



---

# Human Rights In India: Historical Perspective

**Haider Ali** Institute of Legal Studies and Research, Mangalayatan University, Aligarh, UP. E-mail: [haider.ali@mangalayatan.edu.in](mailto:haider.ali@mangalayatan.edu.in)

**Swati Sawan** Faculty of Law, Usha Martin University, Ranchi, Jharkhand.

---

## Abstract:

History of human rights may be traced back to the beginnings of humanity. Human rights as we know them now is the result of centuries of development. In spite of the term "Human Rights" seeming to have a contemporary appearance, human rights have been there for as long as humanity has been. Human rights have existed in some form or another ever since man first lived in groups, such as families, clans, tribes, towns, or nations, and they continue to exist now in the shape of an autonomous global community. 13 The idea of human rights is not unique to the West or even to the contemporary world, but rather the culmination of shared human principles that date back millennia.

**Keywords:** History Of Human Rights, War Captives, Inherent, Natural, Inalienable, Fundamental, Indian Perspective

## Introduction

The human rights of war captives have been outlined and detailed by Kautilya in his renowned and immortal book "Arthashastra" In ancient times, human rights were renamed civil rights, political rights, personal rights, legal rights, natural rights or divine rights, economic rights, and social rights. Because of this, several expressions are used to describe the rights that people have, including "inherent" and "natural" rights, "inalienable" rights, and "basic fundamental" rights.

"Human rights are twentieth century names for what has traditionally been known as natural rights or, in a more exhilarating phrase, the rights of man," states a well-known academic while explaining the notion of human rights.

14 Ancient Greece and Rome's pre-modern natural law notion of Greek stoicism influenced the idea of human rights. Greek and Roman conceptions of divine justice and freedom are at the core of today's human rights concepts. It became more extensive in the 18th century, the so-called Age of Enlightenment, as a rising faith in human reason and, of course, human affairs were perfected. Natural law and human reason were both advocated by John Locke in England, Montesquieu Voltaire and Jean Jacques Rousseau in France, and others.

the English, French, and American revolutions were inspired by the theory of natural rights Revolutionary movement throughout the West, particularly in North America and

France, was motivated by the practical examples of England's glorious revolution in 1688 and the subsequent Bill of Rights in 1689. Historic documents like the Pennsylvania Declaration (1776), the American Declaration (1787), and the French Declaration (1789) represented the intellectual environment of the contemporaneous socio-political events sparking the battle against governmental absolutism. According to respected human rights historian Maurice Cranston, these conflicts arose as a result of males asserting their rights that had been denied to them under absolute rule. Human rights have their roots in all of those uprisings. First philosopher to utilise "human rights" in his thesis; civil disobedience, which encouraged Tolstoy, Gandhi and Martin Luther King to establish and disseminate the notion of non-violent opposition against immoral government activities was Henry David Thoreau. 'Respect of one, equally extends to the entire cosmos,' remarked Mahatma Gandhi. Because all humans are fundamentally the same, "what is possible for one is possible for all."

Second World War tragedies led to the formation and acceptance of the contemporary international human rights movement. Proclamations by President Franklin D. Roosevelt and non-governmental organisations (NGOs) in the 1940s paved the way for a new era of human rights activism in the post-World War II era. It wasn't until 1945, when the United Nations was formed, that the scope of this campaign was broadened. The Universal Declaration of Human Rights (UDHR), which was established on December 10th, 1948, widely known as "Human Rights Day," was a key component of this post-war human rights framework. The English, American, and French revolutions all had a significant influence on the writing of this declaration. Equality, liberty, and social justice were established as the pillars of human rights in the post-war period. International treaties such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, which were ratified by the UN in 1976, were the first to use the expression "human rights."

Amnesty International became a permanent observer at the United Nations in the 1970s, bringing international attention to the human rights movement. A wide range of countries throughout the globe paid attention to its findings and statements on fundamental human rights. Civil society organisations and individuals in developing countries rallied behind the United Nations Declaration of 1948 to defend their most prized liberties. So many civil society organisations (Human Rights Watch, Amnesty International) have sprung up across Asia, Africa, and Latin America to oppose repressive governments and fundamental human rights, such as the right to life and freedom of speech. It's time to admit that Amnesty International and a slew of its sister groups influenced civil rights campaigns throughout the globe. The Nobel Peace Prize was presented to Amnesty International for its work in the defense of human rights.

