

UNIVERSAL PROTECTION OF HUMAN RIGHTS- ITS EVOLUTION AND DEVELOPMENT

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INTRODUCTION

Human Rights are the basic inalienable rights relating to life, liberty, equality and dignity of the individual irrespective of his/her nationality, race, religion, sex etc., guaranteed by the Constitution or embodied in the International Convention and enforceable by courts in India.

Human Rights are sometimes called Fundamental rights or basic rights or natural rights. They are considered as Fundamental or basic rights as these rights cannot be taken away by any legislature or any act of the government and which are often set out in a Constitution. In regard to natural rights, Human Rights are not made by any legislature but they are been recognized by many bodies like United Nation which adopt them. It is also regarded as ‘common rights’ as these are the rights which all men and women in the world² would share like the common law in England. ‘All human rights for all’ and ‘the world is one family’ are concepts which have depended on the expanded meaning of Human Rights assuring full human dignity to every member of the human race in the global village. The idea behind Human Rights is to allow humankind to develop and use their human qualities like intelligence and morals to satisfy their spiritual needs. Denial of Human Rights may trigger political and social unrest –wars, hostility between nations and between groups within a nation and lead to urgent demands for a better life with larger freedom.

ORIGIN OF HUMAN RIGHTS

- **THE CYRUS CYLINDER**- Cyrus, the king of Persia conquered Babylon. He signed a charter with the people of Babylon in 539 BC which contain three points- A) It would establish racial equality. B) They would not detain soldiers of the losing party. C) They will not impose religion on the people of Babylon. Later, this charter was translated into 6 official

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languages of UN i.e. English, Chinese, French, Arabic, Russian and Spanish and has been called “The First Declaration of Human Rights.”

- **THE MAGNA CARTA, 1215**- It is known as the Great Charter and also as the ‘seed for the development of Human Rights.’ When King John went against the established norms and customs of Great Britain, the Parliament of Great Britain made him sign a charter of 63 clauses which guaranteed basic, civic and legal rights to citizens. Some important points of the charter were- A) Earlier there was no written law after the signing of the charter rule of Constitutional law originated. B) It segregated Church from the affairs of the state. C) Everyone should have Right of Inheritance and people will be free from excessive taxes. D) It talked against bribery and due process guarantees

PETITION OF RIGHTS- It was allowed by King Charles First of Great Britain in 1628. It was a Parliamentary declaration which dealt with the freedoms of people.

King Charles created expensive foreign policies for his own selfish interest which was rejected by the Parliament. After that Church and people of Great Britain made king enter into a pact which had two important points- A) No martial law would be imposed against armed forces during peacetime. B) No taxes would be levied without the consent of Parliament and no one would be arrested without a show cause notice (habeas corpus).

- **AMERICAN DECLARATION OF INDEPENDENCE, 1776**- America’s revolution for Independence from Great Britain signified many important things in the history like Right to Revolt against the government; it now focused on individual right and inspired French Revolution.
- **THE CONSTITUTION OF US, 1787**- It was adopted in Philadelphia Convention and gave the concept of Federalism and creation of different organs having power so that each organ could not encroach the power of other organs.
- **U.S BILL OF RIGHTS (1791)**- The first ten amendments in the Constitution of US i.e. the Bill of Rights limits the powers of the federal government of US and protects the Right of all citizens, residents, and visitors in American territory. Due process guarantee was included in the US constitution. No torture would be inflicted against anyone was also taken into account.

