

HUMAN RIGHTS IN INDIA: A STUDY

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Abstract

The Human Rights and Fundamental Rights are sections of the Constitution of India that provides people with their rights. These Fundamental Rights are considered as basic human rights of all citizens, irrespective of their gender, caste, religion or creed. etc. These sections are the vital elements of the constitution, which was developed between 1947 and 1949 by the Constitution of India. There are six fundamental rights in India. They are Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, and Right to Constitutional Remedies. Right to Equality ensures equal rights for all the citizens. The Right to Equality prohibits inequality on the basis of caste, religion, place of birth, race, or gender. It also ensures equality of opportunity in matters of public employment and prevents the State from discriminating against anyone in matters of employment on the grounds only of religion, race, caste, sex, descent, place of birth, place of residence or any of them. Right to freedom provides us with various rights. These rights are freedom of speech, freedom of expression, freedom of assembly without arms, freedom of movement throughout the territory of our country, freedom of association, freedom to practice any profession, freedom to reside in any part of the country. However, these rights have their own restrictions. Right against Exploitation condemns human trafficking, child labor, forced labor making it an offense punishable by law, and also prohibit any act of compelling a person to work without wages where he was legally entitled not to work or to receive remuneration for it. Unless it is for the public purpose, like community services or NGO work. Right to Constitutional Remedies ensures citizens to go to the supreme court of India to ask for enforcement or protection against violation of their fundamental rights. The Supreme Court has the jurisdiction to enforce the Fundamental Rights even against private bodies, and in case of any violation, award compensation as well to the affected individual.

Keywords: *Human Rights, Religious violence, Caste Related Issues, Woman's Rights, inequality*

Introduction

India took active part in drafting of the Universal Declaration on Human Rights. The Indian delegation to the United Nations made important contributions in drafting of the Declaration, especially highlighting the need for reflecting gender equality. India is a signatory to the six core human rights covenants, and also the two Optional Protocols to the Convention of the Rights of the Child. Since inception, the Indian Constitution incorporated most of the rights enumerated in the Universal Declaration in two parts, the Fundamental Rights and the Directive Principles of State Policy, that covered almost the entire field of Universal

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Declaration of Human Rights. The first set of rights are enunciated in Articles 2 to 21 of the Declaration and incorporated under the **Fundamental Rights** - Articles 12 to 35 of the Constitution. These include the Right to Equality, Right to Freedom, Right Against Exploitation, Right to Freedom of Religion, Cultural & Educational Rights, Saving of Certain Laws and Right to Constitutional Remedies. The second set of rights enunciated in Articles 22 to 28 of the Declaration is incorporated under **Directive Principles of State Policy** - Article 36 to 51 of the Constitution. These include 'right to social security, right to work, to free choice of employment, to just and favourable conditions of work and protection against unemployment, right to equal pay for equal work, right to existence worthy of human dignity, right to rest and leisure, right to freely participate in the cultural life of the community, right to free & compulsory education, promotion of welfare of people, equal justice & free legal aid and the principles of policy to be followed by the State. 'However, respect for human rights as a part of its social philosophy has existed in the Indian ethos for a long time. India introduced The Protection of Human Rights Act, 1993 - External website that opens in a new window which provided for the constitution of a National Human Rights Commission at the Union level, which steers State Human Rights Commission in States and Human Rights Courts for better protection of Human Rights and for matters connected therewith or incidental thereto. The National Human Rights Commission and the State Human Rights Commissions are now very much a part of the life of the nation and, increasingly, of consequence to the quality of governance in the country. Awareness of the rights guaranteed by the Constitution, and included in the international instruments to which India is a State party, has increased dramatically in the country.

All human beings are born with equal and inalienable rights and fundamental freedoms.