To put it another way, from this historical viewpoint, it became clear that man's battle for

rights has been going on from the beginning of time. Ancient periods saw a primitive form of human rights; the Middle Ages saw a developing stage; and the 20th Century saw a fully developed version thanks to the establishment of the United Nations.

Though it was not a binding document, the U.N. Charter articulated an ideal that would be developed by many agencies and organisations in the years to come. The United Nations General Assembly adopted the Universal Declaration of Human Rights in December, 1948, as the first tangible step in establishing the numerous human rights. Covenanting Parties were expected to sign an International Bill of Rights that would be legally binding on them. It's important to remember that the Universal Declaration was never intended to be a legally enforceable contract and had no enforcement mechanisms in place. The General Assembly of the United Nations endeavoured to remedy this shortcoming by approving in December 1966 two Covenants on the respect for human rights:

1. Civil and Political Rights Covenant.
2. The Economic, Social, and Cultural Rights (ESCR) Covenant.

### **Indian Perspective on Human Rights**

When we examine the notion of human rights from an Indian perspective, we discover that the Indian political intellectuals and philosophers are not unfamiliar with the concept. Since the beginning of the Vedic era, they have proclaimed a desire to protect the basic human rights and liberties of all people. Human rights have their roots in the ancient Indian concepts of Dharma and Danda, which governed both the government of the state and the lives of its inhabitants. The Sanatan Dharma concept, which formed the groundwork for modern human rights in ancient India, is more than two thousand years older than western Christianity as a whole. For ancient Indian civilisation, it set the groundwork for the same social order, which included a moral code as well as obligations and duties. It was an idea that was much more expansive than that of religion in western history. Detailed guidelines for the King's direction were based on these already-existing concepts. In the same way that everyone else was, he had an obligation to uphold the law (equality before law and equal protection of law can be deduced from that practice). According to religious teachings, conventions, and written norms, he was responsible for administering justice. As a matter of course, he had to uphold both religious and customary rules, as well as those of his citizens. Human rights enforcement may have been in its infancy at the time. Dharmic writings like the Vedas and Vedanta under the Sanatan Dharamgenus, which enshrines "Truth is one" and "God resides in every human being," were the primary sources of the monarchs' guiding beliefs. There can be no genuine pleasure and a community can't keep together if one doesn't adhere to the principles of truth, self-control, acquiescence to one's own moral code of conduct, charity, non-violence, and persistence in virtue.

However, religious prophets made substantial contributions to the foundation of human

rights at the individual level. Mahavir, the Jain founder, believed that human freedom was founded on the truth known as Anekantavad, which established the notion of truth's relative pluralism and the existence of several sides to the same storey. Personal and societal dimensions of existence are profoundly affected by this attitude toward truth.

Laws of punishment were written forth by Kautilya in his Arthashastra during the reign of Chandra Gupta Maurya. These ideas were given out as the cornerstone of social life in Arthashastra. As a result of these principles, a variety of laws were enacted to protect against unlawful arrest and imprisonment, custodial murder and rape of women, as well as a corrupt judiciary. His reign, which was preceded only by King Kalighat's, was marked by several measures to secure equal rights, brotherhood, and happiness for all of his people. Ancient India's greatest creator of civic liberty was Ashoka.

During British control in India, the present form of human rights law was established. In addition to fighting against the harsh and exploitative rule of colonial powers, the human rights movement sought to reestablish the lost Dharma of India's illustrious past via changes within the country's society. Act 1827 by Britishers put religious prejudice into the Indian court system, and Raja Ram Mohan Roy "The great social reformer of Modern India" rejected it.. Act said that Christians, whether European or local, could not be tried by a Hindu or Muslim jury while Christians could not be tried by either a Hindu or Muslim juror. His forward-looking ideas and significant deeds contributed significantly to the advancement of civil freedoms for Native Americans at the time. Human rights and dignity reforms began in Bengal and gradually expanded to the rest of India. In Maharashtra, Mahadev Govind Ranade, one of the founders of the Indian National Congress, founded the Indian Social Conference in 1887 to fight against human rights violations in the Indian subcontinent. As a true visionary, Ranade was able to discern the interconnectedness and indivisibility of what is today regarded as two generations of human rights - civil and political rights, and economic, social, and cultural (ESC) rights. There is no decent social system when people are denied political rights, nor can they be qualified to enjoy their political rights and privileges unless their social system is founded on logic and fairness, according to him. When your social structures are flawed, you can't have a healthy economic system. You can't prosper in the social, economic, and political arenas if your religious beliefs are rooted in the dirt. When the Universal Declaration of Human Rights was written in 1948, it finally expressed this interconnectedness as a natural law.

