



**POST GRADUATE DIPLOMA
IN
CHILD RIGHTS AND GOVERNANCE**



BLOCK I

DCG102: CHILD RIGHTS AS HUMAN RIGHTS- PART I

OFFERED BY

**CENTRE FOR OPEN AND DISTANCE LEARNING
TEZPUR UNIVERSITY
(A CENTRAL UNIVERSITY)
IN COLLABORATION WITH
UNICEF- ASSAM**

Vision

To grow to be a leading centre for human resource development through distance, open and universal learning system.

Mission

To provide quality higher education at door step through barrierless, flexible and open learning mode in conformity with national priority and societal need.

Objective

- **To offer degree, diploma, certificate level programme of study through distance learning in various emerging subjects across the disciplines.**
- **To offer job oriented and vocational programmes in flexible terms in the line of the national and regional level demand of manpower.**
- **To offer various programmes under lifelong learning contributing to the local and regional level requirements and as per the need of the society at large.**
- **To undertake various research and academic activities for furtherance of distance education in the region.**
- **To contribute to conserve and promote cultural heritage, literature, traditional knowledge and environment conducting short programmes, workshops, seminars and research in interdisciplinary field.**

DCG-102:Child Rights as Human Rights- Part I

ADVISORY COMMITTEE

Dr. Rajeev K. Doley	Director, Centre for Inclusive Development, Tezpur University
Prof. Debabrata Das	Director, Centre for Open and Distance Learning, Tezpur University
Prof. Asok Kumar Sarkar	Professor, Department of Social Work, Visva- Bharati, Santiniketan

CONTRIBUTOR

Mr. Mahesh Menon	Assistant Professor of Law, The West Bengal National University of Juridical Sciences
------------------	---

EDITOR

Dr. Subhrangshu Dhar	Assistant Professor, Centre for Inclusive Development, Tezpur University
----------------------	--

Copyright © reserved with Centre for Inclusive Development (CID), Tezpur University. No part of this work may be reproduced in any form, by mimeograph or any other means, without permission in writing from CID.

Any other information about CID may be obtained from the Office of the CID, Tezpur University, Tezpur-784028, Assam.

Published by **Dr. Rajeev K. Doley**, Director on behalf of the Centre for Inclusive Development, Tezpur University, Assam.

TABLE OF CONTENT

BLOCK I	
UNIT 1: CONCEPTUAL & THEORETICAL FOUNDATIONS OF HUMAN RIGHTS	
	1 - 18
1.1 Introduction	
1.2 Learning Objectives	
1.3 Evolution of human rights	
1.4 Generation of rights	
1.5 Principles of human rights	
1.6 Universalism vs. Cultural Relativism	
1.7 Summary	
Unit 2: International Human Rights Law and Child Rights	
2.1 Introduction	
2.2 Learning Objectives	
2.3 Evolution of International human rights law	
2.4 Charity to rights based approach	
2.5 Principal human rights instruments	
2.6 Child rights framework: History and evolution	
2.7 Summary	

BLOCK INTRODUCTION

The course of *DCG 102: Child Rights as Human Rights- Part I* is divided into two blocks. Each block contains two units. The present block contains Unit 1 and 2. **Unit 1** deals with the evolution of human rights as a concept, generation and principles of human rights and a much needed discussion on universalism vs. cultural relativism. The unit also introduces the concept of rights and human rights.

Unit 2 is focusing on human rights law and implementation. It starts with the evolution of human rights as a law followed by different approaches to development and principal human rights instruments. The last part of the unit discusses about the evolution of child rights framework.

UNIT 1:

CONCEPTUAL & THEORETICAL FOUNDATIONS OF HUMAN RIGHTS

Structure

- 1.1 Introduction
- 1.2 Learning Objectives
- 1.3 Evolution of human rights
- 1.4 Generation of rights
- 1.5 Principles of human rights
- 1.6 Universalism vs. Cultural Relativism
- 1.7 Summary

1.1 INTRODUCTION

The present unit would lay a conceptual and theoretical foundation of human rights. It would examine the historical evolution of human rights and its generations. The principles of human rights and a discussion on universalism and cultural relativism are also part of this unit.

1.2 LEARNING OBJECTIVES

- a) To develop conceptual clarity of human rights
- b) To acquire knowledge on evolution of human rights and its generations
- c) To understand the core values of human rights
- d) To examine the relevance of universalism in a culturally diverse world

1.3 EVOLUTION OF HUMAN RIGHTS

The concept of human rights has evolved gradually over the centuries. Beginning was made with the treaties between the king and the barons for imposition of unlawful taxes. In later phase, imposition of unlawful

taxation and colonization played a pivotal role in triggering the human rights movement. But, before going to the historical evolution of human rights we should first understand the concept of rights and human rights.

Rights

In its simplest sense, “Rights are entitlements (not) to perform certain actions, or (not) to be in certain states; or entitlements that others (not) perform certain actions or (not) be in certain states.” (Wenar, 2015). In the present day, “rights” play a central role in organization of states, government and society. They shape the content of laws and provide the moral standards against which government and individual actions are judged.

Rights are typically divided into two broad categories: claim rights and liberty rights. A claim right is one that it provides the holder of the right with a “valid claim” (Feinberg, 1970) and creates a duty on another person/entity towards the holder of that right. The right holder can claim that the duty holder must do or not do something. Thus, when we speak of a right to life and liberty, we mean that there is a duty imposed on others not to assault a person or restrain him. A liberty right, or a privilege, is a freedom that the possessor of that right has to act in a certain way. Rights, in such cases “are permissions rather than requirements. Rights tell us what the bearer is at liberty to do.” (Louden, 1983). “A person who says to another ‘I have a right to do it’ is not saying that ... it is not wrong to do it. He is claiming that the other has a duty not to interfere.” (Raz, 1994).

Rights, thus, perform a foundational role in the organization of a civilized human society by allowing the holder to control the behaviour of the corresponding duty holder (Hart, 1982) and/or furthering the interests of

the right holder (Raz, 1986). “A right is something a man can stand on, something that can be demanded or insisted upon without embarrassment or shame” (Feinberg, 1973). To have a right means that the holder of the right can “resist, complain, remonstrate, and perhaps use coercive measures of other kinds, including, perhaps, to gain compensation if the right is violated.”(Darwell, 2006). About the necessity of rights, Quinn (1973) writes :

“A person is constituted by his body and his mind. They are parts or aspects of him. For that very reason, it is fitting that he have primary say over what may be done to them—not because such an arrangement best promotes overall human welfare, but because any arrangement that denied him that say would be a grave indignity. In giving him this authority, morality recognizes his existence as an individual with ends of his own—an independent being. Since that is what he is, he deserves this recognition.”

Human Rights

“Human rights are norms that help to protect all people everywhere from severe political, legal, and social abuses.” (Nickel, 2017). Human Rights are generally claim rights that impose duties on the addressees of those rights and they seek to achieve freedom and focus on protection, confer a certain status or endow benefits on the holder of rights (Beitz, 2009). Human Rights imposes duties on States and Governments to “respect, protect and promote” them (Nickel, 2017). Human Rights are *universal* in character – all *humans* are entitled to them :

“The meaning of human rights to be Human rights are the rights of a person simply because he or she is a human being. Everybody is equally entitled to human rights. It is the basis of human existence. Human rights are rights inherent to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. All humans are equally entitled to human rights without discrimination. These rights are all interrelated, interdependent and indivisible.” (OHCR, undated)

Human Rights are inalienable in that the holder of these rights cannot be give up these rights even if he wishes to. This does not however mean that the rights are absolute in character and cannot be overridden in any circumstances. For instance, while liberty is a human right, a person can be deprived of liberty as a punishment for a crime that he committed. Donnelly has characterised inalienability to mean “very hard to loose” (Donnelly, 2013)

Human Rights as a concept evolved from the perspective that human behaviour should follow certain principles by virtue of being human i.e. the principle of self-fulfilment, respect for others, doing no harm to others, quest to contribute to others well-being, recognition of human dignity and human freedom This understanding of human behaviour has historical roots in early religious and philosophical writings. Religious texts such as the Bible and the Koran and Confucian, Hindu, Buddhist traditions profess these principles of human behaviour. Common to each of these religions and tradition is the recognition of certain universally valid principles and standards of behaviour. It is these behavioural standards that inspire

human rights thinking but the lineage of the human rights framework (which is more evolved than just good behaviour) is much more complicated.

