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**Subject : Human Rights & Duties**

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**Paper :** Philosophical Foundations of Human Rights; Duties and Responsibilities

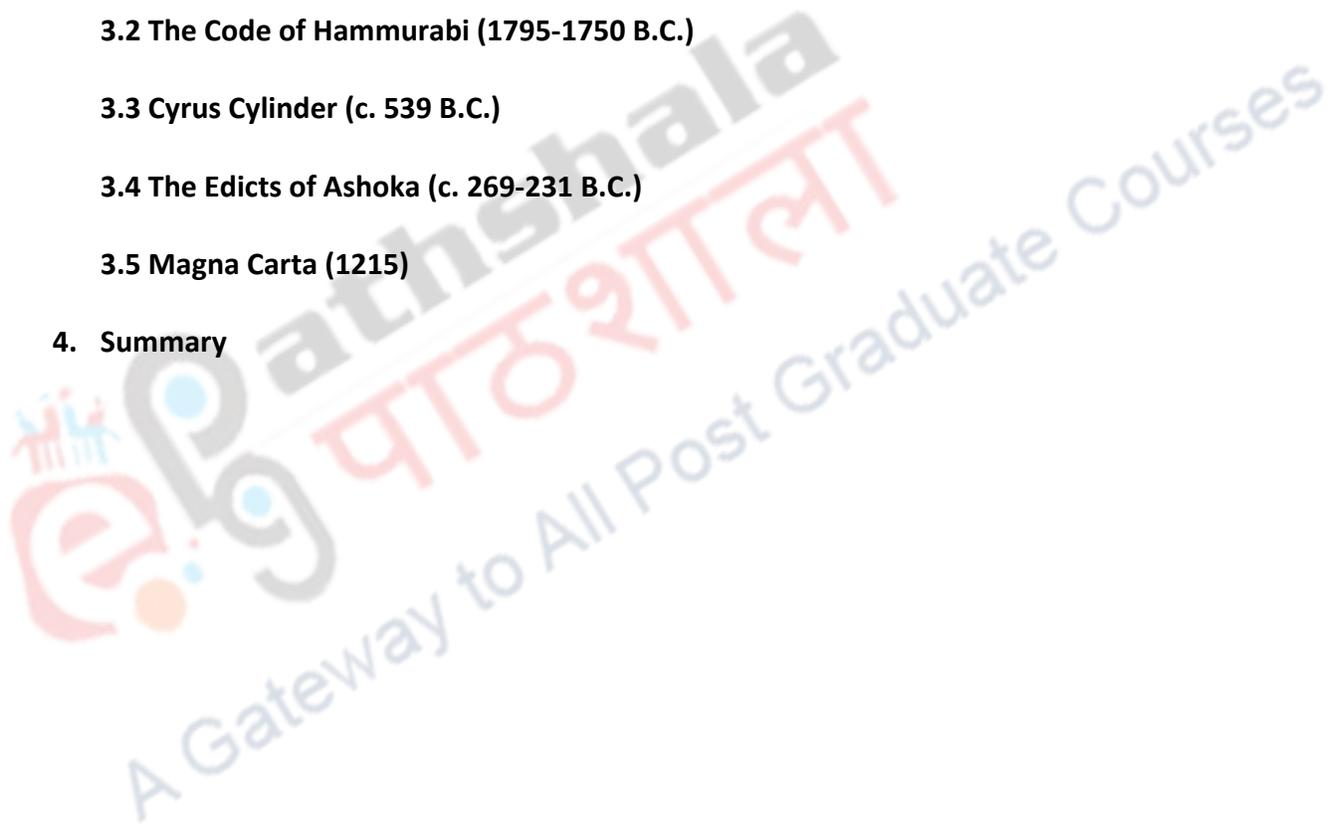
**Module :** Historical Development of Human Rights: from Ancient Roots to Magna Carta

Description of Module	
<b>Subject Name</b>	Human Rights and Duties
<b>Paper Name</b>	Philosophical Foundations of Human Rights; Duties and Responsibilities
<b>Module Name/Title</b>	Historical Development of Human Rights: from Ancient Roots to Magna Carta
<b>Module Id</b>	1
<b>Pre-requisites</b>	
<b>Objectives</b>	
<b>Keywords</b>	

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## Historical Development of Human Rights: from Ancient Roots to Magna Carta

### 1. Learning Outcomes

- To provide an historical perspective of the origin and evolution of human rights and examine the significance and implications of the milestones in the development of human rights till the renaissance.
- By this module, students will explore the series of events that shaped the evolution of human rights as we know them today.

