

The Constitution and Human Rights in India

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I. Abstract

Human Rights are the rights and privileges that form the condition for the peaceful coexistence and for individual growth in the society. With fresh memories of the awful violations of human rights in the colonial period, after the independence, the law makers were in a complete agreement of enshrining the human rights in the Indian Constitution, so the law of the land is there to protect the citizens from any such future infringements. Human rights have existed in the society for ages and will continue with the humanity as absence of human rights would destroy the harmonious coexistence. The Constitution encompasses many of the rights of the International Bill of Rights within it, majorly present in the Fundamental Rights (Part III) and the Directive Principles of the State Policy (Part IV) of the Indian Constitution. India has not accepted the International Bill of Rights as such, it has taken inspiration from it and modified them to suit and serve the needs of India. Apart from the Constitution as the savior of the human rights, the role played by the Judiciary to ensure justice and human rights to everyone is commendable. The courts have played a pinnacle role in interpreting the circumstances of the cases and enforcing the suitable right. The Judiciary has not only ensured justice in the field of human rights but has also widened the scope of the existing rights to make them more meaningful and comprehensive. But

there exist various challenges to the human rights due to the changing world dynamics, which require the constitution and all the organs of the government working in coherence with each other and may even require international cooperation to overcome such issues, which if not worked upon may lead to human crisis.

II. Introduction

First, it is necessary to understand the definition and meaning of the Human Rights in order to go deep in the research about the Human Rights and its protection under the purview of the Constitution of India.

Human rights are the basic rights which are bestowed to every human being because of his birth in the human race and are not granted by the state but a person is born with such rights. It is provided to each and every individual irrespective of his nationality, religion, language, gender, culture, race, or any other basis of differentiation. These are the fundamental rights which are enjoyed by every human being simply because of his existence as a human being. These rights need to be protected at all costs irrespective of the type of state and government a person is living within.

The Universal Declaration of Human Rights (UDHR), was adopted by the United Nations General Assembly in 1948, soon after its establishment in 1945, after the world-wide carnage and abhorrent violations of the human rights caused by the Second World War (1939-45), so as to prepare a Universal Bill of Rights which need to be fostered and protected by all the signing members of the body. The UDHR continues to be the foundation of all the human rights law whose articles are enshrined in the constitutions of the various countries. The UDHR is a legal document comprising of 30 articles which still holds significance and acts as the building unit on which

all the ongoing and future human rights conventions, treaties and declarations stand.

The UDHR, together with the 2 covenants - the International Covenant for Civil and Political Rights, 1966 (ICCPR) and the International Covenant for Economic, Social and Cultural Rights, 1966 (ICESCR) - makes up the International Bill of Rights.

III. Highlights of the Human Rights-

A. *Universal and Inalienable*

The principle of Universality of human rights is the foundation on which international human rights law stand. We being equal as human beings enjoy these rights equally without any discrimination on any basis.

These are inalienable. These remain with an individual until his death but may be curtailed or curbed in certain specific situations, that too according to the procedure established by the law. For example- The right to liberty of an individual may be taken away in case of Preventive Detention or if the person is found guilty of a crime by a court of law.

B. *Indivisible and Interdependent*

All human rights are indivisible and interdependent. All these rights exist alongside one another and violation of any one of them would adversely affect the other. This means that one set of rights cannot be enjoyed completely in the absence of the other. For example- A person cannot enjoy his political and social rights to his full capacity unless he has economic liberty.

C. *Creation of Rights as well as Obligations*

All the states who have signed the UDHR have the obligations and duties to respect, protect, and fulfil human rights.

- The obligation to respect means that states must not interfere with or curtail the human rights.
- The obligation to protect means that states must protect individuals and groups against the abuses and the violations of the human rights.
- The obligation to fulfil requires that the states must take some positive actions and create an environment to facilitate the enjoyment of such rights.

In addition to enjoyment of our own rights, we as citizens must respect and stand up for the human rights of others.

D. *Imprescriptibly*

Human rights are imprescriptible, which means that these would not be taken away due to lapse of time or by the reason of being out of use.

IV. Development of Human Rights in India

The history of human rights in India goes through various centuries and finds religious, social, and political rights and privileges within it. Various old reports and the ideologies and philosophies have been excavated from the ancient times which form the basis for the modern human rights. Significant among such archives are the Proclamations of Ashoka between 272-231 BC and the Muslim leaders like Akbar and Jahangir are also known for their regard for the justice and basic human rights. The Bhagavat Gita, Mahabharata, Manu Dharma shastra, teachings of Lord Buddha and various other scriptures and philosophies contain the reference to human rights which provides evidence

for the presence of the concept of human rights throughout the recorded history.

