the right to life, liberty, and security of person; freedom from slavery and torture; equality before the law; protection against arbitrary arrest, detention or exile; the right to a fair trial; the right to own property; political participation; the right to marriage; the fundamental freedoms of thought, conscience and religion, opinion and expression; freedom of peaceful assembly and association; and the right to take part in the government of his/her country, directly or through freely chosen representatives. The second are economic, social and cultural rights, which relate to, amongst others: the right to work; equal pay for equal work; the right to form and join trade unions; the right to an adequate standard of living; the right to education; and the right to participate freely in cultural life.

The first article of the Declaration expresses the universality of rights in terms of the equality of human dignity, and the second article expresses the entitlement of all persons to the rights set out without discrimination of any kind. The fundamental principle underlying the rights proclaimed in the Declaration is contained in the Preamble to the Declaration,

which starts by recognizing the 'inherent dignity and the equal and inalienable rights of all members of the human family'.

Although the Universal Declaration of Human Rights is not legally binding, over the years its main principles have acquired the status of standards which should be respected by all States. When the Declaration was adopted, there were only fifty-eight Member States of the United Nations. Since that time, this number has more than tripled. The continuing impact of the Declaration and the use made of it bears out its universal acceptance, and it has become a common reference in human rights for all nations. The Universal Declaration, together with the Charter, served both as an inspiration and a means for the millions of people under colonial rule to achieve self-determination in the 1950s and 1960s, and many incorporated the provisions of the Declaration in their constitutions.

The consensus of the international community was reflected at the International Conference on Human Rights in Tehran in 1968 - that the Universal Declaration 'states a common understanding of the people of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community'. Twenty-five years later, at the World Conference on Human Rights (Vienna, Austria, 14-25 June 1993), 171 States reaffirmed that the Universal Declaration 'constitutes a common standard of achievement for all peoples and all nations'6 and that '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 Universal Declaration of Human Rights was the first part of the objective; the other parts, designed to elaborate the content of the provisions of the Declaration, took many years to complete. On 16 December 1966, the United Nations General Assembly adopted two Covenants - the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and an Optional Protocol to the ICCPR, allowing for complaints to be made by individuals on violations of their rights embodied in the Covenant. In adopting these instruments, the international community not only agreed on the content of each right set forth within the Universal Declaration, but also on measures for their implementation. A further elaboration took place when, in December 1989, the Second Optional Protocol to the ICCPR, aimed at abolishing the death penalty, was adopted by the General Assembly. The adoption of these two Covenants endorsed the General Assembly resolution of 1950 that 'that the enjoyment of civil and political rights and economic, social and cultural rights are interconnected and interdependent'.

International Covenant on Civil and Political Rights (ICCPR)

This Covenant elaborates the political and civil rights identified in the Universal Declaration, which include the rights to life, privacy, fair trial, freedom of religion, freedom from torture and equality before the law. Some of the rights can be suspended in times of 'public emergency which threatens the life of the nation', provided that the derogation will not involve discrimination on grounds of race, colour, sex, language, religion or social origin. If a country wants to 'opt out' in this way, it must immediately inform the Secretary-General of the United Nations. States of emergency thus declared unfortunately often create the conditions under which gross violations of human rights occur. In no circumstances, in peace or war, is derogation permitted under the Covenant from the following fundamental rights: the rights to life, recognition before the law, freedom from torture and slavery, freedom of thought, conscience and religion, the right not to be imprisoned solely for inability to fulfil a contractual obligation, and the right not to be held guilty for committing a crime which did not constitute a criminal offence at the time it was committed.

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

The rights recognized by the Covenant include the rights to: work; favourable conditions of work and equal pay for equal work; form and join trade unions; social security; an adequate standard of living including adequate food, clothing and housing; protection of the family; the highest attainable standard of physical and mental health; education; and participation in cultural life. Each State Party to the Covenant agrees to 'take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized' in the Covenant. None of the rights protected under the Covenant can be suspended.

Approaches: Western, Marxian and Third World, Feminist perspective.

