HUMAN RIGHTS UNDER INDIAN LAW

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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.
• **20<sup>th</sup> century**
  World war and huge losses of life and gross abuse 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 IIInd 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.

**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 - 26<sup>th</sup> November 1949
       Enforced – 26<sup>th</sup> January 1950
     - **U.N. Charter**
       Adopt – 25<sup>th</sup> June 1945

      Enforced – 24<sup>th</sup> 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*<sup>1</sup> 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*<sup>2</sup> court held that those rights which are traditionally called Natural Rights is now known as Fundamental Rights.

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<sup>1</sup> *kesavananda Bharti v/s State of Kerala, AIR 1973 SC 1461.*
<sup>2</sup> *Golaknath v/s State of Punjab, AIR 1967 SC 1643.*

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**

   - **1st 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.

   - **2nd generation human rights**
     Rights of human which encourage the strength of 1st 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.

   - **3rd 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 3rd generation is still under process of development.

2. **On the basis of nature**

   - **Civil and political rights**
     They knew as 1st 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.

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 arbitrary ness 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**, in this case court held that there is strict restrictions on police from making arbitrary arrest.

- **b. Sheela Barsey V/s State of Maharashtra**, 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**, in this case court held to humanize the jail administration.

- **d. D.K.Bsu V/s State of West Bengal**, 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** 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 *Supreme Court.*

- Article 32 give to file writs which are as follows:
  - a. Mandamus
  - b. Habius 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
Constitution played a major role which can be consider 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 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 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.

**Right to Clean Environment** -
In case of M.C. Mehta V/s Union of India 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 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 and in case of Mohini jain V/s State of Karnataka 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 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 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 court held that each and every individual has a Right to Food and this right is a fundamental right of individuals.

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10 Maneka Gandhi V/s Union of India, AIR 1978 SC 597.  
11 Justice K.S Puttaswami V/s Union of India, WRIT PETITION (CIVIL) NO 494 OF 2012
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.

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.

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 Brahmo 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
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.
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.
1956 – Young Persons (Harmful Publications) Act – The Act seeks to prevent the dissemination of publications which are harmful to young persons.
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.
1965 – 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
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 - 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
Muslim Women (Protection of Rights on Divorce) Act 1986
1986 – Environmental Protection Act.
1986 – Child Labor (Prohibition and Regulation) Act.
1986 – Indecent Representation of Women (Prohibition) Act. This Act to prohibit incent representation of women through advertisements or in publications, writings, paintings, figures, or in any other manner.
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.
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.
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.
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.
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.