

# 1. THE NATURE AND DEVELOPMENT OF HUMAN RIGHTS

## DEFINITION OF HUMAN RIGHTS

**Human rights:** Fundamental entitlements of people arising by virtue of their humanity

- Laws should express community standards and expectations to reflect the rights that are most valued within the community
- Laws and human rights are inter-related:
  - Human rights should reflect mainstream social values
  - Laws are consistent with broadly held values are likely to reflect the rights important to the people within the society
- Societies that have freely elected members of parliament and allow people to express their aspirations best reflect the rights of the people

### ↳ FEATURES OF HUMAN RIGHTS

- Features of rights are often questioned as they do not always have these qualities
- Universality of rights differs with every culture, religion and social group
- Different societies value different human rights and protect them with legislation questioning the indivisibility of rights

#### › **UNIVERSAL**

Apply to all people, at all times regardless of the circumstances

- Regardless of culture, gender, status, nationality, age, sexuality etc.

#### › **INHERENT**

Intrinsic to humanity and cannot be separated from any human

- Regardless of disability etc.

#### › **INALIENABLE**

Cannot be removed, given up, traded or sold

- Cannot be taken away even when nations legislate against rights and punish expression of rights

#### › **INDIVISIBLE**

All rights are equally important and all people are entitled to the full expression of each right

#### › **INTERDEPENDENT**

Full expression of each right depends on the full expression of all other rights

## DEVELOPING RECOGNITION OF HUMAN RIGHTS

### ↳ HISTORICAL CONSTITUTIONAL DOCUMENTS

- Changing understanding of human rights throughout time is reflected through the progressive nature of the development of historical Constitutional documents
- These paved way for international human rights agreements existent today
- 19<sup>th</sup>/20<sup>th</sup> century human right developments shaped subsequent new concept of protecting human rights

#### **MAGNA CARTA (1215)**

- First legal document that recognised limitations in the King's power over his subjects
- Mainly protected the interests of the rich/powerful, but still a milestone
- King John's dispute with Lords in 1215 forced him to sign the Magna Carta

#### **ACKNOWLEDGED A NUMBER OF IMPORTANT RESTRICTIONS:**

- All citizens have a right to freedom
- All are equal before the law
- All laws must be passed in conjunction with the Parliament
- King must not interfere with matters of the Church
- Any person accused of a crime must be brought before the court and are entitled to judgment by their peers
- Property cannot be confiscated without appropriate compensation

- English common law also developed further to protect human rights:
  - All citizens are entitled to due process of law
  - **Habeas corpus** was recognised – no person could be detained without good reason

#### **ENGLISH BILL OF RIGHTS (1688)**

- Further consolidated protection and freedoms laid out in the Magna Carta
- Permanently transferred power from the monarchy to the parliament
  - Parliamentary controlled the army
- Ensured that Royalty could not override laws created by a freely elected Parliament
  - Separation of Church and State
- Also protected freedom of speech and freedom from cruel and unusual punishments
- King James II was dethroned after attempting to forcibly pass a religious bill through parliament and reduce the limited power of parliament
- William of Orange had to sign the bill before succeeding James II

### U.S. DECLARATION OF INDEPENDENCE (1776)

- Emphasised the individuals right to be free from the arbitrary power of the state
- Enshrined specific human rights in domestic law
  - ‘All men are created equal’
  - Inalienable rights: ‘Life, Liberty and the pursuit of Happiness’
- Response to English colonial repression
- America wished to be recognised as independent and allowed to be governed separately
- Britain attempted to impose taxes of American colonists even though they were not represented in British parliament

### CONSTITUTION OF THE USA (1787)

- Based on the separation of powers of the three arms of government: executive, legislature, judiciary
- Ensuring their functions are mutually exclusive
- Protects citizens’ liberties and human rights from the arbitrary abuse of power by the state
  - No branch of government can be too powerful
  - All bodies are equal before the law

### FRENCH DECLARATION OF THE RIGHTS OF MAN AND THE CITIZEN (1789)

- First attempt to create international human rights
- Sought to protect rights that its creators believed were inherent, inalienable and universal
- Drawn up on the context of the French Revolution