### 2. Introduction

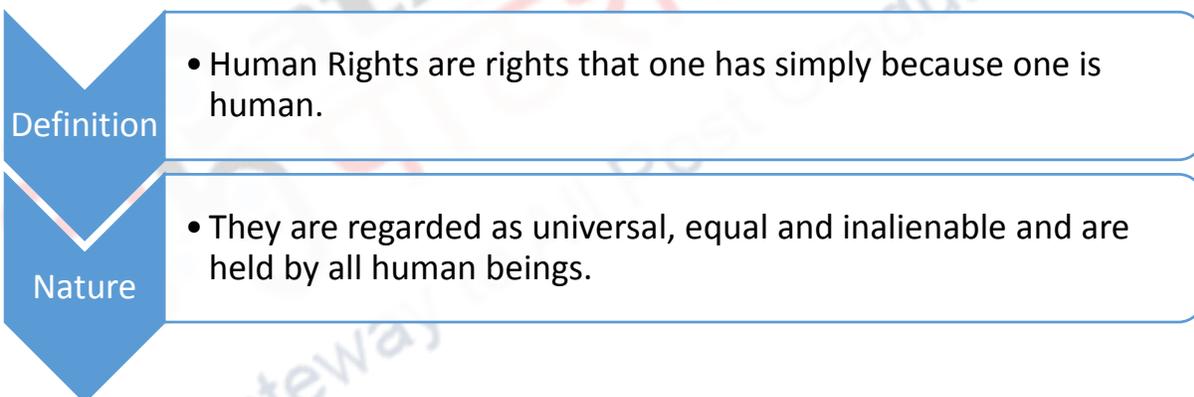
Mankind had to go through long struggles to realize the worth of human beings in the face of prejudice, discrimination, exploitation, oppression, enslavement, persecution, torture and extermination. Most of history is an account not of rights but rather of abuses and violations by traditional, hierarchical and brutal authoritarian regimes.



For a very long time, the notion of human rights was perceived differently throughout the world. There was no unanimous definition of the concept of human rights. Different countries looked at it differently. It was so because there was no international instrument which laid down a universally applicable framework of human rights. The Renaissance in Europe followed by American and French Revolution had changed the world order by establishing the concept of

nation-state governed by Rule of Law. Though the concept of nation-state had gained wide acceptance, the other major contribution of the Renaissance-Human Rights was not embraced with much fervor. The 19<sup>th</sup> century was defined by expansion of colonial powers of the industrialized nations. Hence, the colonies of these imperialist countries became the playground for grave violations of human rights. With this baggage, the early part of the 20<sup>th</sup> century saw two world wars where the notion of human rights was further debilitated. The outcome of the two World Wars brought the world together to recognise the growing need of a universally acceptable instrument of human rights. This realisation paved the way for the adoption of the UN Charter in 1945 which asserted the need to protect human rights and fundamental freedoms. It was followed by the birth of Universal Declaration of Human Rights in 1948.

The concept of human rights as we understand today in the national and international legal framework is an outcome of millennia of struggle by humankind for the protection of human dignity. The discourse on human rights has been influenced by several factors such as religious traditions, national laws and philosophical writings. While it is true that most of the principles of human rights have western roots, the concept has been enriched by the contributions by different civilizations from all parts of the world.



### 3. Key Milestones in the development of human rights

As mentioned earlier, the concept of human rights has evolved through a series of struggles which culminated into certain historic events which are regarded as milestones in the development of human rights.

#### 3.1 Vedic Literature

The Vedas being written well before three thousand years ago are regarded among the oldest religious and philosophical writings. An account of the development of the concept of human rights is incomplete without recognizing the contribution of the Vedic literature. Therefore, as mentioned in the Vedas, a human being has a right to live, right to achieve success, right to

perform good work and share the fruits of it to others and right to perform religious rituals. According to the Vedas, a human being has a right to live. He has a right to seek opportunities to live happily, divinely and peacefully.<sup>1</sup>

There were notions in the ancient literature which inspired principles like Universal Brotherhood, Peace and Justice.

- May all be happy, may all be healthy, may all enjoy prosperity, may none suffer.

