



HUMAN RIGHTS UNDER INDIAN LAW

By *Adarsh Pandey*
From *City Academy Law College, Lucknow University*

INTRODUCTION:-

- Birth right of human being.
- Universal Right of human being.
- Right flowering the spirit of human.
- Right recognize the worth of human being.
- Right determine dignity of human.
- **According to B.R. Ambedkar**, human right is a gift of law.
- **According to Fuller**, human right is requirement of complete development of human being.
- **According to the Protection of Human Rights Act, 1993**, Human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by courts of India.

History of human right

1. **Old concept as human civilization**
Human right is as old as civilization of human being because from the origin of the society everyman has desire of safety which shows that desire of safety is the reason for the emergence of human rights.
2. **Theories of human right.**
The main concept of human right emerged step by step which are considering by the theories of human rights which are as follows
 - **Neutral law theory**

- **Natural law theory**
- **Rights of man**
- **Human rights**

3. **Evolution of concept**

- **16th – 18th century**
Earliest conceptualisation of human right is credited to Ideas about Natural rights emerged from Natural law. Some Spanish clerics who maintained Aristotle view of humanity. Equal right to freedom from slavery for all human.
- **17th century**
English philosopher John Locke in his work life, liberty & estate, social contract observes that fundamental rights can't be surrendered.
- **18th century**
At the time of U.S. Declaration of Independence and French declaration of right of man of citizen stated that- We hold this truth to be self evident that all men are created equal that they are endowed by their creator with certain Inalienable Rights, that among of these are life, liberty & pursuant of Happiness.
Human rights are inalienable rights.
- **19th century**
In 19th century human rights become central concern over the issue of slavery. Number of British members of parliament worked in abolition of Atlantic Slave Trade, Abolition of Slavery. U.S. abolished slavery system between 1777 & 1804. Slavery Abolition Act 18883.



- **20th century**
World war and huge losses of life and gross abused of human right were driving forced develop of modern human right instrument.
League of Nation was established in 1919 for Negotiation over treaty of Versatile.
- **After IInd World War**
United nation and its members made the bodies of law such as International Humanitarian Law.
- **UDHR**
Established in 1950
Adopted by united nations general assembly
Historic document in promotion of human right.
First official step to legalise the concept of human rights.

Enforced – 24th October 1945
Above statement shows that how fundamental rights of Indian constitution affected by U.N. Charter.

2. Effect of adoption of UDHR

- UDHR adopted in general assembly of U.N.
- In case of **kesavananda bharti v/s State of Kerala**¹ court held that great effect of UDHR in Indian Constitution. It is basically because the India is a participant in Universal Declaration of human rights.
- In case of in **Golaknath v/s state of Punjab**² court held that those rights which are traditionally called Natural Rights is now known as Fundamental Rights.

¹kesavananda Bharti v/s State of Kerala, AIR 1973 SC 1461.

²Golaknath v/s State of Punjab, AIR 1967 SC 1643.

HUMAN RIGHT UNDER INDIAN LAW

➤ **INTRODUCTION**

Human rights and fundamental rights of Indian constitution are not different aspects because fundamental rights of Indian constitution opted by human rights which are mentioned in UDHR

➤ **CONCEPT-**

1. Relation in adoption of Indian Constitution & U.N. Charter

Indian constitution and U.N.Charter arisen same time which are as follows-

Indian constitution

Adopt - 26th November 1949

Enforced – 26th January 1950

U.N. Charter

Adopt – 25th June 1945

3. Article 55 of U.N. Charter

This article charges the United Nations to promote Universal Respect for and observance of human right and fundamental right.

4. Position of term human right

This term not mentioned in Indian Constitution.

Term mentioned in Article 1(Promoting & Encouraging respect of Human Right) of U.N.Charter.

5. Effect of establishment of U.N. Commission

Establishment of United Nations Commission made great effect in the



promotion and protection of human right and it also provide universal respect of human rights.

