

COURSE TITLE: BASIC HUMAN RIGHTS
SEMESTER IV

COURSE CODE: BTHM403

Course Instructor: Ashish S. Awate

Email: Ashish. Awate@svkm.ac.in



#### **UNIT IV-**

#### Content -

- Universal declaration of human rights and provisions of India,
- Constitution and law,
- National human rights commission and
- State human rights commission.

- The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, is a foundational international document that sets out 30 articles detailing the basic rights and fundamental freedoms to which all human beings are inherently entitled.
- These rights are universal, inalienable, and indivisible, covering civil, political, economic, social, and cultural aspects.
- The UDHR was designed as a "common standard of achievement for all peoples and all nations," aiming to ensure dignity, equality, and justice for everyone, regardless of nationality, race, religion, or other status

- Main goal was to save future generation from war.
- The UDHR was adopted by the United Nation General Assembly by vote of 48 including India in 1948.
- The main objective of the UDHR was to present human rights and freedoms in order to inspire all person and countries to work for their progress.

- Key rights in the UDHR include:
  - Equality before the law and non-discrimination
  - Right to life, liberty, and security
  - Freedom from slavery and torture
  - Freedom of thought, conscience, religion, and expression
  - Right to education, work, and adequate standard of living
  - Right to participate in government and access to public service
  - Right to a fair trial and remedy for rights violations

- Critical Analysis:
  - UDHR are simply recommendations they are not binding on state.
  - It does not contain any provision for the implementation.
  - It does not contain any provision for its amendment.
  - The notions and norms of human rights do change from time to time.

- Legal Effect of UDHR:-
  - Ministry of Home Affairs Vs Kemali, International Law (Vol 40 p 191)
    - Courts in Italy have taken view that UDHR declaration deemed to have become part of domestic Italian law.
  - Courts in Chile have accepted the UDHR as a declaration of customary international law and have cited the document on several decisions
  - The constitution of India elaborate the provisions for the protection of the right contained in UDHR because India has understood the nature of HR.

- Articles Of UDHR :-
  - Art 1- Born free and equal dignity and rights.
  - Art 2- No discrimination on the bases of race, colour, sex, language, religion, political, national, social, origin, property, birth or other status
  - Art 3- Rt to life, liberty, security of person
  - Art 4- Free from slavery.
  - Art 5- Free from torture, cruel, inhumane, degrading treatment

- Articles Of UDHR :-
  - Art 6- Rt to recognition as a person
  - Art 7- Equal before law, protection against any discrimination.
  - Art 8- Rt to remedy by the competent national tribunals.
  - Art 9- No arbitrary arrest detention.
  - Art10- Rt to public hearing for his own defense.

- Articles Of UDHR :-
  - Art11-(1) Rt to prove innocent until charge is proved
  - 11-(2) No one shall guilty of any penal offence until it constitute as penal offence
  - Art 12- Rt to Privacy. No arbitrary interference with privacy.
  - Art 13-(1)Freedom of movement.
  - 13-(2) Rt to leave any country
  - Art 14-Rt to seek and enjoy in other countries asylum from persecution.

- Articles Of UDHR :-
  - Art 15- Rt to Nationality
  - Art 16- Rt to Marry both men and women.
  - Art 17- Rt to own property
  - Art 18- Rt Freedom of thought conscience and religion.
  - Art 19- Freedom of opinion and expression.
  - Art 20- Rt to peaceful assembly and association.

- Articles Of UDHR :-
  - Art 21-Rt to take part in gov activities, public services, equal secret voting.
  - Art 22- Rt to entitled social security.
  - Art 23-Rt to work, free choice employment
  - Art 24-Rt to rest and leisure.
  - Art 25-Rt to health, food, clothing, housing and medical care and social service.
  - Art 26- Rt to education, free in alimentary and fundamental stages.

- Articles Of UDHR :-
  - Art 27-Rt to participate in cultural life of community.
  - Art 28-Everyone is entitled to social and international order for rights and freedom
  - Art 29-We all have responsibility to the people around us and should protect the rights and freedoms
  - Art 30-You have right to freedom from state or personal interference in these rights.