### **Human Rights as defined by the Constitution and the Conventions**

When India's Constituent Assembly finished crafting the country's first constitution on January 26, 1950, it was considered a triumph. A century-long battle by Indians for independence, recognition, protection, and enforcement of human rights culminated in the creation of the Indian Republic's Fundamental Rights and Directive Principles of State Policy. A near-complete list of human rights was adopted in the Indian Constitution at the same time that the world community was drafting its own Universal Declaration of Human Rights. The Indian Constitution's human rights provisions include a wide range

of rights, including civil, political, economic, social, religious, and minority.

A political society in which there would be no distinction between the rich and the poor, where women would have the same rights as men, and where all Indians would be treated with dignity and justice on all fronts, including social, economic and political, had already been announced by Mahatma Gandhi before the Second Round Table Conference even before the constitution for a free India had been drafted.

From a human rights perspective, the Preamble, Fundamental Rights, and Directive Principles of State Policy are critical Constitutional sections. As a practical matter, human rights are no longer only an abstract idea to be debated. Research on Indian constitutional human rights reveals that the Indian constitution enshrines almost all of the international conventions, covenants, and treaties, such as the 1948 Universal Declaration of Human Rights and 1966 International Covenants on Civil and Political rights. In light of India's ratification of the Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights, the Constitution of India's guarantees and provisions of rights must be in accordance with these Covenants. Part III of the Indian Constitution recognises many rights enshrined in the Covenants on Civil and Political Rights as justiciable, i.e., enforceable fundamental rights, while Rights stipulated in the Covenant Economic, Social and Cultural Rights are enshrined in the Directive Principles of State Policy and are non-justiciable (judicially non-enforceable rights).

### **Rights of the Citizen, Political Participation, and Individual Liberty**

Part III of the Indian Constitution protects the rights enshrined in the Covenant on Civil and Political Rights as Fundamental Rights. This includes rights to equality, freedom from exploitation, right to freedom of religion, cultural and educational rights, and constitutional remedies.

It's important to point out that in addition to include a comprehensive list of essential rights, the framers of our country's constitution also included sound legal mechanisms for upholding those rights. For the enforcement of basic and other rights of persons, Articles 32 and 226 in the Constitution of India contain suitable remedies by means of writs like Habeas Corpus and Mandamus, Certiorari and Prohibition and Quo Warranto. When a breach of the above-mentioned basic rights occurs, the Supreme Court as well as State High Courts use their authority under the heading of "the right to Constitutional remedies." Thus, these articles are the first of their kind in the Indian Constitution and are the only ones of their kind anywhere else.

In the case of *Maneka Gandhi v. Union of India*, Bhagwati J. ruled that Article 21's statement of "personal liberty" has the broadest scope and encompasses a wide range of rights that contribute to human liberty and have been elevated to the level of unique fundamental rights. "Personal liberty takes all the rights of man," the Supreme Court said in *Unni Krishnan J.P. v State of Andhra Pradesh*. Due to its broad reach and inclusion of both a substantive right to liberty as well as a procedural protection to be respected in its deprivation, Article 21 is its co-extensive counterpart. Similarly, the Supreme Court ruled that the Constitution's Preamble is an inherent component of it in *S.R. Bommai v. Union*

of India. Hence

Personal liberty and dignity are protected in the Preamble, thus Article 21's "personal liberty" must be construed in this context. Fundamental rights are equally protected and promoted by both the Convention and the Constitution of the United States of America. Maneka Gandhi, Golak Nath, and Kesavananda Bharti are all examples that must be brought up in any discussion of the Constitution's sixty-three-year history. The Indian Judiciary first articulated the principle that the Constitution's core structure cannot be changed via amendments. The court has made a unique contribution to the defence of human rights in the United States.

