

---

## **UNIT 3 HUMAN RIGHTS**

---

### **Contents**

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Rights
- 3.3 Development of Human Rights
- 3.4 A Critical Look at Some Specific “Human Rights”
- 3.5 The Right to Life
- 3.6 Let Us Sum up
- 3.7 Key words
- 3.8 Further Readings and References

---

### **3.0 OBJECTIVES**

---

We shall seek to understand the important aspects of rights in this unit, first by briefly expounding the different foundations of human rights, then by giving a brief account of the historical development of human rights. We shall also critically evaluate human rights. Special attention is given to the right to life as this unfolds the relation between ethics and human rights in general

---

### **3.1 INTRODUCTION**

---

A simple working definition of a “right” is that it is a well-founded claim. Historically various bases or foundations have been put forward to ground different rights. We will need to critically assess these in a moment. For instance, the British empiricist John Locke (1632-1704) who inspired the writing of both the American and the Indian Constitutions, recognized that the free gifts of Nature (land, forests, the water in lakes and rivers, fresh air, the flowers and fruits that grew wildly) belong to no one but if you “mixed your labour” with any of them, you acquired a “right to private property” of them. The water in the stream belongs to everyone, but the water that I went and fetched in my bucket belongs to me. The trees in the forest are anyone’s, but the one I cut down is mine. So too as regards the fruit and flowers that I have carefully picked. Fair enough. But, what if I put my labour to erecting a fence around a whole lake? Does that entitle me to private ownership of this entire “free gift of Nature,” such that I can reserve its watery wealth all to myself or, perhaps, charge a fee to anyone who wants to draw a bucket from it? Marxists as we know have no problems with private ownership of “consumer goods,” that is, goods that we use or “consume” directly – a computer, bicycle, food, a house, clothes and so on. But they are firmly opposed to private ownership of producer goods, that is, goods that are used to produce other goods – factories, fuel, tools, agricultural land and so on. Not everyone would go along with them, in some virulent anti-capitalists. Some “rights,” such as the right to life, liberty and free speech are allegedly rooted in our very human nature and so are “inalienable” (no one can deprive us of them). How many are these and which ones are they? Has the State the right to curtail them, in emergencies, for a limited period? And has the State the right to execute

capital punishment; if so, on what grounds? These are but some of the issues we have to come to grips with in this chapter.

---

## 3.2 RIGHTS

---

As different rights may lay claim to different foundations, it might be worthwhile to classify them according to these sources, to avoid confusion and misunderstanding. Now, perhaps the most important basic distinction we can make is between positive and natural rights and their corresponding duties.

A “natural right” as the very term indicates, is one that is founded on our very human nature, adequately understood. For instance, the very fact that we are embodied beings, lays upon us the duty to take reasonable care of our bodies. Whence arises the fundamental human right to food, clothing and shelter. We have a right to adequate supplies of these, along with the proper means to obtain them (the right to a decent job and a living wage). Of course, this means that we should make proper use of our human qualities of intelligence and freedom and not overindulge any of our appetites, such that we ruin our health in the process. This also means that we recognize that other persons have an equal right to such goods and we may not go on an unbridled spree of “having more,” amassing private supplies of the above-mentioned necessities such that other persons are deprived of their possibility of access to them. “Positive rights,” on the other hand, are those granted us by virtue of law. Thus, the laws of the State lay down who has the right to vote (usually a citizen of either sex, who has passed the legal age of eighteen).

Now, inasmuch as an authentic “natural right” is rooted in my human nature, no individual or organization can take it away from us: “natural rights” are thus “inalienable.” Our various Constitutions actually do not “grant” us these rights; at best, they merely recognize and guarantee them. A particular State may refuse to acknowledge a particular “natural right,” in which case it would be acting beyond its proper power. It may legally prevent a person from exercising his or her human rights, but it can’t really *remove* one’s claim to them. Few, however, would deny the State right to suspend in an emergency, certain “natural rights” of the citizens, *temporarily* for the common good. Thus, during a flood or in the aftermath of an earthquake, the State may request private agencies to transport food and medicine to the affected areas or to rush the injured to hospital. Some amount of freedom of speech may be curtailed in times of war lest enemy agents have easy access to information that would jeopardize the security of the nation and its citizens.

---

## 3.3 DEVELOPMENT OF HUMAN RIGHTS

---

The initial points of rights were mainly freedom, security, property and resistance to oppression (statement of 1789), which are inspired by liberalism and are considered as rights to be protected against the state. Later versions add the concerns of dignity and wellbeing (education, health, etc.), which, inspired by socialism in a broad sense, are considered as rights to be guaranteed.

