

HR, RL & IHL - Security Forces

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Scheme of Discussion

- What is Law and What is Regulation?
- Why Human Rights Law and Regulations?
- Kinds of Human Rights Regulations
- National Human Rights Regulations
- Regional Human Rights Regulations
- Global or International Human Rights Regulations
- Human Rights and Security Forces
- Awareness of Human Rights Amongst the Security Forces
- Code of Conduct for the Police and Human Rights Protection
- Review of Repressive Laws in India and H R Violations
- Conclusion

Concept of Human Rights

- Human beings are rational beings. They by virtue of being human we possess certain basic and inalienable rights which are commonly known as human rights.
- Since these rights belong to us because of their very existence, they become operative with our birth.
- Human right is being the birth right, therefore inherent in all the individuals irrespective of their caste, creed, religion sex and nationality.
- Human rights are international norms that help to protect all people everywhere from severe political, legal, and social abuses.
- These rights exist in morality and in law at the national and international levels. They are addressed primarily to governments, requiring compliance and enforcement
- The Protection of Human Rights Act, 1993 , provides under, section 2(1) (d), that 'Human Rights mean the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.'

Approaches to Human Rights

Early Natural Law Philosophy – each person's life determined by God, but all people were subject to the authority of monarchs constrained by divine rule. All human beings were endowed with a unique individual identity which was separate from the state.

John Locke: All individuals endowed by nature with the inherent rights to life, liberty and property which were their own and could not be removed or abrogated by the state.

Rousseau: Natural law conferred inalienable sovereignty on the citizens of a state as a whole. Whatever rights were derived from natural law dwelt within the people collectively and could be identified by reference to the 'general will'.

Kant: the non-empirical natural law and natural rights tradition. The idea that individuals are under a duty to develop their rational capacities and to employ them for the promotion of happiness in others.

Philosophical Approach: also known as Idealistic Theory of Rights or Personality Theory of Rights. Insists on the inner development of man.

Sociological Approach: also known as the Social Welfare Theory of Right or the Social Expediency Theory. Advocates of this theory believe that law, custom and natural rights are conditioned by social expediency.

Western Approach to Human Rights

- In England, ***Magna Carta of 1215*** guaranteed to the citizen freedom from imprisonment , from dispossession of his property and freedom from prosecution or exile ‘unless by the lawful judgment of his peers or by law of the land’.
- ***The Habeas Corpus Acts and the Bill of Rights of 1689*** assured the supremacy of the Parliament, the right to free elections, freedom of speech, the right to bail, freedom from cruel and unusual punishment and right to trial by jury.
- The first Continental Congress in its ***Declaration of Rights of 1774*** considered ‘the immutable laws of nature’ as the principal source from which the colonies derived their rights.
- ***The Declaration of Independence of 1776*** expressed in the second sentence: ‘We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness.’
- ***French Declaration of the Rights and the Citizen of 1789*** in its second Article: ‘The aim of the political association is the conservation of the natural and inalienable rights of man. These rights are: liberty, property, security and resistance to oppression.’

Marxists and third world Approaches

- Rights, Marx argued, were simply a bourgeois concept and a product of bourgeois-capitalist society, designed to maintain and reinforce the pre-eminent position of the ruling class.
- The true potential of human beings can only be realized if they are enabled to return to their true nature as social beings. This, however, can only be achieved in a truly communist society where all means of production are held in common and there is an absence of class conflict.
- Third World Countries and International Law
- Many developing countries are more concerned with economic and social rights than with their civil and political rights.
- the natural consequence of the right to self-determination and the peoples' right to freely dispose of their natural wealth and resources.
- correlation between the enjoyment of human rights and economic development recognized. Neither is possible without the other; rather there is an essential connection between them.
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UN and International Human Rights Law

- UN Charter and Human rights
- After the Second World War it was decided to form a successful effective international organization to prevent future wars. This gave birth to the United Nations and United Nations charter was adopted as the mandate to liberate mankind of its sufferings.
- **The Preamble:** The peoples of the United Nations expresses the determination “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”
- **Art. 1(3) – Purposes:** To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

Art. 8: The UN shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

Art. 13: (a) The General Assembly shall initiate studies and make recommendations for the purpose of: (b) promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

UN and Human Rights

Art. 55: With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Art. 56 All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

Art. 62 –The Powers and Functions of ECOSOC

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

Art. 68: The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Art. 76 -The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world.

