



## INDIAN CONSTITUTIONAL FRAMEWAORK AND HUMAN RIGHTS IN PRESENT SITUATION

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### Abstract

*The known human history is the struggle between the power and liberty according to J.S.Mill. This becomes true with the international declaration of human rights, on Dec 10, 1948. This is the result of various movements for rights from the period of Magnacarta" to the II World war. This declaration stood as a pillar of confidence in the human race, and there by it became the primary source for all sorts of demands raised by different groups and individuals. This declaration has empowered the rights movements all through the globe. But it is the individuals who have seen the declaration in different perspectives and gave different interpretation to it. We use to see the past through the present. Past becomes more understandable and visible through the present situations like sunrays are visible as rainbow colors when they pass through the prism of the water droplet. For the last 50 years every nation and every ethnic group have seen the declaration in their perspective according to their socio-economic and political thoughts. As a result some aspects have been glorified to the maximum extent and some have lost their significance.*

**Keywords:** *Human Rights- international declaration of human rights Magnacarta- socio-economic and political thoughts*



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### Introduction

Human Rights are essentially a product of Democracy. Man's struggle against tyranny and all forms of oppressions has been long and never-ending. Tyranny has, from time to time, emerged in different forms and methods. Man has been always trying to establish his right, time and again; sometimes there has been a depressing failure and the assault on human rights continues. So does man's struggle against tyranny. During this period, the actual concept of human rights and their enforcement began taking shape in the west only after the renaissance and the process of industrialisation. From that period onwards the recognition of human rights took the roots in other parts of the world. However, then came the era of

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colonialism where the colonial masters of Asia and Africa and Western nations gruesomely maltreated people ruled, the history of colonialism is full of instances of massacres, ruthless oppressions, killings and heinous crimes. But it was after the end two World Wars and the formation of United Nations in 1945 and its various covenants that the enforcement of human rights took up a right beginning. There is currently no international court to administer international human rights law, however, quasi-judicial bodies exists under some UN treaties. The International Criminal Court (ICC) has jurisdiction over the crime of genocide, war crimes and crimes against humanity. While the European Court of Human Rights, and the Inter-American Court of Human Rights enforce regional human rights law. Although these same international bodies also hold jurisdiction over cases regarding international humanitarian law, it is crucial to recognize that the two frameworks constitute distinctly different legal regimes. The United Nations Human Rights Bodies do have some quasi legal enforcement mechanisms. These include the Treaty Bodies attached to the current seven active treaties, and the Human Rights Council complaints procedures." The enforcement of international human rights law is the responsibility of the Nation State, and it is the primary responsibility of the State to make human rights a reality. In practice, many human rights are very difficult to legally enforce due to the absence of consensus on the application of certain rights, the lack of relevant national legislation or of bodies empowered to take legal action to enforce them." This paper is an attempt to discuss the various facets of human rights, their legal, social political and economic aspects of protection and enforcement at International as well at National levels.

### **Origin and Development of Human Rights in India**

Since the days of the Indus Valley Civilization, Indian culture has been the product of a synthesis of diverse cultures and religions that came into contact with the enormous Indian sub continent over a very long stretch of time. As Jawaharlal Nehru notes, there is "an unbroken continuity between the most modern and the most ancient phases of Hindu thought extending ove three thousand years." The rights of man have been the concern of all civilizations from time immemorial. "The concept of the rights of man and other fundamental rights was not unknown to the people of earlier periods The Babylonian Laws and the Assyrian laws in the Middle East, the "Dharma" of the Vedic period in India and the jurisprudence of Lao-Tze and Confucius in China, have championed human rights throughout the history of human civilization.

The Indian concept perceives the individual, the society and the universe as an organic whole. Everyone is a child of God and all fellow beings are related to one another and belong to a universal family. In this context, Mahatma Gandhi remarks, "I do not want to think in terms of the whole world. My patriotism includes the good of mankind in general. Therefore my service to India includes the services of humanity"

The Buddhist doctrine of non-violence in deed and thought says Nagendra Singh, "is a humanitarian doctrine par excellence, dating back to the third century BC Jainism too contained similar doctrines According to the Gita, "he who has no ill will to any being, who is friendly and compassionate, who is free from egoism and self sense and who is even-minded in pain and pleasure and patient is dear to God. It also says that divinity in humans is represented by the virtues of non-violence.