#### PROTECTED THE RIGHT TO:

- Democratic governance
- Equality before the law
- Liberty
- Freedom of speech, action (within reason), religion
- Respect of property

### US BILL OF RIGHTS (1791)

**Constitutional Bill of Rights:** Country’s statement of civil, political human rights and guarantees freedom from government interference in private matter pertaining to the individual

- Sets forth and guarantees many basic human rights
- Set a trend for a specific document pertaining to human rights in domestic legislation
- First ten amendments of the US Constitution (1787) comprise the US Bill of Rights

#### RIGHTS INCLUDE:

- Freedom of: speech, press, assembly (protesting)
- Freedom from being held without charge, inhuman or unusual punishments, denial of rights listed in constitution
- Entitlement to a fair trial (procedural fairness)
- Concept of double jeopardy

## ↳ ABOLITION OF SLAVERY

### Protection against slavery:

Universal Declaration of Human Rights (Article 4)  
International Slavery Convention 1926

- Slaves, used for labour, were considered an item of property and denied basic human rights
- Movement to abolish slavery began in the 18<sup>th</sup> Century and continued throughout the 19<sup>th</sup> Century
  - Denmark was the first European state to abolish slavery in 1792
  - Britain in 1807, USA in 1808
- Only outlawed the importation of slaves and not the ownership of slaves
  - Widespread people smuggling for the slave trade continued throughout the 19<sup>th</sup> century

### EMANCIPATION PROCLAMATION 1863

- Greatest struggle for slavery abolition manifested in the USA → serious conflict between North/South
- Southern States relied heavily on slave labour to maintain cotton farm plantations
  - People were forcibly taken from throughout the continent of Africa and sold as slaves
  - Movement for slavery abolition brought fierce objection from Southern States
  - Cotton plantations were the social, cultural and economic foundations
- Secession of the Southern States led to the American Civil War (1863) and ended slavery in US
- Emancipation Proclamation allowed the slaves in the Southern States to be freed
- Led to the freeing of all slaves in America by 1895

## ↳ TRADE UNIONISM AND LABOUR RIGHTS

### Right to form and join a trade union:

Universal Declaration of Human Rights (Article 23)  
International Confederation of Free Trade Unions

**Trade union:** Organisation of employees, in a particular trade or industry, formed in order to obtain improvements through collective action

- Improvements: pay, working conditions, safety, training, career progression, professional status and employer/employee relations
- Seek to improve member’s social/political status
- Represent employee interest in industry disputes
- Strength in unity → more bargaining power
- Trade unionism – labour movement arose as the organised response of workers to 19<sup>th</sup> Century industrialisation
  - Exploitation of workers in Britain, USA, Europe in the rush for increased output
  - Basic human rights entitlements were ignored and thus, denied
  - Severe shortage of labour → little economic bargaining power and could easily be replaced

### TRADE UNION ACT OF 1871

- First trade unions encountered fierce resistance from wealthy classes within society who owned the factories
  - Believed to undermine the industrial movement
- Workers attempted to align their common interests into a political force
- Purpose was to pressure legislators to create law protecting their rights as workers
  - Most legislators were wealthy bourgeoisie and only they had the right to vote
  - Their interests were unrepresented in parliament
- British unionism received its legal foundations in the Trade Union Act of 1871
- In America, legal recognition was developed more gradually through a series of court decisions

- Made governments responsible and accountable to the people they represent/govern
- During 18<sup>th</sup> and 19<sup>th</sup> century (Britain), the right to vote required income and property qualifications
  - Women were denied the right to vote
  - Large percentage of the population went unrepresented
- Universal suffrage arose as those who were not represented by public officials campaigned for the right to vote
- Most democratic societies have universal suffrage
- Universal suffrage is still an issue in some areas of the world
  - > In America, people with a criminal record are not allowed to vote even after undergoing their punishments
  - > In Saudi Arabia, only men above the age of 25 can vote
- Subtle issues such as insufficient literacy levels also indirectly deprive people of the ability to vote
  - > ABTSI still largely go unrepresented in the political arena, even with the right to vote