Human rights are based on dignity, equality and mutual respect – regardless of your nationality, your religion or your beliefs.¹

Your rights are about being treated fairly and treating others fairly, and having the ability to make choices about your own life. These basic human rights are:

- **Universal** They belong to all of us – everybody in the world²
- **Inalienable** They cannot be taken away from us
- **Indivisible and interdependent** Governments should not be able to pick and choose which are respected³
- **Human Rights can be violated** Although they are inalienable, they are not invulnerable. Violations can stop people from enjoying their rights, but they do not stop the rig⁴

Religious violence

Communal conflicts between religious groups (mostly between Hindus and Muslims) have been prevalent in India since around the time of its independence from British Rule. Communal riots took place during the partition of India between Hindus/Sikhs and Muslims where large numbers of people were killed in large-scale violence.⁵The 1984 Anti-Sikh Riots was a four-day period during which Sikhs were massacred by members of the secular-centrist Congress Party of India; some estimates state that more than 2,000 were killed. Other incidents include the 1987 Hashimpura massacre during communal riots in Meerut, 1992 Bombay riots. The killing was done at the behest of Congress leaders such as Jagdish Tytler.

Congress Party officials provided assailants with voter lists, school registration forms, and ration lists. Nanavati Commission also found out that several Congress leaders were behind this lynching. ⁶Former prime minister Manmohan Singh apologized in the Lok Sabha for the involvement of Congress stalwarts in the Lok Sabha. According to the 2011 WikiLeaks cable leaks, the United States was convinced of Indian National Congress complicity in the riots and called it "opportunism" and "hatred" by the Congress government of Sikhs. According to official figures, 2002 Gujarat riots ended with 1,044 dead, 223 missing, and 2,500 injured. Of the dead, 790 were Muslim and 254 Hindu. Unofficial sources estimate that up to 2,000 people died. There were instances of rape, children being burned alive, and widespread looting and destruction of property. The Chief Minister at that time, Narendra Modi, has been accused of initiating and condoning the violence, as have police and government officials who allegedly directed the rioters and gave lists of Muslim-owned properties to them. However, Narendra Modi was acquitted of such charges by none less than the honorable Supreme Court of India. ⁷The incident that resulted in the riots was the Muslim mob attack on a train full of Hindu pilgrims in the Godhra Train Burning, where 58 Hindus were killed. Lesser incidents plague many towns and villages; representative was the killing of five people in Mau, Uttar Pradesh during Hindu-Muslim rioting, which was triggered by the proposed celebration of a Hindu festival. ⁸ Other such communal incidents include the 2002 Marad massacre, which was carried out by the militant Islamist group National Development Front, as well as communal riots in Tamil Nadu executed by the Islamist Tamil Nadu Muslim Munnetra Kazaghham against Hindus. ⁹

Caste Related Issues

Contemporary India, however, has seen the influence of caste start to decline. This is partly due to the spread of education to all castes which has had a democratising effect on the political system. However, this "equalising" of the playing field has not been without controversy. ¹⁰ The Mandal Commission and its quotas system has been a particularly sensitive issue. It has been argued by Professor Dipankar Gupta that the role of castes in Indian elections have been overplayed. More recently there has been a flux in caste politics, mainly caused by economic liberalisation in India ¹¹. This upsurge in lower-caste empowerment was accompanied in some regions by a spike in the level of corruption. This was partly due to lower caste perceiving development programs and rule of law as tools used by the upper caste to subjugate lower castes. Amnesty International says "it is the responsibility of the Indian government to fully enact and apply its legal provisions against discrimination on the basis of caste and descent. ¹² Denotified tribes of India, along with many nomadic tribes collectively 60 million in population, continue to face social stigma and economic hardships, despite the fact Criminal Tribes Act 1871, was repealed by the government in 1952 and replaced by Habitual Offenders Act (HOA) (1952), as effectively it only created a new list out of the old list of so-called "criminal tribes. These tribes even today face the consequences of the 'Prevention of Anti-Social Activity Act' (PASA), which only adds to their everyday struggle for existence as most of them live below poverty line. National Human Rights Commission and UN's anti-discrimination body Committee on the Elimination of Racial Discrimination (CERD) have asked the government to repeal this law

as well, as these former "criminalised" tribes continue to suffer oppression and social ostracization at large and many have been denied SC, ST or OBC status, denying them access to reservations which would elevated their economic and social status.¹³

