



A STUDY ON HUMAN RIGHTS AND THE INDIAN CONSTITUTION

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ABSTRACT

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. Thus, human rights are those rights which every individuals are entitled by virtue of being human. Since these rights belong to them because of their very existence, they become operative with their birth. Human rights being the birth right are therefore inherent to all human beings irrespective of caste, creed, religion, sex, nationality etc. The Universal Declaration Of Human Rights was adopted in 1948 and two International Covenants were adopted in 1966 codifying the two sets of rights outlined in the Universal Declaration. International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights entered into force in 1976. The circumstance of human rights in India is unpredictable, because of extensive size, colossal decent variety, its status as a creating nation, and history as a previous frontier region. Hence, this paper discusses about the human rights and the Indian constitution that is the paper deals with the provisions in the Universal Declaration Of Human Rights which are similar to that of the provisions in our Indian Constitution.

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INTRODUCTION

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. Thus, human rights are those rights which every individuals are entitled by virtue of being human. Since these rights belong to them because of their very existence, they become operative with their birth. Human rights being the birth right are therefore inherent to all human beings irrespective of caste, creed, religion, sex, nationality etc. These rights are essential to all human beings as they are consonant with their freedom and dignity and are conducive to physical, moral, Social and spiritual freedom. They are also necessary as they create an environment in which people can can develop their full potential and lead productive and creative lives in accordance with their needs and provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human beings human rights are also referred to as fundamental rights, basic rights, inherent etc. Human rights being fundamental or basic rights are often set out in the constitution so that they are not taken away by any Act or legislature or government¹.

After Independence, India also provides fundamental rights to its citizens which includes: Directive Principles of State Policy for the development and in order to lead a civilized life. The preamble of our Constitution of India clearly describes the values of justice, equality, secularism and cultural pluralism to make a stable democratic society and polity².

The Constitution of India|Bharat|Asian country|Asian nation} sure to all the individuals of India the civil, political, economic, social, and cultural rights for his or her realisation by all sections of the polity with none reasonably discrimination. However, thanks to impoverishment, customary and cultural practices prevailing within the country, there have not abundant chance offered to varied teams and that result in deprive them of being treated equally because of the the different sections of the society. There area unit numerous deprived teams of individuals like ladies, children, regular Castes, regular Tribes, Linguistic Minorities, non secular Minorities, Sexual Minorities etc. so as to expand their rights, the Constitution of Bharat has provided variety of concessions to shield them from exploitation by different teams³

Human Rights

International law was solely concerned with states in the classical period which was influenced by the theory of state

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²Saching.com

³Legaldesire.com

sovereignty. The view was based on the thesis that only States creates rules of international law the rules are valid for them alone. No place was left for the individuals and therefore they had no legal significance from the international law point of view. Individuals were related to one State by through the bond of citizenship and nationality and this stood in relation to other state n the role of aliens. If any injury was caused to an individual, the State alone which owed the responsibility under international law to another state. Even in those cases where the individuals enjoyed certain rights and duties in conformity with or according to the international law such as the rights enjoyed while on foreign territory by Heads of State, diplomatic envoys and even private citizens who have not thereby become subjects of international law. Rights in question were enjoyed by the individuals concerned not as Rights in international law but as rights derived from national law⁴. For both the substance and the procedure the State is the only subject of the international law their entities including individuals were mere objects.

The transformation of the position of the individuals after World War-II is one of the most remarkable developments in the contemporary international law. The charter of the United States by using the words 'peoples of the United Nations' in the preamble has given a place of importance to individuals. However, this alone did not change the position of the individuals in the international law. They are regarded as the real subjects and beneficiaries of the international law by virtue of having rights and duties⁵ flowing directly from the international law. While a few rules are directly concerned regulating the position and activities of the individuals and a few indirectly affect them⁶. Rules may also be applicable to certain inter-relationship of individuals themselves where such inter-relationship involves matters of international concern. However, as long as the international community is composed of states it is only through the exercise of their will alone rights and duties are conferred to them. They may agree to confer certain rights on individuals which may be enforceable under international law, independently of municipal law. For instance, nationals of the Allied and Associated powers were empowered to bring cases against Germany before the mixed Arbitral Tribunal in their own names or compensation in accordance with Article 304(b) of the Treaty of Versailles of 1919. Further, the treaty of 1907 between the five Central American States establishing the Central American Court of Justice provided for individuals to bring cases directly to the Court.

