

UNIT 5: PARLIAMENTARIANS AS HUMAN RIGHTS PROTECTORS

Learning Objectives Parliament and Human Rights

After studying this unit, you should be able to:

- Comprehend the ways that parliamentarians have used their positions to carry forward the human rights agenda;
- Know the various mechanisms available to support parliamentary voice.

Introduction and Overview

Entrenchment of a human rights culture in a country requires parliamentarians to actively push for human rights. This unit explains how parliamentarians can support the embedding of international standards at all levels of governance since they are both policy and law makers, as well as mobilizes of public support for greater allegiance to a human rights agenda.

The unit explores the multiple roles of parliamentarians as members of the executive, members of the opposition, and as members of political parties. It emphasizes the point that parliamentarians are trustees of people's aspirations and as such, they must ensure that law and policy support human rights. It also illustrates strategies that some parliamentarians have used to focus greater attention on human rights issues, like having a human rights supportive foreign policy and the appointment of human rights advocates to key positions.

Parliamentarians as Human Rights Protectors

The challenge before parliamentarians is to change the rhetoric of human rights theory into practical realities that benefit populations at home. While States have endorsed countless commitments at the international level, many support human rights only in theory – the ground reality shows a distressing failure by many governments to convert

Parliamentary Immunity

Essential to parliamentary procedures is the assurance that all members are privileged with the liberty to freely express their views in the House. It is therefore imperative that parliamentarians are assured freedom from criminal prosecution, civil suits or unwarranted disciplinary action – either by their own party whips or from the disciplinary committee - for free and frank expression of their views in parliament. This immunity should be assured through law and as a matter of public policy. Any derogation can seriously impair the quality and candidness of parliamentary debates and prevent members from taking principled stands particularly on human rights issues. Article 9 of the United Kingdom's Bill of Rights, 1689 expressly provides that "the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place outside parliament."

However, the existence of parliamentary immunity does not mean that members of parliament can abrogate constitutional values and accepted international standards. Parliamentarians are bound by parliamentary codes of conduct and are liable to be held to the standard required by these codes.

In addition to guaranteeing immunity to members of parliament, individuals who appear before parliamentary committees during inquiries can also be assured that their testimony --oral or written-- is not to be used in prosecutions against them. In the Australian state of Victoria, Section 50 of the Parliamentary Committees Act, 2003 lays down that proceedings of a Joint Investigatory Committee shall not give rise to any cause of action in law or be the subject of any court proceedings. This protects witnesses from legal action about anything they say before the Committee.

the rhetoric into practical pro-human rights outcomes for their constituencies back home.

Embedding a human rights culture greatly depends on the willingness of law-makers to weave the human rights agenda into all they do. Through its central function as a law-making body, parliament can naturally reaffirm the human rights values and principles for which it stands by incorporating these values into all the laws it passes. While parliamentarians are sometimes constrained by party dictates and real politik, the essential

importance of human rights makes it imperative that each member of the house sees his or her role first as protectors and promoters of human rights and second as members of parties. Even in constrained environments devices like the Private Members Bill offer an

opportunity to act on individual principle. Even if the Bill is defeated, the associated debates draw attention to otherwise difficult and controversial issues.

A parliamentarian's role as a representative of their constituency involves representing the concerns of that community – including human rights concerns – within the parliament and lobbying on behalf of those who fear violations. Making time in busy schedules for those in the community who engage in rights work is another way of showing commitment to this area. As a leader in the community, parliamentarians can also use their speaking engagements to inform and educate the community at large about human rights.

Entrenchment of a human rights culture in a country requires due focus on human rights education not just in academic institutions, but also amongst those who are charged with the responsibility of upholding and enforcing human rights such as police officers, civil servants, judges and prison officials. In this, governments can enroll the assistance of expert civil society practitioners and academics to help design and deliver human rights modules to select groups, for instance corporate managers, and to people at large.