➤ **Classification of human right**

1. **On the basis of Generation**

▪ **Ist generation human rights**

Rights of human which are essential at the beginning of the society or civilization of human society such as right to life etc.

▪ **IInd generation human rights**

Rights of human which encourage the strength of Ist generation of human rights. The main aim of these rights is to establish the concept of public welfare. Rights are right to education, employment, health, etc.

▪ **IIIRD generation human rights**

After emergence of both generations of human rights this was emerged at the end of 20th century and these are not codified because all these rights of IIIRD generation is still under process of development.

2. **On the basis of nature**

▪ **Civil and political rights**

They knew as Ist generation human rights. Rights related to politics which gave right of participation to each individuals in formation of government such as right to vote.

▪ **Economical, social & cultural rights.**

All essential rights of individuals which are necessary for survival of life comes under these rights such as right to food, shelter, cloth, health, education, trade, etc.

▪ **Collective rights**

They knew as IIIRD generation human rights. Main aim to maintain and fulfil all necessary conditions for survive human life such as right to peace and environment.

3. **On the basis of role**

▪ **Positive rights**

Rights such as Economical, social & cultural rights. These rights are similar to DPSP. Main aim is to realization states affirmative action is required.

▪ **Negative rights**

Rights such as Civil and political rights. Main aim is to no realization states affirmative action is required. These rights are similar Fundamental Rights of Indian Constitution.

▪ **Neutral right**

Rights which neither positive nor negative. These rights still in process of development.

➤ **RELATIONSHIP BETWEEN HUMAN RIGHT AND FUNDAMENTAL RIGHT-**

1. **Role of Preamble**

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity; and to promote among them all



FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this 26th day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION

- **“We the people of India”**
This term shows respect of human right because term we shows humans means rights in respect of humans so finally we can say that the preamble which is the soul of Indian Constitution is preserves the rights of human.
- **“Democratic Republic”**
This term Democratic and Republic shows that there is no arbitrariness it means protection of humans from exploitation so we can say that our preamble protect the human right.
- **“sovereignty”**
This term sovereignty shows that the ultimate power of a country is citizens because in India **we the people of India are sovereign** means our preamble directly promoting and protecting human rights.
- **“Aim & Objective of Preamble”**
Justice - Social, Economical and Political
Liberty – Thought, Expression, Belief, Faith and Worship
Equality – Status and Opportunity
Fraternity – Dignity
Our aim and objective of Preamble shows that how human rights are promoting under Indian Laws.

2. **Indian laws**

➤ **Article 13-** prohibits the formation of any law that is inconsistent with or derogation to the fundamental rights.

➤ **Art.14-** State shall not deny to any persons equality before the law or the equal protection of the laws within the territory of India

▪ **Equality before law –**

- Taken from Britain
- Negative in nature
- Means Equality among Equals

● **Rule of law**

A.V. Dicey said rule of law can be concluded in three main keywords which are as follows-

a. **Supremacy of Law**

According to Article 13 (1) (2) of Indian constitution state shall not made any law which is against the fundamental rights and if any law made by state which is contravene to fundamental rights then that law will be null and void.

According to Article 21 of Indian constitution, no one is deprived of his life and personal liberty except according to procedure established by law

These above terms shows supremacy of law,

b. **Equality Before Law**

We cannot achieve full equality before law in any system but we can reach near about equality before law.

c. **Predominance of legal spirit**

Rule of law does not exist without independence of judiciary

▪ **Equal protection of law**

Taken from United States
Positive in nature



Means equal law should be applied to all persons

➤ **Art.15- Clause** –(1) state is prohibited to discriminate between citizens on grounds only of **religion, race, caste, sex, place of Birth.**

➤ **Art.16**
Equality of opportunity in matter of public employment.

➤ **Article 19 of Constitution of India:**
Freedom of speech, thought and expression is a **Fundamental Right**. Freedom of Press is a pillar post in democracy.