But the codification and adoption of human rights at the national and international level began after the two horrible encounters with the world wars. India had signed the Universal Declaration on Human Rights on January 1, 1942 along with other 43 members. So, the UDHR provided the constitution-makers with a strong groundwork on which a modern constitution safeguarding the rights of the people can be formed.

An advisory committee on Fundamental Rights under the chairmanship of Sardar Vallabhbhai Patel was voted upon by the Constituent Assembly on January 24, 1947. Dr. B. R. Ambedkar, Harman Singh, K. T. Shah, K. M. Munshi, B. N. Rau, were the significant members who prepared the list of rights. Apart from a few amendments, the core idea and the principles were all agreed upon. The rights in the UDHR are not present as such in the Constitution but are majorly found within the Fundamental Rights (Part III) and the Directive Principles of State Policy (Part IV). The Constitution came into force on January 26, 1950 providing the citizens with the human rights that had been grossly violated during the colonial rule over India.

V. Human Rights in the Indian Constitution

A large number of the International Human Rights of the UDHR is found in the Part III (Article 12-35) of the Indian Constitution which contains the Fundamental Rights of the Indian citizens which provide the basic liberties for maintaining harmonious and peaceful coexistence with one another. These are known as fundamental because they are essential for an individual for his all-round growth and development. The fundamental rights can be enforced by the citizens in case of any violation by the state. According to Article 13(2),

the state cannot make any law which is in violation with the Part 3 of the constitution and if so, then the law would be declared as void to the extent of the contravention. If the void part is not severable, then the whole of the act would be declared as void.

Articles of UDHR with their corresponding articles of the Fundamental Rights of the COI (Constitution of India) are as follows-

- Article 3 of the UDHR and Article 21 of COI provides for the Protection of Life and Personal Liberty.
- Article 7 of the UDHR and Article 14 of COI provides for the Equality before Law.
- Article 8 of the UDHR and Article 32 of COI provides for the right to enforce Fundamental Rights.
- Article 11(2) of the UDHR and Article 20(1) of COI provides for the Protection in respect of Conviction of Offences.
- Article 13(1) of the UDHR and Article 19(1) (d) and (e) of COI provides for the Freedom of Movement and Residence within the territory.
- Article 17 of the UDHR and Article 300(A) of COI provides for the Right to Property which was a Fundamental Right earlier.
- Article 18 of the UDHR and Article 25(1) of COI provides for the Freedom of Conscience and free profession, practice and propagation of religion.
- Article 19 of the UDHR and Article 19(1) (a) of COI provides for the Freedom of speech, opinion, and expression.
- Article 20(1) of the UDHR and Article 19(1) (b) and (c) of COI provides for the Freedom of Peaceful Assembly and Association.
- Article 21(2) of the UDHR and Article 16(1) of COI provides for the Equality of access to Public Service.
- Article 26(1) of the UDHR and Article 21A. of COI provides for the Right to Education.

Apart from the UDHR, there are also two other covenants ICCPR and ICESCR which have a reference in the Indian Constitution. Many of the rights and privileges provided under the ICCPR are also contained in the Part III of the Indian Constitution. Whereas, many of the provisions of the ICESCR are discussed under the Part IV (The Directive Principles of State Policy) of the Indian Constitution. The ICCPR focuses mainly over the civil and political liberties enjoyed by an individual like the right to vote, right to express freely and rights concerning religion. The ICESCR involves rights regarding food, health, shelter, etc.

VI. Judicial Interpretation on Human Rights Issue

The adoption of the Constitution provided the citizens with the human rights and the basic conditions for a peaceful and harmonious living within the society. But several rights in the International Bill of Rights were not available at the time of the enactment of the Constitution. The Judicial Interpretations widened the scope and the ambit of these Fundamental Rights of the Constitution. The Judiciary has played a pinnacle role in safeguarding the rights of the people. The Judicial Pronouncements in the various cases of the infringement of the basic rights formed the cornerstone over which the modern human rights have evolved. Following are some of the many landmark judicial decisions that shaped the existence and the future of the human rights in India.

A. **M.C. Mehta v. Union of India**⁴⁴⁸, 1986

Human Right at Issue: Right to Life

Because of leakage of oleum gas from units of Shriram Foods and Fertilizers in Delhi, more than

⁴⁴⁸ M.C. Mehta v. Union of India, (1987) AIR 965

3000 persons had died and lacs of others were subject to serious diseases of various kinds. An action was brought under Article 32 of the Constitution by way of Public Interest Litigation. The question before the court was that is this a violation of Right to Life (Article 21). The court extended the ambit of Article 21 and Article 32 of the Constitution⁴⁴⁹.