### **Human Rights and Directive Principles of State Policy**

Civil and political rights are highly valued in India, while economic and social rights have received less attention. However, in reality, civil and political rights cannot be realised without economic rights being enjoyed. People's civil and political rights become a reality only when economic and social rights are achieved, according to P.N. Bhagwati, J. Civil and political rights can only be achieved via economic and social rights. Unless it happens, civil and political rights will remain nothing more than a fanciful dream. The rights outlined in the International Covenant on Economic and Social Rights are included in the Indian Constitution's Directive Principles of State Policy. But even if the State is directed, it is meant to ensure some fundamental economic and social rights to people.

Part IV of the Constitution's non-enforceable rights are mostly economic and social in nature. Because of this, Article 37 makes it plain that the State's obligation to apply them in establishing laws is not affected by their lack of judicial enforcement. In addition, the Supreme Court's creative jurisprudence has now interpreted and made enforceable several of these concepts in Article 21 (the right to life and personal liberty).

According to the Preamble of our Constitution, the goal is to create a society where justice, economic and political; freedom of opinion and speech; equality of position and opportunity and brotherhood; and dignity for the person are guaranteed. Human rights and civil and political ideals expressed in the Preamble are safeguarded in Part III via justiciable basic rights, which provides this vision concrete form. For example, economic and social rights that need government action are included in the directive principle of state policy. The human rights jurisprudence developed over the last six decades has been heavily influenced by the United Nations' Universal Declaration of Human Rights of 1948 and other international human rights covenants, treaties, and conventions in interpreting these two parts of the Constitution. It is via these constitutional rights and freedoms that a person may lead a civilised life. Our Constitutional foundation must not be undermined, and we must be ever watchful in protecting our liberties and fundamental human rights, given its fragility and immaturity. If we are to achieve the social, economic, and political structures that our founding fathers had in mind, we must keep the torch of liberty blazing with all of our resources.

## **Charter, Covenants, and Conventions of the United Nations on Human Rights**

To restore a person's dignity and protect him from inhumane treatment while he is detained, two significant and remarkable statements were issued by the world community.

1. Declaration of Human Rights (UDHR), 1948
2. The 1966 International Covenant on Civil and Political Rights.

Other international instruments, such as the ones listed above, have been developed at various levels throughout the years to support and deepen the fundamental ideas outlined in these two texts. These are some of the most notable ones:

1. United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 ;
2. Human Rights and Fundamental Freedoms (ECHR) • European Convention on Human Rights and Fundamental Freedoms
3. American Convention on Human Rights, 1969.
4. The African Charter on Human and Peoples' Rights, Adopted in 1981.
5. This convention was signed into law by the United Nations General Assembly in 1984 and has been in effect ever since.

## **Conclusion**

We can acknowledge the practical relevance of law, reason, and social fact in bringing economic and social rights into reality via the human rights framework. In view of their normative focus on individual freedom and dignity, as well as their common conceptual approach of the state, constitutional and human rights are interchangeable terms. International human rights and constitutional rights may be linked via judicial communication, borrowing, similar patterns of reasoning, and transnational movements. Norm difference and democratic concerns aren't enough, according to this paper. There are several issues of private law that need more study in light of economic and social rights, as this chapter points out.

## **References:**

1. Dr.BhanwarLal Harsh, Human Rights Law in India, Regal Publications, N. Delhi, 2008, at p. 2, 3.
2. Radhanath Tripathy, "Understanding Human Rights", in Noorjahan Bava (ed.), Human Rights and Criminal Justice Administration in India, N. Delhi: Uppal Publishing House, (2000) P. 92.
3. Maurice Cranston, What are human rights? 1963, at p.1.
4. Preamble of Indian Constitution as well as Article 19 (1).
5. Article 21, Constitution of India; Kehar Singh v. Union of India. (1989) I SCC, 204.
6. M.C. Mehta v. Union of India, AIR 1986 SC1086.
7. Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746.
8. Lalit Dadwal, (Position of Human Rights: An Indian Profile) Civil & Military Law

Journal vol. 39 Oct-Dec. 2009. No. 4 at 221.

9. G.S. Bajwa, Human Rights in India: Implementation and violation, Anmol Publications, N. Delhi(1995) at p. 45.
10. D.D. Basu"s Human Rights in Constitutional law, 3<sup>rd</sup> Edition 2008 p. 9.
11. Dr.TapanBiswal, Human Rights Gender and Environment, Viva Books Private Ltd. N. Delhi 2006, p.185.
12. J. N. Pandey, Constitutional Law of India, Central Law Agency , Allahabad 41<sup>st</sup> Edition. 2004 at Page,340.