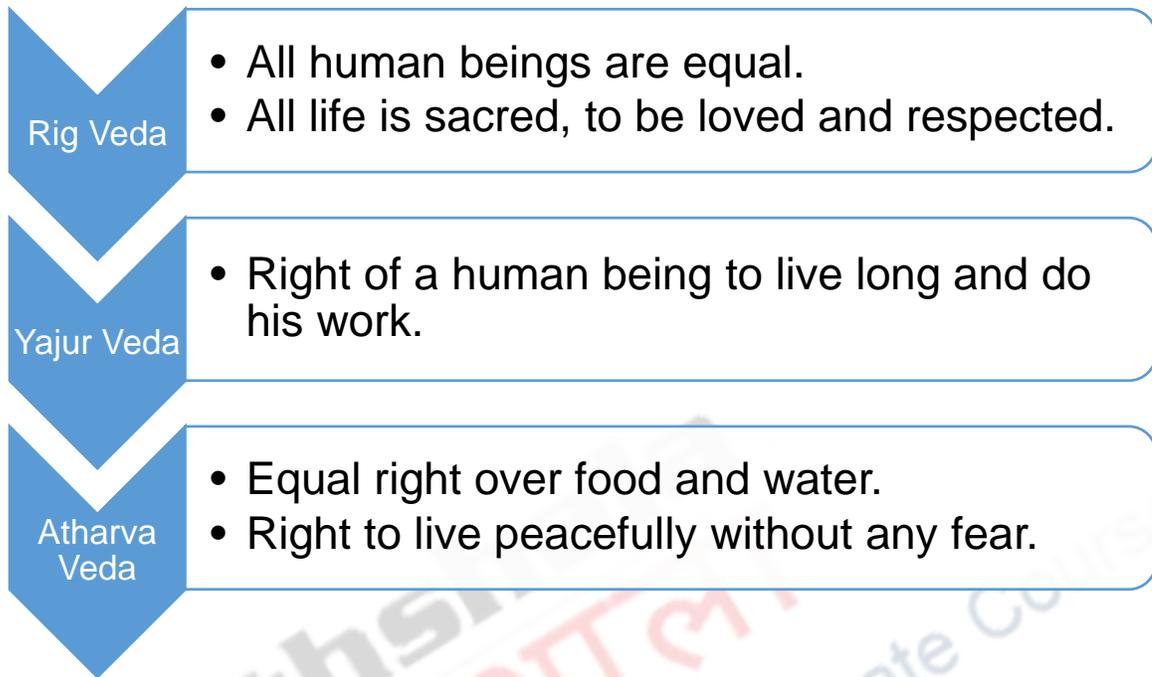
## *Vasudhaiv Kutumbakam*

- The World is one family.

The concept of human rights is the focal point of the Vedic Literature. It is evident from the *Atharva* Veda which recognises the right to happiness for all individuals and makes it obligatory for the King to protect this right. Therefore, it can be said that the first account of human rights in the world was given in the ancient Indian literature.

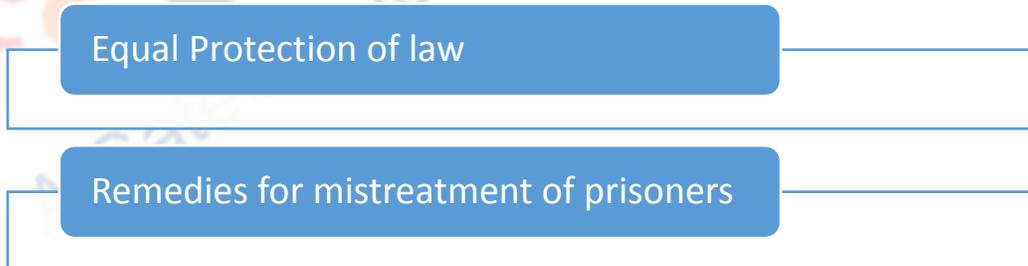
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<sup>1</sup> Rathod, Jaswant V., "The Concept of Human Rights in Vedas" Multi Disciplinary Edu Global Quest (Quarterly), Volume 3, Issue 3#11 (July 2014): 30.



### 3.2 The Code of Hammurabi (1795-1750 B.C.)

The king of Babylon-Hammurabi is credited to have given the earliest framework of laws. The unique feature of the code was that it was carved out in stone and kept in public view. While many portions of the code would be regarded as barbaric today, many aspects of the code laid down the basic human rights principles.<sup>2</sup>



### 3.3 Cyrus Cylinder (c. 539 B.C.)

<sup>2</sup> Horne, Charles F., "The Code of Hammurabi: An Introduction" The Avalon Project, Yale Law School (1915).



