

COMPARATIVE STUDY ON THE HUMAN RIGHTS JURISPRUDENCE IN THE UNITED KINGDOM AND THE INDIA

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ABSTRACT

The human right jurisprudences of both the countries are differently inclined as the India human right jurisprudence rights has have been provided by the written constitution which have mandated the adherence that required to be implied the nation and in the aspect of the United Kingdom the adherences of the human rights jurisprudences are been provided by the statutes that have been provided upon and the common law and the universal mandate that provided in the European convention of the human right regulation that have been inscribed upon to the European union. The mandate which provided by the both countries are varied and legalization of the human right aspects have been provided with an ambit of the development of the jurisprudential aspects of the cases which are put forward to them and the ambit of the protection they provide to those victims which have suffered the consequence of these aspects. So, there would be requirements of the stronger legislation for these sorts of these jurisprudential aspects that have been happening in the nation.

Keywords: Human rights, Jurisprudence, Constitution, Statutes, Legislation, Europe, India

INTRODUCTION

The human right protection the Indian constitution has been provided in the written constitution in the Part 3 provided in the Article 12 to 35 of the constitution. These include the six primary fundamental rights have been provided in the constitution, which are the right to equality provided in the Article 14 to 18, right to freedom provided in the Article 19 to 22, right against the exploitation provided in the Article 23 to 24, right to freedom of religion provided in the Article 25 to 28, right to cultural and educational provided in the Article 29 to 30 and the right to constitutional remedies provided in the Article 32 which is also called as the heart of the Indian constitution and also the heart of the human right jurisprudence in which it has mandated upon and in the Directive principles

of state policy DPSP also mandated the protection of the human right policy to the citizens welfare and their overall development. As far in the United Kingdom supposes the human right protection have been provided in the statutes and there are common laws and the principles provided for the mandates of protection in the human rights perspective to the people of the nation for their wellbeing and progressive impact upon the country.

The jurisprudential aspects of the human rights would be the progressive of the welfare of the human rights which mustn't be neglected or deprived by the others, their basic imputed rights of the humans which are provided by the country to that person mustn't been stamped upon. The laws which have been provided by the countries their interpretation of

these regulation how these works are upon the cases which have been put forth upon whereas in India these inscribed laws provided for the protection are the interpretative laws tool for each cases and not directly would be implied to these cases and whereas in the United Kingdom the statutes which are acquired from the common law principles and the European union statutes are directly will be applied for the cases which are violative to the human rights grounds to the citizens of the nation.

The scope of the human right jurisprudence in the both nations are totally varied as in the India the scope of the jurisprudential aspects of the human rights and their applications would be extensive which is evolving via the judiciary with the implication of the Article 21 which has mandated the right to life and the liberty granting of these rights to the individuals of the nations. As in the United Kingdom the application of the human right jurisprudence would be based upon the statute of the European council of the human rights which have provided the mandates of the protections of the violation of the human rights in the Article 2 have mandated the right to life and the article 3 which have mandated prohibition of torture of the people and their inhumane treatment of the people or in degrading treatment or the punishment and the so on this ECHR statute have provided a varied mandates of the legislation of the protection of the human rights and their obligations of the welfare and the development in the nation as an overall aspects of the country.

CONSTITUTIONAL FRAMEWORK

INDIA

The constitution of India has provided the mandates of the protection of the overall wellbeing of the person and their growth towards the economy a such without any sort of the malefic intent to deprive the human nature of their overall livelihood mustn't been obstructed. The Indian legislation has provided a varied mandates of the rules and their regulations for the overall developmental

aspects of the individual per se instead of the deprive of the citizens from their rights to human nature which are inherent and etched to the borne person and their overall growth so far which would be provided to them by this nation to them. In the constitution of the India, the preamble has declared that,

*1"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **[sovereign, socialist, secular democratic republic]** and to secure to all its citizens:*

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation"

This preamble has provided an intent to that citizens of the nations mustn't discriminated in any aspects and well regarded in the aspects of the justice, liberty, equality and the fraternity orientation to all the developmental aspects of the citizen and their well regard for the social and humanitarian justice to prevail to them rather than destroy or the repealing of these sovereign rights which are the inherent power and the privilege of the citizens of the nation.