Magna Carta (1215) was one of the first written drafts recognising the legal rights of subjects of the crown (then indistinguishable from the state). This charter for the first time disputed the complete autonomy of the monarch. The Magna Carta or the 'Great Charter' was drawn when the subjects were unhappy with the rule of the King John of England as he violated a number of ancient laws and customs by which England had been governed. The Magna Carta established a tradition of civil rights. This document influenced the English Bill of Rights in 1689 which laid down the civil and political rights of all subjects. These documents did not see rights as universal. They were rather limited to barons and lords in the case of Magna Carta. Even when they were extended to all men in the Bill of Rights, they remained within the purview of 'men'. But these documents had a great influence during the eighteenth century when an acceptance of natural rights as legal rights was developing and the rights were written into national constitutions. These documents assented to the free nature of the individual. The understanding of the contractual relationship between the state and the individual and that the state does not have complete power of its citizen was the premise of documents such as the French Declaration of the Rights of Man of 1789, American Declaration of Independence-1776 and the American Bill of Rights of 1791. In Mary Wollstonecraft's *Vindication of the Rights of Woman* (1792) she made a strong case for women's education. It was one of the first documents that explicitly talked about women's rights.

Although these declarations did lay down rights, they were not universal in nature. In the nineteenth century, the understanding of human rights further evolved with the recognition of social and economic rights. Many international treaties concerning human rights were signed during this period. Notable among them were the abolition of slavery treaties such as the Treaty of Washington of 1862. The First Geneva Convention, 1864 which laid down an agreement about the care of wounded soldiers. The end of the First World War (1914-1918) developed an understanding that governments alone cannot safeguard human rights. Although, League of Nations was constituted they mainly concentrated on establishing conditions for the protection of minorities in few countries. Further international developments such as the International Labour Organization (ILO), created in 1919 for determining conditions of industrial workers and

International Slavery Convention, signed in Geneva in 1926, for abolition of slavery established an international understanding of rights. During this period the world witnessed emergence of dictatorial regimes in the 1920s and 1930s who abused human rights in their own territories. But it was the Second World War and the holocaust that send shock waves across the world as it witnessed massive abuses of life and extreme discrimination against communities. Accordingly the need for an international human rights law was felt. Post World War II, 58 countries came together in San Francisco to frame an international body to promote peace and prevent future wars. The Charter of the new United Nations organization came into effect on October 24, 1945, a date that is celebrated each year as United Nations Day. This paved way for the Universal Declaration of Human Rights (UDHR), 1948. The adoption of the UDHR is a key

moment in the history of human rights as this formed the basis for subsequent negotiations and adoption of a large number of binding human rights instruments (more details of this are in the next unit).

To conclude we can say that the precursor to the modern legal development of human rights is not universal and not couched in human rights language. Pre modern ideas couched more on lines of benevolence which is linked but not similar to the doctrine of universal human rights. It is also clear that the foundations of human rights were laid in the eighteenth century and that it has had a complicated development in the nineteenth century and twentieth century. In the next section we examine the evolution of rights based approach in brief.

CHECK YOUR PROGRESS

Match the following:

- | | |
|---------------------------|-----------|
| a) Great Charter | i) 1945 |
| b) ILO | ii) 1689 |
| c) English Bill of Rights | iii) 1215 |
| d) Geneva Declaration | iv) 1864 |
| e) United Nations | v) 1919 |

1.4 GENERATION OF RIGHTS

Human rights are broadly classified into two: “Civil-Political rights” and Socio-economic-cultural rights”.

- Civil-political rights are “*liberty-rights*” – meaning that to respect these rights, states are to refrain from acting in certain ways. Thus, for instance, fulfilling the right to liberty involves

not making arbitrary arrests and detention. The Rights that are protected under the International Covenant for Civil and Political Rights protects this category of rights.

- Socio-economic and cultural rights are the *rights to obtain something* – meaning that states will have to take positive measures to ensure that these rights are respected. Thus, to achieve right to health, the state will have to invest in building hospitals, hiring doctors etc.

Thus, realising human rights involves both negative and positive components of state behaviour. In some cases, the state is only *not required* to act in certain ways, and in some others the state *has to act in a certain way*.

Classification of Rights	What the category of rights pertain to
Civil Rights	Integrity of the person (right to life, personal liberty etc.)
Political Rights	access to political power and participation in political processes
Social Rights	standard of living and quality of life for all persons
Cultural Rights	the cultural sphere of life including ethnic culture, subcultures, arts and science
Economic Rights	the sphere of working, producing and servicing

Yet another classification is to divide these into “First, Second and Third Generation” of Rights, introduced in 1979 by Czech jurist Karel Vasak. The three categories align with the three tenets of the French Revolution: liberty, equality, and fraternity. The three generation of rights are:

- a) *First Generation: Civil and political rights*
- b) *Second Generation: Economic and Social Rights*
- c) *Third Generation: Collective- developmental Rights*

a) **Civil and Political Rights:** These are ‘liberty- oriented’ rights and consist of rights pertaining to the liberty and security of the individual. The focus is on protecting the individual against the violations of the state. They date back to the eighteenth century. They include civil rights like no torture, slavery, inhumane treatment, no arbitrary arrest; equality before the law and political rights like freedom of thought, conscience, and religion; freedom of assembly and voluntary association; political participation in one’s society. Civil and Political Rights are considered immediately enforceable and justiciable.

b) **Economic and Social Rights:** These are ‘security- oriented’ rights. They provide social, economic and cultural security. They are considered positive in nature. The concept of “progressive realization” is understood as States’ obligations to take appropriate measures towards the full realization of economic, social and cultural rights like nutrition, shelter, health care, education, work and fair wages, an adequate living standard, a social security net as per the maximum resources available. They date back to the nineteenth century and emerged as a response to the poverty in

wake of industrial revolution. Economic and Social Rights are called progressive rights.

- c) **Collective- Developmental rights:** These are ‘solidarity rights’. They are exerted collectively rather than individually. These rights are important for the collective development of the community. They emerged out of an international consensus to ensure collective rights. They were articulated in the second half of the twentieth century. This includes rights to live in an environment that is clean and protected from destruction. It also includes the rights to cultural, political and economic development. These rights focus on the self-determination of communities. It provides special rights to ethnic and religious minorities like enjoyment of their own cultures, languages, and religions.

The three generation of rights are critiqued by scholars who argue that although it is a useful typology of conceptualizing rights it has certain limitations. The first and foremost being the classification as ‘first’, ‘second’ and ‘third’ entailing a hierarchy of rights. This assumption of hierarchy reinforces the tendency to give priority to civil and political rights and thereby neglecting other categories of rights. It is notable here that the first generation of rights are “immediately realisable and enforceable” while the second and third generation rights are only to be “progressively realized”. Another important point of contention is that if the third generations of rights are considered collective rights in contrast civil and political rights will be considered individual rights while undermining the fact that these rights can be applied collectively (Macklem, 2015; Ife, 2006).