Many who approach the subject of human rights turn to early religious and philosophical writings. In their vision of human rights, human beings are endowed, by reason of their humanity, with certain fundamental and inalienable rights. This conclusion has existed in various forms in various societies. The historic development of the concept of human rights is often associated with the evolution of Western philosophical and political principles, yet a different perspective could find reference to similar principles concerning mass education, self-fulfilment, respect for others, and the quest to contribute to others' well-being in Confucian, Hindu, or Buddhist traditions. Religious texts such as the Bible and the Koran can be read as creating not only duties but also rights. Recognition of the need to protect human freedom and human dignity is alluded to in some of the earliest codes, from Hammurabi's Code in ancient Babylon (around 1780 BCE), right through to the natural law traditions of the West, which built on the Greek Stoics and the Roman law

notions *of jus gentium* (law for all peoples). Common to each of these codes is the recognition of certain universally valid principles and standards of behaviour. These behavioural standards arguably inspire human rights thinking, and may be seen as precursors to, or different expressions of, the idea of human rights - but the lineage is not as obvious as is sometimes suggested. Let us now look at some approaches like Western, Socialist, Third World, and feminist approaches.

WESTERN PERSPECTIVE OF HUMAN RIGHTS

The standard Western account of the tradition of human rights is somewhat problematic. Early legal developments in the area of human rights are said to have emerged from the *Magna Carta* of 1215, a contract between the English King John and the Barons who were dissatisfied with the taxes being levied by the monarch. But, although this agreement guaranteed rights for *freeman* not to be 'arrested, or detained in prison, or deprived of his freehold, or outlawed, or banished, or in any way molested...unless by lawful judgment of his peers and the law of the land', this guarantee was simply a right to trial by jury granted exclusively to property-owning men. The rights contained in *the Magna Carta* were not human rights, but rather political settlements.

Human rights belong to all human beings and therefore cannot be restricted to a select group of privileged men. From a contemporary perspective, the *Magna Carta* turns out to be a rather unfortunate example of a human rights declaration. The *English Bill of Rights* of 1689 is similarly sometimes considered a stepping stone to today's texts. Parliament declared that 'no excessive fine be imposed; nor cruel and unusual punishment [be] inflicted'. 'Like the *Magna Carta*, the *Bill of Rights* was in fact a political settlement; this time between a Parliament and the King (who had abused the rights of Protestants), in order to vindicate 'ancient rights and liberties'.

At the same time, the work of a number of philosophers had a very concrete influence on the articulation of demands in the form of 'natural rights' or the 'rights of man'. John Locke's *Second Treatise of Government,* published in 1690, considered men in a 'state of nature' where they enjoyed 'a statue of liberty', yet it was not 'a state of licence'. Locke reasoned that everyone 'is bound to preserve himself so when his own preservation is not threatened everyone should'as much as he can... preserve the rest of mankind', and no one may 'take away or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another'. In this way, 'men may be restrained from invading others' rights and from doing hurt to one another'.

For Locke, 'every man has a right to punish the offender and be executioner of the law of nature'. Locke saw that this 'strange doctrine' was unworkable but argued that men remain in this state of nature until they consent to become members of' some politic

society'. Locke saw civil government as the remedy for men acting as their own judges to enforce the law of nature. He considered that this social contract, freely entered into, entitled the government to enforce laws for as long as the government respected the trust placed in it. Should the people be subject to the exercise by the government of arbitrary or absolute power over their 'lives, liberties, and estates' then, according to Locke, governmental power would be forfeited and devolve back to the people.

The Social Contract of Jean-Jacques Rousseau developed the idea that an individual may have a private will and that his private interest 'may dictate to him very differently from the common interest'. Rousseau considered that 'whoever refuses to obey the general will shall be compelled to it by the whole body: this in fact only forces him to be free'. For Rousseau: 'Man loses by the social contract his *natural* liberty, and an unlimited right to all which tempts him, and which he can obtain; in return he acquires *civil* liberty, and proprietorship of all he possess.' Published in 1762, *The Social Contract was* a precursor to the French Revolution of 1789 and the ideas it expressed have had considerable influence around the world as people have sought to articulate the rights of the governors and the governed.

Thomas Paine was a radical English writer who participated in the revolutionary changes affecting America. He immigrated to America in 1774, and in 1776 produced a widely read pamphlet called *Common Sense* which attacked the idea of rule by monarchy and called for republican government and equal rights among citizens. He also worked on the 1776 Constitution of Pennsylvania and for the subsequent abolition of slavery in that state. Paine's publication, entitled *Rights of Man*, appeared in 1791 as a defence of the French Revolution in response to Edmund Burke's *Reflections on the Revolution in France.* Paine was popular with the people. His writings still resonate, and one does not have to look far to find bumper stickers and badges with Paine's aphorism from his *Rights of Man:* 'my country is the world, and my religion is to do good'.