### **Motilal Nehru Committee**

In 1925 the Indian National Congress finalised the draft of Common Wealth of India B II adopting a 'Declaration of Rights. The Madras Session of the Congress held in the year 1927 - demanded incorporation of a Declaration of Fundamental Rights in any future constitutional framework. A committee under Motilal Nehru was appointed by the National Congress to study the fundamental rights. It is interesting to note that the Constitution of the Republic of India, enacted in 1950, incorporated ten of the nineteen rights enumerated in the Motilal Nehru Committee Report, 1928. The rights emphasised by the Motilal Nehru Committee Report" were

- Personal liberty, inviolability of dwelling place and property
- Freedom of conscience, and of profession and practice of religion
- Expression of opinion and the right to assemble peaceably without arms and to form associations
- Free elementary education
- Equality for all before the law and rights
- Right to the writ of Habeas Corpus
- Protection from punishment under ex-post facto laws
- Non-discrimination against any person on grounds of religion, caste or creed in the matter of public employment
- Equality of right in the matter of access to and use of public roads, wells etc.

- Freedom of combination and association for the maintenance and implementation of labour and economic factors
- Right to keep and bear arms
- Equality of rights to man and woman

The Simon Commission, appointed by the British Government in 1927, however, totally rejected the demands voiced by the Nehru Committee reports. In 1930 the Congress Working Committee gave the clarion call for the attainment of 'Purna Swaraj'. The Karachi Session of the Congress in 1931 adopted a detailed programme of fundamental rights. The Government of India Act, 1935 was passed without any bill of rights much to the disappointment of the Indian leaders. It was the 'Sapru Committee' of 1945 that subsequently stressed the need for a written code of fundamental rights and the Constituent Assembly raised a forceful demand for the inclusion of human rights in the Constitution

### **Constituent Assembly and Human Rights**

The Indian Constitution was framed by the Constituent Assembly of India, which met for the first time on December 9, 1946. The Constitution of India gave primary importance to human rights. To quote Guha, "The demand for a declaration of fundamental rights arose from four factors 22

### **Institutional Framework and Human Rights**

India is divided into twenty-eight States and seven Union (centrally administered) territories. The Constitution provides for division of legislative functions between Parliament and the State Legislatures. 97 items are placed under Parliament, 66 items are allocated for State Legislatures and 47 are made subject to concurrent jurisdiction of both, with the power of Parliament overriding in case of overlapping legislation (Article 246 and the seventh Schedule of the Constitution). Parliament has power to make laws, inter alia, on preventive detention (Item 9, Union List, and item 3, Concurrent list), offences against laws in respect of any matter in the Union List (Item 93), and any matter not enumerated in any of the three lists (Item 97 and Article 248). Public order (Item 1), prisons and reformatories (Item 3), relief to the disabled and the unemployed (Item 9), and industries other than those declared by Parliament to be controlled by the Union (Item 24) are among the items in the State List. The Police is a State subject (Item 2), whereas deployment of any armed forces of the Union or any other force under the control of the Union is in the Union List (Item 2-A), Criminal law and procedure (Items 1 and 2), preventive detention for reasons connected with the security

of the State, the maintenance of public order, or the maintenance of essential supplies and services (Item 3), transfer of prisoners (Item 4), actionable wrongs, civil procedure (Item 13), economic and social planning (Item 20), labour matters (Items 22, 23 and 24), education (Item 25), and factories (Item 36) are in the Concurrent List. Further, Article 253 empowers parliament to make laws for implementation of any treaty, notwithstanding the above distribution of legislative powers.

### **Human Rights (Meaning & Nature):**

Human rights are to be viewed as divine, moral or legal entitlement. Human rights belong to a person and affirm his Human dignity for the purpose of good life, better health facilities and Maximum level of liency and development of culture. "All human beings are bon free and equal in dignity and rights. They are endowed with reason and conscience and should act toward cre another in a spirit of brotherhood." According to United Nations centre for human rights, "All those natural rights without which Human life is meaningless have been dubbed human rights." Human rights are common to all regardless of casted, color, race, religion, gender or nation etc. Civil and political rights, social and economic right and freedom from fear are the dimensions of the concept of Human Rights.