1.5 PRINCIPLES OF HUMAN RIGHTS

Human rights are the basic rights and freedoms that belong to every person in the world by virtue of being a human. They are based on the following principles

- a. **Universal:** Every human being everywhere is entitled to human rights. “All human beings are born free and equal in dignity and rights” (Article 1,UDHR).Principle of universality is the cornerstone of human rights. It is strengthened by the fact that human rights have been expressed by all cultures, religions and ideologies at all time
- b. **Equality and non-discrimination:** All individuals are equal by virtue of the inherent dignity of each human being. They should not suffer discrimination based on difference of gender, colour, race, caste, language, sexual orientation, nationality, disability, social or geographical location, birth or other status as established by human rights standards. inalienable:
- c. **Inalienable:** A person cannot lose his/ her rights or they cannot be taken away from a person under any circumstances. No one has the right to deprive another person of his/her rights.
- d. **Interdependence and interrelatedness:** Human Rights are interdependent and interrelated to each other. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the other.
- e. **Indivisibility:** All human rights are equally important and no one right, should be treated differently from the other. There can never

be a hierarchy of rights with one right getting precedence over the other. Whether they are related to civil, cultural, economic, political or social issues. Human rights are inherent to the dignity of every human being. Thus denial of one right impedes the enjoyment of other rights.

1.6 UNIVERSALISM Vs. CULTURAL RELATIVISM

Universalism refers to the understanding that human rights are universal and should apply to all human beings. Philosophically, human rights are rooted in western philosophical and political thought. In the universal notions, human rights are inalienable and applicable to all human beings. It is argued that human rights hold universal values that should be adopted across states everywhere. The UDHR is generally seen as the start and foundation of current human rights discourse and its political structure. Legally, modern human rights law are based on three major documents: the Universal Declaration of Human Rights (UDHR) 1948; the Covenant on Economic, Social, and Cultural Rights (1966); and the Covenant on Civil and Political Rights (1966).

Counter to this is the argument of Cultural Relativists who state that no moral principles can apply to all cultures and human rights are culturally dependent. ““relativism,” is the idea that ethical, political, and legal standards for a particular country or region are mostly shaped by the traditions, beliefs, and conditions of that country or region” (Nickel, 2017). Relativists argue that the origins of the Universal Declaration are rooted in Western History and that the moral content that animates it is based on western-Christian conceptions, that often has very little basis in other cultures. Relativists sometimes accuse human rights advocates of

ethnocentrism, arrogance, and cultural imperialism (Talbot, 2005). The American Anthropological Association in its official statement noted that “what is held to be a human right in one society may be regarded as anti-social by another people” (American Anthropological Association, 1947). The East-Asian Countries have often argued that international human rights as found in United Nations declarations and treaties were insensitive to distinctive “Asian values” such as prizing families and community (in contrast to strong individualism); putting social harmony over personal freedom; respect for political leaders and institutions; and emphasizing responsibility, hard work, and thriftiness as means of social progress (Nickel, 2017). This was not to mean that all human rights were to be abolished, but that some group of rights were not to be applied as the west sees it to Asian societies.

Cultural relativism is rooted in field of anthropology. Within cultural relativism there are two sub-groups: one is the extreme strong relativist view which disregards the concept of universal human rights, as they state that all beliefs and values are culturally rooted and universality cannot be applied across all cultures. The second sub group takes the less extreme relativist view which states that ethical systems share some overlap which makes it possible for a comprehensive human rights framework (Donnelly, 2007).

The contest between the relativists and the universalists peaked at the World Conference on Human Rights held in 1993. While the relativists emphasized their position, the universalists, especially the western countries viewed this as a excuses for authoritarianism and repression. The Vienna Declaration could arrive at a compromise with the following language :

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”
(Article 5, Vienna Declaration, 1993)

The argument between the universality of human rights and cultural relativism remains an important debate. But the elaboration of rights under the auspices of the United Nations has made it possible to reach a broad agreement on the scope and substance of rights. There have been key international instruments that have been ratified by a large number of countries adhering to differing religions and cultural traditions. Jack Donnelly has argued in relation to the human rights debate that :

Human rights are not a panacea for the world's problems. They do, however, fully deserve the prominence they have received in recent years. For the foreseeable future, human rights will remain a vital element in national, international, and transnational struggles for social justice and human dignity. And the relative universality of those rights is a powerful resource that can be used to help to build more just and humane national and international societies.(Donnelly, 2013)

CHECK YOUR PROGRESS

1. Write about any three principles of human rights.

2. Cultural relativism restricts the universal application of human rights law- Justify

3. Match the following:

- | | |
|----------------------|---------------------------------|
| a) First Generation | i) Cultural rights |
| b) Second Generation | ii) Solidarity rights |
| c) Third Generation | iii) Civil and political rights |

1.7. SUMMARY

Rights are the entitlements of an individual or a group guaranteed by law. It allows individual to live a fulfilling life through enjoyment of some basic rights like right to life and liberty, right against torture, exploitation and discrimination, practice and preservation of own culture. Conceptualization of human rights as a concept started with the signing of Magna Carta, also known as Great Charter. However, the Cyrus Cylinder is referred as the first document of human rights. The rights are divided into three generations. The first generation of rights includes civil and political rights while second generation of rights includes social, economic and cultural rights. The third generation of rights, also known as solidarity rights, is a collective right. The definition of human rights indicates that every human being is entitled to some basic rights. In other words, each individual has some inherited rights. Therefore, the concept of human

rights has an universal applicability but the presence of socio-cultural diversities is thought to be interfering with universality of human rights.

Suggested Questions

1. Narrate the evolution of human rights as a concept.
2. Discuss the principles of human rights with suitable examples.
3. Cultural diversity restricts the universal application of human rights- Comment.

Further Readings

Donnelly, Jack. (2013). *Universal Human Rights in Theory and Practice*. 3rd ed. Cornell University Press.

Feinberg, J., (1970), "The Nature and Value of Rights", *Journal of Value Inquiry*.

Ife, J..(2006). *Human Rights Beyond the Three Generations*, In Porter, E J & Baden O. (Eds) *Activating Human Rights*; Peter Lang Publishers: Oxford.

Macklem, P. (2015). 'Human Rights In International Law: Three Generations Or One?'

References

American Anthropological Association. (1947). Statement on Human Rights, *American Anthropologist* 49(1).

Darwall, S.(2006). *The Second-Person Standpoint*, Cambridge: Harvard University Press.

Donnelly, J. (2013). *Universal Human Rights in Theory and Practice*, 3rd edn. Ithaca, NY and London: Cornell University Press.

Donnelly, Jack. (2013). *Universal Human Rights in Theory and Practice*. 3rd ed. Cornell University Press.

- Donnelly, Jack. (2007). 'The Relative Universality of Human Rights', *Human Rights Quarterly*, 29:2.
- Feinberg, J., (1970), "The Nature and Value of Rights", *Journal of Value Inquiry*. 4: 243–257.
- Feinberg, J.(1973), *Social Philosophy*, Englewood Cliffs, NJ: Prentice-Hall.
- Haas, Michael.2008.*International Human Rights: A Comprehensive Introduction*, Routledge: London
- Ife,J..(2006). Human Rights Beyond the Three Generations, In Porter, E J & Baden O. (Eds) *Activating Human Rights*; Peter Lang Publishers: Oxford.
- Louden, R., (1983), "Rights Infatuation and the Impoverishment of Moral Theory", *Journal of Value Inquiry*. 17: 87–102.
- Lansdown, G. (2005). Children's welfare and children's rights, in Hendrick, H. *Child Welfare And Social Policy: An Essential Reader*. The Policy Press.
- Leah Levin.(2009). Human Rights - Questions and Answers, France; UNESCO Publishing. For detailed understanding of Human rights documents please refer to The Avalon Project- Documents in Law, History and Diplomacy by Yale Law School- <http://avalon.law.yale.edu/default.asp>
- Macklem, P. (2015). 'Human Rights In International Law: Three Generations Or One?', 3 (1):61-92
- Nickel, James. (2017). "Human Rights", *The Stanford Encyclopedia of Philosophy*, Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/spr2017/entries/rights-human/>>.
- OHCR, (n.d.).*What are Human Rights?*, URL: <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

- Quinn, W..(1993), *Morality and Action*, Cambridge, Cambridge University Press.
- Raz, J. (1986). *The Morality of Freedom*, Oxford: Oxford University Press.
- Raz, J. (1994), *Ethics in the Public Domain*, Oxford: Oxford University Press.
- Talbott, W.(2005). *Which Rights Should be Universal?*, Oxford University Press: Oxford
- UNFPA.(n.d.).*A Human Rights Based Approach to Programming*, URL : <https://www.unfpa.org/resources/human-rights-based-approach-programming>
- Vasak, K. (1977). "Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights", *UNESCO Courier* 30:11, UNESCO: Paris.
- Wenar, Leif. (2015). "Rights", *The Stanford Encyclopedia of Philosophy*, Edward N.
- Zalta (ed.), URL <https://plato.stanford.edu/archives/fall2015/entries/rights/>.