Paine's writings were not clear on what are the actual *Rights of Man.* His rights theory builds on Locke and Rousseau, and concludes that a man deposits in the 'common stock of society' his natural right to act as his own judge to enforce the law of nature. Paine held that the 'power produced from the aggregate of natural rights... cannot be applied to invade the natural rights which are retained in the individual'. Reading Paine reveals what it is that makes human rights such an enduring concept. Paine railed against Burke for failing to feel any compassion for those who had suffered in the Bastille prison and for being unaffected by the 'reality of distress'. The real seeds of the human rights movement: a feeling of sympathy for the distress of others, coupled with a sense of injustice when governments resort to measures which invade the perceived natural rights of the individual.

Other philosophers have certainly contributed to our contemporary appreciation of the importance of respecting human dignity. Following the German philosopher Immanuel Kant, first, that each of us has to act according to the principles that we wish other rational beings to act on; and second, that a person should never be treated as a means to an end, but rather as an end in themselves. In the words of the modern philosopher Alan Gerwith: 'agents and institutions are absolutely prohibited from degrading persons, treating them as if they had no rights or dignity'.

This is often the starting point for rights theories that emphasize the importance of individual autonomy and agency as primordial values to be protected. The modern concept of human rights is thus traditionally easily traced to the ideas and texts adopted at the end of the 18th century. It is well known that the 1776 American Declaration of Independence stated: We hold these truths to be self-evident, 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.' The French *Declaration of the Rights of Man and of the Citizen* followed in 1789, and its familiar first two articles recognized and proclaimed that 'Men are born and remain free and equal in rights' and that 'The aim of every political association is the preservation of the natural and inalienable rights of man; these rights are liberty, property, security, and resistance to oppression.' These revolutionary Declarations represent attempts to enshrine human rights as guiding principles in the constitutions of new states or polities. Still, the rights they referred to were mostly relevant only to those states in relation to their citizens, and only specific groups could benefit from their protection.

In the 19th century, natural rights, or the 'rights of man', became less relevant to political change, and thinkers such as Jeremy Bentham ridiculed the idea that 'All men are born free' as 'Absurd and miserable nonsense'. Bentham famously dismissed natural and imprescriptibly rights as 'nonsense upon stilts', declaring that wanting something is not the same as having it. In Bentham's terms: 'hunger is not bread'. For Bentham, real rights were legal rights, and it was the role of law makers, and not natural rights advocates, to generate rights and determine their limits. Bentham considered that one was asking for trouble, inviting anarchy even, to suggest that government was constrained by natural rights.

SOCIALIST PERSPECTIVE OF HUMAN RIGHTS

The Marxist-Leninist theory of human rights is in sharp contrast to the Western liberal perspective. It represents a unique model and a distinct paradigm of rights. It considers that the individual is not an abstract entity, or an autonomous person, but is indivisible from the social whole. The rights of the individual derive from a fundamental economic relationship and from his place in a pattern of production. Therefore, the socialist perspective gives priority to economic and social rights. In fact, economic and social rights are taken to come

before civil and political rights. The primary liberty in the socialist countries is economic: the freedom from exploitation that is delivered by having power in the hands of the working class. As social relations improve, and as the socialist system is consolidated and it's material and spiritual wealth increases, the ways and means for implementation of human rights likewise increase.

The socialist doctrine of rights is best reflected in the constitutions of the former USSR (1936 and 1977). The latter provided an impressive bill of rights. Most of the rights enshrined were economic, social and cultural rights, such as right to work, right to rest and leisure, right to material maintenance in the event of sickness and disability, right to health protection, right to housing, right to education, right to enjoy cultural benefits, right to freedom of scientific, technical and artistic work and right to participate in public affairs of the state. Political rights are also recognised. These included freedom of speech, of the press, of assembly and meetings, street processions and demonstrations, and the right to association. Many personal freedoms were also included such as inviolability of person, inviolability of homes of citizens and privacy of correspondence, the defendants' right of defense, freedom of conscience and equality of rights of citizens. For exercising these rights the citizens are expected to perform many obligations and duties imposed by the socialist system of governance. These rights can be enjoyed in conformity with the interests of the working class and in order to strengthen socialist system.

