



Cover Page



HISTORY OF HUMAN RIGHTS IN INDIA

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The history of human rights in India goes back many years and shows how the country has changed in how it sees people's rights and what it values in society.

MEANING OF HUMAN RIGHTS

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. Human rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

Definition of Human rights

Dr. Justice Durga Das Basu defines "Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a 'member of human family' irrespective of any consideration. Durga Das Basu's definition brings out the essence of human rights. The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as "rights derived from the inherent dignity of the human person." Human rights when they are guaranteed by a written constitution are known as "Fundamental Rights" because a written constitution is the fundamental law of the state.

Human rights are important rights that help people feel respected and dignified. These rights make society more humane by looking after people's emotional and social well-being. This progress keeps society moving



Cover Page



forward as capable individuals work together to make society better. In a democratic society, human rights can cover many different things because people have different needs.

The Protection of Human Rights Act, 1993, in India says human rights include life, freedom, fairness and respect, as mentioned in the Constitution and international agreements. These rights are protected by laws and the Indian courts and government make sure everyone gets them.

Concept of Human Rights

Human rights are inherent entitlements possessed by individuals by virtue of being human. These rights are universally and equally applicable to all people, enduring throughout time. As stated in the quote, “All individuals are born free and equal in dignity and rights. They possess reasoning and conscience and should treat each other with a sense of solidarity.” This perspective aligns with the belief that humans hold a unique intrinsic value that distinguishes them from lifeless objects. To infringe upon a human right would signify a failure to acknowledge the inherent value of human existence.

The concept of human rights has evolved over history and has remained intertwined with legal, cultural and religious practices. Many societies have upheld principles akin to the “golden rule” – treating others as one wishes to be treated. The ancient texts of the Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran) and the Analects of Confucius exemplify some of the earliest written sources addressing questions of responsibilities, rights and duties.

Different countries ensure these rights through varying approaches. For instance, in India, these rights are enshrined in the Constitution as fundamental rights, offering statutory guarantees. Conversely, in the UK, these rights are established through legal precedent, with courts establishing various principles through case law. Moreover, international law and conventions also furnish specific safeguards for these rights.

What is the History of Human Rights in India

The history of human rights in India can be divided into three stages: Ancient, Medieval and Modern.



Cover Page



Human Rights in Ancient India

The history of human rights in India has deep roots within Indian political thinkers and philosophers, dating back to ancient civilizations.

In antiquated India, legal principles were founded on Dharma, which aimed to promote the well-being of all beings and prevent harm among them, as evident in Epics like Ramayana and Mahabharata. The Bhagavad Gita emphasises righteousness as the core of Dharma. The Upanishads regard Dharma as the fundamental underpinning of the entire universe. The Vedas and Smritis advocate the concept of “Vasudhaiva Kutumbakam,” portraying the world as a unified family. All four Vedas underscore equality and dignity for every human.

Buddha’s teachings played a significant role in safeguarding human rights. The renowned King Ashoka effectively established a welfare state for his subjects, ensuring basic freedoms and rights.

Consequently, it’s evident that ancient Indian literary works actively promoted and endorsed human rights, liberty, freedom and equality for all individuals, regardless of discrimination based on caste, creed, gender, sex or religion.

Human Rights in Medieval India

The Medieval period in India marks the era of Muslim rule. Before the Mughal rule, there were existing rights related to society, politics, culture and religion. However, with the arrival of the Mughals, the concept of human rights faced challenges. Nevertheless, during Akbar’s reign (1526-1605), significant emphasis was placed on social, religious and political rights.

Akbar introduced a religious policy called Din-E-Ilahi (divine religion), which aimed to promote secularism and religious tolerance. Moreover, religious movements like Bhakti (Hindu) and Sufi (Islamic) played a crucial role in advancing the history of human rights in India. However, these advancements were sometimes suppressed by other Mughal Emperors such as Babar, Humayun and Aurangzeb.



Cover Page



Human Rights in Modern India

The British rule in India can be seen in the Modern period. During this period, the British government of India not only restricted the freedom of its people but also built its foundation upon exploiting the masses, causing economic, political, cultural and spiritual harm to India.

After enduring colonial rule, every Indian firmly believed that the recognition, safeguarding and implementation of human rights were not only fundamental but also essential for leading a civilized life.

Key constitutional provisions in India contribute to the history of human rights in India in modern times. These include the Preamble, Fundamental Rights, Directive Principles of State Policy, recently added Fundamental Duties, reservations for scheduled castes and tribes, and special provisions for Anglo-Indians and other backward classes.

