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# Human Rights In Constitution Of India

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**Abstract:** As a 'member of the human family,' each person is entitled to a minimum set of rights against the State or other public authority, regardless of any other reason. "Human rights" is a term that has only been used recently, in the wake of post-World War II international charters and conventions, but the notion goes back to the ancient theory of "natural rights," based on natural law. Natural rights were the appropriate starting point for the development of the notion of "human rights." Natural rights were the first expressions of human rights in law and morality.

**Keywords:** Human Family, Rights, Post-World War II, Charters, Persecution

## Introduction

As part of his intrinsic essence, a person's natural rights were derived from his or her inherent nature. What this implies is that there are moral rules inherent in the nature of the cosmos that may be discerned by a rational being.

There are a slew of competing views regarding what natural rights are and how they should be defined, all of which lead to the conclusion that every person has certain rights that the rest of society must acknowledge as human rights. This notion of human rights is an updated version of the old 18th century concept of the right of man. Human rights are a relatively new concept, having emerged after the conclusion of World War II. There was a great deal of anxiety about how the war's conclusion would affect mankind, and so there have been significant advancements in issues related to human rights as a result.

In 1948, the United Nations General Assembly approved the Universal Declaration of Human Rights (UDHR), which led to the creation of a vast number of international human rights documents and covenants. UN Charter of 1945: The founding document of the United Nations. Universal Declaration of Human Rights of 1948. Civil and political rights, as well as economic, social, and cultural rights, are included in the 1966 International Covenants. In 1953, the European Convention on Human Rights was signed.

## HUMAN RIGHTS ARE CHANGING IN NATURE

the protection of human rights is fundamental if man is not to turn as a last option to revolt against tyranny and persecution," reads the preamble to the Universal Declaration of Human Rights. Human rights may not have been a notion in primordial society. Natural

law theory's origins may be traced back to the earliest days of human civilisation, when the concept of human rights was first proposed. The natural law thesis posited that a person's inherent rights to life, liberty, and property are enshrined in his or her birth.

Human rights, as Dr. Paras Diwan has pointed out, were first seen as privileges for the wealthy and powerful, while the rights of the poor remained a few provisions in a written constitution. Any and all human rights lose their significance and importance when a person is unable to provide for his or her basic needs because of poverty.

After the Second World War, however, the campaign for human rights continued to grow in vigour. The Universal Declaration of Human Rights was approved and proclaimed by the General Assembly of the United Nations shortly after the United Nations was formed in December, 1948. On December 16, 1976, the Central Assembly of the United Nations enacted two international covenants, one on Economic, Social and Cultural Rights and the other on Civil and Political Rights.

### **HUMAN RIGHTS IN INDIA.**

The founders of the Indian Constitution were inspired by the human rights idea and recognised and protected most of the human rights that were later codified in the International Covenant in 1966 since our country was one of the initial signatories. "dignity of the individual" is mentioned in the Preamble of the Indian Constitution, reflecting the country's lofty values.

### **HUMAN RIGHTS UNDER THE INDIAN CONSTITUTION**

On January 26, 1947, India's new constitution went into effect. On the Constitution's section III, the Universal Declaration of Human Rights clearly had an effect. The Central Assembly of the United Nations enacted the International Covenants on Economic, Social, and Cultural Rights and Civil and Political Rights after India ratified the Universal Declaration of Human Rights in 1948. Those rights contained in the Constitution's Part III are derived from the natural rights philosophy. The term "Fundamental Rights" is a contemporary synonym for the term "Natural Rights." Constitutional limitations or restrictions on the powers of constitutional or state-created institutions are enacted via the Natural Rights converted into basic rights. An essential component of basic rights is judicial review, justiciability, or enforcement. Each basic right has been limited in order to ensure social fairness since no right of freedom can be unlimited. In the case of an emergency, basic rights may be postponed or even prohibited from being enforced. The objectives, aspirations, feelings, precepts, and aims of our whole liberation movement are embodied in the Directive Principles of Part IV of the Constitution. Non-justiciable human rights have been included into the concrete form of the guiding principles by the Constitution's founding authors.

### **RIGHT TO LIFE AND PERSONAL LIBERTY**

The right to life and liberty are guaranteed in Article 21 of our Constitution. "No person shall be deprived of his life or personal liberty except according to procedure established

by law." reads the article's first sentence. "No person shall be deprived of his life or personal liberty without due process of law, nor shall any person be denied equality before law within the territories of the federation." read the initial proposal to the Constituent Assembly. "except according to procedure established by law" was replaced by the Drafting Committee led by Dr. B. R. Ambedkar.