Possession of the rights and duties by the individuals being dependant upon the states has made their position weaker than the states in the international plane. They do not possess all the rights and duties recognised by the international law, they only possess only a few of them and they only possess restricted or limited capacity in contrast to unlimited and full capacity which is possessed by states endowed with most of the rights and duties of the state. It has to be conceded therefore that while wanted the states in international law have full capacity but the individuals have restricted liability since they perform only a few rights and duties.

Human rights is one of such rights which has been conferred to the individuals by the state in the modern international law⁷.

Universal Declaration of Human Rights

The idea for the protection for human rights and fundamental freedoms was convinced in the Atlantic Charter (1941) and the Declaration of the United Nations (1942). When the founders of the United Nations met at San Francisco Conference in 1945 to draft a charter of the United Nation, Latin American States in particular wanted the conference to discuss an international bill on human rights. Panama wanted it to be incorporated as part of the Charter.

A specific list of rights were not able to be prepared due to the lack of sufficient time and also because super powers were not interested in precise legal obligations and international action on human rights. The result was the Charter which contained a number of provisions which are general in nature and are vague for the promotion and protection of the human rights and fundamental freedoms.

In 1946, the Economic and social council formally endorsed the view that the purpose of the United Nations with regard to the promotion and observation of the human rights could be fulfilled only if the provision was made for the International Bill of Rights and for its implementation. It was therefore decided to prepare an International Bill on Human Rights the achieve the end. The Central Assembly referred this matter to the Economic and Social Council for the study by the commission on Human Rights⁸. The mandate extended it to the Commission on Human Rights was inspired by the desire to establish a comprehensive system for the promotion and protection of human rights. The commission in January 1947 appointed a committee known as the Drafting committee for the preparation of the draft of the Bill of Rights⁹.

The Universal Declaration Of Human Rights was adopted in 1948 and two International Covenants were adopted in 1966 codifying the two sets of rights outlined in the Universal Declaration. International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights entered into force in 1976. Later, the General Assembly also adopted two optional protocols to the International Covenant on Civil and Political Rights. The two optional protocols are:

1. Optional protocol to the international covenant on Civil and Political Rights in 1966.
2. Second optional protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death penalty in 1989.
3. Optional protocol to the International Covenant on Economic, Social and Cultural Rights in 2008.

The two International Covenants together with the Universal Declaration and the optional protocols compromise the Inter Bill on Human Rights. Thus, the International Bill of Human Rights is a collective term applied to six major international instruments. These documents have laid the foundations from which other treaties and declarations have been developed.

⁴Oppenheim , international law, vol 1 , ninth edition pg.no: 847.

⁵The Nuremberg tribunal stated that: international law imposes duties and liabilities upon the individuals as well as upon states . This was because crimes against international law are committed by men not by abstract entities and only by punishing individuals who commit such crime can the provisions of the international law be enforced.

⁶Oppenheim op cit pg.no:846

⁷Human rights by Agarwal, pg.no:2

⁸ General Assembly Resolution 7(1)

⁹Human Rights by H. O Agarwal, pg.no:35.