### **Human Rights and Indian Constitution:**

A constitution means a body of laws according to which the country is governed. The constitution not only c defines the powers of each organs of government, but also democrats their responsibilities. It regulates the relationship between the different organs (the Executive, Legislative and the judiciary) and between the Government and the people. The basic principle of human rights conceived in liberty and dedicated to the proposition that "all men are created equal." Found an echo in the Constituent Assembly of India when the late Prime Minister Jawaharlal Nehru declared that the objective of the constitution is to realize the drew Mahatma Gandhi and bring about Ram Rajya.

### **Indian Law**

1. The Protection of Civil Rights Act, 1955
2. Suppression of Immoral Traffic in Women
3. Maternity Benefit Act, 1961
4. Dowry Prohibition Act, 1961
5. Equal Remuneration Act, 1976
6. Bonded Labour (Abolition) Act, 1976

7. Employment of Children Act, 1938 (Amended in 1985)
8. The Child Labour (Prohibition and Regulation) Act, 1986
9. Juvenile Justice Act, 1986
10. Indecent Representation of Women (Prohibition) Act, 1986 and Girls Act, 1956
11. Sati (Prevention) Act, 1987
12. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
13. The National Commission for Women Act, 1990
14. The National Commission for Minorities Act, 1992
15. The National Commission for Safai Karamcharis Act, 1993
16. The National Commission for Backward Classes Act, 1993
17. The Mental Health Act, 1987
18. The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995.

### **Children and Human Rights:**

Article 14 of the Indian Constitution proclaims the general right of all persons to equality before the law, while Article 15 prohibits the State from discriminating against any citizen on grounds of religion, race, caste, sex or place of birth, and prohibits any restriction on any citizen's access to any public place, including wells and tanks. Equality of opportunity for all citizens in matters of public employment is guaranteed under Article 16. Article 17 abolishes untouchability and makes its practice an offence punishable under law. Both Articles 15 and 16 enable the State to make special provisions for the advancement of socially and educationally backward classes, for such castes and tribes as recognized in the Constitution (known as the Scheduled Castes and Scheduled Tribes) require very special treatment for their advancement. Article 18 abolishes all non-military or non-academic titles.

The right to freedom guaranteed to all citizens under Article 19 encompasses the right to freedom of speech and expression, the right to assemble peaceably without arms, the right to form associations or unions, the right to move freely throughout the territory of India, the right of residence, and the right to practise any profession, or to carry on any occupation, trade or business. The protection of a person in respect of conviction of offences under Article 20 includes protection against ex post facto criminal laws, the principle of autre fois convict and the right against self-incrimination. Article 21, the core of all fundamental rights provisions in the Indian Constitution, ordains: "No person shall be deprived of his life or

personal liberty except according to procedure established by law." Article 21A was added to the Constitution by the Eighty Sixth Constitutional Amendment Act 2002 Article 21A proclaims "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." The rights of a person, arrested and detained by the State authorities, are provided in Article 22. These include the right to be informed of the grounds of arrest. the right to legal advice and the right to be produced before a magistrate within 24 hours of arrest (except where one is arrested under a preventive detention law). The right against exploitation includes prohibition of trafficking in human beings and forced labour (Article 23), and prohibition of employment of children below 14 years of age "to work in any factory or mine or in any other hazardous employment."

### **Economic, Social and Cultural Rights in the Universal Declaration of Human Rights and in the Indian Constitution**

**Table**

No.	Universal Declaration of Rights	Article in the Universal Declaration	Article in the Indian Constitution
1.	Right to work, to just and favourable conditions of work	Article 23 (1)	Article 41
2.	Right to equal pay for equal work	Article 23(2)	Article 39 (d)
3.	Right to education	Article 26(1)	Articles 21(A), 41, 45 & 51A(k)
4.	Right to just and favourable remuneration	Article 23(3)	Article 43
5.	Right to rest and leisure	Article 24	Article 43
6.	Right of everyone to a standard of living adequate for him and his family	Article 25(1)	Article 39(a) & Article 47
7.	Right to a proper social order	Article 28	Article 38

In *Keshavananda Bherati v. State of Kerala*, the Supreme Court observed, "The Universal Declaration of Human Rights may not be a legally binding instrument but it shows how India understood the nature of human rights at the time the Constitution was adopted. In the case of *Jolly George Varghese v. Bank of Cochin* the point involved was whether a right incorporated in the Covenant on Civil and Political Rights, which is not recognised in the Indian Constitution, shall be available to the individuals in India Justice Krishna Iyer reiterated dualism and asserted that the positive commitment of the State Parties ignites

legislative action at home but does not automatically make the Covenant an enforceable part of the 'Corpus Juris in India. Thus, although the Supreme Court has stated that the Universal Declaration cannot create a binding set of rules and that even international treaties may at best inform judicial institutions and inspire legislative action. Constitutional interpretation in India has been strongly influenced by the Declaration. In the judgement given in the *Chairman, Railway Board and others v. Mrs. Chandrima Das*, the Supreme Court observed that the Declaration has the international recognition as the Moral Code of Conduct having been adopted by the General Assembly of the United Nations. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence. In a number of cases the Declaration has been referred to in the decisions of the Supreme Court and State High Courts.

