

# **Human Rights in India: A Study**

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## **Abstract**

*India is the biggest democracy in the world. Being a democratic country one of the main objectives is the protection of the basic rights of the people. Government of India has given due consideration to the recognition and protection of human rights. The Constitution of India recognizes these rights of the people and shows deep concern towards them. State government set up these courts with concurrence of the Chief Justice of the High Court, by notification specifying for each district a Court of Session to be a Human Rights Court under Section 30. State Government appoints Special Public Prosecutor to conduct cases in human rights court under Section 31 of the Act. Human Rights Courts have been set up in the States of Assam, Andhra Pradesh, Sikkim, Tamil Nadu and Uttar Pradesh. 50 Commission stays in touch with the concerned High Courts with a view to making clear the precise nature of the offences to be tried in such courts and other details regarding the conduct of their business. 51 The National Human Rights Commission has made an inquiry into thousands of complaints it has submitted reports to the government on various matters wherein it has made a number of recommendations suggesting measures to be taken to curb the human rights violations. In August 2016 it has received 7822 fresh complaints and has disposed of 7772 fresh as well as old cases.*

*Keywords: Human Rights, India, Democracy, Human Rights Commission.*

## **Introduction**

**Human rights in India** is an issue complicated by the country's large size and population, widespread poverty, lack of proper education, as well as its diverse culture, despite its status as the world's largest sovereign, secular, democratic republic. The Constitution of India provides for Fundamental rights, which include freedom of religion. Clauses also provide for freedom of speech, as well as separation of executive and judiciary and freedom of movement within the country and abroad. The country also has an independent judiciary. as well as bodies to look into issues of human rights. The 2016 report of Human Rights Watch accepts the above-mentioned facilities but goes to state that India has "serious human rights concerns. Civil society groups face harassment and government critics face intimidation and lawsuits. Free speech has come under attack both from the state and by interest groups. Muslim and Christian minorities accuse authorities of not doing enough to protect their rights. The government is yet to repeal laws that grant public officials and security forces immunity from prosecution for abuses

## Chronology of Events

1950	The Constitution of India establishes a sovereign democratic republic with universal adult franchise. Part 3 of the Constitution contains a Bill of Fundamental Rights enforceable by the Supreme Court and the High Courts. It also provides for reservations for previously disadvantaged sections in education, employment and political representation.
1952	Criminal Tribes Acts repealed by government, former "criminal tribes" categorized as "denotified" and Habitual Offenders Act (1952) enacted.
1955	Reform of family law concerning Hindus gives more rights to Hindu women. Untouchability offenses Act (1955).
1958	Armed Forces (Special Powers) Act, 1958
1973	Supreme Court of India rules in <i>KesavanandaBharati case</i> that the basic structure of the Constitution (including many fundamental rights) is unalterable by a constitutional amendment.
1975-1977	State of Emergency in India extensive rights violations take place.
1978	SC rules in <i>Menaka Gandhi v. Union of India</i> that the right to life under Article 21 of the Constitution cannot be suspended even in an emergency.
1978	Jammu and Kashmir Public Safety Act, 1978
1984	Operation Blue Star and the subsequent 1984 Anti-Sikh riots
1984	2006 Extrajudicial disappearances in Punjab by the police
1985-1986	The Shah Bano case, where the Supreme Court recognised the Muslim woman's right to maintenance upon divorce, sparks protests from Muslim clergy. To nullify the decision of the Supreme Court, the Rajiv Gandhi government enacted The Muslim Women (Protection of Rights on Divorce) Act 1986
1987	Hashimpura massacre during communal riots in Meerut.
1989	<i>Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989</i> is passed.
1989–present	Kashmiri insurgency sees ethnic cleansing of Kashmiri Pandits, desecrating Hindu temples, killing of Hindus and Sikhs, and abductions of foreign tourists and government functionaries. (See: Ethnic cleansing of Kashmiri Hindus)
1992	A constitutional amendment establishes Local Self-Government (Panchayati Raj) as a third tier of governance at the village level, with one-third of the seats reserved for women. Reservations were provided for scheduled castes and tribes as well.
1992	Demolition of the Babri Masjid occurred after a political rally at the site turned violent.