Upon the conquest of Babylon, Cyrus the Great issued this document giving an account of the reforms which defined his rule. The empire of Cyrus the Great spanned across twenty five nations spread across three continents. He is said to have established the first religiously tolerant empire which embraced the diversity of religions, languages, races and cultures. His contribution in the development of human rights is considered as significant due to respect for the culture and religions of all nations in his reign.

The most significant aspect of this declaration was that freedom that was granted to the slaves. Moreover, the Charter of Freedom guaranteed the freedom of religion. Never before this charter, had the world seen such tolerance from the king with regard to religion. When oppression of the conquered had become the norm for all the conquerors, he made a declaration expressly disallowing all forms of oppression. He also prescribed punishment for all such kinds of oppression. The Right to Property was another major reform that he brought in the sphere of human rights. He made an express declaration with regard to the protection of movable and immovable property from forced acquisition and without due compensation. This charter was a revolution in itself as it established a social order which is followed by the world as a model. The other cornerstone of this document was the prohibition on unpaid and forced labour.<sup>3</sup>

<sup>3</sup> Lendering, J., 2006. Cyrus Cylinder, available at: [http://www.livius.org/ct-cz/cyrus\\_I/cyrus\\_cylinder.html](http://www.livius.org/ct-cz/cyrus_I/cyrus_cylinder.html).

