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## Human Rights & Indian Constitution

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### **Abstract:**

*Human Rights are inherent, inalienable, basic natural rights without which no human can live as human. It's a universal concept, derived from natural law and not conferred by any society or State. All rights that essential for the maintenance of human dignity may be called as human rights. The main aim behind it is to create suitable environment for development. It is a live concept covering new areas day by day. On 10<sup>th</sup> Dec.1948 Universal Declaration of Human Rights was made, and it is a unique landmark in the human rights development. The Constitution of Independent India came into force on 26th January, 1950. Human rights in the Indian Constitution are divided into two separate parts. Part III of the constitution houses the 'Fundamental Rights', while Part IV of the constitution contains the Directive Principles of State Policy. Article 14 of the Constitution of India recognizes the principle of equality. Right to life with dignity is recognised by Art.21. Constitution upholds the human rights of women but still women have been socially, economically, psychologically and sexually exploited from ancient times. Constitution also recognizes freedom of expression, movement, freedom of religion, minority rights, free legal aid etc. As per Article 32 of the Constitution, the Indian Judiciary has given important decisions upholding the human rights guaranteed under the Constitution of India like, Right to education, right of arrestee, right to compensation, food, clothing and shelter etc.*

**Key words:** Human rights, human dignity, State, Constitution, Fundamental rights, Universal Declarations, Supreme Court of India, Violations and Protection of rights.

Human Rights are two simple words but when we put them together they constitute very foundation of human life. Human being can't live a dignified life without Human Rights. Human Rights are inherent, inalienable, basic natural rights without which no human can live as human. Human right is a universal concept. They derived from natural law and cannot be conferred by any society or state. All rights which are essential for the maintenance of human dignity may be called as human rights. All legal rights are human rights but all human rights are not legal rights.

Mahatma Gandhi has rightly said that the “elementary necessities of life should be available to all as God’s air and water. Their monopolization by country, or group of persons would be unjust”. All claims of human being can not be called as Human Rights but only those which rights are essential for development of person can be called as Human Rights. Human Rights concept is not only confined with mere protection from autocratic power of State but the main aim behind it is to create suitable environment for development. Human Rights are easily gets violated where rule of law is non-exist and media is restricted. Denial of human rights sows the seeds of violence and conflict between societies and violence is the killer of human rights. Human Right is a live concept covering new areas day by day.

After a massive disaster of humanity committed during the World War II, people wanted to know about the human rights possessed by them. On 10<sup>th</sup> Dec.1948 Universal Declaration of Human Rights was made, there after various International Human Right Instruments such as International Covenants, Regional Human Right Treaties, National Constitutions, Legislation’s and even judicial pronouncement

were made. The Universal Declaration of Human Rights was adopted by the General Assembly of United Nations on 10<sup>th</sup> December, 1948. It is a unique landmark in the human rights development. Article 1 of Universal Declaration of Human right says “All beings are born free and equal in dignity and rights”.

The Constitution of Independent India came into force on 26<sup>th</sup> January, 1950. Human rights in the Indian Constitution are divided into two separate parts. Part III of the constitution houses the ‘Fundamental Rights’, which include the right to life, the right to equality, the right to free speech and expression, the right to freedom of movement, the right to freedom of religion, which in conventional human rights language may be termed as civil and political rights. Part IV of the constitution contains the Directive Principles of State Policy, which include all the social, economic and cultural rights, such as the right to education, the right to livelihood, the right to health and housing<sup>1</sup>. Justice, social, economic and political is the constitutional aim proclaimed in the preamble of the Constitution of India which contains the requisite guidelines and provides for the infrastructure for attaining it<sup>2</sup>.

The essence of justice lies on the principle of equality. Hence Article 14 of the Constitution of India recognizes the principle of equality. Equality is basic human rights. Constitution of India provides that, no person shall be discriminated only on the ground of religion, race, caste, sex, place of birth. All persons should be treated equally. But it is unfortunate that some sections of the society are deprived of the benefits of basic rights at par with others, due to lack of education and ignorance which ultimately results into violation of their rights.