1993	National Human Rights Commission is established under the <i>Protection of Human Rights Act</i> .
2001	Supreme Court passes extensive orders to implement the right to food.
2002	2002 Gujarat riots which claimed at least thousand lives of Muslims and Hindus.
2005	A powerful <i>Right to Information Act</i> is passed to give citizen's access to information held by public authorities. <sup>[10]</sup>
2005	<i>National Rural Employment Guarantee Act (NREGA)</i> guarantees universal right to employment.
2006	Supreme Court orders police reforms in response to the poor human rights record of Indian police.
2009	Delhi High Court declares that Section 377 of the Indian Penal Code, which outlaws a range of unspecified "unnatural" sex acts, is unconstitutional when applied to homosexual acts between private consenting individuals, effectively decriminalising homosexual relationships in India. See also: Homosexuality in India.
2013	Criminal Law (Amendment) Act was passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013, which provides for amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences.
2015	Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act was passed by both the Houses of the Parliament. This act aims to curb black money, or undisclosed foreign assets and income and imposes tax and penalty on such income.

### **Use of torture by police**

The Asian Centre for Human Rights estimated that from 2002 to 2008, over four people per day died while in police custody, with "hundreds" of those deaths being due to police use of torture. According to a report written by the Institute of Correctional Administration in Punjab, up to 50% of police officers in the country have used physical or mental abuse on prisoners. Instances of torture, such as through a lack of sanitation, space, or water have been documented in West Bengal as well.

### **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.

The 1984 Anti-Sikh Riots was a four-day period during which Sikhs were massacred in India. According to some estimates state that more than 2,000 were killed. Investigations by various committess appointed both by the government and independent civil societies have found complicity on the part of Indira Gandhi's Congress party. Other incidents include the 1987 Hashimpura massacre during communal riots in Meerut, where it was alleged that 19 members of the Provincial Armed Constabulary shot 42 Muslim youths in cold blood, and dumped their bodies in a nearby irrigation canal, 1992 Bombay riots and the 2020 Delhi riots, which resulted in the death of about 51 people, 36 among whom were Muslims and 15 were Hindus. It is commonly believed that the riots were incited by a threatening speech and an ultimatum targeted towards peaceful anti-CAA protesters by Kapil Mishra, a BJP politician from Delhi. The Supreme Court of India blamed the Delhi police for "unprofessionalism" during the Delhi riots and directly indicated that the police was waiting for the Central Government of India led by the BharatiyaJanata Party to give them instructions, instead of acting independently and conscientiously. In the hearing, Justice K.M. Joseph said - "Look at how police acts in the UK. If somebody makes an inflammatory remarks, they swing into action. They don't wait for orders. Police should not be looking for here and there for nods".

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. It is believed to have been incited by the Godhra train burning, where 59 people (who were mostly returning from Ayodhya after a religious celebration at the Babri Masjid demolition site) were burnt to death. Subsequently, circulation of false news in local newspapers alleging ISI hand in the attacks and that the local Muslims conspired with them, and also about false stories of kidnap and rape of Hindu women by Muslims further inflamed the situation. Numerous accounts describe the attacks to be highly coordinated with mobile phones and govt. issued printouts listing the homes and businesses of Muslims. Although many calls to the police were made from victims, they were told by the police that "we have no orders to save you. In many cases, the police led the charge, using gunfire to kill Muslims who got in the mobs' way. A key BharatiyaJanata Party state minister is reported to have taken over police control rooms in Ahmedabad on the first day of the carnage, issuing orders to disregard pleas for assistance from Muslims. Portions of the Gujarati language press meanwhile printed fabricated stories and statements openly calling on Hindus to avenge the Godhra attacks. Also in many cases, under the guise of offering assistance, the police led the victims directly into the hands of their killers. The then Chief minister of Gujarat, NarendraModi was cleared of the accusations levied against him by a local court based on the investigation carried out by a Special Investigation Team. However, this report was challenged by Zakia Jafri, whose husband Ahsan Jafri, a former Congress politician, was killed by a mob in Ahmedabad city. Ms. Jafri claimed the investigation had revealed sufficient evidence to implicate Mr. Modi and 62 others. The Supreme Court of India, subsequently turned down a plea challenging the clean cheat given to