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The Universal Declaration Of Human Rights consists of 30 Articles which are as follows:

- Article -1: Right to equality.
- Article -2: Freedom from discrimination.
- Article -3: Right to life, liberty and personal security.
- Article -4: Freedom from slavery.
- Article -5: Freedom from torture and degrading treatment.
- Article -6: Right to recognition as a person before the law.
- Article -7: Right to equality before the law..
- Article -8: Right to remedy by competent Tribunal.
- Article -9: Freedom from arbitrary arrest and exile
- Article -10: Right to fair public hearing.
- Article -11: Right to be considered innocent until proven guilty.
- Article -12: Freedom from interference with privacy, family, home and correspondence.
- Article -13: Right to free movement in and out of the country.
- Article -14: Right to asylum in other countries from prosecution.
- Article -15: Right to a nationality and a freedom to change it.
- Article -16: Right to marriage and family.
- Article -17: Right to own property.
- Article -18: Freedom Of belief and religion.
- Article -19: Freedom Of opinion and information.
- Article -20: Right to peaceful Assembly and association.
- Article -21: Right to participate in government and in free election.
- Article -22: Right to social security.
- Article -23: Right to desirable work and to join trade unions.
- Article -24: Right to rest and leisure.
- Article -25: Right to adequate living standard.
- Article -26: Right to education.
- Article -27: Right to participate in the cultural life of community.
- Article -28: Right to social order that articulated this document.
- Article -29: Community duties essential to free and full development.
- Article -30: Freedom from state or personal interference in the above Rights¹⁰.

Provisions for Human Rights In Indian Constitution

The Constitution of India is one of the lengthiest Constitutions of the world which covers all parts of individuals. It gives break even with status to all religions in India. Dr B R Ambedkar assumed a main part in confining the Constitution of India. He is known as the Father of Indian Constitution.

The circumstance of human rights in India is unpredictable, because of extensive size, colossal decent variety, its status as a creating nation, and history as a previous frontier region. In 1829 the act of Sati was formally abrogated in British India following quite a while of crusading by Raja Ram Mohan Roy against this Hindu burial service custom of self-immolation of dowagers after the demise of their spouses. As common and political rights, In India setting privileges of minimized ladies, tribal's, dalits or lower-station, and poor whose survival relies upon access to characteristic assets are vital. Contrasted with different nations India has solid energetic media which does not enable any wrong to go absolutely unnoticed. Indian media has, made channels to give human rights infringement a chance to go to the notice to open cognizance. Presently day's media has practically come to at each edge of town or town be it remote or created. The Constitution of India is a standout amongst the most rights-based constitutions on the planet. Drafted around a similar Universal Declaration of Human Rights (1948), the Indian Constitution catches the embodiment of human rights in its Preamble, and the areas of Fundamental Rights and the Directive Principles of state Policy.

The Constitution of India depends on the rule that guided India's battle against a provincial administration that reliably disregarded the common, political, social, financial and social privileges of the general population of India. The flexibility battle itself was educated by the numerous developments for social change, against severe social practices like Sati the act of the spouse following her dead husband onto the burial service. Kid marriage, untouchability etc. thus by the mid 1920's the Indian National Congress had effectively received the vast majority of the common and political rights in its motivation. The development drove by Dr B R Ambedkar one of the establishing fathers of the Constitution against oppression the Dalits likewise affected the Indian Constitution¹¹.

SI No.	Universal Declaration of Human Rights	Indian constitution
1	Article-3: Everyone has the right to life, liberty and security of person.	Article 21
2	Article-4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.	Article 23
3	Article-7: Equality before Law and Non-discrimination.	Article 14 and 15
4	Article-8: Right to effective remedy.	Article 32
5	Article-9: Rights against arbitrary arrest, detention and right to habeas corpus.	Article 22
6	Article-11(2): Rights ex-post facto law.	Article 20(1)
7	Article-13(1): Right to freedom of movement.	Article 10(1)(d)
8	Article-17: Right of own property and not be deprived of property.	Article 19 (1)(f) (but it was omitted by the Constitution) (42th Amendment)
9	Article-18: Right to freedom of thought, conscience and religion.	Article 25(1)
10	Article-19: Right to freedom of opinion and expression.	Article 19(1)(a)
11	Article-20(1): Right to freedom of peaceful assembly and association.	Article 19(1)(b)
12	Article-21(1): Right to equal access to public service.	Article 16(1)
13	Article-22: Right of social security.	Article 29(1)
14	Article -23 : Right of form and join Trade Union	Article 19(1)(c)

¹⁰Hrlibrary.umn.edu

¹¹Saching.com

Civil and political rights

The above table shows the articles of the Universal Declaration of Human Rights and our Indian Constitution in which the subject matter that is mentioned in the Universal Declaration of Human Rights is similar to that of our Indian Constitution. From the above table it is once again proved that our Indian Constitution has given much importance to human rights.

