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## **Human Rights and Democracy: In Indian Contextual Analysis**

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### **Abstract:**

Human rights are essential for the overall development of individuals. The Constitution of India makes provisions for basic rights also known as Fundamental Rights for its citizens. The concept of Human Rights may be difficult to define but impossible to ignore. The Human Rights are concerned with the dignity of the individual-the level of self esteem that secures personal identity and promotes human community. Democracy and the protection of human rights generally go together, but not in India. India is an outlier in the cross-national research that aims to explain human rights performance. The concept of human right is not a new phenomenon, 'Human Rights' is a twentieth century term but its notion is as old as humanity. It has gone through various stages of development and has taken long time to become the concept of present day. There is a close relation between globalized democracy and human rights. As human rights are viewed as a precondition for leading a dignified human existence, they serve as a guide and benchmark for legislation.

**Key Words:** Human Rights, Constitution, Democracy,Dignity, India

### **1. Introduction:**

It is necessary for human beings to evaluate the meaning and definition of the concept of human right. Human Rights are universal, and they apply equally to all human beings whatever their inborn or acquired differences may be. As human beings are rational, they possess certain rights which are commonly known as human rights. Human rights belong to the individuals from very inception of their birth, these rights become operative. Human rights are birth rights inherent to all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are absolutely essential as these rights are concerned with freedom and dignity of people and are related to physical, moral, social, and spiritual welfare. These rights are also essential for moral and material development. Human rights are also referred as fundamental rights, basic rights and birth rights as of immense significance to human beings.

## **Origin and Development of Human Rights in India**

The Buddhist doctrine of non-violence in deed and thought says Nagendra Singh, is a humanitarian doctrine par excellence, dating back to the third century B.C. - Jainism too contained similar doctrines. According to the Gita, he who has no ill will to any being, who is friendly and compassionate, who is free from egoism and self sense and who is even-minded in pain and pleasure and patient is dear to God. It also says that divinity in humans is represented by the virtues of non-violence, truth, freedom from anger, renunciation, aversion to fault-finding, compassion to living being, freedom from covetousness, gentleness, modesty and steadiness- the qualities that a good human being ought to have.

### **1.1 Concept of Human Rights:**

Human Rights are those basic standards without which people cannot live in dignity. The basic rights and freedoms, to which all humans are entitled, often held to include the right to life and liberty, freedom of thought and expression, and equality before the law. To violate someone's human right is to treat that person as though she or he were not a human being. These are basically few natural rights which cannot be denied, but at the same time not guaranteed by Statutory Law. It is the obligation of the state to promote and protect human rights.

### **As defined by OHCHR:**

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

## **Government Human Rights Bodies:**

The NHRC is an independent and impartial investigatory and advisory body, established by the central government, with a dual mandate to investigate and remedy instances of human rights violations and to promote public awareness of human rights. It is directly accountable to parliament but works in close coordination with the Ministry of Home Affairs and the Ministry of Law and Justice. It has a mandate to address official violations of human rights or negligence in the prevention of violations, intervene in judicial proceedings involving allegations of human rights violations, and review any factors (including acts of terrorism) that infringe on human rights. The law authorizes the NHRC to issue summonses and compel testimony, produce documentation, and requisition public records. The NHRC also recommends appropriate remedies for abuses in the form of compensation to the victims of government killings or their families. The NHRC has neither the authority to enforce the implementation of its recommendations nor the power to address allegations against military and paramilitary personnel. Human rights groups claimed these limitations hampered the work of the NHRC. Some human rights NGOs criticized the NHRC's budgetary dependence on the government and its policy of not investigating abuses more than one year. Some claimed the NHRC did not register all complaints, dismissed cases arbitrarily, did not investigate cases thoroughly, rerouted complaints back to the alleged violator, and did not adequately protect complainants.