Freedom of expression

According to the estimates of Reporters Without Borders, India ranks 122nd worldwide in 2010 on the press freedom index (down from 105th in 2009). The press freedom index for India is 38.75 in 2010 (29.33 for 2009) on a scale that runs from 0 (most free) to 105 (least free). In 2014 India was down ranked to 140th worldwide (score of 40.34 out of 105) but despite this remains one of the best scores in the region. The Indian Constitution, while not mentioning the word "press", provides for "*the right to freedom of speech and expression*" (Article 19(1) a). However this right is subject to restrictions under subclause (2), whereby this freedom can be restricted for reasons of "sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt of court, defamation, or incitement to an offence". Laws such as the Official Secrets Act and Prevention of Terrorism Act (POTA) have been used to limit press freedom. Under POTA, person could be detained for up to six months before the police were required to bring charges on allegations for terrorism-related offenses. POTA was repealed in 2004, but was replaced by amendments to UAPA.¹⁴ The Official Secrets Act 1923 is abolished after right to information act 2005. For the first half-century of independence, media control by the state was the major constraint on press freedom. Indira Gandhi famously stated in 1975 that All India Radio is "a Government organ, it is going to remain a Government organ..." With the liberalisation starting in the 1990s, private control of media has burgeoned, leading to increasing independence and greater scrutiny of government. Organisations like Tehelka and NDTV have been particularly influential, in bringing about the resignation of powerful Haryana minister Venod Sharma. In addition, laws like Prasar Bharati act passed in recent years contribute significantly to reducing the control of the press by the government.¹⁵

LGBT rights

Until the Delhi High Court decriminalised consensual private sexual acts between consenting adults on 2 July 2009, homosexuality was considered criminal as per interpretations of the ambiguous Section 377 of the 150-year-old Indian Penal Code (IPC), a law passed by the colonial British authorities. However, this law was very rarely enforced.¹⁶ In its ruling decriminalising homosexuality, the Delhi High Court noted that existed law conflicted with the fundamental rights guaranteed by the Constitution of India, and such criminalising is violative of Articles 21, 14 and 15 of the Constitution. On 11 December 2013, homosexuality was again criminalized by a Supreme Court ruling. On 6 September 2018, a five judge constitutional bench of the Supreme Court of India, in a landmark judgement, decriminalized homosexuality and banned discrimination based on sexual orientation.¹⁷

By State

Assam

A Human Rights Watch report notes that journalists and human rights activists have been arrested for falsely reporting on human rights abuses. Assam continues to be one of the

forefront states where the claims of human rights abuses have been committed by India. Resultant secessionist and pro-independence movements have intensified the political situation, with widespread allegations of human rights abuses being committed by Indian security forces yet without any concrete proofs for allegations. Freedom House stated in their 2013 report on India that journalists in rural areas and regions coping with insurgencies — including Assam — are vulnerable and face pressure from both sides of the conflicts.¹⁸

Punjab

From 1984 to 1994, the state of Punjab in northern India was engaged in a power struggle between the militant secessionist Khalistan movement and Indian security forces. The Indian government responded to the escalating Punjab insurgency by launching Operation Blue Star in 1984, storming the Harmandir Sahib, or Golden Temple complex in Amritsar—the center of Sikh religious and spiritual life, where some militant groups had retreated.¹⁹ The Operation was controversial and resulted in death of hundreds of civilians, militants and soldiers. After this incident, Sikh bodyguards assassinated Prime Minister Indira Gandhi, further violence ensued. The aftermath of these events were felt for more than a decade. According to a Human Rights Watch report, state security forces adopted “increasingly brutal methods to stem the insurgency, including arbitrary arrests, torture, prolonged detention without trial, disappearances and summary killings of civilians and suspected militants”. Militant organizations responded with increased violence aimed at civilians, state security forces, and Sikh political leaders deemed to be negotiating with the government.²⁰