- Constitutional Incorporation
  - India, as a founding member of the United Nations and a signatory to the UDHR, has integrated the principles of the Declaration into its Constitution.
  - The Indian Constitution, adopted in 1950, reflects the spirit of the UDHR, especially in its Preamble, Fundamental Rights (Part III, Articles 12–35), and Directive Principles of State Policy (Part IV, Articles 36–51)

- Fundamental Rights in the Indian Constitution
  - The Fundamental Rights enshrined in the Indian Constitution closely mirror the rights outlined in the UDHR.
  - These rights are enforceable by courts and form the core of India's legal commitment to human rights:

- o UDHR-Universal declaration of Human Rights.
- o COI- Constitution of India, FR-fundamental rights.

Provisions	UDHR	COI
1) Equality and equal protection before law	Art 7	Art 14
2) Remedies for violation of Fundamental Right	Art 8	Art 32
3) Rt to life and personal liberty	Art 3	Art 21
4) No arbitrary arrest detention.	Art 9	Art 20(1)
5) Rt to freedom of movement	Art 13	Art 19
6) Right to Religion	Art 18	Art 25(1)
7) Freedom of speech	Art 19	Art 19(1)(a)
8) Equality in public services	Art 21	Art 16(1)
9) Protection of minorities	Art 22	Art 29(1)

UDHR Article/Principle	Indian Constitution Article(s)	Description
Equality before law, non-discrimination	Article 14, 15, 16	Equal protection of laws; prohibition of discrimination; equality of opportunity
Right to life and personal liberty	Article 21	Protection of life and personal liberty
Freedom of speech, assembly, association	Article 19(1)(a)-(c)	Freedom of speech, peaceful assembly, association
Protection from arbitrary arrest/detention	Article 22	Safeguards against arbitrary arrest and detention
Right against exploitation (slavery, forced labour)	Article 23, 24	Prohibition of trafficking, forced labour, child labour
Freedom of religion and conscience	Article 25-28	Freedom to profess, practice, and propagate religion
Cultural and educational rights	Article 29, 30	Protection of interests of minorities, right to establish educational institutions
Right to constitutional remedies	Article 32	Right to move the Supreme Court for enforcement of Fundamental Rights
Right to education	Article 21A, 45, 51A(k)	Free and compulsory education for children (6-14 years)
Right to work, just conditions, equal pay	Article 39(a), 39(d), 41, 43	Right to livelihood, equal pay for equal work, just and humane conditions
Right to social security, standard of living	Article 39(a), 41, 43, 47	Right to adequate means of livelihood, social security

#### Directive Principles of State Policy

- The Directive Principles (Part IV) further reinforce economic, social, and cultural rights, such as the
  - right to work, education, public assistance, and just and humane conditions of work.
- While not directly enforceable in courts, these principles guide the state in making laws and policies to promote social justice and welfare

#### Judicial Interpretation and Expansion

- The Indian judiciary has played a significant role in expanding the scope of
  - Fundamental Rights, interpreting the right to life (Article 21) to include rights to dignity, privacy, health, education, a clean environment, and legal aid, aligning with the evolving understanding of human rights under the UDHR

#### Enforcement and Protection

- Supreme Court and High Courts: Citizens can approach the Supreme Court (Article 32) and High Courts (Article 226) for enforcement of Fundamental Rights.
- National Human Rights Commission (NHRC): Established under the Protection of Human Rights Act, 1993, the NHRC monitors and investigates human rights violations and promotes awareness.

#### CONSTITUTION AND LAW

- The document lays down the framework that
  - democrats fundamental political code,
  - structure,
  - procedure
  - powers and
  - duties of government institutional and
- sets out
  - fundamental rights,
  - directive principles, and
  - the duties of citizen.



### ADAPTATION OF THE INDIAN CONSTITUTION TO INTERNATIONAL HUMAN RIGHTS STANDARDS

- The Indian Constitution has progressively adapted to international human rights standards through its
  - foundational provisions,
  - judicial interpretation,
  - legislative reforms, and
  - institutional mechanisms.