Western scholars criticized the soviet system of rights and liberties. Political rights, right to form associations and right to criticize or freedom of press were severely restricted. No political party other than communist party was allowed to exist. Many provisions of the Soviet bill of rights were subject to many limitations. There was freedom for anti-religious propaganda, but not for pro-religious teachings. There was right to work, but no right to strike. There were a number of enumerated duties, such as military service, and the duty to abide by the constitution, to observe the laws and to maintain labour discipline. In sum, the constitution not only specifies the purposes for which "rights" may be employed but in addition insisted that the furtherance of these purposes was among the primary duties of the citizens.

Despite these limitations on the rights and the virtual absence of political and other civil rights in the sense we find in Western democracies, the Soviet system should be lauded for its seriousness in implementing some of the socio-economic rights. For instance, right to health protection and right to housing were not only proclaimed but were actually implemented. It is interesting to note that the USSR had more than 120 beds in hospitals for every 10,000 people in comparison to 80 in the USA, and 90-95 for Britain and France. In institutionalizing and implementing right to housing, the Soviet Union was the first country in the world. During a period of 10 years (1965-1975) it built 22.5 million flats providing

accommodation to 111 million people, i.e., half of the country's population. By 1980, 80% of the people in towns had received their self contained flats on a nominal rent amounting to a mere 3% of family income.

The new constitution of Russian Federation, adopted in 1993, after the dissolution of the USSR, no doubt lists major civil and political rights that we find in the Western liberal traditions of human rights; it does not altogether ignore positive socio-economic rights. It provides for right to a home, right to health care and medical attendance, right to education etc.

Feminist perspective on Human rights

The Declarations were inspired by a liberal conception of society and a belief in natural law, human reason, and universal order. Rights were believed (by men) to be the exclusive property of those possessing the capacity to exercise rational choice (a group that excluded women). Attempts by Olympe de Gouge to promote (by appealing to Queen Marie Antoinette) a *Declaration of the Rights of Women* and a 'Social Contract Between Man and Woman', regulating property and inheritance rights, fell on deaf ears. In England, Mary Wollstonecraft's *Vindication of the Rights of Woman* appealed for a revision of the French Constitution to respect the rights of women, arguing that men could not decide for themselves what they judged would be best for women. The denial of women's rights condemned women to the sphere of their families and left them 'groping in the dark'.

The wrongs suffered by women, if experienced by any other social group, "would be recognized as a civil and political emergency as well as a gross violation of the victims' humanity, some argue that women's bodies are central to the struggle over what constitutes women's rights as human rights. Others contend that the role of women as repositories, guardians, and transmitters of culture, and reproducers of the community is most basic. In either case, a separation of public and private spheres, and the relegation of women to the latter, supports a dual system of rights. Areas of human rights violations especially discriminatory against women include economic and educational biases that are barriers to access to productive resources and maintain women's ignorance of the laws that could protect them, domestic violence, rape, slavery in the sex trade, female genital mutilation, and neglected reproductive rights and health. Though many laws guarantee the rights of all, the impact of the same issues can be different for women and for men; for example, reproductive health is of concern to men, but can be a matter of life and death to women.

Perhaps the most profound intellectual stimulant to jurisprudence in the past generation has been the development of feminist approaches to the study of Human rights . Whereas a decade ago, significant obstacles were encountered in the process of accessing this

literature,' by the mid-1980s feminism. Virtually all areas of human rights have felt feminism's influence. Although those of most immediate material concern to women, such as family rights, employment discrimination, and reproductive rights, were the first to be analyzed from feminist perspectives.

Landmark works like Gilligan's In A Different Voice," Chodorow's The Reproduction of Mothering, and Epstein's Deceptive Distinctions addressed not only the status of women within (US) society, but attempted to explain the underpinnings of this "different" life experience. The application of insights such as these and myriad others of the 1970s and 1980s provided important foundations for feminist theorizing in human rights.

These include a focus on women's experience, especially the disempowerment that has been ubiquitous. In a world in which women perform two-thirds of the hourly labor and receive 10 percent of the income and hold barely 1 percent of the property, disempowerment is clearly economic. In a world in which women are more than 51 percent of the population, fewer than 5 percent of the heads of government, and fewer than 10 percent of the (lower house) parliamentarians, disempowerment is clearly political.