## **RIGHT TO LIFE HAS LARGER IMPLICATIONS**

Right to Life and Personal Liberty (Art. 21) has grown in size over time in our Apex Court. According to Justice Bhagwati in *F C Mullin vs. The Administrator, Union Territory of Delhi & others* (1981 2 SCR 516), "To us, human dignity means having the basic necessities of life like food, clothing, and shelter as well as the ability to freely read, write, and express oneself in various ways while also freely moving about and interacting with others. .... Proportionate deprivation of this basic right to life would need reasonable, fair, and equitable methods established by law that meet the test of other fundamental rights, such as the right to life." The word "life" does not always refer to the presence of animals. There are certain positive features to a person's right to life protected by Article 21 of the Constitution, but they are subject to well-organized limits. The State cannot deprive a person of his or her life unless in compliance with a legal law. The Supreme Court's decision to broaden the scope of Art. 21 in *A. K. Gopalan vs. State of Madras* (AIR 1950 SC 27) is a welcome development, given that the Court had previously adopted a very restricted reading of Art. 21 in that case. Article 21 of the Constitution, if interpreted broadly, would include all aspects of modern life, including a person's traditions, culture, and history. As a result, safeguarding one's cultural heritage would be a no-brainer.

## **ART 21 AND THE RIGHT TO PRIVACY**

In the case of *Kharak Singh vs. State of U.P.*, the Supreme Court first rejected the right to privacy as a component of Article 21. (AIR 1963 SC 1295). The petitioner's name was entered into a police history file based on allegations, and the petitioner's movements were monitored. Clause (b) of U. P. Police Regulation 236 authorising "domiciliary visits" was knocked down by Ayyangar J. on behalf of the majority because the administrative rules were not supported by any law and dismissed the remainder of the challenge to the above mentioned regulations. While privacy is not a constitutionally protected right, Ayyangar J. ruled that "As already pointed out, the right of privacy is not a right guaranteed under our Constitution and therefore the attempt to ascertain the movements of an individual which is not merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by part III." Since then, the Supreme Court's opinions have changed, and it now recognises the right to privacy as a component of Article 21.

If Madhukar Narayan Mardikar, a delinquent police officer, was fired in the case of *State of Maharashtra and others* (AIR 1991 Supreme Court, 207) because to his attempt to rape Banubi on the night of November 13th, 1965, he was dismissed because of this. Banubi may have been an unchaste lady, according to historical records. Speaking for the Hon'ble

Supreme Court's Bench in the aforementioned decision, Ahmadi J. made the following observations:— "She was brave enough to open up about the worst parts of her personal history. When it comes to privacy, even the most virtuous lady is entitled to it, and no one may breach it whenever they want to. As a result, it isn't available to everybody at any time... She is entitled to the same legal protections as everyone else. As a result, her testimony cannot be discounted based on the fact that she is a lady of easy virtue." Saroj Rani vs. Sudarshan Kumar Chadha (AIR 1984, SC 1962) overturned the judgement of Andhra Pradesh's High Court in the case of Venkat Suppiah and upheld the constitutional validity of Section 9 of the Hindu Marriage Act, 1955 which provides for a remedy for the restitution of conjugal rights in the event that the marriage has been annulled.

According to the Andhra Pradesh High Court's ruling, the aforementioned part was a barbaric and cruel solution that violated Article 21 of the Constitution. The Scarman Commission report in England, cited by the learned Judge of the High Court of Andhra Pradesh, recommended that the remedy be abolished. According to the Supreme Court of India, Section 9 of the Act was affirmed as constitutionally lawful since it aimed to protect the institution of marriage. Justice Sabyasachi Mukarji, for the bench, said that Section 9 had a societal function as an assistance to preventing marital breakup and should be read in this light.

#### **ART. 21 COMPENSATORY JUSTICE.**

Indian courts have "The Indian Judiciary has totally revolutionised this branch of the subject by laying down that the State or the Central Government shall be liable to pay compensation to the victims of violation of fundamental rights and such compensation could be awarded by the writ court while disposing of writ petitions without directing the party aggrieved to file a separable suit." says Justice D. R.Dhanuka.

The Constitution's Article 39-A says the following:— If you're unable to afford a lawyer, don't worry: "39-A. Equal justice and free legal aid" mandates that the state establish "suitable legislation or schemes or in any other way to ensure that opportunities to secure justice are not denied to any citizen due to economic or other disabilities." " These guiding principles are incorporated into the Constitution by the Apex Court under Article 21."