- **DECLARATION OF THE RIGHTS OF MAN AND CITIZENS OR FRENCH REVOLUTION (1789)**- It is important as National Constituent Assembly was created and came up with written laws and became a republic country. Right of Property, due process guarantee and citizens have an equal right without any discrimination was taken into consideration.
- **THE FIRST GENEVA CONVENTION, 1864**- Henry Dunant, a Swiss businessman saw the casualties of the Battle of Solferino in 1859 i.e. bodies of wounded soldiers without any medical care. He formed a committee with four other Swiss people for the treatment of soldiers in the battlefield. 16 attendees attended the first Geneva Convention and signed the Convention which included principles like- wounded soldiers would not be killed and should be provided with medical treatment without distinction to nationality and would recognize the emblem of International Red Cross as a symbol of a neutral entity.
- **UN CHARTER, 1945**- After the failure of League of Nations due to 2nd world war, delegates from 50 countries met at San Francisco to create an inter-government organization to uphold individual rights to promote peace, integrity and to prevent wars.
- **UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948**- Eleanor Roosevelt, a delegate to UN set up a commission called Human Rights Commission and gave 30 articles on Human Rights (civil, political, social and cultural rights) which was drafted and became the Universal Declaration of Human Rights and was adopted by UN on 10 December, 1948.

LEGAL NATURE OF HUMAN RIGHTS

The ICCPR and the ECHR require state parties to respect and ensure the rights of a person's subject to or within their 'jurisdiction'. Article 2 (1) of ICESCR says that states have to take steps to the maximum of their available resources to achieve progressively the full realization of economic, social and cultural rights without any discrimination. State parties are directed to adopt all necessary measures including legislative, administrative and judicial to give effect to the rights guaranteed to them in accordance with the constitutional process.

- **RELEVANCE WITH FIRST AND SECOND GENERATION THEORY-**

According to first generation theory, it is stated that state has only negative obligation towards states because it deals with civil and political rights but after these conventions, it is very clear that state also imposes positive obligations.

According to second generation theory, it is stated that state has only positive duties on states because it was dealing with economic, social and cultural aspects but it was wrong because the state also has negative obligations towards the states.

So that this theory is wrong and all positive and negative obligations contain all obligations to respect, protect and fulfill towards states.

- **NEGATIVE AND POSITIVE OBLIGATIONS**- There are three types of extraterritorial jurisdiction for the purposes of human rights law, each of which imposes a different level of obligations on the state party and the negative and positive duties also come in respect of those rights.

Positive obligation contains two types of obligations-

The obligation to Protect - It states that states have to protect individuals and groups against Human Rights abuses.

The obligation to Fulfill - States must take positive action to facilitate or to provide the security to the people for the enjoyment of basic Human Rights.

Negative Obligation contains-

The obligation to Respect- state parties must refrain from interfering or abstain from violation of enjoyment of Human Rights recognized in the covenant.

HUMAN RIGHTS IN INDIA

Human Rights enforceable by Courts in India can be classified into three categories-

- Enumerated Fundamental Rights
- Other Fundamental Rights
- Unenumerated Rights.

Enumerated Fundamental Rights means the human rights embodied in the International Covenants on human rights especially the ICCPR and which are specified as Fundamental Rights in Part III of the Constitution. Other Fundamental Rights means the human rights embodied in the International Covenants and recognized by Fundamental Rights by Courts in India even though they have not been specified as Fundamental Rights in Part III of the Constitution. Unenumerated Rights means the Human Rights which have been enumerated in the International Covenants but are neither enumerated as Fundamental Rights in the Constitution nor have been so far recognized as Fundamental Rights as Courts in India, one may, however, add that even unenumerated rights may in future as recognized as Fundamental Rights in a particular case.³

PROVISIONS FOR PROTECTION OF HUMAN RIGHTS

- **ROLE OF THE LEAGUE OF NATIONS, 1920-** The League of Nation was an intergovernmental organization established as a result of Paris Peace Conference to stop the 1st World War. Its main objectives were to ensure peace by preventing wars through collective security and to increase cooperation between states. The treaties made in the period of the League of Nations are now regarded as the two precursors of the International Treaties⁴. Because of Second World War, the League of Nations failed which led to the establishment of UN.
- **UN CHARTER-** UN is an international organization whose main focus is to maintain cooperation in international law, security, economic development and human right issues. It was established in 1945 for the “universal respect for, and observance of, Human Rights” and to take “joint and separate action” to that end without any discrimination. 193 recognized independent states became member of UN and 5 has ratified it.
- **INTERNATIONAL BILL OF HUMAN RIGHTS-** It is an informal name given to two International Treaties and one General Assembly resolution which consists of 5 core Human Rights treaties of UN in 1948 to advance the fundamental rights and to protect the basic Human Rights of all the people. These 5 core treaties are-

³DR. S.K KAPOOR, INTERNATIONAL LAW HUMAN RIGHTS 917 (17th ed. 2009).