B. **Mohd. Ahmed Khan v. Shah Bano Begum**⁴⁵⁰, 1985

Human Right at Issue: Right to Maintenance

A 62-year-old Muslim woman Shah Bano, filed a petition in the court demanding maintenance from her husband who granted her an irrevocable talaq. The Supreme Court recognised the right to alimony in this case but the decision sparked political controversy as the Muslim community felt such a decision as an encroachment on their Muslim Sharia law. The Supreme Court ruled that such a provision in the Muslim law is against humanity as the divorced wife in this case is not in a condition to maintain her.

C. **Keshvanand Bharti v. State of Kerala**⁴⁵¹, 1973

Human Right at Issue: Right to Property

Keshvanand Bharti possessed certain sections of land along with the proper title. The Kerala state government introduced the Land Reforms Amendment Act, 1969 entitling the government to procure land which included his land as well. He petitioned in the court under Article 32 for violation of his Right to property [Article 19(1) (f)] and right to practice and propagate religion

⁴⁴⁹ Bangia, R., 1995. The law of torts, including compensation under the Motor Vehicles Act. 24th ed. Faridabad: Allahabad Law Agency, p.339.

⁴⁵⁰ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) AIR SC 945

⁴⁵¹ Keshvanand Bharti v. State of Kerala (1973) AIR SC 1461

[Article 25]. Later, the Parliament amended the constitution and removed Right to property as a Fundamental Right contending it can amend any part of the Constitution to give effect to the Directive Principles of State Policy. This case was a landmark case in the Indian legal history providing a definite answer to the right of the Legislature to amend the constitution. The Supreme Court gave the 'Basic Structure Doctrine' saying there are some core and basic features of the constitution that the government cannot alter with. This case shows that the UDHR was not a binding instrument but shows how India understood the nature of human rights according to the needs of India.

D. NALSA v. Union of India⁴⁵², 2014

Human Right at Issue: Right of Transgender

The court in this case recognised the rights of the transgender as third genders. Also, it was ordered by the court that the government should treat them as minorities and provide reservation in education, employment, and other amenities. The judiciary provided them with the Right to Dignity under Article 21 and other Fundamental rights which were lacking to them.

E. Shreya Singhal v. Union of India⁴⁵³, 2015

Human Right at Issue: Right to Freedom of Speech and Expression

The apex court in this case struck down Section 66A of IT Act which allowed arrests for objectionable and offensive content shared on the internet. This section was unconstitutional as it

violated Article 19(a) (Right to freedom of speech and expression).

VII. Conclusion

Human rights are the basic rights available to an individual for his overall progress and to develop his abilities to make use of the available opportunities to the fullest. The enactment of the Constitution and the further amendments to it has served the purpose of safeguarding the existing rights and to introduce novel rights to cope up with the new challenges to the humanity. The Constitution has successfully guarded the Magna Carta - The Fundamental Rights of the citizens over its 72-year long journey and continues to face new challenges. Also, it has motivated the governments from time to time to give effect to the Directive Principles of State Policy. The role of the Judiciary in protecting and interpreting the rights of the people as per the special needs of the Indian society cannot be denied as well. The various judicial interpretations over the history of Independent India have added new meanings to the existing rights and have widened the scope of the rights. The apex court has added new features to the Fundamental Rights like Right to Privacy, Right to Fair Trials, Right to Clean Environment, etc.

But there lie various challenges to the Constitution as well as the Judiciary as far as the human rights are concerned. As per the 2021 Country Reports on Human Rights Practices: India of the Bureau of Democracy, Human Rights, and Labour, the condition of human rights in India are very grim which is indicative of the presence of hurdles in the smooth enjoyment of rights by the people. Significant human rights issues include credible reports of arbitrary killings, involving even extrajudicial killings by the government and its agencies, arbitrary and unlawful detentions and inhumane treatment and punishments by prison

⁴⁵² NALSA v. Union of India, Writ Petition (civil) No. 604 of 2013

⁴⁵³ Shreya Singhal v. Union of India, (2015) AIR SC 1523

officials, restrictions on freedom of speech and unjustified prosecutions against journalists, lack of investigation and accountability of gender-related violence, crimes and discrimination against minority groups, bonded labour and many more. International problems like the Covid waves, the International Recession, Border conflicts, etc are posing new dangers to the humanity which require international cooperation and collaboration of the countries and the United Nations. There is an urgent requirement that these human rights violations must be looked and worked upon. It is the need of the hour that the Constitution and all the three branches of the system- Legislature, Executive and Judiciary to work in coherence with each other to improve the existing condition and to ensure basic human treatment to everyone in every field possible.

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