When examining human rights in relation to the Indian Constitution, it becomes evident that the Constitution incorporates nearly all the human rights outlined in various international agreements, covenants and treaties. Some of these include:

1. Universal Declaration of Human Rights, 1948
2. International Covenant on Economic, Social and Cultural Rights, 1976
3. International Covenant on Civil and Political Rights, 1976
4. Convention on the Prevention and Punishment of the Crime of Genocide, 1948
5. International Convention on the Elimination of All Forms of Racial Discrimination, 1965
6. Convention on the Elimination of All Forms of Discrimination against Women, 1979
7. Convention on the Rights of the Child, 1989
8. Convention on the Rights of Persons with Disabilities, 2006
9. In addition to these constitutional provisions, various laws have been enacted by the Indian legislature to safeguard and promote human rights. Some significant legislations introduced by the union include:
10. Protection of Human Rights Act, 1993
11. National Commission for Minorities Act, 1992
12. National Commission for Women Act, 1990



Cover Page



13. Protection of Civil Rights Act, 1995
14. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
15. Immoral Traffic (Prevention) Act, 1987
16. Bonded Labor System (Abolition) Act, 1976
17. Juvenile Justice (Care and Protection of Children) Act, 2000
18. Child Labor (Prohibition and Regulation) Act, 1986 and more.

India has also implemented numerous labour-related legislative measures to ensure social security, significantly influenced by the standards set by the International Labor Organization (ILO)

CHARACTERISTICS AND NATURE OF HUMAN RIGHTS

1.Human Rights are Inalienable - Human rights are conferred on an individual due to the very nature of his existence. They are inherent in all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.

2.Human Rights are Essential and Necessary - In the absence of human rights, the moral, physical, social and spiritual welfare of an individual is impossible. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people.

3. Human Rights are in connection with human dignity - To treat another individual with dignity irrespective of the fact that the person is a male or female, rich or poor etc. is concerned with human dignity. For eg. In 1993, India has enacted a law that forbids the practice of carrying human excreta. This law is called Employment of Manual Scavengers and Dry Latrines (Prohibition) Act.

4. Human Rights are Irrevocable: Human rights are irrevocable. They cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he is a human being. As such human rights have similarities to moral rights.



Cover Page



5. Human Rights are Necessary for the fulfillment of purpose of life: Human life has a purpose. The term “human right” is applied to those conditions which are essential for the fulfillment of this purpose. No government has the power to curtail or take away the rights which are sacrosanct, inviolable and immutable.

6. Human Rights are Universal – Human rights are not a monopoly of any privileged class of people. Human rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.

7. Human Rights are never absolute – Man is a social animal and he lives in a civic society, which always put certain restrictions on the enjoyment of his rights and freedoms. Human rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws to the individuals. As such each right has certain limitations.

8. Human Rights are Dynamic - Human rights are not static, they are dynamic. Human rights go on expanding with socio-eco-cultural and political developments within the State. Judges have to interpret laws in such ways as are in tune with the changed social values. For eg. The right to be cared for in sickness has now been extended to include free medical treatment in public hospitals under the Public Health Scheme, free medical examinations in schools, and the provisions for especially equipped schools for the physically handicapped.

9. Rights as limits to state power - Human rights imply that every individual has legitimate claims upon his or her society for certain freedom and benefits. So human rights limit the state’s power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals, 4 or in the nature of demands on the State, i.e. positive obligations of the State. For eg. Six freedoms that are enumerated under the right to liberty forbid the State from interfering with the individual.

Development of Human Rights in Contemporary India

The Constitution of India, in Part III, encompasses a range of fundamental rights accessible to Indian citizens. This approach aimed to make the Universal Declaration of Human Rights (UDHR) legally enforceable within the country. Articles 14-30 in Part III outline potential rights for citizens. Moreover, Part IV incorporates Directive Principles, offering the State supplementary suggestions to ensure the well-being of its populace.



Cover Page



Initially, the judiciary had a rigid stance in handling cases. However, they later embraced the concept of “Audi Alteram Partem” to approach cases more flexibly and introduce subjectivity. This shift is evident in the interpretation of Article 21. The following judgments will help you to understand the history and development of human rights in India in the contemporary era.

In the case of A.K. Gopalan v State of Madras, Article 21 was narrowly interpreted, almost equating the right to life with mere animal existence. Yet, the landmark case of Maneka Gandhi v Union of India expanded the scope of Article 21, linking it to Articles 14 (Right to Equality), 19 (fundamental freedoms) and 21 (Right to Life and Liberty). The concept of the Right to Life now encompasses an individual’s culture, tradition and guards against potential violations of fundamental rights.

In the case of Kharak Singh v State of UP, the inclusion of the Right to Privacy under Article 21 was debated. The petitioner contested the recording of a detained individual’s name, considering it a breach of privacy.