### FOUNDATIONAL ALIGNMENT WITH INTERNATIONAL NORMS

#### • Inspiration from the UDHR:

- When the Constitution was drafted in **1949–50**, India was already a **signatory to the Universal Declaration of Human Rights (UDHR).**
- The framers drew heavily from the UDHR, embedding its principles in the Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV).
- These constitutional provisions guarantee rights such as equality, freedom, protection against exploitation, and the right to life and dignity, closely mirroring international human rights standards.

#### • Article 51(c):

• This article explicitly directs the State to foster respect for international law and treaty obligations, further cementing the Constitution's commitment to global human rights norms

### JUDICIAL INTERPRETATION AND EXPANSION

#### • Judicial Activism:

- The Indian judiciary, especially the **Supreme Court, has** played a pivotal role in adapting constitutional rights to evolving international standards.
- Courts have frequently relied on international treaties and the UDHR to interpret and expand the scope of fundamental rights, even when such rights are not explicitly enumerated in the Constitution.
- For example, Article 21 (right to life and personal liberty) has been interpreted to include the right to live with human dignity, right to legal aid, right to a clean environment, and right to livelihood, drawing from international human rights jurisprudence.

### JUDICIAL INTERPRETATION AND EXPANSION

#### • Judicial Activism:

- In Vishaka v. State of Rajasthan (1997), the Supreme Court used the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to frame guidelines against sexual harassment at the workplace, directly incorporating international standards into domestic law.
- Public Interest Litigation (PIL) has been used to relax the rule of locus standi, allowing broader access to courts for the protection of human rights, which aligns with international trends in human rights enforcement

### LEGISLATIVE REFORMS AND INSTITUTIONAL MECHANISMS

### • Ratification and Implementation of Treaties:

- India has ratified key international human rights treaties, including the
  - International Covenant on Civil and Political Rights (ICCPR),
  - International Covenant on Economic, Social and Cultural Rights (ICESCR),
  - CEDAW, and
  - the Convention on the Rights of the Child (CRC).

### LEGISLATIVE REFORMS AND INSTITUTIONAL MECHANISMS

- These treaties have led to legislative reforms such as:
  - The Protection of Human Rights Act, 1993, establishing the National Human Rights Commission (NHRC) and State Human Rights Commissions.
  - The Rights of Persons with Disabilities Act, 2016, aligning with the Convention on the Rights of Persons with Disabilities (CRPD).
  - The Protection of Women from Domestic Violence Act, 2005, reflecting CEDAW provisions.
  - Sexual Harassment of Women at Workplace Act, 2013: Enacted following the Vishaka guidelines, this law is rooted in CEDAW principles
  - The Juvenile Justice Act, 2015, incorporating CRC principles.
  - Rights of Persons with Disabilities Act, 2016: This law was enacted to align with the Convention on the Rights of Persons with Disabilities (CRPD)
- Enforcement Mechanisms: Institutions like the NHRC and Human Rights Courts have been established to investigate violations and promote compliance with both constitutional and international human rights standards.

#### EXAMPLES OF TREATY-SPECIFIC INFLUENCE

Treaty/Convention	Example of Influence in Indian Law
ICCPR (International Covenant on Civil and Political Rights)	Right to privacy, compensation for custodial death, humane treatment of prisoners
CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women 1979)	Vishaka guidelines and subsequent sexual harassment law
CRPD (Convention on the Rights of Persons with Disabilities 2007)	Rights of Persons with Disabilities Act, 2016
ICESCR (International Covenant on Economic, Social, and Cultural Rights 1966)	Right to health and housing, used in judgments on social right
CAT (Convention Against Torture)	Used in judicial reasoning for non-refoulement despite India not ratifying it

#### ONGOING EVOLUTION

#### • Continuous Judicial Reference:

• Courts continue to refer to international conventions and the UDHR when interpreting constitutional rights, especially in cases where domestic law is silent or ambiguous.

#### • Legislative Updates:

 Parliament has periodically updated laws to address emerging human rights issues, often in response to international obligations or recommendations from UN bodies.