In a world in which it is acceptable, inter alia, for women to be raped by their husbands; for female detainees to be raped by the police; for women to be educated at half the level and literacy of men; for women to have no access to birth control or abortion; and for women to have no unilateral freedom of movement domestically or internationally, disempowerment is clearly social. To these indicia of societal inequity might also be added the practices of dowry murder, the aborting of female fetuses, the murder of female babies, and nationality laws that are male determinative." The breadth and depth of the critical problems addressed in feminist studies suggest that the undertaking need demonstrate no further that there are academically worthy questions to be asked about gendered economic, political, and social systems. Feminist perspective, which includes a broad field of theorizing, asks questions about where the law fits within women's experience, what is its role in perpetuating these gendered systems, and how might law be a vehicle for change.

FEMINIST STUDIES: METHODOLOGY AND ORIENTATION

Feminist studies have more in common than the subject they study; there are a variety of other relatively common features. Feminist analysis tends to be contextual, experiential, and inductive. Whereas much social theory is hierarchical, abstract, and deductive, the feminist starting point is from actual human experience and the implications of that experience. In a significant sense, it is more anthropological than philosophical, and it is marked by what Bartlett calls "practical reasoning."" Because real life experience is the source and the focus of the theorizing and incorporating the diversity of women's lives is highly valued, grand theory is largely eschewed, and absolutes are distinctly suspect.

This renders feminist theorizing necessarily self-consciously limited, tentative, and provisional." A final unifying feature of feminist theory is that it is inextricably intertwined with contemporaneous social, political, and economic movements. In the law this is an especially prominent feature of the scholarship that has paralleled, influenced, and been influenced by, the movements for legal equality of women since the late 1960s. The interactive realms of scholar and political activist often practiced but rarely openly respected in some quarters of academia, form, in the world of feminism, a natural liaison. While to some such interaction raises questions about the "objectivity" of the scholarship, to many feminists the larger question is whether the failure to engage the application of scholarship suggests an absence of responsibility.

HUMAN RIGHTS IN FEMINIST RELIEF

Feminist perspective provides very substantial challenges to human rights law as it is institutionally understood. These include both fundamental questions about the processes by which human rights are defined, adjudicated, and enforced, as well as questions about the substance of what is thereby "protected." And, while the focus of analysis is on women's experience, a feminist approach might have immediate implications for the rights of all disempowered peoples and raise questions about social organization generally. If it were necessary to offer one word to capture the essence of feminist jurisprudence, in general and in its significance for human rights analysis, it is inclusion. The enterprise critiques the experience of women as persons excluded from legal protection and from proportionate political and economic power.

Feminist critics of legal institutions question whether these institutions are capable of protecting women. Legal institutions are viewed as hierarchical, adversarial, exclusionary, and unlikely to respect claims made by women. In apparently stark contrast, exponents of the protection of human rights argue that human rights must be seen as a legal phenomenon. If principles of justice are not legalized, then they are subject to the unilateral control of nation states, and their abuse can be subjected to nothing more than the ad hoc expression of moral outrage by those who disagree with the challenged behavior. While the domestic or international codification of policy, like conventional or common law, provides no guarantee that the law will be respected, human rights advocates maintain nevertheless that "law" is a critically important arrow in their quiver. Even in situations in which litigation is either impossible or impractical, this view rests on the assumption that most states do not even want to appear to be in violation of international law. Despite the widely held view that all international law is simply international politics, being able to portray a claim as having the backing of "law" removes the dialogue from the realm of being nothing more than self-interested negotiation. A feminist analysis, in contrast, might well argue from experience that human rights law has been a miserable failure in protecting peoples from oppression.

In the protection of human rights, in a sense, the feminist concern and the classic human rights perspective may not be in fundamental disagreement over the question of reliance on law. This is because the major concern expressed by feminist critics of legal institutions, preeminently by Carole Smart, is that litigation as a process does not serve women. Human rights advocates also know only too well that litigation is an extremely limited tool in this endeavor. Thus, while women's experience would suggest that reliance on courts, judges, and lawyers to transform society is folly, feminists and traditional human rights activists are both able to appreciate, and perhaps agree, that developing law as principle and rule is not an enterprise to be jettisoned. The points of disagreement that are far more fundamental reflect on the political power that is represented in the process of defining these "legal" rights, the limitations on "rights" analysis, and the life experience that should underlie the substantive principles of human rights law to which the world ought to be committed. Where human rights advocates spar with the governmental powers-that-be largely over how they are treating political dissidents, feminist critics maintain that the diameter of the circle of inclusion in the realm of human rights law is entirely too narrow.

