

HUMAN RIGHTS

- Human rights can best be understood as important aspects of every human being's life that should be protected
- Known as Natural Rights, they were particularly influential in the 18th century, forming the intellectual basis for two major historical events – the American Revolution in 1776 and the French Revolution of 1789 – justifying the overthrow of British rule in America and the Bourbon monarchy in France.
- The idea of human rights is largely concerned with the relationship between the state and individuals. It is intended to prevent governments advancing policies and introducing laws that would ride roughshod over such important aspects of human life. Individuals, therefore, have certain fundamental rights that are protected from the power of the state.
- Human rights re-emerged in international political significance following the Second World War and, in particular, as a reaction to the atrocities of the Nazi Holocaust, that led to the deaths of six million people.
- Following its establishment after the war the first major step of the United Nations was to put the idea of human rights onto a firm footing by creating the Universal Declaration of Human Rights (UDHR) in 1948. This was quickly followed by the newly created Council of Europe producing the European Convention on Human Rights (ECHR) in 1950.
- There is, however, an important difference between these two post war documents in that the ECHR has its own enforcement machinery, the European Court of Human Rights, sitting in Strasbourg,, whose decisions are legally binding on member states of the Council of Europe whereas. The UDHR, in contrast, does not impose legally binding obligations on countries.

- What human rights do we have? - see accompanying sheet that sets out the rights contained in the ECHR
- Recognition of plurality and personal differences – Human rights “...involves the recognition of difference. The point is that individuals hold different beliefs on religion and on politics, have different senses of right and wrong, different desires and interests, etc...Respecting common humanity implies allowing such differences to flourish.” Human Rights Law H Davies [2021] 5th Edition p.5)
- Human Rights are deemed to be UNIVERSAL, INHERENT and INALIENABLE (universal – every human being has them – both good. and bad, pleasant and unpleasant individuals; inherent = having a permanent quality; inalienable = cannot be taken away).
- As a legally enforceable document, the ECHR is much more detailed than the UDHR (and other similar documents) and is aimed at striking a balance between human rights and community interests. Therefore, there are very few ABSOLUTE rights in the ECHR, namely rights that have no constraints or limitations on their exercise: “At the heart of the theory is the recognition that individual lives are led in a social context and that it is entirely legitimate for states to place reasonable restraints on individuals in order to pursue the common good by advancing common interests and protecting general security. Therefore many rights are not absolute but ‘qualified’ (Davis *ibid.* p.6).
- SUSPENDABLE RIGHTS: Art.15 of the ECHR makes it clear that in time of war or other public emergency 'threatening the life of the nation, all human rights except those not to be tortured, not to be enslaved, not to be subject to retrospective legislation and the right to life are suspendable - and even the last of those four (life) is suspendable in terms of lawful acts of war.
- CONDITIONAL RIGHTS: “Articles 8, 9, 10 and 11 deal with individual freedoms: private and family life (Article 8); belief (Article 9); freedom of expression, including the

freedom of the media (Article 10); freedom to 'assemble' (to hold meetings, to march, to protest, etc.) and to 'associate' (to form, join and participate in trade unions and pressure groups, etc. (Article 11)). The exercise of these freedoms can have a significant impact on the lives and freedoms of others and on the exercise of public interests...[For example], in relation to the right to private and family life, serious disputes can arise over the extent to which someone's rights can interfere with the exercise of government policy (e.g. over deportation

- Human rights can be divided into two types or categories:- CIVIL AND POLITICAL RIGHTS. These rights are essentially negative in nature in that they do not require the state to do anything for its citizens. Rather it requires the state to refrain from interfering - see e.g. ECHR Art 2 – right to life; ECHR Art 3 prohibition of torture, ECHR Art 4 – prohibition of slavery; ECHR Art 10 – freedom of expression; UDHR Arts.9 - no arbitrary arrest, detention or exile; UDHR Art13- freedom of movement and residence; UDHRA rt 17 - right to own property
- ECONOMIC AND SOCIAL RIGHTS. Such rights require the state to do something e.g. provide financial resources to its individuals and are hence known as positive rights. Examples include UDHR Art.22 - right to social security; UDHR Art.23 - right to work and to just and favourable remuneration; UDHR Art.25 - right to an adequate standard of living.
- The ECHR only has civil and political rights and, therefore, it is regarded by some human rights advocates as a somewhat limited document.