Freedom of Religion

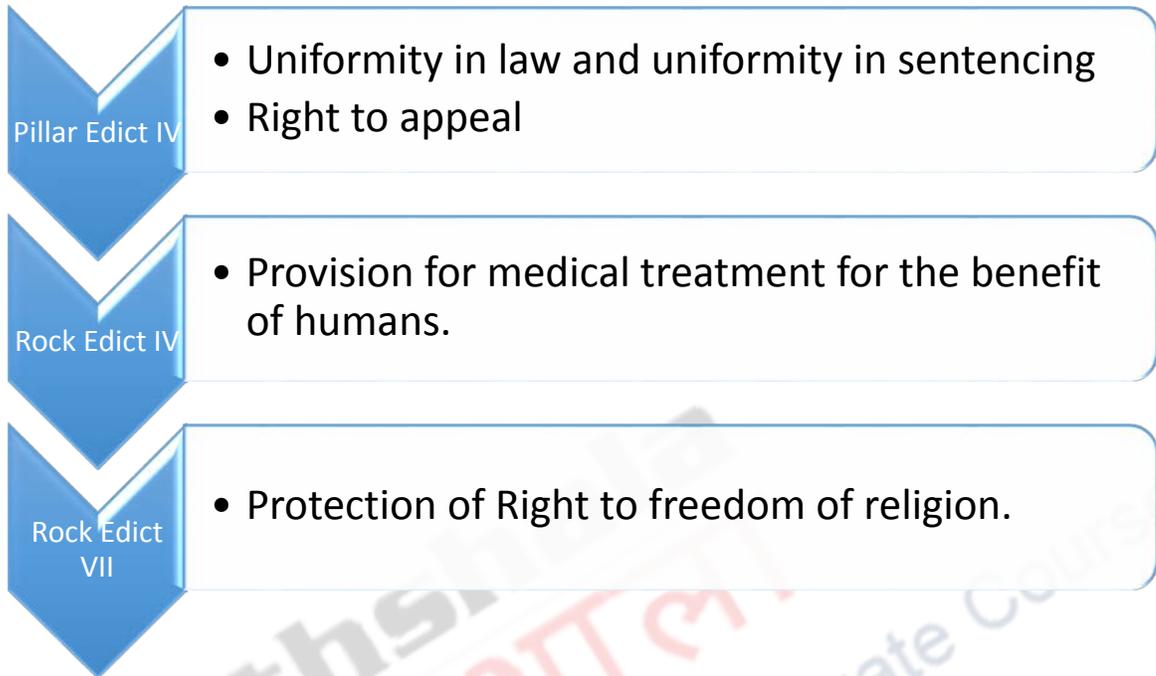
Right to Property

Freedom of Movement

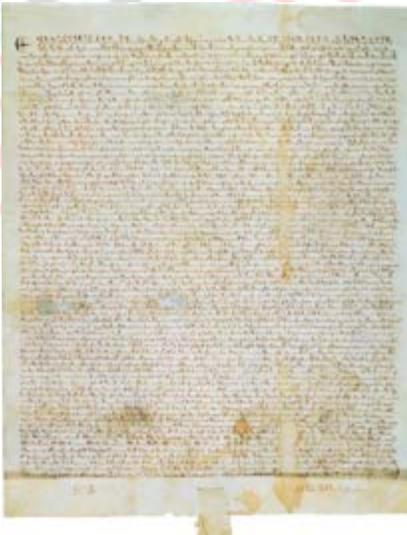
### 3.4 The Edicts of Ashoka (c. 269-231 B.C.)



Ashoka the Great, after adopting Buddhism in his personal life, attempted to apply the principles of Buddhism in his administration. This reformation in his rule came as a result of the enormous loss of lives due to wars. The Edicts include 33 inscriptions based on Buddhist philosophy were carved on stones in different forms and were dispersed throughout his empire. These edicts have been regarded as instrumental in the evolution of humanitarian laws of war. The edicts advocate proper treatment of the prisoners of war as well as the wounded.



### 3.5 Magna Carta (1215)



The Magna Carta (Latin for “The Great Charter”) is regarded as the most significant and celebrated development in the history of development of human rights. It is hailed as the first document in which the king submitted himself to what is now called – “Rule of Law.” While many aspects of this document stand repealed in the modern era, it continues to be the

cornerstone of the English legal system based on Common law. Moreover, to this date, it is considered to the spirit of all democratic constitutions throughout the world.

Magna Carta is the first ever written charter proclaiming as well as ensuring the rights of the people. The reason why it continues to be relevant for the discourse on human rights throughout the world is that it was the first instance when a declaration clipping the powers of the king was forced on the king by the subjects. In today's world, where still people in several nations are fighting to secure their rights, Magna Carta represents a symbol of human aspiration which received the authority of law. Even after completing 800 years which was celebrated worldwide in 2015, the Declaration continues to inspire the democratic traditions across the world.

### **Historical Background**

The tyrannical rule of Anglo-Saxon Kings reached its climax during the reign of King John between 1204 and 1216. He forced his nation to pay for his personal quarrels with the French King and the Pope. He taxed, fined, and performed several cruel acts upon his subjects with the help of mercenaries. His feud with Pope was a result of abuse of the power to confiscate the revenues of the Church. At the center of that row was the matter relating to the election of the Archbishop of Canterbury. When the monks of Canterbury elected an Archbishop, King John interfered with that process by nominating another person. When both monks as well as King John appealed to the Pope, he nominated a third person as Archbishop. French Army also intervened to enforce the order of the Pope. The English Barons refused to join his war effort with the France. This hostility escalated to the point where Pope Innocent III gave the punishment of excommunication to King John. Eventually he was forced to sign the great charter at Runnymede on 15 June 1215.

#### *Abuse of Feudal Rights by King John*

The feudal system in England had established a framework of hierarchy where rights and obligations of everyone were regulated by custom. However, King John sought to depart from the well-established customs and in the process committed several breaches by exploiting his position of tenant-in-chief. King John abused his feudal powers to extort taxes through several means from the Barons. The defeat of the mercenary army at the hands of the French in the Battle of Bouvines was not received well in the British Empire since the army was raised with a tax levied on Barons called as 'scutage'- as a payment in place of contribution to the military

service. This was one of the glaring example of excesses of King John in the exercise of his feudal rights.<sup>4</sup>

### *Laxity on implementing Judicial Reforms*

Henry II, father of King John, had brought several key reforms in the English judicial system. With a view to lay down the foundation of a stable system of justice, Henry II established Royal Courts. However, he did not survive long to implement these reforms. Hence, the responsibility to take the reform process came upon King John. However, rather than implementing the long overdue reforms, John chose to continue with the status-quo. Moreover, he manipulated the existing system to support his exercise of feudal powers and bring down his detractors. John continued to abuse his powers regularly to advance his interests.

Aggrieved by the tyrannical rule of King, the Barons approached the King to honour the commitment of his ancestors and implement the reforms in the judicial system. However, King John did not oblige the Barons and later on, these breaches became the ground for the Barons to go against the King and withdraw their loyalty to the King. Also, the Barons chose Robert Fitz Walter as their leader.