⁴ V.K.SARKAR, PROTECTION OF HUMAN RIGHTS IN INDIA 25 (1ST ed. 2004-05).

- **Universal Declaration of Human rights (UDHR)** -It was the first legal document adopted by the UN General Assembly on 10th December 1948 in Paris for the protection of Universal Human Rights. It does not create binding international Human Rights. The provisions of UDHR were transformed into International Conventional law in the International Covenants on Human Rights i.e. ICCPR and ICESCR.
- **International Covenant on Civil and Political Rights (ICCPR) 1966 and International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966**-They are multilateral treaties adopted by UN General Assembly enforced from 1976 to respect and protect the civil and political rights of individuals and to work toward the granting of economic, social and cultural rights to Non self -governing and trust territories and individuals respectively. They are monitored by the Human Rights Committee and committee on economic, social and cultural rights respectively.

Human Rights do not exist in a vacuum because there are a number of national, regional and international bodies which monitors human rights. The framers of the Indian Constitution were influenced by the concept of Human Rights and guaranteed most of Human Rights contained in UDHR.

CIVIL AND POLITICAL RIGHTS

This table depicts relevance of civil and political rights which have been incorporated in Part III of the Indian Constitution.

Universal Declaration of Human Rights	Indian constitution
Everyone has the right to life ⁵ , liberty ⁶ and security of person.(Art.3)	Article 21
No one shall be held in slavery or servitude; slavery ⁷ and the slave trade shall be prohibited in all their forms.(Art.4)	Article 23

⁵Kilic v. Turkey ECHR 2000.

⁶Maneka Gandhi v. Union of India AIR 1978 SC 597.

⁷HajriziDzemjail et al. v. Yugoslavia CAT 2002.

Equality before Law and Non-discrimination ⁸ .(Art.7)	Article 14 and 15
Right to effective remedy(Art.8)	Article 32
Rights against arbitrary arrest, detention and right to habeas corpus(Art.9)	Article 22
Rights ex-post facto law[Art.11(2)]	Article 20(1)
Right to freedom of movement[Art.13(1)]	Article 10(1)(d)
Right of own property and not be deprived of property(Art.17)	Article 19(1)(f) (but it was omitted by the 42th amendment of constitution)
Right to freedom of thought, conscience and religion(Art.18)	Article 25(1)
Right to freedom of opinion and expression ⁹ (Art.19)	Article19(1)(a)
Right to freedom of peaceful assembly and association[Art.20(1)]	Article19(1)(b)
Right to equal access to public service[Art.21(1)]	Article16(1)
Right of social security(Art.22)	Article29(1)
Right to form and join Trade Unions(Art.23)	Article19(1)(c)

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The table depicts economic, social and cultural rights proclaimed in the UDHR have been incorporated in part IV of the Indian constitution.

Universal declaration of Human Rights	Indian Constitution
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⁸ R (Carson and Reynolds) v. Secretary of State for Work and Pensions [2010] ECHR 338.

⁹Lingens v. Austria (1986) 8 ECHR 407.

Article 23(1) Right to work, to free choice of employment ,to just and favorable conditions of work ¹⁰ etc.	Article 41
Article 23(2) Right to equal pay for equal work conditions of work etc.	Article 39(d)
Article 24(3) Right to just and favorable remuneration	Article 43
Article 25(1) Right of everyone and a standard living adequate for his and his family	Article 39(a) and 47
Article 26(1) Right of everyone and a standard of living adequate for his and his family	Article 41 and 42
Art.28 Right to proper social order	Article 38

- **1st Optional Protocol of ICCPR 1966**- it is an International Treaty adopted by UN General Assembly enforced in 1976 which establish an individual complaint mechanism for the ICCPR.UN Human Rights Committee can receive and consider complaints from individual who allege that there human rights have been violated and provide them effective remedy under Article 2 of ICCPR.
- **2nd Optional Protocol of ICCPR 1966**-It is also an international treaty,aiming at the abolition of death penalty for state parties is a side agreement of ICCPR and it entered into force in 1991.
- **UN ORGANS**- The charter established6 principles of the UN - The General assembly, theSecurity Council, The economic and social council(ECOSOC), the trusteeship council, the International Court of Justice and The Secretariat. Other UN organs that do not important human rights work include UN High Commissioner for refugees, commission on the status of women, United Nation development fund for women, United Nations children’s fund, UNAIDS.