Unit 2: International Human Rights Law and Child Rights

Structure

- 2.1 Introduction
- 2.2 Learning Objectives
- 2.3 Evolution of international human rights law
- 2.4 Charity to rights based approach
- 2.5 Principal human rights instruments
- 2.6 Child rights framework: History and evolution
- 2.7 Summary

2.1 INTRODUCTION

In the preceding unit we learnt about the evolution human right of human rights as a concept, its generations and types, principles of human rights and directed our effort to understand the, to some extent, a never ending debate on universalism vs. cultural relativism. In the present unit, we would focus on evolution of human rights as a law, different approaches to development, instruments for enforcing human rights and evolution of child rights framework.

2.2 LEARNING OBJECTIVES

- a) To learn about the events that shaped the present human rights laws;
- b) To know about the principal human rights instruments;
- c) To explore different approaches of development, and
- d) To study the historical events that contributed towards the evolution of child rights framework.

2.3 EVOLUTION OF INTERNATIONAL HUMAN RIGHTS LAW

In the preceding unit we have examined the evolution of human rights. Prior to the establishment of United Nations, it was primarily nation states that provided for rights and limitations on exercise of powers of the states, within their constitutions and legislations or customs. There was hardly an international legal efforts relating to human rights, except for prohibition of slavery, which by the beginning of the 19th Century had sufficient international consensus. The events that lead to the Second World War and the post-war creation of the United Nations provided an opportunity for growth of international human rights law. The excesses committed during the years prior to the war, especially by Germany to its own citizens opened the eyes of the world to the need for having international protection of human rights. Thus, one of the objectives of the United Nations, as laid down by its charter was the protection and promotion of human rights.

International human rights law is now a distinct and rich branch of law that has evolved over many years. All of it has its humble beginnings in a non-binding legal instrument – a declaration of the General Assembly of the United Nations. The Universal Declaration of Human Rights (UDHR), adopted on the 10th December, 1948 is considered as a baseline for modern International Human Rights law.

In her speech at the UN General Assembly at the adoption of the UDHR, Eleanor Roosevelt, chairperson of the Human Rights Commission, famously stated

‘we stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind. This Declaration may well become the international Magna Carta for all men everywhere. We hope its proclamation by the general assembly will be an event comparable to the proclamation in 1789 [the French Declaration of the rights of Citizens], the adoption of the Bill of rights by the people of the US, and the adoption of comparable declarations at different times in other countries’.

With 30 Articles that cover the most basic of rights, the UDHR formed the basis of further expansion and elaboration of human rights law in the form of treaties, covenants and other international instruments at the global and regional levels. It is also worthwhile to note that the declaration covered both civil-political as well as socio-economic-cultural rights.

The preamble to the declaration set out history, context and the purpose of the declaration. It maintained that protection of human rights and fundamental freedoms were essential for maintaining international peace, security and cooperation and that “*it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law*”. It identified the content of the declaration to be “*a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society*”. The international community promised that “keeping this Declaration constantly in mind”, it “shall

strive by teaching and education to promote respect for these rights and freedoms and by progressive measures”.

Content of UDHR

Articles 1-2: affirmed the dignity of the human person and his entitlements to liberty, equality and brotherhood.

Articles 3-12: Basic individual rights such as the right to life, liberty, equality, protection from arbitrary actions of the state, privacy& rights relating to application of criminal law

Articles 13- 17: Rights of the individual to family, community, identity, property and movement.

Articles 18- 21: Freedoms of thought, expression, association and participation in government.

Articles 22 -30: Right to work, to social security, to a fair standard of living, to participation in community and an international order in which these rights can be realized.

It was this declaration that is considered to have started the modern journey of ensuring human rights are protected universally by the rule of law. Since then, many conventions have been negotiated and ratified by member states and several new debates about the scope and content of human rights law have taken place. The declaration formed the basis of these developments.

Initially there was move towards forming a single binding instrument based on the UDHR, but it was not be; the UN Commission of Human Rights was confronted with controversies of differences between the Western bloc and Soviet bloc (the negotiations occurred during cold war period) about drafting a single internationally binding document containing civil-political and socio-economic rights. The western bloc was unwilling to accept any binding universal obligation on socio-economic rights, while the eastern block wanted that. Likewise, the eastern block was unwilling to accept many of the standards that the west sponsored with respect to civil-political rights. Further, there were also plenty of differences of opinion regarding monitoring, oversight and mechanisms for international implementation, with the soviet block unwilling to accept what they considered to be excessive interference with the sovereignty of states (Daniel *et al*, 2007).

The International Covenant on Civil Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR)

It is during this period that two separate covenants emerged, each addressing different categories of rights: The International Covenant on Civil and Political Rights (“ICCPR”), which articulated liberty-oriented rights and The International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), which articulated security-oriented rights that the state should provide for its citizens as a basic necessity such as food, housing, education and health care. Both these covenants were adopted in 1966. The UDHR, ICCPR and the ICESCR are jointly referred to as the “*International Bill of Rights*”. Following the adoption of these two instruments, a number of human rights instruments that dealt with specific

human rights concerns emerged (see figure 1 below). The 1989 convention on the rights of the Child must be viewed in this larger context

Figure 1: Evolution of International Human Rights Law

Key Contents of the ICCPR and the ICESCR	
ICCPR	ICESCR
Article 1 : Right to self-determination, including the right to "freely determine their political status" and pursue their economic, social and cultural goals, and manage and dispose of their own resources	
Articles 2-5: obligation to take steps to recognize the rights laid down by the covenant and provide avenues for enforcement of these rights. Further, the obligation to ensure that the rights can be enjoyed by all without any discrimination	Article 2-5 : the principle of progressive realization of these rights, without discrimination
Articles 6-7: the rights guaranteed by the covenant, such as the right to life and personal liberty, due process rights, rights against self-incrimination and presumption of innocence, right to free and fair trial, right to vote, equality before the law and non-discrimination.	Articles 6-15: the rights of work, of association to form trade unions, right to social security, to family life, to adequate standard of living, to health, education and to participation in cultural life.

That being said, one cannot ignore the fact that there is a considerable amount of difference between the force with which the ICCPR and the ICESCR operates. The ICCPR imposes an immediate obligation to

respect, protect and promote the rights therein. The ICCPR, however, articulates the principle of “progressive realization”. This means that the states are obligated 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 present Covenant by all appropriate means, including particularly the adoption of legislative measures” (Article 2.1, ICESCR). This essentially means that there is a continuing obligation to put in efforts towards the realization of these rights (and not that they are immediately to be achieved, unlike the rights in ICCPR). The reasons for this are fundamentally that the ICCPR is thought of only requiring *not doing certain things* (such as *not* arbitrarily arrest people, *not* interfere with right to life etc.) while the ICESCR requires *positive steps* (*provide* social security, *ensure* that people have access to healthcare and education etc.). It is was understood that not all states would be in a position, in terms of resource availability, to ensure that these are immediately realizable. Further, it is also obvious that one cannot *immediately* ensure that *everyone* can have education or good health – it would take effort over a period time to reach that position. This lead to the principle of “progressive realization” of the rights in ICESCR. Progressive realization in effect means that the State has a continuing obligation to take all appropriate steps (including making laws, administrative actions and allocation of resources) to ensure that these rights are indeed respected, protected and promoted.