UDHR and Human Rights

Universal Declaration of Human Rights, 1948

- the UN general assembly adopted the universal declaration of human rights on December 10, 1948.
- It opens with the famous lines, “All human beings are born free and equal in dignity and rights. They are endowed with reasons and conscience and should act towards one another in a spirit of brotherhood”
- Art. 3 states that ‘everyone has the right to life, liberty and security of person.’ It is possible that the Declaration has simply retained its status as a non-binding resolution; or
- The Declaration is an authoritative interpretation of the Charter by one of its important and competent organs: the General Assembly; or
- The Declaration is now a part of the general principles of law recognized by civilized nations; or

UDHR: OVERVIEW

- Civil and political rights are enshrined in articles 3 to 21 and Economic, social and cultural rights are enshrined in articles 22 to 28 of the [Universal Declaration of Human Rights](#)
- **Article 1.** 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
- **Article 2** 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, non-self-governing or under any other limitation of sovereignty

UDHR: OVERVIEW CONT..

- Article 3 to 21 deals with various Civil and political rights including right to life, liberty and security of person, prohibition of slavery or servitude, prohibition of torture or to cruel, inhuman or degrading treatment or punishment, all are equal before the law, right to an effective remedy by the competent national tribunals, no one shall be subjected to arbitrary arrest, right to freedom of movement and residence, right to a nationality, right to own property, freedom of thought, conscience and religion, right to freedom of opinion and expression
- **Articles 22 to 28 Economic, social and cultural rights including** right to social, right to work, everyone has the right to rest and leisure, right to a standard of living adequate for the health and well-being and right to education, right freely to participate in the cultural life, scientific advancement and its benefits, social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.
- **Article 29 and 30 deals with personality development and not to interpret negative**

International Covenant on Civil and Political Rights (ICCPR)

- The International Covenant on Civil and Political Rights is a United Nations Treaty based on the Universal Declaration of Human Rights created in 1966 and entered into force on 23 March 1976. The nations that have signed this treaty are bound by it.
- The Covenant contains two Optional Protocols.
 - The first optional protocol to the ICCPR enables the human rights committee set up under the covenant to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the covenant.
 - The second optional protocol abolishes the death penalty; however, countries were permitted to make a reservation allowing for use of death penalty for the most serious crimes of a military nature, committed during wartime.
 - Scope of the Rights--Reporting Obligations of States.
 - Procedure for dealing with Individual Complaint
 - Procedure for dealing with Inter-state Complaints

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

- It was introduced as a [second generation human rights](#) treaty developing some of the issues contained in the [Universal Declaration of Human Rights](#). It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to individuals, including labour rights and rights to health, education, and an adequate standard of living.
- **The International Bill of Rights:** constituted by five major UN legal instruments, which define and guarantee the protection of human rights. They are: the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966) and two **Optional Protocol** to the Civil and Political Covenant, individuals under certain circumstances may file complaints of human rights violations by ratifying States.
- Under the **Second Optional Protocol** to the Civil and Political Covenant, States must take all necessary measures to abolish the death penalty

UN and Protection of HRs

The U.N. Commissions' Main Procedures for Responding to Violations.

- - the Resolution 728F of the Economic and Social Council
- - the 1503 procedure: pros and cons of confidentiality.
- - the 1235 procedure: processes and participants
- the evolution of techniques of promotion compliance.

The Protection of Human Rights Under the U.N. Organs and Instruments.

- - the U.N Commission on Human Rights
- - Sub-Commission on the Prevention of Discrimination
- - the Human Rights Committee
- - the Economic and Social Council
- - the U.N. Commission on the Status of Women
- - the U.N. Centre for Human Rights

HUMAN RIGHTS AND REGIONAL CONVENTIONS

- ▣ The European System for Protecting Human Rights
 - The European system for protecting human rights is mainly composed of two major treaties: the European convention on human rights and fundamental freedoms (ECHR) and the European social charter (ESC). The ECHR which focused on the protection of civil and political rights was adopted in 1950 and entered into force in 1953. This charter was signed on 8th October, 1961 and came into force on 26th February, 1965. This was adopted by the council of Europe to develop and protect the economic, social and cultural rights of the European states parties and the European council.
- ▣ Human Rights Conventions and Organization of American States
 - The organization of American states (OAS) is a regional organizational that brings together the various countries of the American continent. It came into being on 30 April 1948 at the ninth inter- American conference held at Bogota, Columbia.

