

## EVALUATION OF HUMAN RIGHTS LAWS IN INDIA

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### INTRODUCTION TO HUMAN RIGHTS

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United Nations defines Human Rights as “*rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.*”<sup>1</sup> For the existence of a human in a society or civilization, a set of basic or natural rights are immensely needed. Human Rights or also known as Natural rights govern both, citizens as well as the government in the country. United Nations created a set of universal human rights laws which ranged from rights to women and children to labours and skilled workers. They were created in the Charter of the United Nations and the Universal Declaration of Human Rights which came into force when the general assembly adopted them in 1945 and 1948 respectively. In 1920, the International Labour Organization established the conventions on workers’ freedom to join unions and organizations, the prohibition of slave labour, and the right to collective bargaining. In India, Human Rights are defined in Section 2 of Human Rights Act, 1993 as “*the rights relating to life, liberty, equality and dignity of the individual guaranteed under the constitution or embodied in the International Covenants and enforceable by courts in India*”<sup>2</sup>

Just like humans cannot live without food, water, and shelter, they cannot live without Human Rights. For existence in a society or country, each individual must have some sets of Human rights law in order to have a dignified life. It is presumed that a person adopts human rights law the day he/she is born. Human Rights laws protect people from different gender and caste-like LGBTQ and schedule caste. Internationally, the rights are often used by Asians, Jews to protect themselves from abuse and discrimination. Human Rights law has several features like it allows people to practice any religion, marry any human, provide equal

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<sup>1</sup>*Human Rights*, United Nations.org ( 27 April, 2021), <https://www.un.org/en/global-issues/human-rights>

<sup>2</sup> *How are human rights defined in the Protection of Human Rights Act 1993*, National Human Rights Commission, India, (25 April 2021), <https://nhrc.nic.in/faqs/how-are-human-rights-defined-protection-human-rights-act-1993>.

opportunity in jobs, and many more. Also, *the right to education is a human right and indispensable for the exercise of other human rights.*<sup>3</sup>

## HISTORY AND DEVELOPMENT OF HUMAN RIGHTS

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Human Rights law is an old concept that was first established in The Cyrus Cylinder (539 B.C.) and Magna Carta (1215). In India, the concept of Human Rights is also as classical as the principles of Buddhism and Jainism. Many religious texts like Bhagavad Gita, Dharmashastra, and Arthashastra contained the rules and laws made for human and accepted activities in society. Judaism Holy book, Torah and Christianity Holy book, Bible have also made many references in terms of Human Rights Law. “ *Human Rights law does not have a separate body. However, Human Rights in Islamic International Law can be found in every rule of Islamic Law.* ”<sup>4</sup>

However, it was only during British rule when Indians understood the importance of Human Rights after facing severe trials and tribulation in their nation. Several Indian figures demanded political and civil rights for Indians and resisted the foreign rule. British rule, in general, has a net negative impact because of its Human Rights Violations. *Oppression and ruling by force, along with treating natives as second class citizens, are automatically moral crimes.*<sup>5</sup> Thus, it became important for Indians to get their Human right which was denied to them since the invasion by the East India Company. Initially, when the Indians demanded their rights, either they were reprimanded by Governor-General or debarred from any reputed service. Lord Macaulay rejected the ancient Indian Legal system and East India Company debarred Indians from occupying high offices. This is how Indians were prevented from exercising political, civil, economic, and social rights.

## UDHR AND ICESCR IN THE INDIAN CONSTITUTION

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On 26<sup>th</sup> January 1950, the constitution of India came into force with 395 Articles and 8 Schedules. Indian Constitution is one of the most elaborate Constitution which contains laws and rules which have been adopted from several countries, treaties, and signatories

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<sup>3</sup> *What you need to know about Right to Education.* UNESCO.org (25 April, 2021), <https://en.unesco.org/news/what-you-need-know-about-right-education>.

<sup>4</sup> Malekian, F. (2011). *HUMAN RIGHTS LAW*. In Principles of Islamic International Criminal Law: A Comparative Search (pp. 107-134). LEIDEN; BOSTON: Brill. Retrieved April 25, 2021.

<sup>5</sup> Human Right Violations, British Raj (25 April, 2021) <http://britishraj.weebly.com/human-rights-violations.html>.

declarations. India had ratified 2 important human declarations before commencing of Constitution. One was Universal Declaration on Human Rights which India ratified on 1 January 1942. The laws prescribed by Universal Declaration on Human Rights or UDHR were established in Part III of the Indian Constitution which contains Fundamental Rights.