The importance of human rights education was recognized at the World Conference on Human Rights in the Vienna Declaration which states that human rights education, training and public information are essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace. In fact the decade from 1st January 1995 to 31st December 2004 was declared as the **Decade for Human Rights Education**. As a follow up to the Decade, the United Nations is in the process of initiating a **World Program for Human Rights Education**. During the period from 2005- 2007, the focus will be on human rights in primary and secondary education.

MPs, as members of Cabinet, as Ministers, backbenchers or even as members of the Opposition, wear multiple hats, and, as such, have multiple opportunities to push forward the human rights agenda. These are explored below.

The Special Role of the Executive/Cabinet

In the parliamentary democracies, Cabinets play a critical role. Cabinets comprise the most influential ministers who collectively take the lead on the issues that shape the destiny of the nation. As such, Cabinets act like an Executive. Alternatively, in some Commonwealth countries, the President and his/her advisors act in this executive capacity. Regardless of the form the Executive takes, it has a special, crucial human rights role to play.

The “executive” in the majority of Commonwealth countries is specifically empowered to negotiate and enter into treaties. Considering that the development of human rights law over the last 50 years has been heavily influenced by international treaty developments,

Appointing Human Rights Advocates to Key Positions

The voting and behavior of government-appointed people on human rights committees at the UN is always a favorite point of scrutiny by diplomats and human rights advocates who are looking to see who will uphold and who will obstruct a human rights cause. Members of the Commission on Human Rights, for instance, are national representatives. Likewise staff in human rights sections in the UN, Commonwealth and regional organizations is often reliant on the endorsement or recommendation of their governments. While special reporters, independent experts and members of working groups in the UN human rights system serve in their personal capacity, they are appointed by the Chair of the Human Rights Commission after consultation with member states’ representatives.

It is crucial that appointments to key positions are based on expertise and a demonstrated commitment to take forward human rights. Too often, however, the unfettered right of sovereign to appoint their nominees to multilateral bodies means that in reality seniority or politics dictate nominations, to the detriment of the credibility of these organizations.

Cabinet members have a significant role to play on the international stage. For example, by guiding their bureaucracies in the contributions they make in the process of making international human rights principles and laws. More information on national roles and responsibilities in relation to treaties is explored in the next Unit.

As the body that sets national priorities and policy directions in most Commonwealth countries, as well as largely

dictates the legislative program, the role of the Cabinet as a human rights guardian is crucial. When Cabinet keeps the human rights frame to the fore, it can ensure that all Bills promote human rights and do not infringe upon committed human rights standards,

both when they first give instructions to the bureaucracy to prepare Bills and when they vet these Bills themselves. Therefore, it is important to have a process that scrutinizes all legislation to ensure compliance with national human rights laws and international commitments. For instance, in Canada when the **Charter of Rights and Freedoms** was introduced, a process was put in place to ensure that all laws adhere to the principles of the Charter –no minister could bring forward legislation without filing a certificate that the legislation complied with the Charter of Rights and Freedoms. Such a consideration on the rights implications of proposed legislation or executive action can in fact be specifically required when this is included in the Cabinet handbook or other instructions to Cabinet members. Guidelines for legislative drafts can also consciously include a minimum requirement that all Bills are consonant with the country's international human rights obligations.

Where there is a Constitutional Bill of Rights in-country, laws will nearly always be required to conform to these standards and, if not, will be in danger of being ultra vires (or outside the authority allowed by law). More directly, Cabinet members can also be active in making specific laws and national action plans that further human rights efforts for marginalized groups who need special attention or protection. Affirmative action laws that grant privileges to women and indigenous and tribal populations, for instance, have

A Human Rights Supportive Foreign Policy

Cabinets can help establish a country's credentials as a conscientious member of the international community by taking up human rights concerns in international forums by: (i) actively drafting and signing on to declarations that call for greater protection of human rights; (ii) establishing itself as a champion of human rights by being open and transparent in allowing its human rights track record to be scrutinized by international agencies; (iii) using human rights diplomacy to encourage countries with a poor human rights record to adhere to international standards such as through bi-lateral talks; (iv) publishing annual reports on the status of human rights in other countries, such as those produced by several countries including the UK's Foreign and Commonwealth office; and (v) by providing financial and moral support to human rights projects, programs and initiatives in other countries.