#### • Challenges:

• Despite significant progress, challenges remain in enforcement, awareness, and addressing socio-economic and cultural barriers to full realization of rights

### JUDICIAL USE OF INTERNATIONAL TREATIES

#### Vishaka v. State of Rajasthan (1997):

- The Supreme Court framed guidelines to address sexual harassment at the workplace, explicitly referring to the Convention on the
  - Elimination of All Forms of Discrimination Against Women (CEDAW) and other international conventions.
- These guidelines filled a legislative gap and were later codified as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

#### Justice K.S. Puttaswamy v. Union of India (2017):

• In the landmark right to privacy case, the Supreme Court relied on the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and other international instruments to recognize privacy as a fundamental right under Article 21 of the Constitution.

#### JUDICIAL USE OF INTERNATIONAL TREATIES

#### Navtej Singh Johar v. Union of India (2018):

• The Supreme Court decriminalized consensual samesex relations, referring to ICCPR, ICESCR, and international human rights jurisprudence to affirm the rights of sexual and gender minorities.

#### • Neelabati Behera v. State of Orissa (1993):

• The Court relied on Article 9(5) of the ICCPR to grant compensation for custodial death, reinforcing the right to life and personal liberty.

#### JUDICIAL USE OF INTERNATIONAL TREATIES

#### o D.K. Basu v. State of West Bengal (1997):

• The Supreme Court issued guidelines on arrest and detention, drawing from the UDHR and ICCPR to strengthen protections against torture and custodial abuse.

#### • Chairman, Railway Board v. Chandrima Das (2000):

• The Court cited the UDHR to extend constitutional protections to foreign nationals and broaden the scope of Article 21 (right to life and personal liberty)

# NATIONAL HUMAN RIGHTS COMMISSION AND STATE HUMAN RIGHT COMMISSION:-

(12 October 1993)

## NATIONAL HUMAN RIGHTS COMMISSION AND STATE HUMAN RIGHT COMMISSION

- Introduction:-
  - In India Protection of Human Rights Act 1993 enacted.
- Aim of this Act is to set up
  - A National Human Rights Commission,
  - State Human Rights Commission
    - at state level Human Rights Courts.

#### NATIONAL HUMAN RIGHTS COMMISSION

- Act was Amended in the year 2006.
  - Definition:-
  - Constitution:-
  - Functions:-
  - Powers:-
  - Procedure:-

- Introduction:-
  - The establishment of National institution to protect and promote human rights plays an important role in the good governance.
  - In India Protection of Human Rights Act 1993 enacted.
- Aim of this Act is to set up
  - A National Human Rights Commission,
  - State Human Rights Commission
  - at state level Human Rights Courts.
- Act was Amended in the year 2006.

- Openition:-
- Sec 2(d) Term Human rights defined as the rights relating to life, liberty, equality and dignity of the individual guaranteed by constitution embodied in the international covenants and enforceable by courts.

### Constitution:-

- Sec 3 Provide constitution for NHRC consisting Five Members.
  - A chairperson who is former chief justice of the Supreme Court.
  - One member who is or has been judge of Supreme Court.
  - One member who is or has been judge of High Court.
  - Two members being having knowledge, or experience matter relating to human rights.

- Appointment of Members:-
  - Members are appointed by the president of India and committee headed by Prime minister.
  - Basic qualification the chairman the person he/she should be **former** chief justice of supreme court under age of 70 years.
  - All members hold office for five years of until age of 70 years.
  - NHRC when discharge any function then the
    - o chairperson of National commission for Women
    - chairperson of National commission for Minorities
    - o chairperson of National commission for Scheduled caste and scheduled Tribe.

### • Functions:-

- 1. Suo-motu inquire or on petition presented by victim.
- 2. Intervene any proceedings.
- 3. Visit intimation to the government
- 4. Review safeguards provided by or under the constitution
- 5. Study of treaties and other international instruments make recommendation for effective implementation.
- 6. Undertake and promote research in the field of human rights.
- 7. Spread human rights Literacy among various section of the society.

- Powers relating to Inquiries:-
  - U/S 13 of the Act. All powers of civil courts under Civil Procedure Code1908.
  - 1. Summoning and enforcing the attendance of witness
  - 2. Discovery and production of any document.
  - 3. Receiving evidence on affidavits
  - 4. Requisitioning any public record or copy therefore from any court of office.
  - 5. Issuing summons for the examination of witnesses of documents and
  - 6. any other matter which may be prescribed.