Regional Cont..

- There are two institutional mechanism frameworks provided the charter of the OAS for the protection and promotion of the human rights. These are:
 - The Inter – American Commission on Human Right: The Inter - American Court of Human Rights
 - ▣ **Human Rights Convention and Organization of African Unity (OAU)**
 - The African human rights were developed under the tutelage of the organization of African Unity (OAU). The major initiatives of the OAU were the adoption of the “African charter on human and people’s rights” (ACHP) also called as the Banjul charter to address the common problems of human rights of the continent.
 - The African charter was adopted by the OAU on June 27, 1981 and entered into force on October 21, 1986 – in honour of which 21 October was declared "African Human Rights Day".
 - ▣ **Human Rights and South Asian Association for Regional Cooperation (SAARC)**
 - The South Asian cooperation for regional cooperation (SAARC) was established on 8 December 1985 at the first SAARC summit held at Dhaka, Bangladesh.

Relation between IL and IHL

- What is IL – Interstate Law and Intrastate Law
- What is IHL - IHL is a branch of public international law established by Custom and Treaties, that applies to situations of armed conflicts, whether IAC or NIAC
- It is a set of rules which seeks, for humanitarian reasons, to limit the effects of armed conflict.
- IHL is also known as the 'Law of War' or 'Law of Armed Conflict'.
- **Purposes of IHL**
 - reduce the unnecessary suffering, loss & damage in time of armed conflicts
 - safeguard the fundamental human rights & dignity of persons
 - facilitate the restoration of peace

How does IHL protect?

- by protecting persons who do not or no longer participate in hostile action (Geneva Law)
- by limiting the choice of means and methods of conducting military operations (Hague Law)

Fundamental Principles of IHL

- Military Necessity
- Humanity
- Proportionality

Fundamental Rules of IHL

- **Limitation**
- **Distinction**
- **Precautionary Measures**
- **Superfluous Injury and Unnecessary Suffering**

Relationship between IHL and IRL

- The international legal framework applicable in armed conflict is primarily composed of three interrelated and mutually reinforcing sets of rules:
 - a International Humanitarian Law;
 - b International Human Rights Law, and;
 - c International Refugee Law.
- **While international humanitarian law regulates the protection of persons and the conduct of hostilities in armed conflict (persons affected by armed conflict), international human rights law imposes standards that governments must abide by in their treatment of persons both in peacetime and war (all human beings).**
- **International refugee law focuses specifically on protecting persons who have fled their country due to persecution or other serious violations of human rights or armed conflict (Refugees).**

International Refugee law

- **• The 1951 Convention relating to the Status of Refugees;**
- **• The 1967 Protocol relating to the Status of Refugees;**
- **• The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.**
- **Cartagena Declaration of 1984**

Domestic Implementation of IL and HR Law in India

- Why implementation of I.L.? How domestic Implementation happens?
- Changing Notions of State Sovereignty and Globalization and its Impact on Society
- Independent States to Interdependent states and Law Makers to Law Takers
- Role of States as Regulator to Facilitator
- Status of IL is changing from a weak (unenforceable) to strong (enforceable) Law
- Difference among the Jurists- Theories
- Monism- Supporters: Kelsen, Westlake and Lauterpacht. What is State? Individuals are the root of all legal systems.
- Dualism- Supporters: The two systems are distinct when it comes to sources, subjects, substance of law, principles and dynamism of subject matter. India adopts the above theory
- Specific Adoption or Transformation Theory

Domestic Implementation of IL in India

- Pre and Post Independence Era
- Why India has to Implement I.L? India's International Obligations
- India is Party to Many International Treaties and Member in International Organizations
- What is Constitution?
- General – Art. 51—Promotion of International Peace and Security
- Executive Powers in Law-making or Role of the Executive --- Articles 53, 73 and 77
- Legislature (parliament) and Treaty-making-power—Articles- 245 and 246 along with 7th Schedule -- Other Articles includes 248, 253, 254, 299 and 372.