➤ **Article 23** - prohibits bonded labour system

➤ **Article 24** - prohibits child labour.

➤ **Article 25 to Article 28** - gives freedom of religion and liberty of belief, faith and worship to every citizen

➤ **Article 29 to 30** - confers the right to cultural and educational rights to minorities.

➤ **Article 31A to 31D, 300A** - deals with **Right to Property**

➤ **Article 32 to 35** -provides constitutional remedies available to Indian citizens.

3. DECIDED CASES

There are some cases which are played very important role in protection and promotion of human rights under Indian Laws which are as follows –

a. **Jogendar kumar v/s state of Uttar Pradesh**³, in this case court held that

there is strict restrictions on police from making arbitrary arrest.

b. **Sheela Barsey V/s State of Maharashtra**⁴, in this case court held that mistreatment with women in lockup will be considered as violation of human right.

c. **Prem Shankar Shukla V/s .D.M**⁵, in this case court held to humanize the jail administration.

d. **D.K.Bsu V/s State of West Bengal**⁶, in this case court held that protection of human right during arrest.

All these above cases shows how human rights are protected under Indian Laws.

4.POWER OF ENFORCEMENT OF RIGHTS.

Article 226 – remedies on the level of state, right to go **High Court** for enforcement of fundamental rights mentioned under part III of Indian Constitution.

- **Article 32** –
- **Constitutional remedies only in case of violation of Fundamental right.**

- **According to Dr. B.R. Ambedkar – Article 32 is soul of Indian Constitution.**

- In case of **Fertilizers Corporation Workers Union V/s Union of India**⁷ court held that

Article 32 is a basic structure of Indian Constitution.



- In case of **L. Chandra kumar v/s Union of India**⁸ court held that **Judicial Review is the basic structure of Indian Constitution.**

- In case of **Bandhua Mukti Morcha v/s Union of India**⁹ court held that **a letter may entertain as a PIL or Plaint there is no need of legal representative and come to court , this letter may be sent by post.**

- Provided to citizens of India under Indian constitution for enforcement of fundamental rights mentioned under part III of Indian Constitution.

- Right to go to Supreme Court.

- b. Habeas Corpus
- c. Quo Warranto
- d. Prohibition
- e. Certiorary

5. ESTABLISHMENT OF COMMISSIONS

- **SHRC (State Human Right Commission)-**

This commission was established with the aim of the matter dealing on the state level. All matters related to human right entertained under this commission.

Each state has separate State Human Right Commission

- **NHRC (National Human Right Commission)-**

This commission was established with the aim of the matter dealing on the National

Level. All matters related to human right entertained under this commission.

In India one National Human Right Commission.

6. Article 21 Played major role in promotion of human right

- Human right are not a codified and limited right because it is the requirements of human beings which were changed time to time so it's still in the process at the end of the human life so it's the process of requirement and human rights
- On the theme of promotion and protection of human right and fundamental right of individuals, Article 21 of the Indian

³Jogendar kumar v/s state of Uttar Pradesh, AIR 1989 4 SCC 62.

⁴Sheela Barsey V/s State of Maharashtra, (1997) 4 SCC 373.

⁵Prem Shankar Shukla V/s .D.M, AIR 1980 SC 1535.

⁶D.K.Basu V/s State of West Bengal, AIR 1977 SC 610.

⁷Fertilizers Corporation Workers Union V/s Union of India, AIR 1981 SC 344

⁸L. Chandra kumar v/s Union of India, AIR 1977 SC 1125.

⁹Bandhua Mukti Morcha v/s Union of India, AIR 1984 SSC 803.

- **Article 32 give to file writs which are as follows-**

- a. Mandamus



Constitution played a major role which can be considered by the development which was in process with the help of Article 21, which are as follows-

Right To Travel Abroad-

In case of **Maneka Gandhi V/s Union of India** court held that each and every individual has a **right to travel abroad and** this right is a fundamental right of individuals.