Jammu and Kashmir

A soldier guards the roadside checkpoint outside Srinagar International Airport in January 2006. Several international agencies and the UN have reported human rights violations in Jammu & Kashmir. In a press release the OHCHR spokesmen stated "The Office of the High Commissioner for Human Rights is concerned about the recent violent protests in Indian-administered Kashmir that have reportedly led to civilian casualties as well as restrictions to the right to freedom of assembly and expression."²¹ A 1996 Human Rights Watch report accuses the Indian military and Indian-government backed paramilitaries of "commit[ing] serious and widespread human rights violations in Kashmir." One such alleged massacre occurred on 6 January 1993 in the town of Sopore. The Human Rights Watch also wrote of other regular human rights abuses being committed by the Indian forces including "using rape as a means to punish and humiliate communities."²² *TIME Magazine* described the incident as such: "In retaliation for the killing of one soldier, paramilitary forces rampaged through Sopore's market setting buildings ablaze and shooting bystanders. The Indian government pronounced the event 'unfortunate' and claimed that an ammunition dump had been hit by gunfire, setting off fires that killed most of the victims." In addition to this, there have been claims of disappearances by the police or the army in Kashmir by several human rights organisations. Many human rights organisations such as Amnesty International and the Human Rights Watch (HRW) have condemned human rights abuses in Kashmir by Indians such as "extra-judicial executions", "disappearances", and torture; the "Armed Forces Special Powers Act", (AFSPA) which "provides impunity for human rights abuses and fuels cycles of violence."²³ The AFSPA grants the military wide powers of arrest, the right to shoot to kill,

and to occupy or destroy property in counterinsurgency operations. Indian officials claim that troops need such powers because the army is only deployed when national security is at serious risk from armed combatants. Such circumstances, they say, call for extraordinary measures." Human rights organisations have also asked Indian government to repeal the Public Safety Act, since "a detainee may be held in administrative detention for a maximum of two years without a court order.". One 2008 report determined that Jammu & Kashmir, was 'partly Free',²⁴

Other Human Rights Violations

Conflicts such as Anti-Bihari sentiment have sometimes escalated to violence between communal groups, despite government and police efforts to mediate the situation. Invasive methods like 'narcoanalysis' (controlled anaesthesia), Brain mapping, and lie detector tests were once commonly permitted by Indian courts for crime investigation. Even though according to Indian constitution "nobody may be made a witness against himself". Concerns regarding human rights violations in conducting deception detection tests (DDT)s were raised long back and the National Human Rights Commission of India had published Guidelines in 2000 for the Administration of Polygraph tests. However, only few of the investigating agencies were seen to follow these guidelines. However, on May 5, 2010 the Supreme Court in India declared brain mapping, lie detector tests and narcoanalysis to be unconstitutional, violating Article 20 (3) of Fundamental Rights.²⁵ These techniques cannot be conducted forcefully on any individual and requires consent for the same. When they are conducted with consent, the material so obtained is regarded as evidence during trial of cases according to Section 27 of the Evidence Act. Inadequate investigation and hasty rulings by courts have caused some wrongful convictions of innocent people causing them to languish in jail for many years. For instance, the Bombay high court in September 2009 asked the Maharashtra government to pay ₹ 100,000 as compensation to a 40-year-old man who languished in prison for over 10 years for a crime he didn't commit.²⁶

Muslim Woman's Rights in India

One of the vital concerns in India is the non-discrimination between genders. Muslim Woman in India are one of the major groups deprived of their equality within the Human rights framework. Their hardship has derived from cultural and religious reasons. This includes being negatively stereotyped within religion, incorporating both Muslim and even Judaic-Christian beliefs.²⁷