MONITORING BODIES

- **Office of the United Nations High Commissioner for Human Rights (OHCHR)** - Its responsibility in the U.N. system is to protect and promote Human Rights. The office

¹⁰Vishaka v. State of Rajasthan AIR 1997 SC 3011.

supports the human rights components of peace keeping missions in several countries, and has many country and regional offices and centers. The High Commissioner for Human Rights regularly comments on Human Rights situations in the world and has the authority to investigate situations and issue reports on them.

- **U.N. Commission on Human Rights Replaced by Human Rights Council**- the HRC established in 2006 replaced the UN commission on Human Rights as the key independent UN intergovernmental body responsible for Human Rights.
- **Human rights committee**- The Human Rights Committee is the body of independent experts that monitors implementation of the ICCPR by its state parties. All the state parties are obliged to submit regular reports to the committee on how the rights are being implemented. The committee examines each report and addresses its concerns and recommendations to the state party in the form of “concluding observations”.
- **Sub-Commission on Prevention of Discrimination and Protection of Minorities**- It is established by commission on human rights in 1947, to undertake studies particularly in UDHR and to make recommendations to the commission concerning the prevention of discrimination and protection of racial, national and linguistic minorities.
- **National Human Rights Commission (NHRC) 1993**- It is an autonomous body which investigates the violation of Human Rights or the failures of the state or other to prevent a Human Rights violation.

INTERNATIONAL COURTS AND TRIBUNAL

- **International Courts of Justice (ICJ) 1946**-It is a principle judicial organ of UN. It settles the disputes submitted to it by states according to international law and gives advisory opinions on legal questions referred to it by duly authorized international organs and agencies.
- **International Criminal Court (ICC)**-It is an independent International organization and not a part of UN system. It mainly deals with cases of Genocide, Crimes against Humanity, War crimes committed anywhere in the world and Crime of Aggression.

- **International Criminal Tribunal for the Former Yugoslavia (ICTY)**- It is formed for the prosecution of persons responsible for serious violations of International Humanitarian law committed in the territory of the former Yugoslavia since 1991.
- **International Criminal Tribunal for Rwanda (ICTR) 1994**- It is established in order to judge people responsible for Rwandan Genocide & other serious violations of International law in Rwanda. It has jurisdictions over cases of Genocide, War crimes and Crimes against Humanity.
- **Regional courts**-These are independent coherent human rights sub-regimes made for the protection of human rights violations and it contains three principle regional human rights instruments which are ,the African charter on human and people’s rights, the American convention on human rights and the Europe convention on human rights. The regional courts are European Courts of Human Rights,African Court on Human & Peoples’Rights, Inter-American Court on Human Rights-
- **UNIVERSAL JURISDICTIONS**- It is a controversial principle in international law, where states claim criminal jurisdiction over people who has done crimes outside the boundaries of prosecuting state. It is closely related to some international norms like-
 - *Jus Cogens*-It is a fundamental principle that is accepting by the international community of states as a norm in which no derogation could be made in court. It consists of abolition of slavery and torture, right of revolution and genocide.
 - *ErgaOmnes*-It is a Latin phrase which means rights and obligations towards all”.

INTERNATIONAL CONFERENCES

- **Tehran conference(22 april-13th may, 1968)**- The first global conference on human rights were held at Tehran for marking the 20th anniversary of UDHR. This conference main goal was to review the progress in field of Human Rights since the adoption of UDHR and to formulate and prepare a program of further measures for promotion and encouragement of Human Rights.
- **Vienna conference (14th to 25th june,1993)**- This world conference was held at Vienna for specific measures design to strengthen International Human Rights instruments and their

monitoring mechanism and to improve co- ordination of UN activities for the furtherance of Human Rights. It also consider the question of establishment of (OHCHR) and promotion of all human rights and supported the making of ICC for violation of Humanitarian Law and Vienna Convention was also established for making many bodies and treaties.