Out of 28 states, 24 have human rights commissions, which operated independently under the auspices of the NHRC. Some human rights groups alleged local politics influenced state committees, which were less likely to offer fair judgments than the NHRC. The Human Rights Law Network, a nonprofit legal aid group, observed most state committees had few or no minority, civil society, or female representatives. The group claimed the committees were ineffective and at times hostile toward victims, hampered by political appointments, understaffed, and underfunded. The government closed the Jammu and Kashmir Human Rights Commission and ordered the NHRC to oversee human rights violations in Jammu and Kashmir. The NHRC has jurisdiction over all human rights violations, except in certain cases involving the military. The NHRC has authority to investigate cases of human rights violations committed by the Ministry of Home Affairs and paramilitary forces operating under the AFSPA in the northeast states.

## **1.2 Types of Human Rights:**

### **Economic, social, and cultural rights:**

The UDHR and other documents lay out five kinds of human rights: economic, social, cultural, civil, and political. Economic, social, and cultural rights include the right to work, the right to food and water, the right to housing, and the right to education. Documents like the International Covenant on Economic, Social, and Cultural Rights, which was established in 1976, protect these rights. Conventions like the Convention on the Rights of the Child safeguard the economic, social, and cultural rights of specific groups. As with all types of human rights, the state's responsibility is to protect, promote, and implement economic, social, and cultural rights. Specific examples in this category include:

- The right to work in a safe environment for a fair wage
- The right to access medical care, including mental health care
- The right to accessible education
- The right to adequate food, clothing, and housing
- The right to affordable sanitation and clean water
- The right to take part in cultural life
- The right to enjoy the benefits of scientific progress
- The right to social security
- Civil and political rights

**Civil and political rights** include articles from the first part of the Universal Declaration of Human Rights. They state that people must be allowed to participate freely in civil and political life without facing repression or discrimination. While economic, social, and cultural rights are framed as rights a person is entitled to, most civil and political rights are about protection from certain things, like torture and slavery. Documents like the International Covenant on Civil and Political Rights and its two Optional Protocols outline rights such as:

- The right to life, which is violated by actions like death by torture, neglect, and use of force.
- The right to freedom of expression, which is violated by restricting access to ideas and limiting press freedom.

- The right to privacy, which is violated by intruding on a person's sexual life or personal data.
- The right to asylum, which is violated by deporting someone to a country where their lives are at risk.
- The right to a fair trial and due process, which is violated by a court that's not impartial and excessive delays.
- The right to freedom of religion, which is violated when someone is punished for following their beliefs or forced to adopt another religion.
- The right to freedom from discrimination, which is violated when traits like race, gender, religion, etc are used as justification for actions like being fired from a job.

### **1.3 Human Rights and The Indian Constitution**

The Constitution of the Republic of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules, is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term democratic denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal irrespective of the race, religion, language, sex and culture. The Preamble to the Constitution pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to aid its citizens.

India was a signatory to the Universal Declaration of Human Rights. A number of fundamental rights guaranteed to the individuals in Part III of the Indian Constitution are similar to the provisions of the Universal Declaration of Human Rights.

The following chart makes it very clear:

## **Civil and Political Rights in the Universal Declaration of Human Rights and in the Indian Constitution**

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

The table below shows that most of the economic, social and cultural rights proclaimed in the Universal Declaration of Human Rights have been incorporated in part IV of the Indian Constitution

## **Economic, Social and Cultural Rights in the Universal Declaration of Human Rights and in the Indian Constitution**

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

**In KeshavnandaBharati v. State of Kerala**, the Supreme Court observed, 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.

## **1.4 Comparison between Human Rights, Fundamental Rights, and Legal Rights:**

Fundamental rights are the rights of a country's citizens that are stated in the constitution and enforced by the law. Human rights, on the other hand, are the safeguards that a human being seeks in order to live in dignity and equality. Legal rights, on the other hand, are the government's protections for residents of a particular state. Fundamental rights only include certain rights that are fundamental to a normal existence. Human rights, on the opposite, include certain rights that are fundamental to real life and that are unconditional, i.e. that can not be excluded. Legal rights, on the other hand, are neither fundamental to a normal life nor to absolute life.