<b>Article</b>	<b>Declaration</b>	<b>Constitution</b>
<b>Equality before law</b>	Article 7	Article 14
<b>Prohibition of discrimination</b>	Article 7	Article 15(1)
<b>Equality of opportunity</b>	Article 21(2)	Article 16(1)
<b>Freedom of speech and expression</b>	Article 19	Article 19(1)(a)
<b>Freedom of peaceful assembly</b>	Article 20(1)	Article 19(1)(b)
<b>Freedom to form associations or unions</b>	Article 23(4)	Article 19(1)(c)
<b>Freedom of movement within border</b>	Article 13(1)	Article 19(1)(d)
<b>Protection of respect of conviction for offences</b>	Article 11(2)	Article 20
<b>Protection of life and personal liberty</b>	Article 3	Article 21
<b>Protection of slavery and forced labour</b>	Article 4	Article 23
<b>Freedom of conscience and religion</b>	Article 18	Article 25(1)
<b>Remedy for enforcement of rights</b>	Article 8	Article 32
<b>Right against arbitrary arrest and detention</b>	Article 9	Article 22

Another declaration was International Covenant on Economic, Social, and Cultural Rights (ICESCR). This declaration also contained many rights which focused on health, education, shelter, and social-cultural rights. India ratified the same on 10 April 1979. These declarations could be found in Part IV of the Indian Constitution which deals with Directive Principles of State Policy (DPSP).

Article	Declaration	Constitution
<b>Right to work</b>	Article 23(1)	Article 41
<b>Right to equal pay for equal work</b>	Article 23(2)	Article 39(d)
<b>Right to education</b>	Article 26(1)	Article 21(a),41,45,51A(k)
<b>Right to just and favorable remuneration</b>	Article 23(3)	Article 43
<b>Right to rest and leisure</b>	Article 24	Article 43
<b>Right of everyone to a standard of living adequate for him and his family</b>	Article 25(1)	Article 39(a), 47
<b>Right to proper social order</b>	Article 28	Article 38

### CONSTITUTIONAL VALIDITY OF RIGHTS IN UDHR AND ICSCR IN INDIA

There have been specifically 2 questions that often arise in Supreme Court and High Court. One is whether rights obtained from UDHR and ICSCR in the constitution will be applied absolutely. *“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.”*<sup>6</sup>This was discussed by Supreme Court in the case of Kesavananda Bharti v. the State of Kerala. The rights prescribed in the Indian Constitution are meant to be followed. The laws cannot be turned void unless they violate Fundamental Rights or any other laws. In the case of Chairman of Railway Board v. Chandrima Das, *“it was observed that UDHR has been recognized as Model code of conduct adopted by United Nations General Assembly. The principles may have to be read if needed in domestic jurisprudence.”*<sup>7</sup>

Another question that was raised was whether the rights mentioned in UDHR and ICSCR but not noted in the Indian Constitution will have any validity in India. At the time of the

<sup>6</sup> Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225; AIR 1973 SC 1461

<sup>7</sup>The Chairman Railway Board & Ors v. Mrs. Chandrima Das & Ors, (2000) 2 SCC 465; MANU/SC/0046/2000; AIR 2000 SC 98.

Constitution's ratification, many of the covenant's rights were not recognized as constitutional rights. As clarified in the case of *ADM Jabalpur v. Shivkant Shukla* that "*the law of land does not recognize any natural or common law rights other than specifically provided in the Indian Constitution.*"<sup>8</sup> However, the Judiciary also plays a vital role in either introducing or ask the government to introduce laws that are mentioned in UDHR and ICSCR in Parliament. The spectrum of Constitutional rights guaranteed by the Indian Constitution has been expanded by judicial interpretations. Right to Privacy, a right in the declaration was established and discussed briefly in the case of *K .S. Puttaswamy & Anr. v. Union of India & Ors.* In the case of *M.C. Mehta v. Union of India & Ors*, the Right to clean water was discussed and interpreted by the Supreme Court of India. Thus, Judiciary expanded the scope of human rights laws in India.

### **ESTABLISHMENT AND FUNCTIONS OF NHRC**

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The Protection of Human Rights Act, 1993, an act in the Parliament led to the establishment of the National Human Rights Commission on 12 October 1993. The main function of NHRC is to safeguard the Human Rights of each individual in the country. The Headquarters of NHRC lies in New Delhi and its first Chairperson was Ragnath Misra. Other than the national commission, India also has an individual State Human Rights Commission. National Human Rights Commission comprises of one Chairperson (Retired Supreme Court Judge) and 2 members along with chairperson of Minorities, Scheduled Castes, Scheduled Tribes, and Women National Commission. "*Since, the day of its establishment, National Commission of Human Rights have received 74,968 human Rights violations complaints in the current year (FY 2020-21)*"<sup>9</sup>

#### **Functions of the National Human Rights Commission are:**

- NHRC has the authority to prosecute complaints of human rights violations either suo moto or after submitting a petition.
- It has the authority to intervene in all legal cases concerning allegations of human rights violations.