The first generation of human rights is that of civil and political rights. These are rights of the individual to confront the state if it acts contrary to the political

freedom of the citizens. Historically, these rights already in the embryonic British customary constitution developed in the late eighteenth century and were recognized during the American Revolution (1787) and the French Revolution (1789). These rights include civil liberties which guarantees freedom to the individual to do anything in so far as it does not harm others, right to life, prohibition of slavery, prohibition of torture and inhuman, prohibition of arbitrary detention, freedom of marriage and of parentage, and right to private property (considered by the Declaration of 1789 as a natural and inalienable right of human person, Articles 2 and 17). Political rights include the right to vote, the right of resistance to oppression, the right of peaceful assembly including freedom of religion.

The second-generation rights are rights that require government intervention to be implemented. The individual, unlike in the case of resistance, is here able to require the State to take some action. The State must guarantee some rights to its citizens in return for abandonment of a part of their freedom. They are called social rights because they result from the experience of social struggles.

Historically, most of these rights have been recognized in the aftermath of the Second World War. Nevertheless, the right to work and to social protection was claimed at the outset of the French Revolution of 1789 and enrolled in the law of March 19, 1793, which states that every human person is entitled to his/her livelihood through work if he/she is capable to work or through free relief if he/she is unable to work. The care of providing for the subsistence of the poor is a national duty. Similarly, Article 21 of the Declaration of Human Rights and Citizen of 1793 affirms that the State owes subsistence to unfortunate citizens, either by providing labour or providing the means of existence for those who are unable to work. There is some conflict between the rights to be safeguarded against the state and the rights to be guaranteed by the state. This is because of the opposition between two conceptions of human rights: liberal and socialist.

The Universal Declaration of Human Rights (1948), which upholds rights such as right to social security (article 22), right to work (article 23) and right to education (article 26), is accompanied by two United Nations International pacts on civil and political (first generation) and on Economic, Social and Cultural Rights (second generation) (December 16, 1966). Both pacts have rarely been signed together; the countries of the West Block signed the first more willingly while those in Eastern bloc signed the second.

The human rights of the third generation revolve around the fundamental principle of equality and non-discrimination. Some of the major concerns are the environmental law, considerations of bioethics, right to development, and the right to peace. Some like Emmanuel Kobra Quashigah speak of a fourth generation of rights that would be global, so all actors in society would benefit from implementing these rights. However, the content of these rights is not clear. They contain certain rights of the third like environmental law and bioethics. However there is a shift from freedom to substantive equality.

The source of law in the field of human rights is the existence of the individual, while the source of law in democracies, by definition derives from the general will. When these two sources of law conflict, society must find a balance and a way to reconcile these two imperatives. For example, we have freedom of

expression, but the criminal law prohibits insulting a neighbour, and we have the fundamental right to marry, but civil law prohibits marriage between brothers and sisters in many countries. The laws in these examples provided do not violate human rights but this raises the difficult question of what “acceptable” limits that the law may impose on human rights in a democratic society governed by the right.

It is possible that democracy can come into conflict with human rights. The democratic principle makes legitimate a priori any determination made in the popular will, and recognizes no higher authority than the rule of the people. Accordingly, there is no universally accepted philosophical, political or legal solution as satisfactory if the majority of people, directly or through officers democratically elected, would support a policy contrary to human rights. A democratic state can violate human rights. To avoid this, it is generally accepted that they must limit the sovereignty of the people by independent safeguards, a role often taken by the courts (at national level, by constitutional judges or Supreme Courts.

**Check Your Progress I**

**Note:** Use the space provided for your answer

1) Define Rights.

.....  
.....  
.....  
.....  
.....

2) Explain Natural Rights and positive Rights.

.....  
.....  
.....  
.....  
.....

---

**3.4 A CRITICAL LOOK AT SOME SPECIFIC  
“HUMAN RIGHTS”**

---

It is necessary for us to take a closer look at certain basic human rights that touch upon issues that are very much “in the news” or part and parcel of our everyday experience. Let us critically assess their meaning and foundation.

The Right to Private Property: Private property – even of producer goods is a natural human right, but it should not be forgotten that “the free gifts of nature” also have a social function. This is because this right is rooted in our very human nature as well as in the very make-up of the commodities concerned, in addition.