#### **RIGHT TO A CLEAN ENVIRONMENT AS A RIGHT TO LIFE**

Art. 21 was applied in the Doon Valley Case (AIR 1985 SC 652) to stop the Mussoorie Hills from being degraded by mining. Article 21 included a right to clean air and water, as well as the preservation of humanity's natural resources, the Supreme Court said. A pollution treatment facility is a pre-condition for the establishment and continuing of an enterprise in M. C. Mehta vs. Union of India (AIR 1988 SC 1037), the Supreme Court said. "A tannery that cannot set up a primary treatment plant, just like an industry that cannot pay its workers minimum wages, cannot be allowed to exist," the report said. ""

Oleum Gas Leak Case (AIR 1986 SC) enforced strict responsibility without exemption to a polluting activity utilising hazardous manufacturing processes. Under Article 21 of the

Constitution, this was another writ. "An company engaged in hazardous or intrinsically dangerous industrial activity that poses a possible threat to the health and safety of individuals working in the factory and live in the surrounding area was required to provide compensation for the injuries caused," observed Bhagwati C.J. in this case." In the case of Rylands versus Fletcher, the English courts recognised that the idea of unlimited responsibility included certain restrictions and exceptions, which are worth mentioning for the benefit of the public. "Our hands are tied in India, therefore I'm going to propose a novel concept of liability that hasn't been tried before in English courts. There is no reason why we should hesitate to develop new principles of liability to deal with an unusual situation that has arisen and is likely to arise in the future because of hazardous or intrinsically dangerous industries that are part of an industrial economy."

### **ENUMERATION OF FUNDAMENTAL RIGHTS IN INDIA'S CONSTITUTION**

Fundamental Rights' are incorporated in the Indian Constitution's Third Part, which covers the following rights: (a) Articles 14, 15, and 16 of the United Nations Charter. Article 19 guarantees the right to six liberties. Free speech and expression are protected by (a). (a) The right to peacefully assemble without the use of weapons. (b) The right to organise unions or groups. (c) The right to freely travel within the territory of India. An Indian citizen's right to dwell and establish a home in any area of the country f) The right to engage in whatever vocation, trade, or business one chooses. Articles 20, 21, and 22 guarantee the right to life and liberty. It is guaranteed under Articles 25, 26, 27, and 28. Articles 29 and 30 of the United Nations Convention on the Rights of the Child. Sixth - Article 31 - Right to property. As a constitutional right, this privilege was reinstated in Article 300 A of the 44th Amendment, (9) Articles 23 and 24 of the Universal Declaration of Human Rights, Right to Constitutional redress - Article 32 of the Constitution.

### **UNDER THE CONSTITUTION OF INDIA'S DIRECTIVE PRINCIPLES, THE ENUMERATION OF CULTURAL, SOCIAL, AND ECONOMIC RIGHTS**

The Indian Constitution's 'Directive Principles of State Policy' section sets forth the following rights. Article 39 of the Constitution places a strong emphasis on socialism and welfare. Article 39 guarantees the right to an appropriate standard of living (a). (2) Article 39 of the Constitution protects people from economic exploitation (e). There are no economic constraints that compel people of all ages and genders to engage in activities that are not appropriate for their age or strength. (3) The right of both sexes to equal compensation for equal effort is guaranteed in Article 39. (d). Article 41 of the Constitution guarantees the freedom to labour. Article 41: The right to rest and recreation. Public support for unemployment, old age illness (Social Security) is provided in accordance with Article 41 of the Social Security Act. Directive Principles of economic and social justice, as well as certain aspirational goals, are all included in Part IV. By establishing and safeguarding successfully a social order where justice, social, political, and economic shall guide all of the institutions of national life, Article 38 instructs the State to bring about the wellbeing of people. Seventh, it instructs the State to ensure that the community's wealth and means of production are not concentrated in a way that

harms everyone, but rather that they are dispersed in a way that best serves the common good. b) and (c) of Article 39. In addition, the Directive Principles are outlined in the following Constitutional Articles: Eighth, Article 42 - Humane work and parental leave conditions. (9) Article 43 - Employees must be paid a livable wage and other benefits. (1) Article 44 of the Uniform Civil Code. (2) Eleventh Amendment: Education Is Entitled to Be Free and Compulsory Twelve (12) Article 46 - Support for scheduled castes, schedule tribes, and other vulnerable parts of the population. 13) Article 47 - State duty to enhance public health and elevate the quality of nutrition and living standards The organisation of agriculture and animal husbandry is the subject of Article 48. Article 49: Monuments, historic sites, and other culturally significant artefacts are safeguarded. Article 50 - Separation of powers between the executive and judiciary. International peace and security promotion is the focus of Article 51 of the United Nations Charter. Three new articles were included into the Constitution with the 42nd Amendment: Article 43A - Workers' participation in industry management. Article 39A - Access to justice for everyone and free legal representation. (19) Twenty-eighth Article 48A - Conservation and preservation of natural resources, including forests and wild animals. These amendments' additions are routine. As a result, it is appropriate to accept the following general remark by renowned scholar K. Subba Rao: "The Indian Constitution has codified, incorporated, and improved upon what the United States and other established democratic nations have done via judicial judgement and pragmatism (K. Subba Rao, Enforcement of Basic Human Rights in Law and the Commonwealth, 73).