International Conventions for women

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on 18 December 1979, and entered into force on 2 September 1981. By now there are more than 150 States Parties to this Convention. There is no provision under the Convention for inter-State complaint, or complaints from individuals. The Committee on the Elimination of Discrimination against Women, a body of twenty-three independent experts, established under Article 17 of the Convention, considers periodic reports from States Parties regarding their compliance with the provisions of the Convention. The Committee makes general recommendations on specific articles of the Convention, or on issues related to the Convention. In 1992, General Recommendation No. 19 was made on the issue of violence against women which, whilst not specifically mentioned in the Convention, is deemed by the Committee as constituting discrimination against women and, as such, violates, amongst others, Articles 1 to 4 of the Convention. The recommendation suggests specific measures which States should take to protect women from violence. The Committee submits to the General Assembly an annual report which contains a record of the examination of State reports, concluding observations and general recommendations.

The object of the Convention on the Elimination of All Forms of Discrimination against Women is to implement equality between men and women and to prevent discrimination against women, in particular such specific forms of discrimination as forced marriages, domestic violence and less access to education, health care and public life as well as discrimination at work.

These issues were recognized at an early stage by the Commission on the Status of Women (a body of governmental representatives), which was established in 1946 with the mandate to further gender equality. It was also given the task of drafting the Convention. In emphasizing the indivisibility of human rights, the Commission has focused attention on development issues as an area which affects women disproportionately. More recently, the Commission has been concerned with practical measures to ensure the implementation of women's rights.

These are broadly aimed at integrating the human rights of women into all United Nations activities, as well as creating special mechanisms to deal with violations of those rights specifically concerning women. In order to further promote the rights of women, the United Nations convened several world conferences: in Mexico City, Mexico (19 June-2 July 1975), Copenhagen, Denmark (24-30 July 1980) and Nairobi, Kenya (15-26 July 1985). The World Conference on Women held in 1985 adopted the 'Nairobi Forward-looking Strategies for the Advancement of Women to the Year 2000', which are aimed at the achievement of a genuine equality of women in all spheres of life and the elimination of all forms and manifestations of discrimination against them.

The Vienna Declaration and Programme of Action (1993) called for increased integration of women's rights into the United Nations human rights system. It furthermore endorsed the need to recognize the particularity of women's rights and the development of means to implement them, including the more vigorous implementation of the Convention on the Elimination of All Forms of Discrimination against Women. In a follow-up to the Vienna Declaration, the Commission on Human Rights passed a resolution at its fiftieth session calling for 'intensified effort at the international level to integrate the equal status of women and the human rights of women into the mainstream of United Nations system-wide activity'.

The Declaration on the Elimination of Violence against Women, adopted by the United Nations General Assembly in 1993, calls on all States to take measures to prevent and punish violence against women. In March 1994, the Commission on Human Rights established a Special Reporters on violence against women, with the mandate to examine the causes and consequences of violence against women. The Fourth World Conference on Women, which took place in Beijing, China, from 4 to 15 September 1995, confirmed the importance of actions in order to ensure the advancement of women, including their full incorporation into the development process, improvement of their status in society, and greater opportunities for education.

Third world view of human rights

As the third world societies are embarking on the path of development, the process of democratization and economic growth seems to run counter to each other in most of the

countries. There was a compromise of sorts in the beginning of decolonization though. With greater prosperity, however, there is an increasing clamor for more freedom and democracy. In the march towards development the biggest casualty is human rights. Despite the efforts by the international institutions and international community, there is a tardy growth in the advancement of human rights in these societies. Further, the emergence of international terrorism as a weapon to gain political power by the disgruntled elements in the developing societies of the east as well west has threatened the prospects of human rights in these societies. There is also the increase in the demand for self-determination by many communities in many countries. These communities most often use violence to achieve their goals. There is a thin line of wedge, however, dividing terrorists and freedom fighters. In the case of the former the fear and violence caused do damage to the intent and purpose of the objective and ideology they pursue. In the later case to the method of violence for the sake of self-determination also does bring much harm to their goals and objective. This, in any case, brings a lot of damage. The regime in power takes the advantage and engages in human rights violations for protecting its loyal citizens. Besides the slow pace of growth of democracy and human rights in the third world societies, there is the problem of interpretation of the universal nature of the western perspective of human rights.

