

## Human Rights in the Context of UNO Charter and the Indian Constitution

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**Abstract:** *Human rights are generally defined as a rights which every human being is entitled to enjoy. The societies and cultures of various countries of the world have developed the conception of rights and principles, that should be respected. The stoic philosophers of Greece spoke about natural rights and their writings influenced Rome. The Romans believed that all human beings were subject to certain common principles of life. The natural law became the basis for Roman law makers. The Church thinkers spoke in terms of the law of God and of the Church. According to Hobbes, man lost his natural rights when a social contract was made<sup>1</sup> (K Chandrashekhara - Harold J. Laski State and Ideology, published by Rawat Publications, Jaipur and New Delhi 1999, p- 135). According to Locke though man surrendered some of his natural rights, but he continued to enjoy the remaining rights. According to Rousseau man surrendered his individual will to the general will. "Man is born free but everywhere he is in chains" said Rousseau<sup>2</sup> (K Chandrashekhara - Harold J. Laski State and Ideology, published by Rawat Publications, Jaipur and New Delhi 1999, p-136-137). According to Thomas Paine, the rights to liberty, property, security and resistance to oppression are based on natural rights.*

**Key Words:** *Human Rights, U.N.O, The General Assembly, progressive measures, equality before law, Major International Documents, The National Human Right Commission, State Human Rights Commission, Empowerment of Women, Rights of Children*

### 1. INTRODUCTION:

Human rights are generally defined as a rights which every human being is entitled to enjoy. The societies and cultures of various countries of the world have developed the conception of rights and principles, that should be respected. The stoic philosophers of Greece spoke about natural rights and their writings influenced Rome. The Romans believed that all human beings were subject to certain common principles of life. The natural law became the basis for Roman law makers. The Church thinkers spoke in terms of the law of God and of the Church. According to Hobbes, man lost his natural rights when a social contract was made<sup>(1)</sup>

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#### 1.1 Origin, growth and development of Human Rights:

Several rights arose as a result of historical evolution. Human beings in society evolved certain usages, traditions and customs for the common good. Custom was the unwritten law in the Ancient period .The customs and traditions were created by human beings. When those customs and traditions were hardened by time and they provided a basis for the written laws of the state. In England, some rights are the product of history and some rights are the results of legislation. But all rights directly or indirectly developed the personality of the individual. But the individuals do not enjoy the rights as isolated beings. But they enjoy the rights as members of the society and state<sup>(3)</sup>. According to Harold J Laski "the state is known by the rights it maintains"<sup>(4)</sup> Mahatma Gandhi says " I learnt from my illiterate but wise mother that all rights to be deserved and preserved come from duty well-done"<sup>(5)</sup>

In 1789 occurred the French Revolution. "The storming of the fortrees of Bastille, a state presume by the people of palace on 14th July that year symbolize the end of autocracy and old regime in French. The national assembly of France which and started meeting in June 1789 adopted the Declaration of the Rights of Man and the Citizens, on August 7th 1789 as the preamble to the new constitution that it was framing for France. This declaration was truly international in it appeal and inspired revolutionary and democratic movements in almost every country of Europe and in Central and South America and later in Asia and Africa. <sup>(6)</sup> The Soviet Government which took over power in Russia after the October Revolution in 1917, took a number of revolutionary measures and issued the number of Decrees such as Decree on Peace and Decree on Land and the Declarations of the Rights of People's Russia. A declaration of rights of the working class of the exploited people was proposed at the sessions of the Constituent Assembly by Bolshevik delegation. On the refusal of the constituent assembly to recognise the Soviet

Government and approve the Decree on land and the declaration of the rights of the working class and the exploited people. The Constituent assembly was dissolved on 19th January 1918. But the declaration was subsequently issued by all Russian Congress Soviets.<sup>(7)</sup> The American Declaration of Independence in 1776 the French Declaration of Rights of man in 1789, like the Magna Carta of 1215, the Habeus corpus Act of 1769, and the Bill of Rights of 1689 are the great landmarks in the history of man's struggle for Human Rights<sup>(8)</sup>

### 1.2 U.N.O and Human Rights:

The San Francisco Conference did not undertake to define the human rights and fundamental freedoms - respect for which was to be promoted by the organization. At the first session in February 1946, the Economic and social council established the commission on Human Rights and decided that its work should be directed towards submitting proposals and reports regarding<sup>(9)</sup>.

a) on international bill of rights b) international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters; c) the protection of minorities ; d) the prevention of discrimination on grounds of race, sex, language or religion.