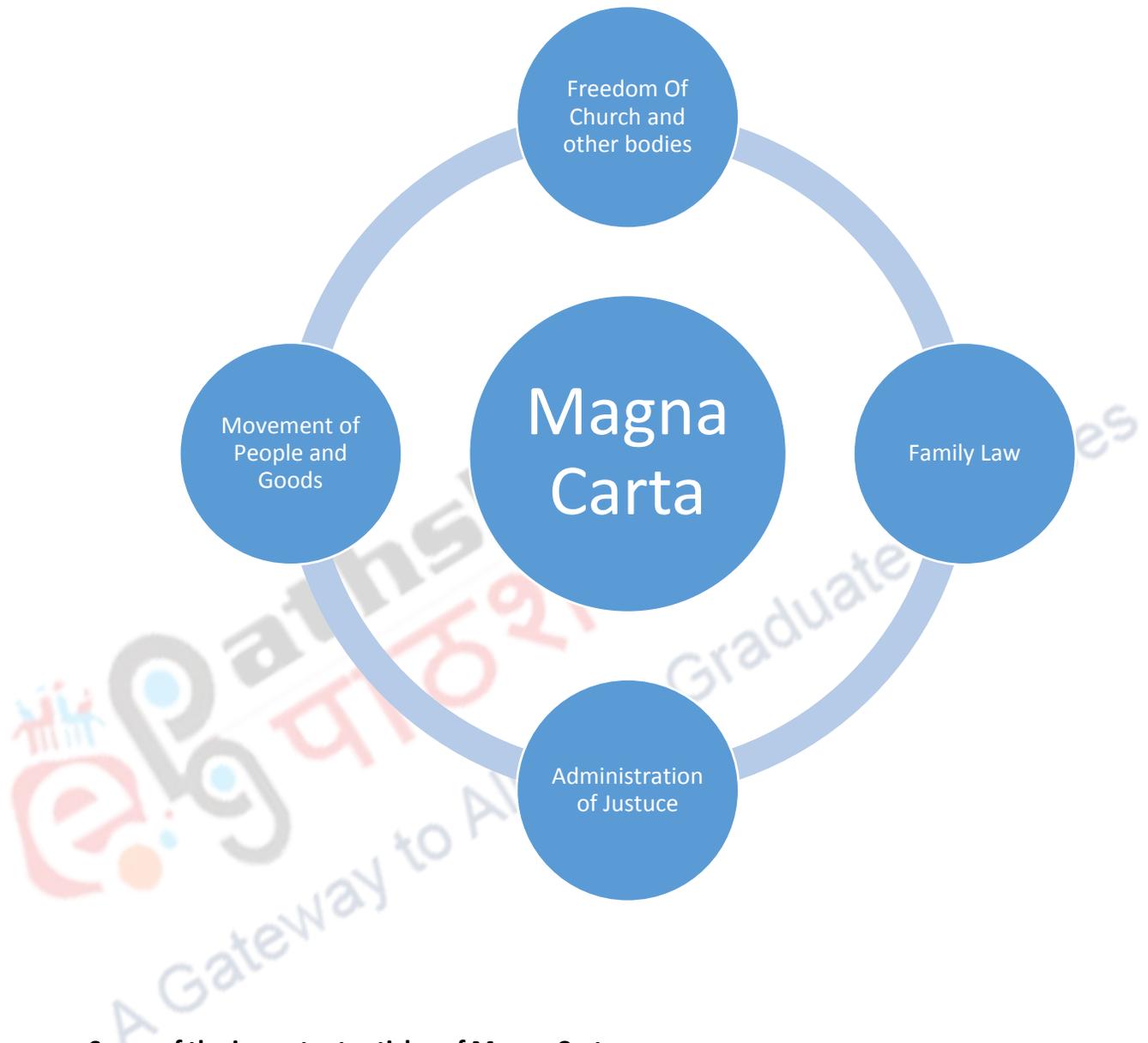
These events compelled the King to negotiate with the Barons at Runnymede as the city of London was no more under his control. The Barons submitted a document titled-‘Articles of Barons’ to John containing their demands. Subsequently, King John had to submit his approval to the demands and hence, Magna Carta came about as a result of a peace accord between the King and the Barons. The settlement concluded between the King and the Barons also had certain unique features like the clause which established a body comprised of Barons as its members to ensure the compliance of the terms of settlement.