Private property is an inalienable human right because in as much as we are embodied beings, we need a certain supply of material goods to provide for our growth, health and well being as well as that of our family members. This would include a reasonable right to “store up” for future plans and emergencies. By that same token, we also have a right to a reasonable amount of entertainment, rest and leisure for the purpose of recreation after hard work. We need to literally “re-create” ourselves, our energies and strength so as to be able to work more efficiently and productively in the future. Now, as scientific progress is made and lifestyles change, we may make legitimate demands for more sophisticated forms of amusement as well as more efficient labour-saving devices. All this is quite well ordered and constitutes part of human duty towards human inherent embodied nature.

On the other hand, the very nature of material goods cries out for some free and intelligent being to take possession of them, take care of them and help them develop more fully and freely. About the only things that we need and that we can find “ready-made” in the pure state of nature are fruit, vegetables, air and water. For the rest, we need to plough, water, harvest, to weave and tailor, to graze and so on before we can avail ourselves of the “consumer goods” we need. A measure of research and development must also be undertaken to improve the quality and quantity of these necessities: they won’t simply develop themselves, collaborate and make scientific breakthroughs by “natural selection” and similar processes. Yes, the very nature of material things themselves requires that some free and intelligent agents help them to develop and come to their full flowering.

Of course, collective farms and State-ownership of industries can assure us of all these: there is no absolute need for private ownership, especially of “producer goods.” Very true, but history and very recent human experience gives us cause to hesitate. Recent facts have shown that humans do not take care of or manage efficiently that which does not directly belong to them. Life behind the former Soviet Union or in strict Communist China, before the “opening up” seems to bear this out. And don’t we in India repeatedly clamour for bringing back into the public sector many State-run industries – the electric supply, for instance – to rescue them from the morass of inefficiency and sub-standard quality in which they have become mired? It would seem that such enterprises thrive best when they are privately owned and directed, when they can face the challenge of competition by developing quality control, efficiency in management, research into better methods of production and so on. Admittedly, all this is motivated not so much by the desire to provide better goods and services but to ensure bigger profits. However, good business acumen recognizes that the two are inseparably connected. It would seem that a blanket ban on all private ownership of producer goods and to advocate only state ownership in this regard would be as disastrous as the reverse. Nor is this the conclusion of those who indulge in “armchair philosophizing,” rather is it borne out by those who have a nose for the facts, especially good business sense.

Of course, it is also an undeniable element of human experience that it is quite possible to “go overboard” with the burgeoning consumer mentality that suffocates and stifles us. The promise of consumerism – as heralded by globalization – assures us that “having more, producing more, hoarding more” is the answer to the deep-seated human quest for happiness. Happiness is a measure of having more (power and things), we are told. If one is not yet truly happy, it is due to the

simple fact that he or she does not yet have enough. The purpose of human life and development is not to be more (human) but to have more. Hence, Ayn Rand and those of her like would see sharing as an anti-value and all appeals to rights and duties, to love and concern for the poor as merely “subjective,” foolish preying upon the heart and trying to make a “whim” into a universal norm. If “having more” is to be the ultimate goal of human life, it would make absolutely no sense to share, for that would involve having less. But what if the authentic goal of human life was to “be more” and “having more” a mere means to this? Wouldn’t that change the whole perspective? Sometimes we would “be more” by “having less” (sharing), thus enhancing our social being as a reasonable respite from the wanton and unceasing rape of nature, bequeathing insoluble problems for future generations? And wouldn’t this not only dehumanize millions yet unborn, but our very selves too, for it is harming society and nature, both of which are necessary for our growth?

---

### 3.5 THE RIGHT TO LIFE

---

This is perhaps the most basic of all fundamental rights, in the sense that if one were to deny it, all the others would have no meaning. Aquinas included it among the most basic practical first principles with which human beings are endowed: indeed, as the natural urge for self-preservation, it is one of those metaphysical drives which we share with all beings. In as much as human life is, in a special way something that stems from God’s personal creative act, it is something sacred and no one, for any purpose whatsoever can, therefore arrogate to himself or herself the right to directly destroy an innocent human being. Even an atheist would have good reason to respect this right, for it is the basis of all the others and without it the rest would become derisory.