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<sup>8</sup> A.D.M. Jabalpur v. Shivkant Shukla, AIR 1976 SC 1207.

<sup>9</sup> About US, National Human Rights Commission, (25 April 2021), <https://nhrc.nic.in/>.

- NHRC has the authority to visit any jail or government-run institutions to inspect the living conditions of the inmates and make recommendations respectively.
- It has the authority to examine the constitutional provisions and any civil rights laws in place, as well as to make recommendations for possible remedies.
- In Addition, NHRC conducts and supports human rights studies. It works to increase literacy across different segments of society and to raise awareness of the protections available to secure these rights.
- The Commission holds an authoritative stand when providing guidance on the protection of human rights in legislative or statutory terms.
- The NHRC has state court jurisdiction and can offer temporary relief.
- It has the authority to advise both the national and state governments on how to deter violations of human rights.
- The President of India receives the NHRC's annual report and it has to put it before each House of Parliament.

However, National Human Rights Commission has limitations too. NHRC can take any action against the government body, it has no jurisdiction among the private parties. The suggestions made by the NHRC are not binding and they cannot complain/blame the government for not implementing the same. Thus, making the statutory body less effective in power. National Human Rights Commission cannot hold jurisdiction in some specific genres like cases related to Armed Forces, service matters, cases that are anonymous, vague, or older than one year.

### **#STOP ASIANS HATE MOVEMENT**

*"An elderly Thai immigrant dies after being shoved to the ground. A Filipino-American is slashed in the face with a box cutter. A Chinese woman is slapped and then set on fire."*<sup>10</sup>The above-mentioned excerpts are examples of hate crimes that are faced by Asians in their everyday life since, the beginning of the Pandemic. The reason for such casualties is because of Covid-19 Disease. Many Americans blame Asians for the surge in Covid-19 diseases and thus, as a punishment, abuse and harass them. This can range from verbal abuse to physical assault. According to Asia Pacific Policy Planning Council, 800 Covid related hate crimes

<sup>10</sup> Sam Cabral, Covid 'hate crimes' against Asian Americans on rise, BBC News, (25 April, 2021) <https://www.bbc.com/news/world-us-canada-56218684>.

were reported in 34 Countries. The coronavirus has left the world shattered into pieces where several people blame China for the loss of their loved ones and their jobs. Not only citizens of the country, but also the government and states of all the countries have been hit with this pandemic. The lockdown created a more uproar because it led to the closing of shops, industries and markets either temporary or permanently causing loss of livelihoods.

Any kind of hate crime is not tolerated and will be reported to the Police. Some general preventions a human can take to stop hate crimes are, first of all, advocate or spread awareness among peers and employees about how humans support things like community-based activities can and also what consequences one can face if found practicing any hate crime. Another measure is to protect and support Asian that is either your employee or friend by offering him/her to go for shopping with you only. It can be for big malls to run an errand. Many hate crimes go unreported because of 2 reasons. One, that Asians are themselves scared to report. Another is that humans ignore these kinds of incidents unless it affects them. All citizens of the country are responsible for running the country with laws and rules and thus, it is the responsibility of every human to report any kind of crime that has been experienced. Some of these ways can prevent hate crimes against a particular community.

## CONCLUSION

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Human Rights are one of the key principal in Democracy because if we safeguard humans, only then we can save a country as the country is run by the people of that country. Human Rights that have been obtained from various declarations, treaties, and judiciary pronouncements have played important role in creating a more civilized society globally. Many rules and laws added in the constitution of India have been obtained from these sources only. Even though the country had myriad human rights laws in the pre-colonial period, the establishment and seriousness of one were taken only after the establishment of the Constitution of India. National Human Rights Commission is an important body that keeps checks and balances among the country and prevents the nation from spreading human violations in any kind of form. Even though the ideology of introducing NHRC was to prevent Human Violations, the limitation in power and less binding in decisions falters the role of NHRC in the country. There is a need for more Human rights laws than ever, especially since, the beginning of the pandemic. The hate crimes against a particular

community were observed and will not lessen until there are more stringent laws to safeguard the same.