The Commission was able to finish its work by June, 10, 1948. The draft was approved by the Economic and Social Council and adopted by the General Assembly on December 10, 1948 without a dissenting vote. The opening paragraph of the Declaration clearly states the nature of the documents in the words.

### 1.3 The General Assembly:

“Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedom and by progressive measures, national and international, to secure the universal and effective recognition and observance, both among the peoples of Member-States themselves and among the peoples of territories under their jurisdiction”<sup>(10)</sup>

The fourteen sections of UNO Charter deals with the following human rights:-

1) The abolition of slavery 2) Freedom of movement 3) The abolition of inhuman treatment 4) Protection against arbitrary arrest, equality before law 5) The dignity of labour and social security 6) Standard of living and assistance 7) The protection of family-life and of property 8) The emancipation of women 9) Freedom of religion 10) Freedom of thought and expression 11) The right to education 12) Participation in cultural life 13) Freedom of creative work 14) The right to participate in government.

Thus in all these fourteen sections, man is considered successively as

- a) a physical organism
- b) a moral personality
- c) a worker
- d) an intelligent being and
- e) a member of a community and of a polity

“The world would be paradise if all these five ideas are put into practice.”

In the light of the adoption of the Resolution of the Universal Declaration of Human Rights by the General Assembly, Several Multi-Lateral Treaties on different aspects of human rights have been entered by the various countries in the World and they have been ratified by various countries in the form of memorandum of understanding.

### 1.4 Major International Documents : Declarations, Covenants & Conventions are listed below<sup>(11)</sup>:

- Convention on prevention and punishment on the crime of Genocide, New York 9<sup>th</sup> December 1978.
- International Convention on the enumeration of all forms of Racial Discrimination New York, 7<sup>th</sup> March 1966.
- International Convention on Economic Social and Culture Rights, New York 16<sup>th</sup> December 1966.
- International Covenant on Civil and Political Rights, New York 16<sup>th</sup> December 1966.
- Optional Protocol to the International Covenant on civil and political Rights New York 16<sup>th</sup> December 1966.
- Second optional Protocol to the International covenant on civil and Political Rights, aiming at the Abolition of Death penalty New York, 15<sup>th</sup> December 1989.
- Convention on the Elimination of all forms of Discrimination against Women New York 18<sup>th</sup> December 1966.
- Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against women New York 6<sup>th</sup> October 1999.
- Convention against Torture and other cruel, Inhuman or Degrading Treatment or punishment, New York 10<sup>th</sup> December 1984.
- Convention on the Rights of the child New York 20<sup>th</sup> November 1989.

- Optional Protocol to the Convention on the Rights of the child on the involvement of children in the armed conflict New York, 25<sup>th</sup> May 2000.
- Optional Protocol to the Convention on the Rights of the Child on the Sale of children, Child Prostitution and child Pornography New York, 25<sup>th</sup> May 2000.
- International Convention on the Rights of all migrant workers and members of their families New York, 18<sup>th</sup> December 1990.
- Convention relating to the status of Refugees, New York 31<sup>st</sup> January 1967.
- Convention of the safety of United Nations and Associated personnel New York 9<sup>th</sup> December 1994.
- International Convention for the suppression of Terrorist Bombings New York 15<sup>th</sup> December 1997.

### **1.5 Human Rights in the Indian Context under the Provisions of the Constitution and Legislations Independence Pledge -**

The Indian National Congress at its Lahore session held in Lahore in 1929 adopted the attainment of Purna Swaraj (Complete independence) as its goal. It was decided to observe 26th January every year as Independence day. On 26th January 1930, the pledge of independence was adopted by the people at thousand of meeting held all over the country. We believe that it is a inalienable right of the Indian people as of any of the people to have freedom and enjoy the fruits of their toil and have the necessities of life so that they may have full opportunities of growth<sup>(12)</sup>.