The purpose of the preamble is to serve the following which are the:

- a. It indicated the source from which the constitution comes viz, the people of India
- b. It contains the enacting clause which bring into force the constitution
- c. It declares the great right and freedom which the people of India intended to secure to all its citizens and the basic type of government and polity which was to be established

These wording which are inscribed and provided by the preamble are inherent and those provided an intent to protect the human rights of the citizens and their well regards of the future aspects as mandated and provided

for the overall development of the country as the regards to the constitution which have provided by the statue of the India.

In the part 3 of the constitution contains a long list of the fundamental rights which provide the mandate for overall wellbeing of the citizens in the nation as sense as the constitution has been well described as the Magna Carta of the India². As the early as 1215 the English has exacted the an assurance from King John for respect of the ancient liberties, which they have provided the mandate of the Magna Carta which as the written document for the overall well being of the nation and the overall growth aspects as also been mandated and provided upon for the welfare of the citizens of the nation and in the point of the France Declaration of the Right of Man and the Citizen (1789) they have provide the natural, inalienable and scared rights of the man and their overall development in the societal aspects in the nation. These nations have provided a mandate of the development of the fundamental rights and the origin of the fundamental rights have been inscribed upon by this aspect of the inducement of the nation and their effort for the overall growth and the development of the man and their livelihood.

In *Nagraj v. Union of India*³ the supreme court held that the fundamental rights are not gift from the state to citizens its doesn't confer fundamental rights which have been inscribed in the part 3 of the constitution but they confirm their existence and give them protection. Individuals possess basic **human rights** independently of the constitution by reason of basic facts that they are human race. These rights are important as they possess intrinsic values. Its purpose is to withdraw certain subjects from the area of the political controversy to place them beyond the reach of the majorities and officials and to establish them as legal principles to be applied by the courts.

Sticking a balance between Individual liberty and social need- Absolute and unrestricted

individual rights do not, and cannot exist in any modern state. Unrestricted liberty becomes a license and jeopardies the liberty of others. "Civil liberties as guaranteed by the constitution imply the existence of an organized society maintain public order without which liberty itself would be lost in the excess of unrestrained abuses"⁴. The supreme court has considerable=y widened the scope of the Article 21 and has held the protection will be available for the safeguarding the fundamental right of prisoners and for effecting the prison reforms to the prisoners for them to have proper treatment in the prison rather than oppressing them their humane rights as the depriving them with basic humanity and oppression would lead to the contravene of those rights⁵. In the case of the Sunil Batra they have provided the concept of the human right jurisprudences and their relevance for the overall development of those human in a orderly manner instead of oppressing them of their rights and imputing them inhuman manner and obstruction of those basic mandates of the human rights which have been provided to them, Justice Krishna Iyer has stated upon this that "Today, human rights jurisprudence in India has constitutional statues".

In 1979 India became party to the International Covenant on Civil and Political Rights in that Article 10 provides that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Article 5 of the U.N Declaration of Human Rights, 1948 says "No one shall be subjected to torture or to cruel inhumane or degrading treatment or punishment". In the *Prem Shankar v. Delhi Administration*⁶, Krishna Iyer J, said that in interpreting constitutional and statutory provision the court must not forget te core principles of the Article 5 of the U.N Declaration of Human Rights,1948. Homage to human rights calls for prisons, prison staffs and prisoners reforms.

The fundamental rights as incorporated in the

Indian Constitution can be classified under the following six groups: -

1. Right to equality (Articles 14-18).
2. Right to freedom (Articles 19-22).
3. Right against exploitation (Articles 23-24).
4. Right to freedom of religion (Articles 25-28).
5. Cultural and educational rights (Articles 29-30).
6. Right to constitutional remedies (Articles 32-35).

The 44th Amendment has abolished the right to property as a fundamental right as guaranteed by Article 19(1)(f) and Article 31 of the Constitution, and hence Article 19(1)(f) and Article 31 has been omitted.