Right to life with dignity is the basic human right acquired by all from birth. It is also recognised by Art.21 of the

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<sup>1</sup> Kothari, J, 2004, Social Rights and the Indian Constitution, [www.escrnet.org/usr\\_doc/kothari\\_article2.doc](http://www.escrnet.org/usr_doc/kothari_article2.doc)

<sup>2</sup> Abichandani, R.K, 2003, “Obstacles to Justice and the Suffering Humanity”, <http://gujarathighcourt.nic.in/articles/accesstojustice.htm>

Constitution of India. But the ground reality is different. We are bound to say that it is not available to many citizens of India, especially people living in tribal and remote areas as they are not able to fulfill their basic needs like, potable water, food, health assistance etc. due to poverty, illiteracy & ignorance. They never think about the good and bad effects of the acts done by them and they just follow anything even if it goes against their interest<sup>3</sup>. It is the responsibility of State to provide basic amenities to all its citizens. But due to scarcity of funds every government has its own limitations. Hence there is violation of the right to life with human dignity.

All human rights are useless unless the right to education is recognised and provided to all, because until a person becomes literate he can't understand what right he possesses. The right to education is not exercised by downtrodden people because they are unaware of the importance of education. The schools are running on papers without giving effects to given purposes. As rightly observed by John Adams, "the preservation of means of knowledge among the lowest rank is of more importance to the public than all the property of all rich men in the country". Article 21 A was added in the Constitution of India by the 86<sup>th</sup> Constitutional Amendment Act 2002. Though the amendment provides about giving educational right of children as a fundamental right, it's not truly working in remote and tribal areas of the country.

Article 24 of the Constitution provides that "no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment"<sup>4</sup>. Children need special protection because of their tender age and physique, mental immaturity and incapacity to look after themselves. Various Laws provide for the prohibition of child labour and their exploitation. It seems that poverty is the basic reason which compels parents of the child, despite of their unwillingness, to get it employed; hence instead of taking

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<sup>3</sup> Vyas, N.N, 1980, Indian Tribes in Transition, Jaipur, Rawat Publications

<sup>4</sup> Acharya, N.K, 2013, Constitution of India, Hyderabad, Asia Law House

education children are engaged in different types of work. Migration to urban areas for earning bred by the parents, makes children vulnerable to be exploited as cheap labour. Their inability to understand the nature and consequences of their act they are easily exploited by the anti-socials.

Indian Constitution upholds the human rights of women. It provides equality right to women. Special provisions for them, prohibition of traffic of women, maternity benefit, respect for women etc. but they are placed at various disadvantageous positions due to gender difference and bias. Indian society is a tradition bound society where women have been socially, economically, psychologically and sexually exploited from ancient times. Maximum violations of human rights are made against women. For e.g. women workers are paid less than the man gets for daily work. Again due to lack of antenatal and intranatal care and knowledge regarding it, unfortunately substantial numbers of women belonging to weaker sections of the society die during pregnancy and labour. The physical cruelty of women is common in our society.

Right to livelihood is not expressly guaranteed under fundamental rights of the Constitution. The Employment Guarantee Scheme is implemented for guaranteed work but still due to corruption in implementation of the scheme thousand's families migrates every year in search of work in urban areas. They get work in urban areas but at the same time they have to face many problems after the migration to hundreds of kilometer away from home. As entire families migrate, they can make little or no investment in the education of the children, improving the productivity of the land or developing other skills.

As per Article 39 of the Constitution, it is the duty of the state to provide free legal aid to the poor and needy person to maintain equality in the case of access to the justice. Legal Aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an

authority. The Government is rightly providing legal aid to the poor & needy whenever they demand it. The problem is that the common man for whom it is made available, majority of them are unaware of such concept of free legal aid.