While neither of these instruments are specifically on child rights, the provisions therein are equally applicable to children too. Article 2 of the ICCPR obliges States Parties “to respect and to ensure to all individuals within its territory and subject to its jurisdiction” the rights recognized in

the ICCPR, “without distinction of any kind”. This means that children are also equally entitled to the rights stated therein. Many of the rights covered by the ICCPR are of immense relevance to children, especially in the context of criminal justice administration (the rights of presumption of innocence, the right against self-incrimination, prohibition of arbitrary arrest etc.). The Preamble to the ICESCR notes that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world” and that “these rights derive from the inherent dignity of the human person. Thus, with its recognition of non-discrimination and indivisibility of rights, it is clear that ICESCR applies to children too. Apart from this, there are also some specific provisions in both these instruments on children. These are:

- Article 10 of the ICESCR states that “the widest possible protection and assistance should be accorded to the family ... particularly for its establishment and while it is responsible for the care and education of dependent children”. It is also stated that “*special measures of protection and assistance*” should be taken on behalf of the young without any discrimination; that they should be protected from economic and social exploitation; that employing them in morally or medically harmful or dangerous work or in work likely to hamper their normal development should be punishable by law; and that age limits should be set below which the paid employment of child labor is prohibited and punishable by law
- Article 12 of ICESCR provides for the right of “*enjoyment of the highest attainable standard of physical and mental health*”. It also

provides for “*for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child*”.

- The ICESCR also provides for the right of everyone to education (article 13(1)) and stipulates, “*primary education shall be compulsory and available free to all*” (article 13(2a)).
- 14(1) of the ICCPR states that: “*any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*”
- ICCPR also states that criminal proceedings “*should take account of age and the desirability of promoting their rehabilitation*” and that the penal system should segregate juvenile offenders from adults and accord them treatment “*appropriate to their age and legal status*” (Article 10)
- ICCPR also recognizes the family as entitled to societal and state protection (Article 23). To this end it mandates that the liberty of parents to ensure their “*children’s religious and moral education in conformity with their convictions*” is respected (Article 18)
- Article 23 provides that If a marriage is dissolved, provision must be made for the protection of any children
- Article 24 of the ICCPR is specifically devoted to children. It stipulates that “*every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*” It further prescribes that every child must

be registered immediately after birth and have a name and that every child has the right to acquire a nationality.

Convention on the Elimination of All forms of Discrimination Towards Women (CEDAW)

CEDAW is regarded as the international bill of rights for women. As the title suggests, the focus of the convention is to prohibit all forms of discrimination against women. While “girls” have only one mention in the convention [in the context of reduction of female student drop out from schools (Article 10)], many of the general provisions of the convention are relevant to the girl child too. Article 5 states that the parties to the convention are to take steps “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”. CEDAW further states that the interests of children are paramount in relation to the common responsibility of men and women for their children’s upbringing and development (Article 5) and in this context conjoins States to ensure that same rights and responsibilities are placed on men and women in matters of guardianship, wardship, trusteeship, and adoption of children (Article 16). CEDAW also proscribes betrothal and marriage of children and calls for action to specify a minimum age for marriage and to make marriage registration compulsory (Article 16)

Emergence of Regional Treaties to protect Human Rights

As noted above, since the adoption of the UDHR, a number of international human rights instruments have emerged. In addition, the growth of international human rights law has been paralleled by the

emergence of regional level conventions like the European Human Rights Convention, African and Inter American Convention. In this section we shall refer to some of these instruments, with a focus on provisions that are relevant to the rights of the child.

The Convention for the Protection of Human Rights and Fundamental Freedoms, popularly referred to as the **European Convention on Human Rights (“ECHR”)** is one of the earliest regional human rights instruments. Adopted in 1950, the convention conjoins the member states to secure the rights stated in the convention to “everyone within their jurisdiction” (hence, including children too). The convention repeats the rights mentioned in the ICCPR and the ICESCR. There are also some specific provisions regarding the rights of the child : Article 5 (which allows detention of minors or taking away of minors from parents only in certain circumstances) and Article 6 (which stipulates the right of free trial and fair open hearing – making an exception to open hearing in the case of children). What makes the convention special is the mandatory jurisdiction of the European Court of Human Rights. This enables parties to take the states to an international court for violation of these rights. There has been several instances when children have approached the court for the enforcement of their rights.

The **African Charter on Human and People’s Rights** contains both civil-political as well as social-economic-cultural rights. As opposed to the European Charter, the African charter places a special emphasis on the rights of the family and duties towards family and community (in tune with African culture). The Charter, hence, places emphasis on the need and duty “[t]o preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at

all times, to maintain them in case of need” (Article 29). While there are no specific provisions that deal with the rights of the child, the provisions are applicable to children too. **The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa** makes numerous specific references to children and the girl-child. The preamble to the charter requires the elimination of “any practice that hinders or endangers the normal growth and affects the physical, emotional and psychological development of women and girls.” The protocol condemns harmful practices “such as medicalization of female genital mutilation and scarification that affect the fundamental human rights of women and girls and are contrary to recognized international standards” and calls for rehabilitation of victims. In furtherance of the right to education and training, the protocol demands that “all appropriate measures” should be taken to eliminate discrimination against women and girls, with specific positive action to be taken to promote girls’ education and training “at all levels and in all disciplines” as well as their retention in schools and other training institutions (Article 12).

The American Convention on Human Rights (ACHR) obliges all states parties to ensure that the rights stated therein are available to all persons within their jurisdiction, irrespective of discrimination. While the Convention has only separate provision on children,¹ the general provisions relating to rights concerning legal personality, to life, to humane treatment, to personal liberty, and to a fair trial are applicable to children too. It is also worthy note that Article 12 preserves the rights of

¹ Article 19 states that “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state”

parents or guardians to “provide for the religious and moral education of their children or wards that is in accord with their own convictions”. Further, Article 12 states that “public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence”. The Convention further recognizes equal rights of parents over children and the right to a name and surnames of one or both parents (Article 18).

Summing up, the beginning of human rights law started with the formation of United Nations which led to the adoption of UDHR. But it didn't have any legal binding on the member state as it was a declaration. To make the provisions mentioned in UDHR two major conventions were adopted namely International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights. In the ensuing section we would explore conceptual differences between different approaches of development.

2.4 CHARITY TO RIGHTS BASED APPROACH

- **Charity approach:** The charity approach was the earliest approach to social development. This approach was prevailing for thousands of years. Religious charity was the most common. For eg: before reformation it was considered ‘Christian’ to provide for the poor and needy. Post reformation there was a need felt to regulate this charity and the Elizabethan poor law was passed in 1601. In this relief was given through collected donations but different categories of poor were made so as to decide who will have access to these donations. This was a parish law and the state did not interfere. This approach depended on the generosity of the

people. People met the needs of the poor only when resources were available. It involved donations from the rich to the poor, donating money, food, clothing and medical care to improve their immediate suffering. The critique of the approach is that it only targets the symptoms while the root of cause remains the same. The recipient of the charity remained dependent on the donors. These charities were never based on the needs of the people. In Oscar Wilde *The soul of the man under socialism*² he states that ‘charity degrades and demoralizes’.

- **Welfare approach:** The welfare approach is said to have emerged in the late 18th and 19th century during the industrial revolution. Large scale industrialization and urbanization led to the increase of many social problems. There was move towards passing laws to control these activities and to meet the ‘unmet’ needs of the people. The ‘welfare approach’ was based on the needs of the people. The state was to play a key role in providing for different sections of the society. This approach further developed in the 20th century, welfare programmes by the state were aimed at certain sections of the society. But in the welfare approach there was no attempt at systemic change. This approach kept the image of people as responsible for their own condition. Welfare approach did not have people’s participation at policy level. The intervention was only at micro levels with minimal effort at the macro, national or international level.
- **Rights based- approach:** As seen from the history of human rights, the rights-based approach came to focus post the Second

²Wilde Oscar -The Soul of Man under Socialism (1891)

World War and gained more prominence after the cold war. The rights-based approach recognizes people as actors in their own development rather than passive recipients of services. This approach is based on international human rights standards and operationally directed to promoting and protecting human rights. They are legal rights enshrined in the Universal Declaration of Human Rights; Covenants, Conventions, Treaties and Declarations and laws. An understanding is that this approach is more than the legal instruments and is the very nature of the human person. It focuses on the rights of the excluded and marginalized populations. In this approach the state has the obligation to respect, protect and fulfill the rights of every human being. In this approach respect of a right means not interfering with the enjoyment of the right, protection means preventing other parties from interfering with the fulfillment of rights and to fulfill a right means to have systems, laws, policies, institutions and procedures, including enabling people to enjoy their rights. This approach helps in making effective policies and programmes for implementing rights of the people. It guides what and how should be done to achieve freedom and dignity for all. It helps to empower people and have systems in place which will hold duty bearers responsible to fulfill their functions.