Principally the problem emerges from the use of the bogey of human rights by the western powers to bully third world countries. It is often believed that the rich countries use the human rights violations as a pretext to further their economic ends. Still more interesting is that the western world is unmindful of human rights abuses in those countries that cater to their economic and security interests. There seems to be a double standard in the use of human rights as a weapon for furthering liberal democracy. There are questions regarding the rigid applicability of the high standards of human rights in the backward societies that are undergoing the transition from tradition to modernity. The problem is further compounded in the context of globalization where nation states of the third world are on the path of liberalizing their economies. The fear of sanctions looms large, in case these countries do not know the line of the west. This threat is rather dangerous from two angles. First, by imposing sanctions the western World violates human rights; as such sanctions lead to the increasing pauperization in the third world. Secondly, the objective of liberalizing the economy for ensuring growth in these societies will be blocked which indirectly works antithetical to the objective of globalization that the west intended to pursue.

The fundamental issue that bothers the third world societies is that given the structural difficulties, too rigid adherence to the western human rights programs would stifle the development process. Rigid adherence of human rights pursuit in the third world countries also opens the floodgate for numerous groups and communities to fight for separate political entities, in the name of self-determination there would be chaos of sorts in these

societies. The writ of the centralized state apparatus will erode and progress may be thwarted. The ultimate objective of freedom from want and privation, which is the basic human rights concern, will be lost. This does not imply that the pursuit of human rights in the third world should be abandoned altogether. Issues such as environment and labor standard in the context of third world situations would deprive the majority of people of the basic needs of livelihood. Poverty and unemployment make it difficult to conform to these newly emerging issues of human rights discourse. A middle path has to be found in order to ensure the basic needs of livelihood and minimum human rights for the citizens in the third world societies.

Another important dimension of human rights pursuit in the third world societies is the need of the growth of institutions and structures. There are some countries where the mechanisms for governance are still to be evolved. There are also some societies where the writ of the government over the entire political system is yet to be felt. There are many less-developed countries where paucity of resources makes it difficult even to run the government, let alone enforcing human rights. These difficulties, however, do not make it an excuse for human rights violation nor do they entitle them to shy away from basic human rights obligations. Nevertheless, these are some of the issues that stand in the way of realizing the objective human rights paradigm in the third world societies.

The discussions in the previous section drive home the need to have a new dimension to the discourse on human rights. There is no doubt that the foregoing sections highlight the growth and development of the concept of human rights since the ancient times till date. Theoretically, there is a formidable growth in the literature on human rights though. They are based on western institutions and structures. The perspective is also western oriented, although they seem to characterize universality. The fundamental problem with the so called universal nature of the human rights paradigm is that it is not sensitive to the third world issues. For the west, it is human rights per se that is inseparable from modern polity. For the third world, however, development is the main concern, although human rights constitute an important aspect of it. There are some compromises which need to be reckoned when development is blended with human rights. Eradication of poverty and unemployment are the key elements of third world political process. For the sake of human rights people in the third world cannot remain deprived of their basic needs, which, of course, is also one dimension of human right.

The trajectory of the growth of the concept of human rights has been tardy in the third world. It took centuries for the west to evolve and execute the concept. The evolution of democracy and human rights in the west witnessed many revolutions. The third world societies may not have to undergo the same process to realize the goals of democracy. This does not, however, imply that there would be an outright imposition or adoption of these

concepts and perspectives for the sake of having them. There is the need of building institutions and structures that can further the goals of democracy and human rights. These societies need time and resources to pursue them with efficiency and productively. Further, the transition from tradition to modernity raises many fundamental questions about the retention of the cultural aspect of the third world societies. Consequent upon the rigid adoption of western oriented democracy and human rights, nation states in the third world face the so called crisis of cultural decadence. There is a fear in these countries of the swamping of the oriental culture by the western culture. This, however, does not mean that western institutions are lop-sided, only to suit to their needs. Rather, the universal nature of these concepts and institutions strengthen the objectives of realizing democracy and human rights in the third world. There is no denying that modernity renders harmonization of cultures. The challenge is, now, how to modernize the third world societies and at the same time retain the respective cultural aspects. This has a direct impact on the discourse on human rights. Thus, the human rights paradigm needs a shift in its thrust to accommodate the third world sensibilities. There is a need to recast the human rights paradigm to make it really universal in character.

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