Protection of Fundamental Rights available to citizens and non-citizens they can claim this rights upon the violation of their basic humane rights against the deprive of their livelihood they could invoke this right upon the violation of their basic fundamental rights which are provided in the constitution of India mandates. Citizens of India are entitled to the protection of all fundamental rights but there are some fundamental rights, the protection of which is available to the citizens and non-citizens both, those are the Equality before law in the Article 14; Protection in respect of conviction for offences in the Article 20; Protection of life and personal liberty in the Article 21; Right to education in the Article 21-A; Protection against arrest and detention in certain cases the Article 22; Prohibition of traffic in human beings and forced labor in the Article 23; Prohibition of employment of children in factories in the Article 24; Freedom of conscience and free profession, practice and propagation of religion in the Article 25; Freedom to manage religious affairs in the Article 26; Freedom as to payment of taxes for promotion of any particular religion in the Article 27; Freedom as to attendance at religious instruction or religious worship in

certain educational institutions in the Article 28; Right of minorities to the establish and administer educational institutions in the Article 30 and Right to remedies for enforcement of fundamental rights in the Article 32.

Articles 14 to 18 of the Constitution guarantee the right to equality to every citizen of India. Article 14 embodies the general principles of equality before law and prohibits unreasonable discrimination between persons. Article 14 embodies the idea of equality expressed in the Preamble. The succeeding Articles 15, 16, 17 and 18 lay down specific application of the general rules laid down in Article 14.

Article 15 relates to prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Article 16 guarantees equality of opportunity in matters of public employment. Article 17 abolishes 'Untouchability'. Article 18 abolishes title. The principle of equality is fundamental in formulation of any policy by the State and the glimpse of it can be seen in Articles 38, 39, 39- A, 43 and 46 of the Constitution embedded in Part IV of the Constitution⁷.

Article 14 declares that 'the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Article 14 uses two expressions "equality before the law" and "equal protection of the law". The phrase "Equality before the law" finds a place in almost all written Constitutions that guarantee fundamental rights⁸. Both these expressions have, however, been used in the Universal Declaration of Human Rights⁹. The first expression 'equality before law' is of English origin and the second expression has been taken from the American Constitution. Both these expressions aim at establishing what is called "equality of status" in the Preamble of the, Constitution. While both the expressions may seem to be identical, they do not convey the same meaning.

While 'equality before the law' is a somewhat negative concept implying the absence of any

special privilege in favor of individuals and the equal subject of all classes to the ordinary law. "Equal protection of the law" is a more positive concept implying equality of treatment in equal circumstances¹⁰. However, one dominant idea common to both the expressions is that of equal justice¹¹. In *State of West Bengal v. Anwar Ali Sarkar*,¹² Patanjali Sastri, C.J., rightly held that the second expression is corollary of the first and it is difficult to imagine a situation in which the violation of the equal protection of laws will not be the violation of the equality before law. Thus, in substance the two expressions mean one and the same thing.

Equality before law and absolute equality this concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favor of any individual, and also the equal subject of all individuals and classes to the ordinary law of the land. As Dr. Jennings puts it: "Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence".¹³

Equality before Law and Rule of Law. The guarantee of equality before the law is an aspect of what Dicey calls the rule of law in England.¹⁴ It means that no man is above, the law and that every person, whatever be his rank or conditions, is subject to the jurisdiction of ordinary courts.

"With us", Dicey wrote "every official from the Prime Minister down to constable or a Collector of taxes is under the same responsibility for every act done without legal justification as any other citizen". Rule of law requires that no person shall be subjected to harsh, uncivilized

or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.¹⁵

Professor Dicey gave three meanings of the Rule of Law thus Absence of Arbitrary Power or Supremacy of the law.

I. It means the absolute supremacy of law as opposed to the arbitrary power of the Government. In other word "a man may be punished for a breach of law, but he can be punished for nothing else".

II. Equality before the law in the means subjection of all classes to the ordinary law of the land administered by ordinary law courts. The public officials do not hold a privileged position in Great Britain. In Great Britain there is one system of law and one system of courts for all, i.e., for public officials and private persons.

III. The Constitution is the result of the ordinary law of the land. It means that the source of the right of individuals is not the written Constitution but the rules as defined and enforced by the courts.