Right To Dignified Life-

In case of **Maneka Gandhi V/s Union of India**¹⁰ court held that each and every individual has a **Right to dignified life means** each and every individuals have all rights which will affect the individual's dignity **and** this right is a fundamental right of individuals.

Right To Privacy -

In case of **Justice K.S Puttaswami V/s Union of India**¹¹ court held that each and every individual has a **Right to privacy and** this right is a fundamental right of individuals guaranteed under Article 21 of Indian Constitution.

¹⁰Maneka Gandhi V/s Union of India, AIR 1978 SC 597.

¹¹Justice K.S Puttaswami V/s Union of India, WRIT PETITION (CIVIL) NO 494 OF 2012

Right to Clean Environment -

In case of **M.C. Mehta V/s Union of India**¹² court held that each and every individual has a **Right to Clean Environment and** this right is a fundamental right of individuals

guaranteed under Article 21 of Indian Constitution.

Right to Livelihood-

In case of **Olgatellis's case**¹³ court held that each and every individual has a **Right to Livelihood and** this right is a fundamental right of individuals guaranteed under Article 21 of Indian Constitution

Right to Education-

In case of **Unnikrishnan V/s State of Andhra Pradesh**¹⁴ and in case of **Mohini jain V/s State of karnataka**¹⁵ court held that each and every individual has a **Right to Education and** this right is a fundamental right of individuals guaranteed under Article 21 of Indian Constitution.

Right to Marriage –

In case of **Lata Singh V/s State of Uttar Pradesh**¹⁶ court held that each and every individual has a **Right to Marriage and** this right is a fundamental right of individuals guaranteed under Article 21 of Indian Constitution.

Right to Legal Aid –

In case of **Sheela Barsey V/s Union of India**¹⁷ court held that each and every individual has a **Right to Legal Aid and** this right is a fundamental right of individuals guaranteed under Article 21 of Indian Constitution.

Right to Food –

In case of **P.U.C.L V/s Union of India**¹⁸ court held that each and every individual has a **Right to Food and** this right is a fundamental right of individuals



guaranteed under Article 21 of Indian Constitution.

Right to Sleep –

In case of **Ramleela Committee Maidan Case**¹⁹ court held that each and every individual has a **Right to Sleep** and this right is a fundamental right of individuals guaranteed under Article 21 of Indian Constitution.

Right to Flag Hosting –

In case of **Navin Jindal V/s Union of India**²⁰ court held that each and every individual has a **Right to Flag Hosting** and this right is a fundamental right of individuals guaranteed under Article 21 of Indian Constitution.

to Passive Euthanasia in special circumstances and this right is a fundamental right of individuals guaranteed under Article 21 of Indian Constitution.

Right to Medical checkups of accused –

In **D.K.Basu’s Case**²² court held that each and every individual has a **Right to Medical checkups of accused in every 48 hours and make a memo after interrogation**, this right is a fundamental right of individuals guaranteed under Article 22 of Indian Constitution.

All the above rights are some examples of development of human right under Indian Societies. By India Laws so it can be concluded that article 21 of Indian Constitution Played a very Important role in the protection and promotion of human right in India.

¹²M.C. Mehta V/s Union of India, (1986) 2 SCC 176.

¹³Olga Tellis v. Bombay Municipal Corporation. AIR 1986 SC 180.

¹⁴Unnikrishnan V/s State of Andhra, (1993) 1 SCC 645.

¹⁵Mohini jain V/s State of Karnataka, (1992) 3 SCC 666.

¹⁶Lata Singh V/s State of Uttar Pradesh, AIR 2006 SC 2522

¹⁷Sheela Barsey V/s Union of India, (1997) 4 SCC 373.

¹⁸P.U.C.L V/s Union of India, (2000) 5 SC ALE.