Economic, Social and Cultural Rights

SI No.	Universal Declaration Of Human Rights	Indian Constitution
1	Art. 23 (1) Right to work, to free choice of an employment, to just and favourable conditions of work etc,	Article 41
2	Art. 23 (2) Right to equal pay for equal work conditions of work etc,	Article 39(d)
3	Art. 23 (3) Right to just and favourable remuneration	Article 43
4	Art. 24 (1) Right to rest to leisure	Article 43
5	Art. 25 (1) Right of everyone and a standard of living adequate for his and his family	Article 39 (a) and 47
6	Art. 26 (1) Right to education and free education in elementary and fundamental stages	Article 41 and 45
7	Art. 28 Right to proper social order	Article 38

The above table shows that the majority of the economic, social and cultural rights declared within the UDHR are incorporated partially IV of the Indian Constitution. However, the Constitution of Republic of India is conspicuous by absence of specific mention of bound rights declared within the UDHR like right to special care and help to mothers and kids, whether or not born in or out of union [Art.25 (2)]; Parents’ right to settle on the type of education for his or her kids [Art.26 (3)]; Right of everybody to freely participate within the cultural lifetime of the community to relish art and to share in scientific advancement and its edges. [Art.27(1)]; and right of each one to protection of the ethical and material interests ensuing from any scientific, literary or creative activity of that he's the author [Art.27(2)].

In respect of the on top of rights absence of specific mention doesn't mean that these rights haven't been incorporated within the Indian Constitution. As a matter of truth, the on top of rights area unit either subsumed within the exiting right to any half thence or are expressed in a very very little completely different scope. As an example Article 39(f) charges the state to direct its policy towards securing, “that kids area unit given opportunities and facility to develop in a very healthy manner and in condition of freedom and dignity which childhood and youth area unit protected against ethical and material abandonment.” equally, Article forty two makes “provision for simply and humane conditions of labor and maternity relief.” Article forty seven provides for the “Duty of the State to lift the amount of nutrition and customary of living and to boost public health.

Human rights regarding the economic, social and cultural aspects are concerned, the fact remains that Directive Principle of State Policy contained in Part IV of the Constitution are definitely much more exhaustive than the Universal Declaration of Human Rights. But, many of the rights and principles which are mentioned in part IV of the Indian Constitution is not mentioned in the Universal Declaration Of Human Rights. Some of those rights are listed below:

1. Equal justice and free legal aid (Article 39A)
2. Organization of village panchayat (Article- 40)
3. Uniform civil code (Article – 44)
4. Protection and improvement and safeguarding of forests (Article 48A)
5. Participation of workers in management industries (Article 43A)
6. Promotion and education and economic interest of scheduled caste, scheduled tribes and other weaker sections (Article 46).¹²

CONCLUSION

As the subject itself is therefore wide there's no acceptable conclusion as right is concern. little question these rights has been incorporated in Indian Constitution, However, it's still a failure with events of human rights violation creating headline in one type or the opposite. The violation of right is also in numerous type. We must always be hangdog with rising issue of honour killing, penalty, tutelar death, pretend encounter killing, etc. If we would like to present the precise interpretation of term Unity in Diversity it's the responsibility of terribly Indian to respect rights of another individual no matter race, colour, sex, caste, language, religion, political or different opinion, national or social origin, property, birth or different standing. To erase right violation is also attainable however it forever possible to bring changes if we have a tendency to take individual responsibility on our own shoulder.

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¹² Lex writer.in