Brief history of Muslim Law in India

Muslim law in South Asia is different from Islamic law of Sharia. Shariat law (shari'a or fiqh) law is seen as a body of religious rules that are set out to manage the lives, in all aspects, of every Muslim. However, in India there are only a few of these laws that are enforced. This is due to India's laws having been modified by traditional English common law and equitable principles since the beginning of the British imperialist regime.²⁸ It is now called *Anglo-Muhammadan law*. Although Islamic law is sacred, due to modern political and social developments sacred interpretation of classic Islamic law's in India have changed in response to societal requirements. The Constitution of India outlines the Fundamental rights

in India to equality under Article 14. Article 15 covers freedom from discrimination which includes that of gender equality. However, Article 25 justifies the freedom of religion which safeguards the religious rights of Muslim communities, in turn Muslim Personal Law, which is discriminatory between Muslim men and woman. The continuance of discrimination within Muslim personal law contravenes that set out in India's constitution, notably articles 14 and 15.²⁹

Personal law and Inequality

Even though there is formal recognition of rights within the constitution, Muslim women experience gender in-equalities in practice within the sphere of personal law. Personal law enables the continuing practice of giving a lower status to Muslim women in India.³⁰ Which raises the need for legal reform. This is hard to achieve because often uniformity of family laws are often upheld by staunch supporters of religious traditions, who will ensure that all efforts to keep traditional Muslim practices within the conformity of Islamic ideals. The courts will also favor to not let constitutional rights intrude in personal law. In the High Court case *Harvinder Kaur v. Harmander Singh Choudhary*, it was rejected that personal law was discriminatory towards Gender inequality in India and stated that the "...introduction of Constitutional law into the home is most inappropriate".³¹ Essentially depriving all woman in India the fundamental rights within the constitution. Personal law discrimination was on the other hand was positively recognized in the case of *Amina*, here the court noted that Muslim personal law is discriminatory towards Muslim women, and as such is unconstitutional. Islamic law does however provide for certain rights. One example can be seen within a matrimonial deed, or *Nikahnama*. A *Nikahnama* can cover certain rights which pertain to polygamy and the woman's right to enforce a divorce proceeding. This could even include shares in property rights. Muslim law for financial support due to divorcement has been codified In the Muslim Women's (Protection of Rights on Divorce) Act 1986. Nevertheless, these rights remain minimal.³² For example, the divorced wife can only receive three months of financial support. Also the husband of the divorced wife only has to pay child support for 3 months if that child is born within the three-month period, but if they had a child before that then the husband is not obligated to pay any support. Woman's rights in these matters are often not practiced due to Muslim women's lack of education toward their rights within the Islamic community.³³ Also Muslim woman in India are not protected when it comes to monogamous marriages, but Muslim men are, protected under the Indian Penal Code. The Human Rights Commission (HRC) under the International Covenant on Civil and Political Rights (ICPPR) highlighted religious based personal laws In India's report in 1997. It was informed that the Human Rights framework towards multiculturalism should be a remedy when addressing clearly biased provisions and practices towards Muslim women in Islamic legal community.³⁴

Conclusion

It is the duty of every nation to create such laws and conditions that protect the basic Human rights of its citizens. India being a democratic country provides such rights to its citizens and allows them certain rights including the freedom of expression. These rights, which are called 'Fundamental Rights' form an important part of the Constitution of India.

These rights are fundamental in three different ways.

- **First**, these are basic human rights. As human beings we have the right to enjoy these rights.
- **Secondly**, our Constitution gives us these fundamental rights and guarantees. These rights are necessary for the citizens of our country to act properly and live in a democratic manner.
- **Thirdly**, the procedure for the effective enforcement of these guaranteed Fundamental Rights has been mentioned in the constitution itself. Every citizen of India has the right to move to a court of law if he/she is denied these rights. The Constitution is there to safeguard her/his rights.

The importance of the human rights movement is that it tells people that one cannot call a society a good and a just society until all its citizens enjoy these human rights. The human rights laws aims at eliminating unjust discrimination against any human being. The concept of Human rights is based on the principle of human solidarity, cooperation, and development and access of all to the common heritage of humankind. The impact and importance of human rights are so deep and strong that the constitutions of India, Indonesia, Costa Rica and other countries incorporated many of the provisions of rights codified in the said Declaration in their respective constitutions. This may be treated as landmark the history of progress of civilization. The Charter of human rights exerts tremendous pressure on all political authorities. Strong vigilance is noticed throughout world against the violation of human rights.

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