Box 2.1: Elements of good practices under a human rights-based approach:

- Programmes identify the realization of human rights as ultimate goals of development
- People are recognized as key actors in their own development, rather than passive recipients of commodities and services.
- Participation is both a means and a goal.
- Strategies are empowering, not disempowering.
- Both outcomes and processes are monitored and evaluated.
- Programmes focus on marginalized and excluded groups.
- The development process is locally owned.
- Programmes aim to reduce disparities and empower those left behind.
- Situation analysis is used to identify immediate, underlying and root causes of development problems.
- Analysis includes all stakeholders, including the capacities of the state as the main duty-bearer and the role of other non-state actors.
- Human Rights standards guide the formulation of measurable goals, targets and indicators in programming.
- National accountability systems need to be strengthened with a view to ensure independent review of government performance and access to remedies for aggrieved individuals.
- Strategic partnerships are developed and sustained.

(UNFPA, Undated)

CHECK YOUR PROGRESS

1. Enumerate the rights that come under civil and political rights.

2. Mention the rights under ICESCR

3. What are three approaches to development?

2.5 PRINCIPAL HUMAN RIGHTS INSTRUMENTS

United Declaration of Human Rights (UDHR), 1948

The preamble of this monumental declaration clearly states that it recognizes ‘the inherent dignity and of the equal and inalienable of all members of the human family is the foundation of freedom, justice and peace in the world’. Universal Declaration of Human Rights through its thirty articles guarantees civil and political rights along with economic, social and cultural rights. The preamble of the documents expresses the universal nature of the declaration. It establishes the importance of ensuring rights through the rule of law and reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.

Among the articles of UDHR four are considered non-derogable rights i.e. those rights which can be never suspended or restricted under any

circumstances not even in a state of emergency. Four non-derogable rights are the right to life, the right to be free from torture and other inhumane or degrading treatment or punishment, the right to be free from slavery or servitude and the right to be free from retroactive application of penal laws.

Article 1: Right to equality

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

All are born free and should be treated in that manner. Everyone is entitled to all rights and freedoms that have been enshrined in the declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. There shall be no distinctions between made based status of the country whether it is independent or not

Article 2: Right to freedom from discrimination

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, nonself-- governing or under any other limitation of sovereignty.

All are entitled to rights and freedoms without differentiating between anybody based on race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status. They

enjoy these rights and freedoms irrespective of the country they belong to whether it is independent or not

Article 3: Right to Life

Everyone has the right to life, liberty and security of person.

This article consists of three interconnected elements i.e. right to life, liberty and security. The right to life is the supreme right of every individual and is considered as non-derogable right. The right to liberty protects the physical liberty of the individual. It necessitates that the person should not be deprived of liberty as per the established procedures of law. This also accords that no person will be arbitrarily arrested, detained or exiled without reason. Right to security is focused on ensuring the person both individual and national security.

Article 4: Freedom from Slavery

No one shall be held in slavery or servitude

It is one of the non-derogable rights. It states that no person shall be owned, bought or sold. As per this article no person will be enslaved by anyone. Slavery is considered a crime

Article 5: Right to freedom from torture and degrading treatment

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

This article ensures that no individual will be subject to torture, punish or mistreatment.

The term “torture” here includes:

- Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes of obtaining information or confession from him

- Punishing a person for an act has or is suspected through intimidating or coercing a person, based on discrimination of any kind, especially when pain or suffering is inflicted by or at the instigation of or with the consent or consent of a public official or other person acting in an official capacity.
- It does not include lawfully sanctioned punishment.

Article 6: Right to Recognition as a Person before the Law

Everyone has the right to recognition everywhere as a person before the law.

It has been described as the “right to have rights”. Every person must be granted the rights and bear the obligations accorded to every person by the law. The right to recognition as a person before law requires recognition of everyone as a subject to be protected by the legal system of the country and at the international level. It requires the existence of relevant frameworks, which shall ensure everyone’s protection by the law

Article 11: Right to be Considered Innocent until Proven Guilty

- *Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*
- *No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*

All are to be considered innocent till proven guilty before the law. Everyone has the right to a fair trial. No person has the right to condemn or penalize another for an offence they have not done.

Article 15: Right to a Nationality and the Freedom to Change It

- *Everyone has the right to a nationality.*
- *No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*

All are entitled to belong to a nation and also have the right to change their nationality if they wish to.

Article 22: Right to Social Security

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality

All have the right to an environment in which they develop to the best of their abilities. Everyone should avail the economic, social and cultural rights made available by the State.

Article 25 Right to Adequate Living Standard

- *Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness,*

disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

- *Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.*

All are entitled good living conditions which include health, food, clothing, medical care and facilities. Everyone should be ensured security from unemployment, sickness, disability, widowhood and old age. Social protection to children is an important provision along with special care for the mother and child.

Article 26 Right to Education

- *Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*
- *Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*
- *Parents have a prior right to choose the kind of education that shall be given to their children.*

Education is an important provision in the declaration. Access to education is necessary for all round development. Everybody will have

right to education, free education at elementary level and efforts to make higher and vocational education accessible to all will be done. The government will make provisions for providing good quality education.

Article 27 Right to Participate in the Cultural Life of Community

- *Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*
- *Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*

Everyone has the right to share in the community's arts and sciences. All have the right to be protected for their works as an artist, a writer or a scientist and all should be able to benefit from them.

The International Covenant on Civil and Political Rights (ICCPR), 1966

The text of the Covenant was adopted in 1966 and formally entered into force on 23 March 1976 for the 35 states that had become party to the Covenant. The Covenant is divided into six major parts.

Parts I and II have provisions generally applicable to all the rights described in the Covenant. Part III elaborates the substantive individual rights and is considered the backbone of the Covenant. The Part IV-VI deals with the technical aspects of setting up the monitoring mechanisms including establishment of the Human Rights Committee, Committee's monitoring functions and other technical matters. Below we examine the articles of the Covenant which have a bearing on child rights

Article 2: Equal Protection of Rights

The rights enshrined in the ICCPR are applicable to all irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3: Right to Equality

Covenant ensures equal right of men and women to enjoy all the civil and political rights

Article 6: Right to Life

Every human being has the right to life

Article 7: Right against Torture

Everyone has the right to be free from torture

Article 9: Liberty and Security of Person

All are ensured the right to security and liberty as accorded by law

Article 10: Treatment of Prisoners

All detainees have the right to dignity and respect. Special provisions to segregate accused from convicts. Juveniles shall be separated from adults and brought to speedy trial. Juvenile offenders should be accorded treatment appropriate to their age and legal status.

Article 12: Freedom of Movement

Everyone is accorded the right to liberty and freedom of movement within the country

Article 14: Fair Trial

All are entitled to the right to a fair trial. In case of juveniles, their age will be taken into account and will promote measures for rehabilitation.

Article 24: Rights of the Child

Every child by his status as a minor without discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, have the right to measures of protection from his/her family, society and the State. All the children should be registered immediately after birth and shall have a name. All children have a right to nationality

Article 26: Right to Equality before Law

The right to equality before the equal protection and equality before law

Article 27: Right of Minorities to enjoy their Own Culture, Religion, and others.

The right, for members of religious, ethnic or linguistic minorities, to enjoy their culture, practices their religion and uses their language.