### **Principles of Human Rights in Magna Carta**

Among the different unique aspects of Magna Carta, the authentication of the declaration with the Great Seal rather than the signature of the King was perhaps the most radical clause. The Charter contained 63 articles covering subjects like taxation, limitation of feudal powers of the King, reform of criminal justice system.

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<sup>4</sup> Fowler, Russell, “History’s Verdict: The 800th Anniversary of Magna Carta: A Time for Lawyers to Remember”, no. 50 (2014): 2.



**Some of the important articles of Magna Carta:**

*...WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope*

*Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.*

*TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs forever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:*

*(8) No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.*

*(9) Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.*

*(20) For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a villein the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.*

*(28) No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this.*

*(31) Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner.*

*(38) In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.*

***(39) No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.***

***(40) To no one will we sell, to no one deny or delay right or justice.***

*(41) All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs. This, however, does not apply in time of war to*

*merchants from a country that is at war with us. Any such merchants found in our country at the outbreak of war shall be detained without injury to their persons or property, until we or our chief justice have discovered how our own merchants are being treated in the country at war with us. If our own merchants are safe they shall be safe too.*

*(45) We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.*

*(52) To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgement of his equals, we will at once restore these. In cases of dispute the matter shall be resolved by the judgement of the twenty-five barons referred to below in the clause for securing the peace. In cases, however, where a man was deprived or dispossessed of something without the lawful judgement of his equals by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. On our return from the Crusade, or if we abandon it, we will at once render justice in full.*

*(54) No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband.*

*(60) All these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects. Let all men of our kingdom, whether clergy or laymen, observe them similarly in their relations with their own men.*

*(61) SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire that they shall be enjoyed in their entirety, with lasting strength, for ever, we give and grant to the barons the following security:*

*The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter.*

*(63) IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fullness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.*

*Both we and the barons have sworn that all this shall be observed in good faith and without deceit. Witness the above-mentioned people and many others.*

To sum up, Magna Carta provided that

- Church should be free with all its rights and liberties
- King must not take more than the customary due from Barons and must not waste the property of the minor
- No freeman was to be punished without proper trial.
- Fines were to be proportionate to the crimes, and the means of subsistence should not be taken as the basis for fine.
- Cities, boroughs, town and ports were to have their liberties and free customs.
- Protected the interests of the commoners from heavy taxes and exactions, forest laws etc.<sup>5</sup>

### Significance of Magna Carta

It is significant to note that the word “liberty” appears at many places in the Magna Carta. It recognized a very important principle that there is a body of law in the State and the king is bound to regard it and thereby protect the rights belonging to the subjects or to the community. If he violates them, he may be compelled by insurrection against him to maintain it.<sup>6</sup> In the 17th Century, when the England witnessed constitutional struggle between the King and the Parliament over the question of sovereignty, the Parliament carried the struggle in the name of Magna Carta. It is also said to have influenced the American Declaration of Independence. In European history, Magna Carta is regarded as the first written constitution.

### Criticism

Despite being hailed as a document which laid the foundation of the modern democratic society, Magna Carta has come under criticism for two principle reasons. Firstly, the Declaration reflected a reactionary approach rather than a visionary approach. The main objective of the Charter seems to undo the injustice perpetrated by the King rather than secure a basic framework of fundamental rights for the people. The second and the most important criticism of the document was that it only sought to advance the selfish interests of rich section of the society. As per Magna Carta, the concept of human rights was a privilege that was available only to the elite sections of the society i.e. the Barons.

### 4. Summary

We have learnt in this module about the process of evolution of human rights as a concept. It is evident from the above discussion that the concept of human rights as we know today has evolved

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<sup>5</sup> Dr. K.S.S. Seshan, European Legacies, University of Hyderabad.

<sup>6</sup> Worcester, Kent, “The Meaning and Legacy of Magna Carta” Political Science and Politics, Vol. 43 (2010): 451.

over the years and is a result of centuries of human struggle to affirm the importance of human dignity.

**Resources for further Reading:**

1. H.A.L. Fisher, History of Europe
2. C.J.H. Hayes, Modern Europe up to 1890
3. G.M. Trevelyan, History of England
4. Dr. K.S.S. Seshan, European Legacies, University of Hyderabad.

**Self-assessment questions:**

1. What are the important milestones in the evolution of human rights?
2. What is the significance of Magna Carta?
3. What human rights principles did Magna Carta lay down?
4. What is the significance of English Bill of Rights, 1689?