Indian Constitution and HRs

- Human rights provisions in the Indian Constitution.
 - -Fundamental Rights.
 - -Directive principles of state policy and international obligations.
 - -Emergency provisions
 - -Indian constitution and due process of law, writs
- 2. Mechanisms for the protection and promotion of Human Rights.
 - -Developing and Maintaining an independent judiciary.
 - -The Establishment of special Human Rights Court?
 - -Developing and Maintaining effective human rights Commissions
- 3. Enforcement for Human Rights through the Courts.
 - -Facilitating access to the courts by
 - *Providing liberal locus standi provisions
 - *Public interest litigation.
 - *Providing free legal aid

NATIONAL HUMAN RIGHTS COMMISSION

- The protection of Human Rights Act, 1993 constitutes National Human Rights Commission, State Human Rights Commission in states and human rights courts for better protection of human rights. The national and state human rights commission were not the wings of the government and were independent institutions meant to function as checks and balance like courts of law, election of commission
- The commission is the first of its kind among the South Asian Countries and also few among the national human rights institutions, which were established in the early 1990s. The commission came into effect on 12 October 1993, by virtue of protection of human rights act, 1993..
- The commission established must consist:
 - A chairperson who has been a chief justice of the supreme court;
 - One member who is, or has been a judge of the supreme court;
 - One member who is, or has been the chief justice of the high court;
 - Two members to be appointed from amongst persons having knowledge of or practical experience in matters relating to human rights

Human Rights and Security Forces

- India, widely hailed as the world's largest democracy, has a vibrant press and an active civil society, but also suffer from a series of low intensity conflicts and proxy wars conducted by Pakistan and various radical Jehadi outfit through the instrumentality of terrorism, Islamic terrorism, Communist terrorism, Sikh terrorism and Ethnic terrorism, are the badly dangers nation faces today.
- Unfortunately, for a long time after independence, the security forces have engaged in counter insurgency operations for more than fifty years in the North East and for more than two decades in Jammu and Kashmir to aid and assist the State Government authorities.
- In carrying out these tasks, the security forces has time and again, come under criticism for human rights violations. Torture, extra-judicial killings and forced disappearances are a daily reality in India. The armed forces, security and paramilitary forces use violence and often deadly measures to intimidate and punish citizens for a range of actual or perceived transgressions, crimes and beliefs.

Awareness of Human Rights Amongst the Security Forces

- The Indian Security Forces are divided into three broad categories:
- 1) The Armed Forces of the Union- the Army, Navy and Air Force.
- 2) The Central Paramilitary Forces(CPMF), Central Reserve Police Force (CRPF), Assam and Rastriya Rifles, Indo- Tibetan Border Police Force(ITBPF), and the National Security Guards, Defence Security Corps, the Railway Protection Force, the Central Industrial Security Force, the Special Frontier Force and the Indian Coast Guard etc..
- 3) The Indian Police Force- Police Forces of States and Union Territories.

Awareness of Human Rights within the Armed Forces of the Union

- It is interesting to know that the Indian Army, in 1993 March, on its own and even before the enactment of the Protection of Human Rights Act, 1993 or even the establishment of the National Human Rights Commission, had established a Human Rights Cell at Army Headquarters.
- This Cell was created without any separate resources but within the authorized establishment of the Indian army. Till today this Cell is fully functional with a full-time director of the rank of Colonel, assisted by a Lieutenant Colonel and other staff.
- This cell functions under the command of a major general who heads the Additional Directorate of Discipline and Vigilance
- Headquarters, New Delhi. This cell is in close liaison with the National Human Rights Commission

Awareness cont...

- As an educated segment of society, Indian Army soldiers are conscious of their own Human Rights and those of the public. Indian Army takes pride in having Human Rights originated right from Army Headquarters level down to formations. Indian Army also has institutionalised training both for officers and men in various courses run by the Army at a very basic level on Human Rights to create awareness amongst all ranks.
- Training establishments like College of Combat, Infantry School, Defence Service Staff College, and Institute of Military Law have Human rights as a subject, as a small part of their curriculum.
- The focus of their training on the subject, at the junior level includes developing of their reflexes and thus to react to different situations in keeping with the Human Rights. The Chief of the Army Staff had in 1993 issued the "Ten Commandments" for strict observance for the forces engaged in the counter-insurgency operations

Ten Commandments for strict observance for the forces engaged in the counter-insurgency operations

These ten Commandments are:

- No rape.
- No molestation.
- No inhuman torture.
- Death preferable to military disgrace.
- No meddling in civil administration, i.e., land disputes or quarrels.
- Competence in platoon/company tactics with innovations.
- Willingly carry out civic action.
- Maintain good relationship with media use it as a force multiplier' and not as a 'force degrader'.
- Respect human rights.
- Only fear God, uphold the path of righteousness and enjoy serving the country.