¹⁹Ramleela Committee Maidan Case, (2012) 5 SCC 1

²⁰Navin Jindal V/s Union of India, 1995 IVAD Delhi 273

Right to Passive Euthanasia–

In **Aruna Shan Bagh Case**²¹ court held that each and every individual has a **Right**

7. EVENTS IN A SEQUENCE FOR PROMOTION OF HUMAN RIGHTS

The following is a list of some of the important national statutes which have a bearing on the promotion/protection of human Rights in India.

1829 – The practice of sati was formally abolished by Governor General William Bentick after years of campaigning by Hindu reform movements such as the Brahma Samaj of Ram Mohan Roy against this orthodox Hindu funeral custom of self-immolation of widows after the death of their husbands.

1871 - Criminal Tribes Act 1871, was repealed by the government in 1952 and replaced by Habitual Offenders Act (HOA) (1952)

1923 – Workmen’s Compensation Act.



1926 – Trade Unions Act

1929 – Child Marriage Restraint Act, prohibiting marriage of minors under 14 years of age is passed.

1933 – Children (Pledging of Labor) Act – Prohibit the pledging of the labor of children and the employment of children whose labor has been pledged.

1936 – Payment of Wages Act

1942 – Weekly Holidays Act.

1946 – Industrial Employment Standing Orders Act.

1947 – Industrial Disputes Act.

1948 – Minimum Wages Act.

1948 - ESI Act

1948 - Factories Act.

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.

1950 – Caste Disabilities Removal Act

1952 – Criminal Tribes Acts repealed by government, former "criminal tribes" categorized as "denotified" and Habitual Offenders Act (1952) enacted.

1956 – Young Persons (Harmful Publications) Act – The Act seeks to prevent the dissemination of publications which are harmful to young persons.

1956 – Immoral Traffic Act.

1960 - Orphanages and other Charitable Home (Supervision and Control) Act.

1960 – Children Act.

1961 – Apprentices Act.

1961 – Maternity Benefit Act. This is an Act to provide maternity benefits, etc and to regulate employment of women in certain establishments for certain periods before and after child birth.

1961 – Dowry Prohibition Act. This is an Act to prohibit the evil practice of giving and taking of dowry.

1966 - Beedi and Cigar Workers (Conditions of Employment) Act, 1966

1971 – Medical Termination of Pregnancy Act.

1973 – Supreme Court of India rules in Kesavananda Bharati case that the basic structure of the Constitution (including many fundamental rights) is unalterable by a constitutional amendment.

1976 – Equal Remuneration Act.

1976 - Beedi Workers Welfare Fund Act

1976 – Bonded Labor (System) Abolition Act –The Act provides for the abolition of bonded labor system to prevent the economic and physical exploitation of the weaker sections of the people.

1978 – SC rules in Menaka Gandhi v. Union of India that the right to life under Article 21 of the Constitution cannot be suspended even in an emergency.

1985-6 – The Shah Bano case, where the Supreme Court recognized the Muslim woman's right to maintenance upon divorce, to nullify the decision of the Supreme Court, the Rajiv Gandhi government enacted The

²¹Aruna Shan Bagh Case, WRIT PETITION (CRIMINAL) NO. 115 OF 2009

²²D.K.Basu V/s State of West Bengal, AIR 1977 SC 610.

1952 - The Employee Provident Funds and miscellaneous Provisions Act.

1955 – Reform of family law concerning Hindus gives more rights to Hindu women.

1955 – Protection of Civil Rights Act, 1955.



Muslim Women (Protection of Rights on Divorce) Act 1986

1986 – Environmental Protection Act.

1986 – Juvenile Justice Act.

1986 – Child Labor (Prohibition and Regulation) Act.

1986 – Indecent Representation of Women (Prohibition) Act. This Act to prohibit incense representation of women through advertisements or in publications, writings, paintings, figures, or in any other manner.