IMPLEMENTATION MECHANISMS-

It is any type of obligation, procedure or process recognized by any treaty or convention for the promotion or to motivate the compliance by the state themselves for protection of Human Rights. Earlier there was nothing for protection but after establishment of UN there are plenty of treaties, conventions, and institutions to promote and protect Human Rights and to monitor the observance of states towards international obligations because state plays a vital role as it has obligations to protect, respect and fulfill Human Rights obligations.

There are three types of Human Rights mechanism-

- **CHARTER BASED MECHANISM**-These is the mechanism which derives their establishment from provisions contained in the Charter of the UN. They work for unlimited audience by majority voting and are mandatory on everyone.

Human Rights Council- It is the current charter based mechanism including universal periodic review working group and advisory committee. Earlier, there was Human Rights Commission(1947) established by General Assembly but due to its selective nature it has been removed and on 15th march 2006 Human Rights council has been formed by General Assembly resolution for strengthening the promotion or protection of Human Rights globally. There are 47 seats filled by statemembers of this council elected for 3 years terms who meets in Geneva every year 3 times for sessions and discuss the sessional reports made by them on a particular agenda and submit it to General Assembly.

Universal periodic review working group- The General Assembly resolution which mandates a universal periodic review of each state's fulfillment of its Human Rights obligations and commitments. It is a functional body of OHCHR which review the reports in three sessions per year and in each session 16 countries are reviewed.

- **INDIVIDUAL TREATY BODY MECHANISMS**-These is the bodies and committees of experts created to monitor government's implementation of specific Human Rights conventions. In current mechanism, complainants can now bring claims to the UN for the violations of their rights contained in the nine so-called "core" Human Rights treaties. The nine treaties consist-
 - The Human Rights Committee sees implementation of the International Covenant on Civil and Political Rights (ICCPR).
 - The Committee on Economic, Social and Cultural Rights (CESCR) monitors complaints with the International Covenant on Economic, Social and Cultural Rights (ICESCR).
 - The Committee on the Elimination of Racial Discrimination (CERD) oversees implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).
 - The Committee on the Elimination of Discrimination against Women (CEDAW) monitors compliance with the Convention on the Elimination of All Forms of Discrimination against women
 - The Committee against Torture (CAT) sees complaints of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.
 - The Committee on the Rights of the Child (CRC) monitors compliance with the Convention on the Rights of the Child and its two protocols.
 - The Committee on Migrant Workers (CMW) oversees implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).
 - The Committee on the Rights of Persons with Disabilities (CRPD) monitors compliance with the International Convention on the Rights of Persons with Disabilities (ICRPD)
 - The Committee on Enforced Disappearances (CED) monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)

- **APPOINTMENT OF SPECIAL RAPPORTEURS**-The HRC has responsibility for the special procedures, including those originally established by the Commission on Human Rights. There are many countries which don't submit their reports so HRC make team of

special Rapporteurs, special representatives, Experts and working groups to go there and see the conditions and submit a report on specific Human Rights issues of that country to HRC because it is mandate in every one year.

SUGGESTIVE MEASURES AND CONCLUSION-

Human Rights education must be an integral part of general public learning then only they will be at a place to know what their rights are and how to utilize them. Article 13(1) of ICESCR and article 51A (1) of the Indian Constitution both puts a mandate of Human Rights education for making people aware. To check the enforcement of rights, there should be implementation body at each and every level so that the activities of those persons who perpetrate human right violations would be exposed.

The whole world is indulged in making provisions for the Universal Protection of Human Rights but still, the provisions written on paper has not met with the practical life practice because of lacking in implementation mechanism, bribery, corruption and lack of knowledge. We all should together to put an end to Human Rights abuses and to create an environment in which they will be respected in the future.