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

The text of the covenant was adopted in 1966 and formally entered into force on 3 January 1976. The ICESCR defines a broad set of rights related to the economic, social, and cultural elements of life that states must provide to their citizens. Specific rights relate to housing, education, labour, environment, health, cultural rights (including language and religion), and self-determination. The ICESCR is divided in five parts. Part I recognizes the right of the people of self determination, Part III relates to the substantive rights under the Covenant. Part III deals with specific substantive rights. Part IV focuses on international implementation and the system of supervision. Part V deals with the technical aspects of the Covenant.

Article 1: Right to Self-determination

Everyone has the right to self-determination and is entitled to freely pursue economic, social and cultural development.

Article 2: Non-Discrimination

Each state party has the responsibility to take steps individually and through international co-operation to ensure that all citizens can avail of their rights. The state provides resources as well as adopts legislative measures for the same. Everybody irrespective of race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3: Equality

State parties to the covenant should undertake measures equally for men and women to ensure all economic, social and cultural rights set forth

Article 9: Social Security

Everybody has the right to social security including social insurance

Article 10: Special Protection

Families should be accorded protection and assistance while it is responsible for the care and education of dependent children. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits. Children and young person's should be protected from economic and social exploitation. Special measures for protection and assistance should be taken on behalf of all children and young person's without any discrimination for reasons of parentage or other conditions. Child labour

should be prohibited by law as employment hampers the all round development of children

Article 11: Standard of Living

Everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. Specific programmes should be undertaken by the state and through international co-operation to ensure realization of this right

Article 12: Right to Health

Everyone is entitled to the enjoyment of the highest attainable standard of physical and mental health and states should take steps to ensure the same through the provision for the reduction of stillbirth-rate and of infant mortality and for the healthy development of the child, measures to prevent, treat and control epidemics, endemics, occupational and other diseases. The state shall create conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13: Right to Education

Everyone is entitled to the right to education. Primary education shall be compulsory and available free to all. Secondary and higher education shall be made generally available and accessible to all. The development of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved

Article 14: Compulsory Primary Education

Each State at the time of becoming a Party to the covenant has to establish compulsory primary education, free of charge and adopt a detailed plan of action for the progressive implementation, of the principle of compulsory education free of charge for all.

Article 15: Right to Scientific Progress

Everyone has the right to take part in cultural life; enjoy the benefits of scientific progress.

Convention for the Protection of Human Rights and Fundamental Freedoms, 1950

The convention has fifty nine articles related to the civil and political rights of citizen. Under the convention States Parties guarantee the basic civil and political rights of a state governed by the rule of law (right to life, prohibition of slavery, right to liberty and security, right to fair trial, no punishment without law, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, right to an effective remedy and prohibition of discrimination)

Article 1– Obligation to respect Human Rights

The contracting parties are obligated to ensure rights and freedoms to all citizens.

Article 2 – Right to life

Everyone's right to life shall be protected by law.

Article 5 - Right to Liberty and Security

Everyone is ensured right to liberty and security

Article 6 - Right to a Fair Trial.

Everyone will be considered innocent until proven guilty and have the right to be assisted by a lawyer. This lawyer will be paid by the state if the citizen is poor.

Article 14: Right to Equality

Everyone is entitled to the rights and freedoms set forth without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

American Convention on Human Rights, 1969

The American Convention for Human Rights is divided into three parts and has 82 articles. These articles cover a wide range of rights and mechanisms to ensure rights.

Article 4: Right to Life

Everyone has the right to life. This right shall be protected by law and no one shall be arbitrarily deprived of his life.

Article 5: Right to Humane Treatment

Every person has the right to have his physical, mental, and moral integrity respected. Minors shall be separated from adults while being subject to criminal proceedings. They will be presented before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

Article 8: Right to a Fair Trial

Every person has the right to a hearing and the right to be presumed innocent so long as his guilt has not be proven before the law.

Article 17: Rights of the Family

The family is the natural and fundamental group unit of society and is entitled to protection by society and the state. The States Parties shall take appropriate steps to ensure the equality of rights to spouses in a marriage, and in the event of its dissolution. Provisions will be made for the necessary protection of any children solely on the basis of their own best interests. The rights are equally accorded to children born in and out of wedlock.

Article 18: Right to a Name

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Article 19: Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

Article 20: Right to Nationality

Every person has the right to a nationality.

Article 24: Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 25: Right to Judicial Protection

Everyone has the right to simple and prompt recourse in a competent court or tribunal for protection against acts that violate his/her fundamental rights.

The provisions within the conventions have direct and indirect bearing on the rights of the child. Non-discrimination is one of the most important provisions across all declarations. They all ensure equal right to all the citizens of state parties.

African Charter on Human and Peoples' Rights (ACHPR), 1981

The ACHPR is divided into two parts and has 62 articles. The African charter enshrines both rights and duties of individuals. It also has provisions for mechanisms and institutions to ensure rights of the individuals. The articles that have a bearing on the rights of the child are

Article 2: Non-Discrimination

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter irrespective of race, ethnic group, colour, sex, language, religion, political or anyother opinion, national and social origin, fortune, birth or other status.

Article 3: Equality

Equality before law is the right of each individual

Article 13: Right to Participate

Every citizen shall have the right to participate freely in the Government of his country. Everyone will have right of equal access to the public service of his country.

Article 16: Right to Health

Every individual shall have the right to enjoy the best attainable state of physical and mental health. State parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 17: Right to Education

Every individual shall have the right to education and right to freely take part in the cultural life of his community. The state has the duty to promote and protect of morals and traditional values recognized by the community.

Article 18: Right to Protection

Everyone has the right to protection of health both physical and moral. The state shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community. The state shall ensure elimination of discrimination against women. Woman and child have the right to protection as stipulated in international declarations and conventions.

Article 22: Right to Economic, Social and Cultural Development

All peoples shall have the right to their economic, social and cultural development. States shall have the duty, individually or collectively, to ensure the facilities to exercise right to development

Article 24: Satisfactory Environment

All people shall have the right to have a satisfactory environment favorable to their development

We have understood that provisions of principal human right instruments have direct and indirect bearing on child rights. In the next we will examine the specialized instruments for children.

CHECK YOUR PROGRESS

<i>Match the following</i>		
a) UDHR		i)1950
b) ICCPR		ii)1969
c) Convention for the Protection of Human Rights and Fundamental Freedoms		iii) 1948
d) American Convention On Human Rights, 1969		iv)1966
e) ICESCR		v) 1966

2.6 CHILD RIGHT FRAMEWORK: HISTORY AND EVOLUTION

Traditionally, children were viewed as the possession of their parents and parents enjoy absolute control over their children. The practice of honour killing may be considered as evidence to prove the existence of such mentality. Again, many consider that children do not have enough mental and physical ability to look after their own self and thus require constant help and support from their primary caregivers. In other words, they are dependent on their parents and community for their wellbeing. Further, there is a possibility that a child may hurt himself/herself with their own action as they do not have the ability to understand the consequences of their own action. In this context, it becomes important to ask ‘why do we need children’s Rights?’ To develop a better understanding three case studies are presented in Box 2.2 to display the vulnerability and need of child rights framework.

The next question that comes to mind is that if human rights are universal and everybody is entitled to them without discrimination then is there a need for a specialized framework for child rights? Is there a need for a specialized framework to protect and help children like Ahmed, Lakshmi

and Rohit? (Refer box 2.2) The answer to both the questions is Yes! We explore the history of child rights to have a better understanding of the specialized framework for child rights. The concept of child rights is relatively new.

Child rights as a concept only evolved in the nineteenth century, first in France where it emerged as ‘minor rights’. These rights were aimed at bringing out laws protecting children at their workplace. But the concept that children were separate entities and were entitled to their own rights did not feature in the understanding of these ‘minor rights’. Post World War I millions of children were injured and orphaned. Eglantyne Jebb realized the need for special protection of children in these conditions. In 1919, with the help of her sister she formed Save the Children Fund in London to provide assistance to the war affected children. She helped to draft the Declaration on the Rights of the Child which is adopted by the League of Nations and titled the ‘Geneva Declaration on the Rights of the Child’. It was for the first time that the child was recognized as a separate individual and not merely an extension of the adult. But the document was more a declaration of the obligation of the adults towards the child rather than rights of the child.