### INTERNATIONAL LABOUR STANDARDS 1919

- UN created the International Labour Org. (ILO)
 

**MAIN AIMS:**

  - Promote rights at work
  - Encourage decent employment opportunities
  - Enhance social protection
  - Strengthen dialogue on work-related issues
- Labour standards created articulate the minimum standards across a range of employment issues
- Aims to promote opportunities for women and men to obtain decent and productive work
  - In conditions of freedom, equity, security and dignity
- Ensures the growth of the global economy provides benefits to all

### ↳ UNIVERSAL EDUCATION

**Right to education:**  
Universal Declaration of Human Rights (Article 26)

- UDHR recognises that universal education is important in securing respect for all other human rights
- People would have a greater understanding of their own human right entitlements when educated
  - Governments would be held more accountable

**Universal education:** Right for all people in the world to undergo fundamental levels of education

- Refers to elementary education level
- Basic literacy, numeracy and comprehension abilities

- Historically, an education is the privilege of the aristocracy (the wealthy ruling class and nobility)
- During the industrial revolution, citizens of all classes realised the importance of education in attaining skilled jobs
- 19<sup>th</sup> century, national schools systems were developed
- 20<sup>th</sup> century, legislation was passed to enforce compulsory education

### ↳ UNIVERSAL SUFFRAGE

**Right to vote:**  
Universal Declaration of Human Rights (Article 21)  
*“Right to take part in the government of his country ... in periodic and genuine elections”*

**Universal suffrage:** Right of all person, free from discrimination, to vote freely when electing public officials except those under an appropriate age limit

- Right to vote is a fundamental entitlement, and the denial of this right would be a denial of human rights
- Large unrepresentation of people in parliament result in further human rights issues concerning these people going unaddressed
- Enlightenment period (18<sup>th</sup> century) introduced the concept that all people should have a role in electing their leaders
  - All people have a right to self-government
  - Governments derive their right to govern from the people

### United Nations Education, Scientific and Cultural Organisation (UNESCO)

- Attempt to improve education levels
- Began literacy campaigns and other educational projects on an international level

**AIMS:**

- Put every child in every country into a school
- Ultimately eliminate illiteracy

- Basic compulsory education is almost universal, but
  - Estimated that up to 50% of school aged children do not attend school on a regular basis
  - Many children today still suffer from low literacy levels or are classified as functionally illiterate

## ↳ SELF-DETERMINATION

**Right of a group to self determination:**  
International Covenant on Social, Economic and Cultural Rights (ICESCR) 1966 – Article 1  
“All peoples have the right to self-determination ... to determine their political status ... and economic, social and cultural development”

**Self-determination:** The **collective** right of a group of people to govern themselves independently

- How they are governed
- By what laws they are governed
- By whom they are governed
- Often associated with indigenous peoples and their struggle to gain political, social and economic independence
  - In Australia, the plight of Indigenous
  - In securing independent land within Australia through Native Title
- Indigenous peoples are those which have a historical continuity with pre-invasion and pre-colonial societies that developed on their territories
  - Consider themselves distinct from other sectors of the societies now prevailing on those territories
- There are 300-500 million Indigenous Peoples all over the world in more than 70 countries
  - Often been forced to assimilate, economically exploited, oppressed and excluded from the democratic process

### **PROBLEMS FACING INDIGENOUS PEOPLES:**

- A lack of access to self-governance
- Cultural loss
- Loss of traditions
- Loss of lands
- A need for self-determination
- A need for political control

### **UN DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES 2007**

- Adopted by the UN in 2007
- Took 20 years to complete
- Non-binding declaration on member states
- Only four states rejected the Declaration, including Australia, however a number of others abstained from voting
  - Howard Coalition believed ‘there should only be one law for all Australians’
- Rudd government formally endorsed the Declaration on behalf of Australia in April 2009