## **UNENUMERATED INDIVIDUAL RIGHTS OR 'NATURAL RIGHTS' UNDER WRITTEN CONSTITUTION**

As a general rule of thumb, the following guidelines should be kept in mind: In most cases, a legislative enumeration does not include anything outside of what is listed. Statutory Constitution: P. 333

The Constitution is an organic instrument for the governing of the nation, and therefore, a liberal or progressive interpretation of the Constitution's stated provisions is not precluded from being supplied to suit the developing demands of civilization or the changes in the social backdrop. India's Supreme Court rejected the usual assumption that Part III of the Constitution gives an entire list of Fundamental Rights and instead posited a "emanation" approach. If a right can be seen as an integral part of another named fundamental right, then it can be considered a fundamental right even though it isn't specifically mentioned in Part III; in other words, "It "emanates" from a named fundamental right, or its existence is "necessary" to make the exercise of a named fundamental right meaningful and effective. in the case of Maneka vs. Union of India, 1978 SCR 597, p. The Supreme Court's use of the 'emanation' thesis has resulted in the following unnamed rights being referred to as, Fundamental Rights: As an emanation of Arts 19(1)(d) and 21, the right to privacy. (2) Human dignity is a fundamental right (as an emanation from Arts. 14, 19, 21). The right to travel outside of the country (as an emanation from Art. 21) Torture, harsh or unusual punishment, and humiliating

treatment are all prohibited under Article 4 of the Convention Against Torture. (5) The right to a timely trial is another important one (emanating from Art. 21). In criminal trials, defendants have the right to free legal help (from Art. 21). (seven) The right to object to a delay in the implementation of justice. Eighth, the right to be protected against abuse by a guardian. Right to shelter, right to medical help, and the right to health are all included in this. The right to clean air and water. (11) A child's right to an education up to the age of fourteen. Right to hear, right to know. (12) Freedom of the Press, and the right to listen. From the first paragraph of Article 19(1), (a).

As a human rights watchdog, the media has an equally essential duty to play. It has been seen, however, that the media either fails to raise awareness of human rights breaches, or actively works with state authorities in order to cover up the crimes. When the media sensationalises an occurrence (a practise known as "trial by media"), it may have detrimental effects on society and the people involved. Because of this, it is critical that the media be educated on the need of protecting people's rights. Human rights violations can only be controlled if there is a strong commitment to the preservation of human dignity and values. A proper approach and attitude toward human rights must be adopted by all members of Indian society—political leaders as well as the media and civil society, and intellectuals who have a significant impact on shaping public opinion—as well as by those who hold positions of power in the government and law enforcement.

To ensure the preservation of human rights, here are some of my recommendations:

- Human Rights education should be a component of the general education.
- Funding human rights research will help establish a contemporary understanding of human rights that is relevant in today's society.
- Law enforcement agencies should be made more aware of human rights issues and given training on how to comply with them.
- Human rights must be officially recognised by the adoption of a new special law.
- The implementation of policies and activities to guarantee that individuals may exercise their constitutional rights.
- Women's and children's rights must be protected with utmost care.

### **Conclusion:**

Human rights in India is an issue complicated by the country's large size and population as well as its diverse culture, despite its status as the world's largest sovereign, secular, democratic republic. The Constitution of India provides for Fundamental rights, which include freedom of religion. Clauses also provide for freedom of speech, as well as separation of executive and judiciary and freedom of movement within the country and abroad. The country also has an independent judiciary<sup>[1][2]</sup> as well as bodies to look into issues of human rights.<sup>[3]</sup>

The 2016 report of Human Rights Watch accepts the above-mentioned facilities but goes to state that India has "serious human rights concerns. Civil society groups face harassment and government critics face intimidation and lawsuits. Free speech has come

under attack both from the state and by interest groups. Muslim and Christian minorities accuse authorities of not doing enough to protect their rights. The government is yet to repeal laws that grant public officials and security forces immunity from prosecution for abuses."<sup>[4]</sup><sup>[5]</sup>

We may sum up by saying that these rights belong to us and are ours, thus we should be aware of them. We have a moral obligation to support and protect these values for ourselves and our fellow human beings.

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