In narrower sense, it can be said the first and the second aspects apply to Indian system but the third aspect of the Dicey's rule of law does not apply to Indian that source of rights of individuals is the Constitution of India. In the broader sense, the fundamental rights guaranteed by the Constitution are inalienable human rights which get recognition in the Constitution. This view has been accepted by the Supreme Court in *Justice K. Puttaswamy v. Union of India*.¹⁶

The Article 21 of the Constitution provides procedure established by the law that No person shall be deprived of his life or personal liberty except according to personal liberty to citizens only against the arbitrary action of the executive, and not from Prior to Maneka Gandhi's decision, Article 21 guaranteed the right to life and legislative action. The State could interfere with the liberty of citizens if it could support its action by a valid law. But after

the Maneka Gandhi's decision, Article 21 protects the right to life and personal liberty not only from the Executive action but from the Legislative action also. A person can be deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be a procedure prescribed by that law, provided that the procedure is just, fair and reasonable.¹⁷

The Fifth Amendment of the American Constitution also provided that 'no person shall be deprived of his life or personal liberty, except according to procedure established by law'. The Fourteenth Amendment imposes a similar limitation on the State authorities.

The right guaranteed in Article 21 is available to 'citizens' as well as "non-citizens'. Personal liberty has been interpreted in the restrictive interpretation in then A. K. Gopalan v. Union of India,¹⁸ the petitioner, A. K. Gopalan, a communist leader was detained under the Preventive Detention Act, 1950. The petitioner challenged the validity of his detention under the Act on the ground, that it was violative of his right to freedom of movement under Art. 19(1) by which is the very essence of personal liberty guaranteed by Art. 21 of the Constitution.

The arguments for him were the words "personal liberty" includes the freedom of movement also and therefore the Preventive Detention Act, 1950 must also satisfy the requirement of Art. 19(5). In other words, the restrictions imposed by the detention law on the freedom of movement must be reasonable under Art. 19(5) of the Constitution. The "personal liberty" in Art. 21 means nothing more than the liberty of the physical body, that is, freedom from arrest and detention without the authority of law.

The phrase personal liberty given by Prof. Dicey means freedom from physical restraint and coercion which is not authorized by law. The word 'liberty' is a very comprehensive word and if interpreted it is capable of including the rights mentioned in Art. 19, but the word "personal

which qualifies the word "liberty" and, therefore, the "personal liberty" is narrowed down to the meaning given in English law to the expression liberty of the person'. Articles 19 and 21 deal with different aspects of 'liberty'. Art. 21 is guarantee against deprivation (total loss of personal liberty while Art. 19 affords protection against unreasonable restrictions (which is only partial control) on the right of movement. Freedom guaranteed by Art. 19 can be enjoyed by a citizen only when he is a freeman and not if his personal liberty is deprived under a valid law.

Articles 32 and 226: Judicial Review: Basic features of Constitution cannot be curtailed by Act of Parliament and Constitutional provisions. - In Centre for PIL v. Union of India, the two writ petitions were filed under Article 32 of the Constitution challenging the appointment of the respondent an IAS, Central Vigilance Commissioner under Section 4 (1) of the Central Vigilance Commission Act, 2003 against whom a criminal case was pending in the Court of Special Judge for the offence under Section 13 (1) of the Prevention of Corruption Act, 1988 read with Section 120-B of IPC. It was alleged that the respondent had played a big part in the cover up of the 2-G Spectrum allocation which matter was sub-judice. The Supreme Court confined its judgment strictly on the legality of selection and recommendation of the appointment by High Powered Committee (HPC) and it clarified that any reference in the judgment should not be understood as observations on the merits of the case. Under Section 4 of the Vigilance Commission Act, 2003, the service conditions of the candidate being a public servant or civil servant in the past was not the sole criteria. The HPC must also take into account the question of institutional competency. If the selection adversely affected institutional competency and functioning, it was the duty of the selection committee not to recommend such a candidate. While recommending the respondent's name, the institutional integrity of the C.V.C. was not kept in mind.

The Directive Principles of State Policy from Article 36 to 51 which has contained in Part IV of

the Constitution set out the aims and objectives to be taken up by the States in the governance of the country. This novel feature of the Constitution is borrowed from the Constitution of Ireland which had copied it from the Spanish Constitution. The idea of welfare State envisaged by our Constitution can only be achieved if the States endeavor to implement them with a high sense of moral duty. At one time, it was thought that the State was mainly concerned with the maintenance of law and order and the protection of life, liberty and property of the subject. Such a restrictive role of the State is no longer a valid concept. Today, we are living in an era of a Welfare State which has to promote the prosperity and well-being of the people. The Directive Principles lay down certain economic and social policies to be pursued by the various Governments in India; they impose certain obligations on the State to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. The Directive Principles are the ideals which the Union and State Governments must keep in mind while formulating policies or intaking laws. They lay down certain social, economic and political principles suitable to peculiar conditions prevailing in India.