Box 2.2: Case study

Case study A: Ahmed is a seven year old boy and the only child of Mr. Rahim and Zaheen Khan. He is a very bright child who loves going to school. Mr. Rahim and Zaheen Khan are middle class parents who want the best for their child. One day Ahmed's world comes crashing down when his parents die in an accident and he is left homeless. His uncle takes Ahmed to his house. Ahmed is asked to contribute to the family income because he has become a 'big boy' now. He starts working in his uncle's shop and in return gets two meals and stay at his place. However, Ahmed's uncle enrolled him to a nearby government school, but most of the days, he misses school because he is working. One day a lady comes to the tea stall and tells the owner that Ahmed cannot be employed as he is underage. His uncle screams at her and says that he is his nephew instead of leaving him on the streets. Ahmed was provided with a roof and two meals a day. He also argues that Ahmed also goes to school and it is only occasionally that he is helping his uncle.

Case study B: Lakshmi is a twelve year old girl living in Orissa who has never been to school because of poverty. One day a neighbor who lives in Mumbai comes back to the village and takes a liking for Lakshmi. He asks her parents for Lakshmi's hand in marriage and promises to pay them Rs.25000 for her. Her parents agree to the alliance. After the marriage she goes to Mumbai with her husband who sells her to a brothel for one lakh rupees.

Case study C: Rohit is a 16 year old boy from a well-to-do family, whose parents spoil him with the choicest of things. He receives all the things he demands. He goes to one of the best schools in Pune and enjoys going for extra-curricular activities after classes. In the evenings he spends time with his friends. But his parents start noticing a gradual change in his behavior. They realize that he has become withdrawn and secretive in his manner. They become worried about his situation and try to have a dialogue with him which proves futile. One day the police arrive at Rohit's house to arrest him for theft and robbery. The parents were shocked to learn that two of his friends had dared him to do it hence he had gone ahead with the dare. He then admitted that after the completion of one dare it had become a routine for the boys to indulge in small time theft because they got 'excitement' from it.

Discuss: Do Ahmed, Lakshmi and Rohit have rights? What are the violations of rights in the case of Ahmed, Lakshmi and Rohit? Are there laws preventing Ahmed from working and Lakshmi from getting married at a young age? In Rohit's case are there mechanisms in place to help him or will he be punished like an adult?

Box 2.3

Geneva declaration of the Rights of the Child of 1924, adopted September 26, 1924, league of nations By the present Declaration of the Rights of the Child, commonly known as 'Declaration of Geneva,' men and women of all nations, recognizing that mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

- (1) The child must be given the means requisite for its normal development, both materially and spiritually
- (2) The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored
- (3) The child must be the first to receive relief in times of distress
- (4) The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation
- (5) The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

World War II and the destruction that followed led to the formation of the UN Fund for Urgency for the Children in 1947, which became UNICEF and was granted the status of a permanent international organization in 1953. In 1948, Universal Declaration of Human Rights is adopted which recognizes the rights of all citizens. The rights of the children were added into the UDHR provided in Article 25(2)

“Motherhood and Childhood are entitled to special care and assistance. “It was argued that child rights as an area required a separate document. In 1959, the United Nations General Assembly adopted the second Declaration of the Rights of the Child which clearly laid down ten principles for the rights of the child

Box 2.4

Declaration of the Rights of the Child (1959): drafted by the United Nations Commission on Human Rights and adopted by the General Assembly of the United Nations on 20th November 1959

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

-The right to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner, and in conditions of freedom and dignity

-The right from his birth to a name and a nationality.

-The right to social security and entitled to grow and develop in health. Special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

-The right to special treatment, education and care for child who is physically, mentally or socially handicapped shall be given by his particular condition.

-The right to understanding and love by parents and society.

- The right to receive education, which shall be free and compulsory, at least in the elementary stages.
- The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.
- The right to full opportunity for play and recreation.
- The right to receive protection and child shall in all circumstances be among the first to receive protection and relief The right to be protected against all forms of neglect, cruelty and exploitation.
- The right to be protected from practices which may foster racial, religious and any other form of discrimination

The commission on human rights developed the Convention for Rights of the Child (CRC) which becomes the most rapidly adopted text in relation to human rights. It is adopted by the United Nations General Assembly on November 20, 1989. After it is ratified by twenty states it became an International Treaty and came into force on September 2, 1990. The CRC is a comprehensive document that put forth the rights of the child recognizing the agency of the child as well as the importance of working keeping in mind the ‘best interest of the child’. Its 54 articles describe the economic, social and cultural rights of the children.

Box 2.4: The guiding principles of the Convention

- Non-discrimination
- Adherence to the best interests of the child
- The right to life
- Survival and development
- Right to participate

Looking at the history and content of child rights, it is clear that the earlier understanding of the child/adult relationships constructed child as a passive recipient of adult protection and good-will. The rights based approach which evolved over the period of time helps to construct the child as a separate individual. Historically, most cultures never considered children to be a full person possessing any form of autonomy and capacity to make decisions for themselves and the adult caregivers (parents, guardians etc.) were most often given infinite amount of discretion on how to treat children (Lansdown, 2005). Child Rights seeks to fill up this limitation. It makes children social actors and promotes their participation in decision making. It focuses on the holistic development of the child by ensuring *survival and development rights* (adequate food, shelter, clean water, formal education, primary health care, leisure and recreation, cultural activities and information about their rights), *protection rights* (from all forms of child abuse, neglect, exploitation and cruelty, including the right to special protection in times of war and protection from abuse in the criminal justice system) and *participation rights* (freedom to express opinions in matters affecting their social, economic, religious, cultural and political life, right to information and freedom of association). This approach holds the governments, private sectors,

families and communities accountable for creating an environment that is best suitable for the development of the child. It works towards ensuring equity, justice and freedom by attempting a society free of exploitation and discrimination. It focuses on the ‘best interest of the child’ while making any programmatic decisions. It is this rights based approach that will make certain that children like Ahmed, Lakshmi and Rohit (Box 2.2) are provided proper care and protection with mechanisms in place who will work in their best interest without discriminating against any child.

CHECK YOUR PROGRESS

1. What are the guiding principles of UNCRC?

2. Who established the Save the Children Fund?

3. What are the provisions mentioned in the Declaration of Geneva?

2.7 SUMMARY

The beginning of the human rights law is marked with the adoption of UDHR followed by two international conventions to give legal status to the provisions mentioned under UDHR. In between, other international and regional treaties came to existence to deal with specific issues. The emergence of these conventions also resulted into shift in approaches i.e.

from charity based approach to rights based approach. To ensure universal adherence to these international laws treaty bodies were established. In the last part of the unit we tried to focus on the evolution of child rights framework and its requirement.

Suggested Questions

1. Describe the evolution of human rights law.
2. Discuss provisions of ICCPR and ICESCR.
3. Highlight the distinguishing features of rights based approach and welfare approach.
4. Narrate the evolution of child rights framework.

Further Readings

Burke, R. (2010). *Decolonization and the Evolution of International Human Rights*. Philadelphia: University of Pennsylvania Press.

Lauren, P. G. (2011). *The Evolution of International Human Rights: Visions Seen*. Philadelphia: University of Pennsylvania Press.

Weissbrodt, D., Aolain, F. D., & Rumsey, M. (2014). *The Development of International Human Rights Law*. New York: Routledge.

References

Lansdown, G. (2005). Children's welfare and children's rights, in Hendrick, H. *Child Welfare And Social Policy: An Essential Reader*. The Policy Press.

UNFPA.(n.d.).*A Human Rights Based Approach to Programming*, URL : <<https://www.unfpa.org/resources/human-rights-based-approach-programming>>