The Judiciary is the cornerstone of an effective legal system. It is considered the state organ best able to uphold the Rule of Law or the idea that all persons are treated equally before the law. As per Article 32 of the Constitution, the Indian Judiciary has given important decisions upholding the human rights guaranteed under the Constitution of India. *Gaurav Jain v Union of India*<sup>5</sup> - Child born to prostitutes should not be kept in separate schools and hostels. Children however should be separated from their parents. *Unnikrishnan v State of Andhra Pradesh*<sup>6</sup> - Right to education. *Zahira V State of Gujarat*<sup>7</sup> Woman witness threatened. *D. K. Basu V West Bengal*<sup>8</sup> the Supreme Court laid down the procedure of arrest to be followed by the police. *Chairman, Railway Board V Chandrima Das*<sup>9</sup> compensation was awarded to rape victim. *Municipal Corporation Delhi V Female Workers*<sup>10</sup> (Muster Roll) Maternity Benefit was extended to daily wages workers. In *Manager, St. Thomas U.P. School v. Commr. and Secy. to General Education Deptt.*<sup>11</sup> it was held that a school established by a single philanthropic individual with his own means can also be treated as a minority institution. Indian Supreme Court has reiterated in several of its decisions that the Right to Life guaranteed in Article 21 of the constitution in its true meaning includes the basic right to food, clothing and shelter<sup>12</sup>.

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<sup>5</sup> All India Reporter 1990 Supreme Court 292

<sup>6</sup> All India Reporter 1993 Supreme Court 2178

<sup>7</sup> (2004) 4 Supreme Court Cases 158

<sup>8</sup> All India Reporter 1985 Supreme Court 628

<sup>9</sup> (1997) 1 Supreme Court Cases 416

<sup>10</sup> All India Reporter 2000 Supreme Court 1274

<sup>11</sup> Narayana, S. 2002, "Human Rights — Safeguards, Constitutional Provisions and Legislative Measures and Their Adequacy"

<http://www.ebcindia.com/lawyer/articles/604.htm>

<sup>12</sup> Kothari, J, 2004, Social Rights and the Indian Constitution, [www.esrc-net.org/usr\\_doc/kothari\\_article2.doc](http://www.esrc-net.org/usr_doc/kothari_article2.doc)

In India, human right now days is a burning issue. The act passed to protect human rights i.e. Protection of National Human Rights Act, 1993 was passed very recently with a view to prevent human rights violations. But this Act has also proved to be deficient in some cases especially in cases relating to violation of human rights by armed forces. It is very necessary to protect the interests of people like SC, STs, etc. because these people form the vulnerable section of the society<sup>13</sup>. "All humanity is one undivided and indivisible family, and each one of us is responsible for the misdeeds of all others. I cannot detach myself from the wickedest soul." Mahatma Gandhi.<sup>14</sup>

## **Conclusion & Suggestions**

The Indian Constitution through its Part III & Part IV provides various essential human rights in the form of Fundamental Rights & Directive Principles. Indian Government has taken number of efforts like establishment of National Human Rights Commission, Judiciary has also has a great contribution in the promotion & protection of human rights in India. However the lack of implementation of policies properly has become an obstacle in protection of human rights. Hence massive human rights violation is a burning issue persisting in India from years together.

Following may be some suggestions for the promotion & protection of human rights in India.

- 1) Right to life with human dignity can be given only when basic needs like, potable water, food, health assistance will be made available to every person at a cost that they can afford.

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<sup>13</sup> Swarup M, 2010, "Human-Rights-Of-Vulnerable-Sections"<http://www.legalserviceindia.com/article/I431-.html>

<sup>14</sup> Chaudhary T, 2013, "Human Rights Lawyers in India"  
<http://www.legalservicesindia.com/law-india/Human-Rights-law-in-India.htm>

- 2) To prevent atrocities in custodies, the police officials should be made aware of human rights of arrestees.
- 3) The most important aspect is to educate the people. Only opening of schools is not enough, it requires sincere effort stakeholders.
- 4) Legislatures should not only pass the legislations, but it should be implemented effectively, for prevention of violation of human rights.
- 5) Legal surveys should be made periodically to know the nature of violation of human rights and its prevention.
- 6) Legal literacy and Legal awareness camps should be arranged in remote and tribal areas for making them aware of the rights they possess.
- 7) Communication facilities should be increased in remote and tribal areas, which will give downtrodden people an opportunity to walk with developments made in the society.