been passed in many countries. In New Zealand, for instance preferential access to university courses and scholarships is provided to Maoris. In India, Part XVI of the Constitution includes "Special Provisions Relating to Certain Classes" - affirmative action measures for disadvantaged groups, including seat reservations in

the Lok Sabha (House of the People) and in state legislative bodies for members of Scheduled Castes and Scheduled Tribes.

The Special Role of Ministers

In a parliamentary democracy, ministers exercise direct supervision over government departments. The personal inclination of a minister towards a particular cause can shape the attitude of the bureaucracy under him or her, which is responsible at the coal-face for implementing laws and policies. Human rights are therefore better protected when civil servants are made aware that 'their' minister understands human rights standards and is committed to their furtherance and will take a serious view of any breaches. In

Protecting Human Rights: The Need for Rights Friendly Rule-Making

Progressive laws are sometimes undermined because the rules that are needed have not been framed - or have been framed in a manner that dilutes the true import. This means that even where parliament is supportive of human rights, if resistant, bureaucrats can still use their rule-making power to stifle change. A salient example of this can be seen in the Indian state of Tamil Nadu, where the Government has designated certain courts specifically as "human rights courts" under the Protection of Human Rights Act 1993 but no rules have yet been put in place to make these courts effective in practice.

their supervisory capacity, ministers can strengthen internal disciplinary mechanisms to deal with failure or negligence to protect human rights. One positive initiative in this area comes from the Australian Capital Territory that requires annual departmental

reports to include the ways in which the department has promoted and protected rights during that year. A human rights culture in public sector departments can also be assisted by setting up human rights units, and committees to review complaints of sexual harassment or racial discrimination. Performance reviews at appropriation time are also moments for reviewing the functioning of departments in terms of how well they have progressed in promoting human rights.

The Special Role of the Opposition

Members of the Opposition are quick to call the government to account for perceived lapses, and can do this specifically for human rights violations. They often spearhead calls for greater adherence to human rights standards by the police, army and paramilitary forces and frequently pick up on international criticism as a basis for citing the government for bringing the country into disrepute. Just as valuable as opposing government action that is contrary to rights, is taking a bi-partisan approach to positive human rights proposals. The Opposition can help to promote the concept of universal human rights by not opposing important human rights initiatives for political purposes.

As responsible members of parliament, opposition members sitting on various committees – and frequently as their powerful chairs – also have a considerable responsibility for promoting human rights. Apart from the rich opportunities offered to draw attention to shortfall in standards at question time through oral and written questions, members who seriously attend to the findings of international scrutiny bodies, the reports of foreign governments and civil society, as well as to the reports of national human rights institutions and commissions of inquiry can keep the government's performance under constant scrutiny. The parliamentary opposition in Guyana, for instance, highlighted this when a Presidential Commission of Inquiry was appointed to look into alleged government sponsorship of death squads made up of serving and former police officers. The Opposition issued a press statement demanding that the inquiry be conducted by highly-regarded and respected persons of unblemished integrity who were acceptable to major stakeholders in the country; be accompanied by a credible and secure witness protection program; allow a role for the Caribbean Community (CARICOM) and other international organizations; have the power to take evidence in camera as well as in public; and have the authority and resources to take evidence both inside and outside of Guyana.

Research on patterns of violence, violation and impunity can impress upon the government the need to review offending policies from a human rights perspective. Urgent motions can also call attention to serious human rights violations to ensure that human rights concerns are kept in the forefront. Principled refusal to countenance

impunity for rights violation, whether in opposition or in government, also furthers human rights compliance at home. Outside parliament, opposition members can also lead fact-finding delegations to examine and report State violations of human rights.