### **Human Rights and the Indian Constitution**

The Constitution of the Republic of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules, is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal "irrespective of the race, religion, language, sex and culture." The Preamble to the Constitution pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to all its citizens

India was a signatory to the Universal Declaration of Human Rights.

A number of fundamental rights guaranteed to the individuals in Part III of the Indian Constitution are similar to the provisions of the Universal Declaration of Human Rights. The following chart makes it very clear



**Table: Civil and Political Rights in the Universal Declaration of Human Rights and in the Indian Constitution**

No.	Name of Rights	Universal Declaration	Indian Constitution
1.	Equality before law	Article 7	Article 14
2.	Prohibition of discrimination	Article 7	Article 15(1)
3.	Equality of opportunity	Article 21(2)	Article 16(1)
4.	Freedom of speech and expression	Article 19	Article 19(1) (a)
5.	Freedom of peaceful assembly	Article 20(1)	Article 19(1) (b)
6.	Right to form associations or unions	Article 23(4)	Article 19(1) (c)
7.	Freedom of movement within the border	Article 13 (1)	Article 19(1) (d)
8.	Protection in respect of conviction for offences	Article 11(2)	Article 20 (1)
9.	Protection of life and personal liberty	Article 3	Article 21
10.	Protection of slavery and forced labour	Article 4	Article 23
11.	Freedom of conscience and religion	Article 18	Article 25(1)
12.	Remedy for enforcement of rights	Article 8	Article 32
13.	Right against arbitrary arrest and detention	Article 9	Article 22
14.	Right to social security	Article 22	Article 29(1)

The Indian Constitution is a document rich in human rights jurisprudence. This is an elaborate charter on human rights ever framed by any State in the world. Part III of the Indian Constitution may be characterised as the 'Magna Carta' of India. The Judiciary in India plays a significant role in protecting human rights. The Indian Courts have now become the courts of the poor and the struggling masses and left open their portals to the poor, the ignorant, the illiterates, the downtrodden, the have-nots, the handicapped and the half-hungry, half-naked countrymen.

### Reference

- Rama Jois, Legal and Constitutional History of India, Part 1 (New Delhi: Universal Law Publishing Co. Ltd, 2001)*
- Z.A. Nizami and Devika Paul, ed. Human Rights in the Third World Countries (New Delhi: Kirs Publications, 1994) 107.*
- Paramjit S. Jaswal and Nishtha Jaswal, Human Rights and the Law. 1st ed. (New Delhi: Ashish Publishing House, 1995)*
- S.N. Dhyani, Fundamentals of Jurisprudence: The Indian Approach (Allahabad: Central Law Agency, 1992) 79.*
- Jawaharlal Nehru, The Discovery of India, 2nd ed. (New Delhi: Jawaharlal Nehru Memorial Fund, 1992) 88.*

*Attar Chand, Politics of Human Rights and Civil Liberties - A Global Survey (Delhi: UDH Publishers, 1985) 45*

*Jawaharlal Nehru 420.*

*Nagendra Singh, Enforcement of Human Rights (Calcutta: Eastern Law House Pvt. Ltd, 1986) 7*

*S. Radhakrishnan (trans.) The Bhagavadgita (London: George Allenand Unwin, 1958) 276.*

*Yogesh K. Tyagi. "The World Response to Human Rights," Indian Journal of International Law, Vo.21, No.1 (January-March 1981): 120-121.*

*V.R. Krishna Iyer, The Dialectics and Dynamics of Human Rights in India: Yesterday Today and Tomorrow, Tagore Law Lectures (New Delhi: Eastern Law House, 1999) 115.*

*P.B. Gajendra Gadkar, The Historical Background and Theoretic Basis of Hindu Law - The Cultural Heritage of India, Vol. II (Bombay: Asia Publishing House, 1965) 421.*