## ↳ ENVIRONMENTAL RIGHTS

**Treaties that attempt to deal with specific environmental threats:**

Stockholm Declaration 1972

Rio Declaration 1992

Kyoto Protocol 1997

CROC – Article 24

“...taking into consideration the dangers and risks of environmental pollution” on child’s right to health

→ Global warming, marine pollution, depletion of the ozone layer, atmospheric pollution

- **Collective entitlement** of future generations to enjoy the same quality of environment that their parents did
  - *Intergenerational Equity* – equality between generations
- All people, in all generations have the right to live in a healthy physical environment
- Rights such as: right to life, health or property cannot be fully realised without a healthy environment
- Tension between balancing the need for economic growth and development with maintenance of the current physical environment
  - Healthy physical environment is also paramount in determining the overall wellbeing of an economy
- Ecologically Sustainable Development (ESD)
  - Sustainable levels of economic growth to ensure protection of the environment in the long term
  - Limiting practices that have harmful effects on the environment in the present
- Businesses are reluctant to incorporate environmentally friendly production processes → increase costs → competitiveness
- The global nature of negative environmental impacts such as global warming and inter-border pollution
- Need international protection of environmental rights
- Governments address the issues of environmental rights through the imposition of carbon taxes or systems based on carbon trading permits/credits

### **UN NATIONS CONVENTION ON CLIMATE CHANGE 1994**

- Still in the early stages of real environmental protection
- Some countries refuse to sign the Convention
- Fear loss of economic production, jobs and increased costs if environmental protocols were established

### **UN Human Rights Council establishes an Independent Expert on Human Rights and the Environment (03/2012)**

- Council’s recognition of universal right to healthy environment
- Expert is tasked with identifying and promoting best practices relating to the use of human rights obligations to strengthen environmental protection



## ↳ PEACE RIGHTS

**Peace rights:** Moral right to live in a peaceful environment that is free from war and other threats due to conflict.

### **CONVENANT ON THE LEAGUE OF NATIONS**

- 1919, after WWI → Paris Peace Conference with the countries whom won WWI
- Established a world body with the primary aim of preventing war: League of Nations

#### **MAIN PURPOSE:**

- To promote international co-operation and to achieve international peace and security

### **UNITED NATIONS CHARTER (1945) - Article 1**

- “Maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace”

### **DECLARATION OF THE RIGHT OF PEOPLES TO PEACE (1984)**

- Required governments eliminate the threat of war, particularly nuclear war wherever possible
  - Avoid the use of force to solve international problems
  - Utilise international dispute mechanisms to settle dispute peacefully
  - Non-binding on member states
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- However, regardless, there have still been many international conflicts even after the UN Charter was signed
    - > Korean War 1950-53
    - > Iraq War 2003-11
  - Tension between the right of peace balanced against a sovereign nations right to self-defence
  - [Article 51 of UN Charter](#) enables states an inherent right to collective/individual self-defence in an armed attack occurs
    - UN Security Council can also authorise actions to maintain or restore peace
    - Enabled the justification of wars on a legal basis
  - In 2013, UN Office of the High Commissioner for HR voted on a resolution in favour of the Declaration on the Right to Peace
  - Was not widely supported
  - USA did not support it on the basis that:
    - It was not a recognised nor defined in any universal binding instrument
    - No consensus on what the right would entail
    - Would modify or stifle the exercise of some existing rights

## **FORMAL STATEMENTS OF HUMAN RIGHTS**

**International instruments:** Formal legal document that has legal force under international law

- Horrors of two WWI/II acted as a catalyst for recognition of many human rights
- Shared purpose of international community lead to establishment in 1945 of the United Nations
  - Acts as a body to oversee international community
  - A forum for discussion for all states
- International declarations act only as a moral guide due to state sovereignty
- International declarations, treaties and framework seek to define universal standards in the protection and recognition on HR
- Countries ratify human right protections into their own legislation to reflect these standards
  - Responsibility of each nation-state to protect human rights of its citizens