Promoting Human Rights within Political Parties

Most parliamentarians belong to a political party. No matter their persuasion or ideology there are few except those on the extreme fringes that do not abjure violence, avow equality and appreciate the values of social justice and equity. However, the key lies in how the public gauges its levels of commitment – and actions speak louder than words. While rhetoric makes good press for political parties in public fora, inner party processes show a political grouping's commitment to good governance and human rights. The existence of human rights caucuses and units, women's units, minority and child protection units or even general complaint units within party structures point towards the commitment of a party to human rights principles. Internalising the human rights agenda is evidenced by diversity in membership and can be seen through the participation of women, tribal, ethnic, linguistic and religious minorities, and traditionally unrepresented groups; as well as their pre-selection to safe seats. Some countries have legislated to ensure that this happens, particularly as it relates to women. For example, in Guyana, political parties must include a quota of 33% female candidates on their electoral lists. In other countries the decision has been made by parties themselves, such as Malta where the Labour Party has a 20% quota for women on party lists, and Mozambique where one party has adopted a quota system of 30% for women on election nomination lists and leadership positions.

In some instances, individual support of parliamentarians to causes outside a party's set agenda can be constrained by demands for party discipline. Nonetheless, in their capacity as influential members of their own political parties, parliamentarians can lobby to ensure that commitment to human rights issues figure prominently on their party's electoral manifestos. The initiative for releasing white papers and setting up special commissions to probe human rights abuses has often come from their inclusion in an election manifesto based on public aspirations. In addition, human rights can be

Election Manifestos Resulting in Practical Reforms

In South Africa, when the first elections were being held in 1994, the African National Congress' manifesto promised to the people of South Africa the following:

- A democratic society based on equality, non-racialism and non-sexism;
- A nation built by developing different cultures, beliefs and languages as a source of common strength;
- An economy which grows through providing jobs, housing and education
- A peaceful and secure environment in which people can live.

These promises encapsulate the combined values of economic social and cultural rights and civil and political rights.

promoted through specific domestic rights issues. For example, domestic issues might include the reform of colonial legislation, particularly police acts, official secrets acts, and press freedom acts; a human rights friendly approach to refugee issues or anti-terror strategies; or the establishment of National Human Rights Institutions. Recently in Bangladesh for instance, the election manifestoes of both the Bangladesh Nationalist Party and the Awami League included establishing a national human rights commission. A party manifesto can also include big-ticket foreign policy items like signing up to the International Criminal Court or lobbying for reform of the UN Human Rights Commission to ensure that only people with a demonstrated commitment to human rights sit on the Commission.

Unit 5 Questions

Please answer each of the following questions. If you are taking this course in a group you may then meet to discuss your answers.

1. What are some key ways a country's foreign policy can influence human rights abroad?
2. How are human rights positions in international and regional bodies appointed?
3. What opportunities are there for ministers to take a leadership role in realising human rights?

Relevant Internet Resources

Primer on Parliaments and Human Rights
www.undp.org/governance/docshurist

UNDP Practice Note: Parliamentary Development
www.undp.org/governance/parldev/docs/parldeveng.pdf

Select Bibliography

A Concept Paper on Legislatures and Good Governance, (Based on a Paper prepared by John K. Johnson and Robert T. Nakamura), UNDP:
www.undp.org/governance/parldev/docs/concepaper.htm

“The Federal Parliament and the Protection of Human Rights”, Research Paper by George Williams, Consultant, Law & Bills Digest Group, 1999,
www.aph.gov.au/library/publications/rp/1998-99

Human Rights And Good Governance – Conjoined Twins Or Incompatible Strangers?”
The Hon Justice Michael Kirby, The University Of Melbourne, Chancellor’s Human Rights Lecture 2004: www.hcourt.gov.au/speeches/kirbyj/kirbyj_3nov04.html

Unit 6: Privileges and Immunities of Members, Module on Parliamentary Democracy, Commonwealth Parliamentary Association and Athabasca University, 2001.
http://www.athabascau.ca/govn/parliamentary_democracy/introduction/cpa.pdf