### • Powers relating to Inquiries:-

- 1. Summons and enforce the attendance of any person and examine him and documents.
- 2. Require the discovery and production of any document and
- 3. Requisitioning any public record or copy therefore from any court of office.

- Procedure to be followed:-
  - U/S 17. Inquiry into any complaint of violation of human rights.
  - NHRC can call for any information or report from central government or state government.
  - If on receipt of such information or report,
    - the NHRC is satisfied.
      - No further inquiry or required action has already been taken by concerned government.
      - It may close the complaint and inform complainant accordingly receipt of such.
    - If it is not so satisfied,
      - the NHRC may initiate an inquiry into the complaint.
  - If the information or report called for as is not received by the NHRC within the times stipulated by it for this purpose,
    - it can proceed to inquire into the complaint.

- Procedure to be followed:-
  - After completing its inquiry the NHRC may take any of the steps listed:-
    - If the inquiry discloses a violation of human rights
      - By public servant or negligence on his part
    - To prevent such a violation:-
      - NHRC can recommend to the concerned government or authority.
    - That proceedings be initiated to prosecute such a person of that any other action be taken against him as the NHRC may deem fit.
    - The NHRC may approach to Supreme court or appropriate High court for such directions, orders or writ as may be deemed necessary.

- Procedure to be followed:-
  - The NHRC may recommend to the concerned government or other authority, the granting of such immediate interim relief to the victim or members of his/her family as the NHRC may consider necessary.
  - It is clear from above that the NHRC has no power to pass any order of give relief on its own in the case of violation of human rights.
  - All it can do is to make recommendation to the concerned authority or approach a court of law for orders or directions.

### • Limitations:

- Recommendations are not binding on the government.
- Cannot directly penalize violators or enforce its recommendations.
- Limited jurisdiction over violations by the armed forces.
- Cannot consider cases older than one year, anonymous, or frivolous complaints

• SHRCs are statutory bodies established at the state level under the same Protection of Human Rights Act, 1993.

• As of now, 26 states have set up SHRCs.

- Sec 21 Provide constitution for SHRC consisting Five Members.
  - A chairperson who is an **ex-chief Justice of the High** Court.
  - One member who is or has been Judge of High Court.
  - One member who is or has been District Judge in that state and experience in matters relating to human rights.
  - Two members being having knowledge, or experience matter relating to human rights.
- Members are appointed by the Governor of the state and committee headed by Chief

• The State Commission is authorized to inquire into human rights violation only respect of matters which fall within the List II (State List and List III (Concurrent List) of 7<sup>th</sup> schedule of COI.

• From Language of **Act Sec 30**. it is clear that there is no obligation on the State Government to set up such courts.

### • Functions and Powers:

- Inquire into human rights violations or negligence by public servants, suo motu or on petition.
- Intervene in court proceedings involving human rights issues.
- Visit jails and detention centers to review inmate conditions and make recommendations.
- Review constitutional and legal safeguards for human rights at the state level and suggest improvements.
- Promote research and awareness about human rights in the state.
- Recommend compensation, prosecution, or relief to victims of violations.
- Has powers similar to a civil court for investigations.

### • Limitations:

- Functions are mainly recommendatory; recommendations are not binding on the state government.
- Cannot investigate cases older than one year from the date of occurrence.
- Cannot inquire into matters already being investigated by the NHRC or another statutory commission.
- The study of international treaties is not within SHRC's mandate (reserved for NHRC)

# KEY DIFFERENCES AND SIMILARITIES

Aspect	NHRC	SHRC
Jurisdiction	Nationwide	State-specific; State and Concurrent List subjects
Appointment	By President (on central committee's advice)	By Governor (on state committee's advice)
Composition	Chairperson + 5 members + 7 ex- officio members	Chairperson + 2 members
Powers	Civil court powers, recommendatory	Civil court powers, recommendatory
Treaties/Internation al Law	Can study and recommend implementation	Cannot study treaties (NHRC's exclusive domain)
Nature of Recommendations	Not binding	Not binding

# END OF UNIT 5