1987 – Mental Health Act. – The Act regulates determination of lunacy, reception, care and treatment of mentally ill persons.

1987 – Commission of Sati (prevention) Act. This is an Act for effective prevention of the commission of Sati and its glorification.

1987 – National Commission for Scheduled Castes and Scheduled Tribes. Article 338 of the Constitution requires constitution of the National Commission for SC's and ST's for better protection of the rights of the members of the Scheduled Caste and Scheduled Tribes.

1989 – Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is passed.

1990 – National Commission for Women Act, 1990. An Act to constitute a National Commission for Women for better protection of the rights of women.

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 – National Commission for Minorities Act, 1992 An Act to constitute a National Commission for Minorities for better protection of the rights of the minorities.

1993 – National Human Rights Commission is established under the Protection of Human Rights Act.

1993 – The SAARC Convention (Suppression of Terrorism) Act.

1993 – Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 It provides for the prohibition of all manual scavengers as well as construction or continuance of dry latrines and for the regulation of construction and maintenance of water-seal latrines.

1994 - The Transplantation of Human Organs Act.

1994 – The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act.

2001 – Supreme Court passes extensive orders to implement the right to food.

2005 – A powerful Right to Information Act is passed to give citizen's access to information held by public authorities.

2005 – National Rural Employment Guarantee Act (NREGA) guarantees universal right to employment.

2006 – Supreme Court orders police reforms.

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 decriminalizing homosexual relationships in India.

April 2010 - The Right of children to Free and Compulsory Education Act came into force. This is a historic day for the people of India as from this day the right to education will be accorded the same legal status as the right to life as provided by Article 21A of the Indian Constitution. Every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate



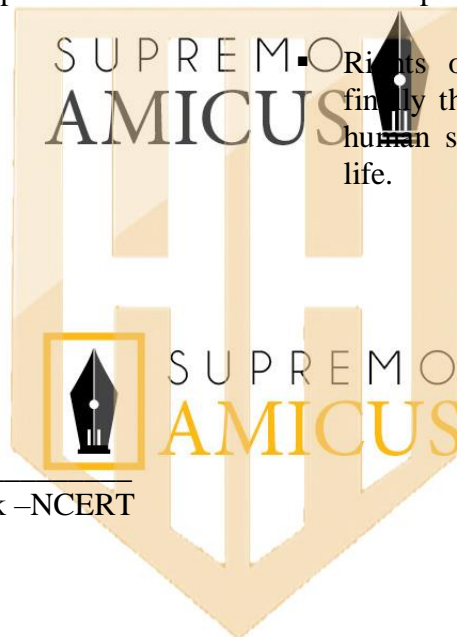
classroom in the vicinity of his/her neighborhood.

2012 – Direct Cash Transfer Scheme launched.

2012 - Chhattisgarh Legislative Assembly passed the Food Security Bill aimed at providing food and nutritional security to around 50 lakh families in the state.

All above sequence shows how the development of human right has been done in Indian Society and all are legal reforms in the field of human right which was done for securing the protection and promotion of human rights.

- Right of humans for performing of their activities and their rights are protected under Indian laws from Article 12 to 35, part III of Indian Constitution, these fundamental rights are the basic structure of Indian Constitution.
- All International conventions such as U.N CHARTER, UDHR, ECHR, ICCPR, ICESCR, made great effects in the development of concept of human rights and these all are played very important role in the development of rights of man.



▪ Rights of human can be concluded finally that it is the essential rights of human species for survival of human life.

Human Rights A source Book –NCERT
Indian Constitution
Wikipedia
NHRC

Conclusion-

- Human right is a developing concept in respect of the protection and promotion of human right and ultimate aim to secure the human species, after considering the above statements it can be concluded that human rights under Indian is known as fundamental rights which is essential rights of human beings for survival.

SUPREMO AMICUS



VOLUME 3 | JAN | 2018

ISSN: 2456-9704