This does not mean that one cannot strike back, even kill, an unjust aggressor. The legitimate defence of individual persons as well as of societies, would allow one the right to do so. Thomas Aquinas justifies this on the grounds of the Principle of Double Effect. As he puts it in the book *Summa*, “The act of self-defence can have a double effect: the preservation of one’s own life and the killing of the aggressor. The one is intended, the other is not.” However, it stands to reason that if one were to use against a malicious assailant more violence than is necessary, this could hardly be justified as Aquinas reiterates. If a human person, in self-defence, uses more than necessary violence, it will be unlawful: whereas if he repels force with moderation, his defence will be lawful, nor is it necessary for salvation that a man omit the act of moderate self-defence to avoid killing the other man, since one is bound to take more care of one’s own life than that of others.

Helder Camara teaches us, in his *Spiral of Violence*, to be wary of the definitely biased understanding of the term that vested interests and the powers project. We must recognize three distinct types of violence: structural violence, the violence that is constituted by unjust social or other structures (e.g. the caste system, various forms of apartheid and discrimination) which effectively debar persons of a particular sex, ethnic origin etc. from the enjoyment of certain fundamental human rights. Insurrectional violence occurs when oppressed people, unable to bear the injustices let loose on them by the bullying tyrannical powers that be, strike back desperately in rioting and other forms of civil unrest. Repressive violence takes place when the State calls in crack troops, maybe

even helicopter gunships, to rain down ruthless firebombs and bullets on the revolting peasantry or slum-dwellers, whose make-shaft weapons and rag-tag “army” are no match for them. Eventually this latter form of violence sets up even worse and more inhuman structures to keep the people in control. A time is reached when the latter can “take it no more” and the weary round starts all over again. Thus, there is a cycle of continually escalating violence.

The significant thing is, as Helder Camara, the prophetic pastor of Recife points out, only the second instance is qualified as “violence”: the first and third are described as “public order” and “restoring the public order”, respectively. This is yet another example of how the dominant class rules over every aspect of life – including deciding how key words in the vocabulary are to be defined and used invariably, in a way that justifies the status quo and those who wield the reins of power in any given society.

In today’s warped set-up, where violence is frequently the first reaction to an unwelcome development (college students – even school kids – attacking professors or teachers who didn’t give them a good mark, or stabbing former partners who had “ditched them”), we cannot praise too highly those who call for reconciliation, dialogue and healing. Catholic church in its document on *The Church in the Modern World* concurs, “We cannot fail to praise those who renounce violence in the vindication of their rights and who resort to methods of defence which are otherwise available to weaker parties, too”. However, a small provision is added: “injury to the rights and duties of others or of the community itself” is to be avoided. However, this should not necessarily oblige us to go along with the great votary of ahimsa, Mahatma Gandhi, when he teaches that, “Every murder or other injury no matter for what cause, committed against another, is a crime against humanity.” Aquinas and other authoritative thinkers would have another view. Paolo Freire would also differ with Gandhi on this matter, though not all would approve of his reasoning, all the way. The violence of the oppressed in certain cases, though they may seem “as violent as the initial violence of the oppressor” is of a qualitatively different stamp. That of the oppressor is universally dehumanizing: it reduces both its victims as well as its perpetrators (though for different reasons) to a sub-human conditional man. The violence of the oppressor “prevents the oppressed from being fully human”; that of the oppressed “prevents the oppressor from dehumanizing himself” (the oppressor is almost invariably a male). In as much as the oppressed uses violence because of its desire “to pursue the right to be human” and, in “fighting to be human, takes away the oppressor’s power to dominate,” it thereby rescues him from the dehumanizing act of degrading both himself and the other, it cannot be put on the same level as oppressive violence.

After all, the real subject of political power is the people who, in effect delegate some of this power (e.g. to provide basic necessities, security and so on) – either tacitly or by election – to their representatives and the functionaries they employ for this purpose. Now, if and when these representatives prove themselves unworthy or incapable of fulfilling this commission, the people obviously have the right to depose them and replace them with others whom they find fit. Now this is normally done in and through the election process however, other efficacious means could be established, with the consent of the people and enshrined in the National Constitution and it should be carried out by due process of the law.

However, when there is a Government, so entrenched in its power that no legal means can oust it (as the military regime of Myanmar), assuredly the people would have the right to violent revolution to achieve its legitimate aim. Even Aquinas grants that. Furthermore, he even goes on to say that when such times of civil revolt, unrest and dissension arise, “it is the tyrant” (or the tyrannical government) “that is more guilty of sedition,” for it is the real party who “fosters discord and dissension among the people in order to lord it over them more securely”. Salvino Azzopardi lists the five conditions under which Scholastic tradition permits an oppressed people to revolt. They are as follows: the abuse of power is really excessive and habitual, all peaceful means have been employed in vain (e.g. passive resistance, active, but not violent protests, etc.), no more violence than is necessary, no harm is done to innocent third parties (e.g. loss of their lives, their property, etc.), and no greater evil is foreseen to ensue.