## ↳ **UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)**

- UN Commission on Human Rights entrusted with drafting the document
- Referred to historic document containing rights as well as worldwide, political, philosophical and religious movements
  - Broad membership with representatives from Australia, Egypt, Uruguay, USA, UK etc.
- Adopted on the **10<sup>th</sup> December, 1948**
- Main instrument of the inalienable and indivisible rights of all mankind
- ‘Soft law’ as it is a declaration – non-binding on UN member states, but still influential
  - Arguably has become part of international customary law
  - Used to guide government’s overarching response in policy making by setting a minimum benchmark which must be upheld
- 30 articles altogether:
  - 2-21 detail civil and political rights and form the basis of the ICCPR
  - 22-27 detail the economic, social and cultural rights and form basis of ICESCR
- Negative rights – articulated as ‘freedom from’ which restrain the state from doing things that curtail individual rights
- Positive rights – ‘freedom to’ which impose duties or obligations on the state to be in active in promoting individual rights
- **UDHR + ICCPR + ICESCR → International Bill of Rights**

#### **RIGHTS INCLUDE:**

- Right to life, liberty, security, thought, religion, education, work, asylum
- Freedom from slavery, torture

↳ **INTERNATIONAL CONVENANT ON CIVIL AND POLITICAL RIGHTS**

- Came into effect in **1976** after being ratified by the requisite number of countries (35)
- First rights to be protected under international law – **first generation rights**
- Crucial rights to ensure people live in safety and free from fear of government
  - Ensure governments respect the civil and political rights of individuals

**RIGHTS INCLUDE:**

- Equality between men and women
- Right to freedom of movement
- Freedom from arbitrary arrest, detention or exile
- Right to remain innocent unless proven otherwise
- Right to seek asylum
- Right to self-determination
- Freedom from retrospective law
- Freedom of thought, conscience, religion, opinion and expression
- Right to vote

- ICCPR contains monitoring and periodic reporting arrangements for member states
- Monitored by the HR Committee which reports on compliance by member states and investigates violations

Status	Countries
Ratified	165 states (2010)
Signed but reduced its domestic effects	USA
Signed but not ratified	China, Cuba
Neither signed nor ratified	Singapore, Burma, Saudi Arabia

**OPTIONAL PROTOCOLS**

- ICCPR is supported by two optional protocols

**Protocol:** international agreement that nations will separately ratify if they agree to be bound by text

- › **First Optional Protocol to the ICCPR** allows individuals to make complaints to the UN HR Committee in regards to breaches of the ICCPR
  - 35 states have ratified this treaty
- › **Second Optional Protocol to the ICCPR** aims to outlaw the use of death penalty as a sentencing option
  - 78 states have ratified this treaty

**'Hard law':**

- › 'Hard law' is found in the text of treaties, covenants, conventions and protocols
- › Expected to be ratified by a number of members nations that are party to the agreement
- › In ratifying or passing such 'laws' into domestic law, a nation can have breaches to the law enforced by domestic courts

↳ **INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

- Approved in 1966 but came into force in **1976**
- Protect **second generational rights** which ensure citizens can fully and safely participate in society whilst maintain human dignity
  - Financial, cultural and social wellbeing of nations within a nation
- Encourage quality of life and are generally positive rights that place obligations/duties on the state

**RIGHTS INCLUDE:**

- Right to work and equal pay for equal work
- Right to join trade unions
- Right to adequate food, clothing, housing and health care
- Right to education
- The right to strike
- Right to equal opportunity in employment
- Right to safe and healthy working conditions
- Right to reasonable work hours and to holidays
- Right to adequate standard of living and health

- Monitored by the UN Committee on E S C Rights

Status	Countries
Ratified	160 states (2010)
Signed but not ratified	USA, South Africa
Neither signed nor ratified	Malaysia, Burma, Saudi Arabia

**OPTIONAL PROTOCOLS**

- Entered into force in 2013, three months after its tenth ratification
- OP-ICESCR establishes important mechanism for bringing violations of E,S,C rights before the UN Committee on E,S,C rights
  - › Individual complaints mechanism
  - › Inter-state complaint mechanism
  - › Inquiry procedure
- Signed by 42 states and ratified by 11
- Australia has not signed the treaty