Ten Commandments conti..

- As a corollary to the Ten Commandments of the Chief of Army Staff, the Corps Commander had further issued Ten Directives for strict compliance. These in brief are:
- Display compassion and humanity towards local "populace.
- Do not look down upon local customs and traditions.
- There are no insurgents here only misguided countrymen.
- Never molest women they are our sisters and mothers.
- Do not harm children they are our heritage.
- No reprisals under any circumstances.
- Apprehendees to be treated with respect.
- Honour democratic norms and rightly adhere to human rights.
- Aggressiveness and spontaneous reaction is the key to success and survival.

Code of Conduct for the Police

- The police officers at the middle and higher levels are exposed to the principles of Universal Declaration Of Human Rights and international instruments on Human Rights, Human Rights relevant to the criminal procedure in India, relevant areas of the Indian Constitution, the Supreme Court of India and case laws on Human Rights, and NHRC
- The United Nations General Assembly had on 17 December, 1979, adopted a code of conduct for the law enforcement officials. In India, the following Code of Conduct for police was adopted and issued by the Government of India in July 1985.

The code, inter alia, emphasises the following:

- (1) The Police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.
- (2) The Police should enforce the law firmly and impartially, without fear or favour, malice or vindictiveness.

Code of Conduct for Police cont..

- (3) The Police should recognise and respect the limitations of their powers and functions.
- (4) In Securing the observance of law or in maintaining order, the Police should as far as possible, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used.
- (5) The Police should always keep the welfare of the people in mind and be sympathetic and considerate towards them
- (6) The Police should always place duty before self, should remain calm in the face of danger, scorn or ridicule and should be ready to sacrifice their lives in protecting those of others.
- (7) The Police should always be courteous and well-mannered; they should be dependable and impartial.
- (8) The Police should renounce practices derogatory to the dignity of women and disadvantage segments of the society

Review of Repressive Laws in India and Human Rights Violations

- The problem of terrorism is not a new one in human rights agenda. Acts of terrorism has imperiled and killed innocent people, jeopardized fundamental freedoms and seriously impaired the dignity of human beings for so many years . States have therefore long been under an obligation to take measures to protect the fundamental rights of everyone within their jurisdictions against terrorist acts.
- If one looks at the history of legislation on terrorism or disturbance, there was the Preventive Detention Act 1950 at the advent of Independence followed by the Punjab Security Act 1955, Assam Disturbed Areas Act 1955, and the Armed Forces (Assam and Manipur) Special Powers Act, 1958. In the 1960s and 1970s there were two major acts passed in each decade and in the 1980s there were five acts and in the 1990s there were two acts. There are about 25 to 30 repressive acts passed either at the central or the state levels.
- Since the 1980s, specific laws came to be enacted to address the issue of terrorism. These include the Terrorist and Disruptive Activities (Prevention) Act (TADA) 1987, the Prevention of Terrorism Act (POTA) 2002 and the amendments to Unlawful Activities (Prevention) Act (UAPA) in 2004 and 2008. By enacting these laws, the government has treated terrorism to be a special crime that warrants special and stringent laws.

Observance of HRs

- In any civil society, observance of human rights is essential by each citizen, more so by the law enforcing agencies, who are themselves responsible for maintaining law and order.
- Consequently, any act performed by the security forces in excess of what has been authorised by law becomes illegal. The cause and call of human rights is so precious for the humanity that it be not comprised under any amount or degree of provocation.
- This requires not only wide awareness of human rights amongst members of security forces but more than that it requires promotion and inculcation of human rights attitudes and sensitivities in them.
- A consideration of the Special Enactments for the security forces and their deployment in aid to civil administration reveals that the Army's role in controlling riots and other emergency situations is extremely restrictive in nature and depends entirely on the cooperation and willingness of the administration to employ the Army to best use.
- They must perform their duty to the nation to fight and triumph over terrorism. They must observe international standards of Human Rights and discharge their duty with full respect for the laws of the land and the rights of all the people

Conclusion

- International Human Rights Law is a system of laws comprising of domestic, regional and international which is basically designed to promote human rights. Promotion and protection of human rights is not only the task of national and international human rights law and of specialized human rights institutions.
- International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.
- Recent developments refute the suggestion that rights are always appropriated by powerful groups. They suggest that there is scope to shift meanings and secure "progressive" interpretations of human rights norms.

THANK YOU