However, with all respect to the Scholastic tradition, we may wonder how useful such stipulations can be to would-be revolutionary leaders in a concrete situation, apart from very general guidelines. How does one go about trying to fulfil these requirements in a practical way? For instance, how does one restrain the use of violence? Perhaps it is not an impossible task, but it is too complex an issue to be written off with the trite recommendation that it be taken care of. Then, how does one determine who is an “innocent third party” in cases of large-scale structural injustice? And just how would one provide practical safeguards against the suffering of the innocent, even if one *could* identify them? And what is the criterion to decide, not just that the abuse of power has been “excessive and habitual,” but that *all* peaceful means have actually been employed? And suppose one is reasonably certain that the Government is a kind of “wild repressive steamroller that would show no respect for peaceful protesters. In that case, could one proceed directly to the use of violence? How does one arrive at the assurance that no greater evil would result from the uprising?

In most cases, whether the people revolt or not, depends on how widespread and horrendous is the oppression they are facing. Eventually, when they are convinced that “they cannot take it anymore”, that all reasonable bounds have been crossed, they make some desperate resolve to the effect that it would be better to go down fighting rather than die by degrees amidst the humiliation of their women and children? For the most part, they are well aware that they have no chance – underfed, untrained and poorly equipped against a few well-fed, well-trained and well-armed regulars. Jaya Prakash Narayan, the former firebrand revolutionary, who was eventually converted to non-violence, confides to us that it was more for pragmatic reasons (will it work?) than for moral ones (is it right?) that he abandoned the path of popular violence and insurrection.

**Check Your Progress II**

**Note:** Use the space provided for your answer

- 1) Explain Right to Life.

.....  
.....  
.....  
.....



2) Briefly write on Private Property.

.....

.....

.....

.....

.....

.....

.....

### 3.6 LET US SUM UP

Human rights are the inalienable rights of all human beings, whatever be their nationality, place of residence, sex, ethnic or national origin, color, religion, language or any other condition. We all have the right to exercise our rights without discrimination and on an equal footing. These rights are interrelated, interdependent and indivisible. The universal human rights are often expressed and guaranteed by law, in the form of treaties, customary international law, general principles and other sources of international law. International law on Human Rights states that governments are obliged to act in a certain way or refrain from certain acts to promote and protect human rights and fundamental freedoms of individuals or groups.

Human rights are inalienable. They can not be revoked except in specific circumstances and in accordance with a specific procedure. The right to liberty may, for example, be limited if a court finds the person guilty of a crime. All human rights are indivisible, whether civil or political, including the right to life, equality before the law and freedom of expression, economic, social and cultural rights as the right to work, social security and education, or collective rights as the right to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of others. Similarly, deprivation of rights has a negative effect on others. The non-discrimination is a universal principle in international law of human rights. The principle exists in all the major treaties on human rights and serves as a central theme of certain international 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.

### 3.7 KEY WORDS

- Embodied** : to express or represent an idea or a quality.
- Dehumanize** : to make somebody lose their human qualities, such as kindness, pity, etc.
- Scholastic** : connected with schools of education, mainly based on religious principles and writings.

---

### 3.8 FURTHER READINGS AND REFERENCES

---

Goldewijk, B. Klein, A. Contreras Baspineiro and P. Cesar Carbonari. *Dignity and Human Rights: The Implementation of Economic, Social and Cultural Rights*. Ardsley, NY: Transnational Publ., 2002.

Steiner, Henry J. and Philip Alston. *International Human Rights in Context: Law, Politics, Morals*. New York: Oxford University Press, 2000.

Tomasevski, Katarina. *Economic, Social and Cultural Rights: A Textbook*. Dordrecht: Martinus Nijhoff, 1995.

Wellman, Carl. *The Proliferation of Rights: Moral Progress or Empty Rhetoric?* Boulder, CO: Westview Press, 1998.

Wilson, Richard A., Ed. *Human Rights, Culture and Context: Anthropological Perspectives*. London: Pluto Press, 1999.

Woods, Jeanne M., Hope Lewis, and Ibrahim Gassama, Eds. *Economic, Social and Cultural Rights: International and Comparative Perspectives*. Ardsley, NY: Transnational Publ., 2004.