Similarly, in D.K. Basu v State of Bengal, a case dealing with custodial deaths, the Supreme Court established guidelines for the treatment of detainees. This case revealed that prisoners were often subjected to cruelty and abuse by the police, without any legal safeguards. The court ruled such behaviour as a violation of human rights and deemed it necessary to condemn such actions to protect detainees.

In the case of Olga Tellis v Bombay Municipal Corporation, the Right to Life was further linked to the Right to Livelihood. The argument was that livelihood significantly impacts an individual’s quality of life and should not be considered separately from the Right to Life. The court emphasized that if someone is denied the ability to earn their chosen livelihood, their life’s purpose would be undermined, leading to a violation of their rights. The rights outlined in the Indian Constitution also focus on the welfare of women and children, as evidenced by the following cases:

- In Unni Krishnan v State of AP, compulsory primary education for children was established, which is also reflected in Article 21A of the Constitution (Part III). This article guarantees free and compulsory education for children until they reach the age of fourteen.



Cover Page



- The **People’s Union of Civil Liberties v Union of India** case resulted in the immediate release of all child laborers, along with compensation for their efforts.
- In **Public at large v State of Maharashtra**, measures were taken to protect children from sexual exploitation.
 - In **State of Maharashtra v Madhukar Narayan Mandlikar**, Article 21 was interpreted differently, extending protection to the life and liberty of sex workers. The court held that even women who are labelled as having an “easy virtue” have a right to privacy, deviating from the previous ruling in *Tukaram v State of Maharashtra*, where the court ruled against the victim due to her perceived character.
 - In recent times, several cases have provided optimism about the judiciary’s commitment to upholding human rights. The landmark case of *Naz Foundation v Govt. of NCT of Delhi* stands out, declaring that criminalising consensual homosexual relationships violated fundamental rights as per the Constitution. Relying heavily on Articles 19 and 21, it argued that such laws infringed upon individuals’ privacy by suppressing their sexual orientation, forcing them into secrecy and fear.
 - This also amounted to a breach of Article 21 by denying individuals the freedom to live according to their preferences, hindering their ability to lead a fulfilling life. Additionally, the stance was discriminatory and regressive, signifying a violation of human rights. Consequently, Section 377 was struck down.
 - The *Sabarimala* case also recognised women’s Right to Religion (Article 25) and upheld their right to visit the temple. While respecting religious beliefs, the court took a middle path in its decision.
 - However, despite these advancements, India has witnessed setbacks in recent years. The situation in Jammu and Kashmir has been a grave human rights violation, inadequately addressed by the government. Revoking the region’s special status and subsequent mistreatment of its residents, including arbitrary arrests, highlighted a major issue. Even though Right to Internet is now a fundamental right and high-speed 4G Internet is expected, the region faced prolonged Internet suspension and remains limited to 2G speed, indicating subpar living conditions.
 - The Protection of Human Rights Act (PHRA) advocates for the establishment of Human Rights Commissions at both the Central and State levels. The Central Commission is granted the authority to conduct trials and make enforceable decisions. While it has made notable decisions, such as the investigation during the Godhra riots, its power has waned in recent years, with limited action despite ongoing violations. NGOs, empowered by the PHRA, have been more proactive in exposing violations and seeking justice for those affected.



Cover Page



- During the lockdown, incidents of domestic violence have surged significantly, but there has been a lack of action against the perpetrators, despite reports and statistics highlighting the issue. Police arrests made under the pretext of ‘violating COVID rules’ during the lockdown have resulted in arbitrary detentions and mistreatment of detainees. Disturbing cases have emerged, such as one in West Bengal where a man was fatally beaten by the police for going out to obtain essential items.

Journalists’ lives have also been at risk, as arrests have been justified by citing ‘national security’ and ‘public interest.’ However, no clear explanation has been provided for these arrests. These actions not only infringe upon freedom of expression but also violate the Right to Privacy. Moreover, numerous detentions are occurring under a stringent Sedition Law that has seen minimal changes since the British era. Yet, there has been minimal accountability for these human rights violations.

Conclusion

The history of human rights in India traces a path from ancient principles of Dharma to constitutional recognition of fundamental rights and directive principles.

While landmark cases have expanded interpretations, challenges remain in addressing issues like domestic violence and preserving freedom of expression.

Landmark cases like *Maneka Gandhi v Union of India* and *Naz Foundation v Govt. of NCT of Delhi* have advanced interpretations, including privacy and LGBTQ+ rights. However, challenges persist, with recent instances of domestic violence, arbitrary arrests and freedom of expression concerns. India’s journey involves striking a balance between tradition and modernity, aligning cultural heritage with global human rights standards to ensure a just and equitable society.

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Cover Page



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