Modi. The 2020 report by the United States Commission for International religious freedom designated India as a Country of Particular Concern

### **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. 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. 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. 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.

### **Freedom of Expression**

Main article: Freedom of expression in India

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. 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 PrasarBharati act passed in recent years contribute significantly to reducing the control of the press by the government.

## **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. 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.

## **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 (Smt. Selvi vs. State of Karnataka) declared brain mapping, lie detector tests and narcoanalysis to be unconstitutional, violating Article 20 (3) of Fundamental Rights. 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.

## **Women's rights**

### **Bride buying**

Molki brides (one who is bought) or "*paro*" (from the far side), is a Bride buying phenomenon where the brides are sold by parents in the impoverished states of India to the husbands in relatively richer states who due to the skewed sex ratio and other socioeconomic disadvantages find it harder to find a bride within their community and region. Major destination states are Haryana, Punjab, Rajasthan, Western Uttar Pradesh. The major source states are the impoverished parts of Northeast India (Assam), Bihar, Jharkhand, Odisha, West Bengal, Andhra Pradesh and Tamil Nadu.<sup>[61][62][63][64]</sup> According to the research sponsored by the Royal Norwegian Embassy at Delhi, the Molki brides are arranged for marriage in 4 ways: molki brides "*as marriage mediators*", husbands of molki brides arranging brides for family and friends, marriage brokers, and "*trafficking of women for forced marriages*" though it is "*not as extensive and rampant*".<sup>[63]</sup> Molki brides face social and color discrimination, racism, slur, social isolation and mental health issues. Among molki brides, cases of those who are trafficked are rarely reported and they find it difficult to obtain justice.

## **Muslim women's rights**

One of the vital concerns in India is the non-discrimination between genders. Muslim women 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.<sup>[66][66]</sup> This includes being negatively stereotyped within religion, incorporating both Muslim and even Judaic-Christian

beliefs. This also includes male interpretations of the Quran. Where the functions of a woman concerning family matters are seen as less than half, according to hijab, then that of their male counterparts.

### **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. 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 women. The continuance of discrimination within Muslim personal law contravenes that set out in India's constitution, notably articles 14 and 15.

### **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. 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". 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 divorce has been codified in the Muslim Women's (Protection of Rights on Divorce) Act 1986. Nevertheless, these rights remain minimal. 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. Also Muslim women in India are not protected when it comes to monogamous marriages, but Muslim men are, protected under the Indian Penal Code

## **Conclusion**

Since its inception in 1993, the NHRC has undertaken several activities in area of protection and promotion of human rights.<sup>7</sup> The Commission is continuously organizing workshops, seminars, campaigns, etc. to make people aware about human rights especially in slums and rural areas. Besides, it is conducting research studies and carrying out projects. It has completed several research projects and some of the projects and research is still going on. The studies which are still going on are on topic of varied nature such as implementation of the Juvenile justice care and protection, current trends in child labour in industries, feminization of poverty and impact of globalization and a study of the human rights status of denotified. In addition, the Commission is incurring huge expenditure on publication of material on human rights to make people aware about rights. It is organizing internships programmes for students of different colleges and universities from diverse parts of the country. International co-operation in area of protection of human rights has also been encouraged by the commission.

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