These are the inscribed written regulations which have been provided by the mandate of the Constitution of India and the human rights mustn't be violated involuntarily without any prejudice to their rights.

UNITED KINGDOM

The *UK does not have a written constitution*. Human rights protection primarily operates through the Human Rights Act 1998 (HRA), which incorporates the European Convention on Human Rights (ECHR) into domestic law. The HRA enables individuals to enforce rights in UK courts instead of going straight to the European Court of Human Rights (ECtHR) in Strasbourg. UK courts must interpret legislation compatibly with ECHR rights where possible. Courts may issue a declaration of incompatibility if

domestic law cannot be read compatibly in the section 4 of the statue. Public bodies must act in ways consistent with ECHR rights.

The European Convention on Human Rights¹⁹ as ratified by the United Kingdom guarantees the following rights and freedoms:

- Right to life (Article 2)
- Freedom from torture and inhuman or degrading treatment or punishment (Article 3)
- Freedom from slavery and forced or compulsory labor (Article 4)
- Right to liberty and security of person (subject to a derogation applicable to Northern Ireland) (Article 5)
- Right to a fair and public trial within a reasonable time (Article 6)
- Freedom from retrospective criminal law and no punishment without law (Article 7)
- Right to respect for private and family life, home and correspondence (Article 8)
- Freedom of thought, conscience and religion (Article 9)
- Freedom of expression (Article 10)
- Freedom of assembly and association (Article 11)
- Right to marry and found a family (Article 12)
- Prohibition of discrimination in the enjoyment of the Convention rights (Article 14)
- Right to peaceful enjoyment of possessions and protection of property (Article 1 of Protocol 1)
- Right to education (subject to a UK reservation) (Article 2 of Protocol 1)
- Right to free elections (Article 3 of Protocol 1)
- Right not to be subjected to the death penalty (Articles 1 and 2 of Protocol 6)

In the case of **Dudgeon v. United Kingdom**

(1981)²⁰ it held that criminalizing consensual adult homosexual acts violated *Article 8* (private life). This ECtHR ruling led to decriminalization of homosexuality in Northern Ireland. In that ARTICLE 8 Right to respect for private and family life 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In the case of the *Hirst v. United Kingdom* (No. 2) (2005)²¹ it has ruled that ECtHR the UK's blanket ban on prisoner voting violated *Protocol 1, Article 3* in that Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State. Even though UK Parliament resisted implementation, the judgment is a key example of rights vs parliamentary sovereignty.

In the case of the *Gillan and Quinton v United Kingdom* (2010)²² Excessive stop-and-search powers under the UK Terrorism Act violated *Article 8*. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an

independent and impartial tribunal established by law.

Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

In the case of the *Cream Holdings Ltd v Banerjee* (2004)²³ the UK House of Lords decision showing how HRA affects freedom of expression vs privacy/confidentiality domestically. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the

protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The human rights jurisprudence of the United Kingdom has been inscribed upon these are the in the conventions of the European Convention of the Human Rights and the Human rights acts of the 1950 of the England. Human rights jurisprudence refers to the body of judicial decisions and legal principles developed by courts when interpreting and applying human rights laws. In the UK, this jurisprudence is shaped by the Domestic legislation, the Common law principles, the

European Convention on Human Rights (ECHR)²⁴, Decisions of UK courts and the European Court of the Human Rights (ECtHR). Unlike some countries, the UK does not have a single written constitution. Human rights protection is therefore derived from statutes, judicial precedents, and international obligations.

CONCLUSION

India and the United Kingdom share a commitment to human rights but differ substantially in their approaches the India relies on a written constitution, a strong judiciary, and expansive rights jurisprudence rooted in constitutional guarantees. The United Kingdom operates within a framework of statutory rights under the Human Right Act, judicial interpretation aligned with European Convention of Human Rights standards, and parliamentary sovereignty that limits judicial annulment of primary legislation. These differences reflect distinct legal traditions and constitutional philosophies, yet both systems aim to uphold human dignity, liberty, and justice each adapting to the evolving landscape of human rights in the modern era.

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597

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