### **Some universal human rights include:**

- The right to education and to reap the rewards of freedom of culture and of scientific advancement.
- The freedom to operate in equal and favourable terms.
- The right to social security, to an acceptable standard of living, and to the best attainable physical and mental well-being levels, etc.
- Human rights, thus, are those which, considering their nationality, faith, age, race, are intrinsic to all human beings.

### **Human Rights under the Indian Constitution**

The Human rights which are classified under the Indian constitution are as follows:

- The right to equality and freedom from discrimination.
- The right to life, liberty, and personal security.
- Freedom from torture and degrading treatment.
- The right to equality before the law.
- The right to a fair trial.
- The right to privacy.
- Freedom of belief and religion.
- Freedom of opinion.
- Right of peaceful assembly and association.
- The right to participate in government.

- The right to social security.
- The right to work.
- The right to an adequate standard of living.
- The right to education.
- The right to health.
- The right to food and housing.
- These rights are called fundamental rights because of two reasons:
- They are enshrined in the Constitution.
- They are justifiable. They are enforceable by courts. An individual may approach a court of law in the event of a breach.

**Following are the six fundamental rights of the Indian Constitution:**

- Right to Equality (Article 14-18)
- Right to Freedom (Article 19-22)
- Right against Exploitation (Article 23-24)
- Right to Freedom of Religion (Article 25-28)
- Cultural and Educational Rights (Article 29-30)
- Right to Constitutional Remedies (Article 32)

## **2. Current Scenario in India:**

### **Women Rape and Domestic Violence:**

The law criminalizes rape in most cases, although marital rape is not illegal when the woman is older than 15. According to legal experts, the law does not criminalize rape of adult men. Rape of minors is covered under the gender-neutral POCSO laws. Official statistics pointed to rape as one of the country's fastest-growing crimes, prompted at least in part by the increasing willingness of victims to report rapes, although observers believed the number of rapes remained vastly underreported. Incidents of rape continued to be a persistent problem, including gang rape, rape of minors, rape against lower-caste women or women from religious and nonreligious minority communities by upper-caste men, and rape by government officials.

**Domestic violence** continued to be a problem. Poor economic potential and job losses led to increased instances of domestic violence. Women and children were more vulnerable due to loss of livelihood of the perpetrator and the family being forced to remain indoors, where victims were locked in with their abusers with limited means to escape or access to resources. The Jammu and Kashmir and Delhi High Courts took note of the increased problem of domestic violence and directed national protection agencies to consider additional measures to address the rising instances of domestic violence.

**Societal violence** based on religion and caste and by religiously associated groups continued to be a serious concern. Muslims and lower-caste Dalit groups continued to be the most vulnerable. Ministry of Home Affairs data for 2016-17 showed 703 incidents of communal (religious) violence occurred in which 86 persons were killed and 2,321 injured. According to the NHRC, there were 672 Country Reports on Human Rights Practices. Bureau of Democracy, Human Rights and Labor INDIA 59 cases of discrimination and victimization against Scheduled Castes and 79 cases against minorities.

### **Freedom of Speech:**

Individuals routinely criticized the government publicly and privately. According to the HRW World Report, sedition and criminal defamation laws were sometimes used to prosecute citizens who criticized government officials or state policies. In certain cases local authorities arrested or filed cases against individuals under laws against hate speech for expressions of political views. The harassment and detainment of journalists critical of the government in their reporting or social media messaging continued. According to several journalists, press freedom declined during the year. There were several reports from journalists and NGOs that government officials, at both the local and national levels, were involved in silencing or intimidating critical media outlets through physical harassment and attacks, pressuring owners, targeting sponsors, encouraging frivolous lawsuits, and in some areas blocking communication services, such as mobile telephones and the internet, and constraining freedom of movement.

### **Corruption:**

Corruption was present at multiple levels of government. On March 18, the minister of state in the Prime Minister's Office informed parliament's lower house that 12,458 corruption

complaints were received between March 2018 and February, of which 12,066 complaints were addressed or resolved. Additionally, the minister noted the Central Vigilance Commission, which addresses government corruption, reviewed 2,752 cases during 2018.

### **3. Challenges and Opportunities:**

Democracy and human rights are complex, multi-faceted and multi-dimensional concepts that are not mutually exclusive from one another. The first and crucial step in any systematic effort to compare, measure, and analyse democracy and human rights is to provide precise and coherent definitions of the concepts to be measured and analysed, the boundary conditions for them, and the attributes that comprise them. It is for the reasons of complexity, multi-dimensionality, and variable overlap between democracy and human rights that measurement strategies have been difficult, challenging, and evolving. The scholarly and practitioner communities working on democracy and human rights have made great strides in developing increasingly nuanced and effective measurement strategies that have captured more of the inherent complexity and multi-dimensionality of democracy and human rights. Events-based data, standards-based data, survey-based data, and socio-economic and administrative statistics are being used in increasingly creative and systematic ways to capture the temporal and spatial variation in democracy and human rights. First, there is still the need to work on how democracy and human rights are defined and how those aspects that are unique to each are circumscribed, while greater attention is given to the different ways in which democracy and human rights overlap with one another and how they are related to one another. Second, the specification of systematic definitions of both concepts is directly linked to the ways in which they are measured. Third, there continues to be an over-reliance on subjective coding of subjective information collected on democracy and human rights.

Now more than ever, there are increasing types of data being generated that can be harnessed and analysed in ways that can enhance our understanding and explanation of the variation in democracy and human rights. Big data techniques, machine learning and supervised machine learning, web scraping and corpus linguistic analytical techniques offer new ways of measuring, mapping, and understanding democracy and human rights.

#### **4. Conclusion**

Abraham Lincoln's dream of ideal democracy is shattered, because today democracy appears to be 'of the people', 'by the people' but not properly /truly 'for the people'. The government apparatus and the government itself faced a credibility crisis. Political parties as the legitimizing vehicle of parliamentary democracy suffered a lack of credibility due to criminalization of politics and motto of grabbing the power. After considering leading theories of the relation of justice and democracy, priority of justice and human rights should be given, in principle, over the authority of democratic decisions. Democracy is based on the requirement of Page no.124 justice as equal freedom, itself one of the human rights, it follows ,that interventions on behalf of justice should be carefully delimited ,and specifically to cases where fundamental rights have been violated. The Indian Constitution abolished "untouchability" in Article 17. Despite this "untouchability" continues to be practised in India in various forms. We have seen there is a persistent increase in all forms of crime against women and children and other forms of violation of human rights in India. Communal violence and oppression should be handled in a human rights perspective. Many people from the minority community are incriminated only on the basis of suspicion and subsequently acquitted after a long period of time and thereby their lives are being massacred. Fake encounters by the Security Personnel violate Article 21 of the Constitution of India. Most of the victims are from the minority communities. Though several steps have been taken by the government to sharpen the edge of a tool like human rights, the main problem lies in the proper implementation of the same. Implication of acts regarding the protection of human rights is of greater importance but unfortunately it is significantly lacking in India. It is needed to concentrate less on legal norms and to connect more with social activism of Human Rights Organizations in India. The emphasis on individual in Western Societies is not apropos in India where man's "social self" is far more crucial than in the West. Rights become real only when people begin to realize their full potential as human beings and affirm their rights both in public and private spheres. Human Rights of all should be protected in order to extend and strengthen Indian democracy. Otherwise secular fabric and democratic values will face a serious threat in future India.

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