In the factories of England, France, Belgium and Germany working men and women and children laboured without any leisure. The exploitation of man by man was at its heights. It was a saga of sufferings and sacrifices of the humanity at the alter of the freedom. The two revolutions in the 18th century were mainly responsible for the formulations of rights. India is party to the International Covenant on Civil and political rights and the International Covenant on Economic, Social and Culture Right adopted by the General Assembly of the United Nations on 16<sup>th</sup> December 1966. The Human Rights incorporated in the above mentioned covenants are protected by the provisions of the constitution and other legislations. Wide ranging discussions were held at various forums of the Chief Ministers' Conferences and taking into considerations all the views, the protection of Human Rights Act 1993 was enacted and it received the assent of the President on 8<sup>th</sup> January 1994. Under section 3 of the Act, the National Human Rights commission has been constituted and it has been exercising the powers and performing the functions under the provisions of the Act.

### **1.6 The National Human Right Commission consists of the members:-**

1. Chairperson who is a Chief Justice of the supreme Court.
2. One member who is a Judge of the Supreme Court.
3. One member who is a Chief Justice of the High Court.
4. Two members are appointed from amongst persons having knowledge or practical experience in the matters relating to human rights.
5. The Chairperson and other person of the commission are appointed by the president by warrant under his hand and seal after obtaining the recommendations of the Committee consisting of
  - 1) The Prime Minister
  - 2) The Speaker of the House of the People.
  - 3) Home Minister
  - 4) Leader of the opposition in the House of the people.
  - 5) The leader of the opposition in the Council of States.
  - 6) Deputy Chairman of the Council of the State.

### **1.7 Powers and Functions of the National Commission:**

#### **The Commission performs the following functions**

- a) Inquire suo motu or on a petition presented to it by a victim or any person in the violation of human rights and negligence in the prevention of such violation by a public servant.
- b) Visit any jail or any other institution under the control of State Govt. Under intimation to the concerned state Govt., to study the living conditions and make recommendation for improvement.
- c) Review the Safeguards provided under the Constitutions and Laws and recommend measures for their effective implementation.
- d) Study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- e) Under take and promote research in the field of human rights and spread awareness of the safeguards available for the protection of these rights through publications media and seminars.

### 1.8 State Human Rights Commission:

Similarly every State Govt. in India has constituted State Human Right Commission to exercise the Powers and perform the functions under the provisions of the Act. The Sate Commission consists of

1. A Chairperson who has been a Chief Justice of the High Court.
2. One member who is a Judge of the High Court.
3. One member who is a District Judge in that State.
4. Two members from amongst persons having knowledge or practical experience in the matters relating to Human Rights.

The Chairperson and other members are appointed by the Governor by warrant under his hand and seal after obtaining the recommendations of the Committee consisting of

1. The Chief Minister
2. Speaker of the Legislative Assembly.
3. Home Minister
4. The Leader of the Opposition in the Legislative Assembly.

The State Commission will inquire in to the violation of Human Rights only in respect of matters relating to any of the entries enumerated in list II & list III in the seventh schedule to the constitution.

### 1.9 Human Rights Courts at the Dist. Level:

For the Purpose of providing speedy trial o{ offences arising out of violation of human rights, the State Govt. shall notify for each dist. A Court of Session to be a human rights court to try the said offences. The Commission at the Dist. Level shall have all the Powers of a Civil Court trying a suit under the Code of Civil procedure 1908.

#### The Powers of the Court to deal with the following matters.

1. Summoning and enforcing the attendance of the witnesses and examining them in court.
2. Discovery and production of any documents.
3. Receiving evidence on affidavits.
4. Requisitioning any public record or copy thereof from any court or from any office.
5. Issuing commissions for the examination of documents.
6. Any other matter which may be prescribed

### 1.10 Illustrative Cases under the provisions of Indian Constitution and other laws<sup>(13)</sup>

#### Empowerment of Women

1. Empowerment of Women in Political Economic cultural religious and social fields is in sine qua non of gender justice. For Women, from womb to tomb, female sex is now a sin, a misfortune, a guiltless guilt. Article 23 of Indian Constitution has made provision for Right against Exploitation. "Traffic in Human Beings and beggary and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with Law".
2. Priyadarshini Mattu and Jessica Lall cases are the best examples of exploitation of women.
  - a) The Killer of Law Student Priyadarshini Mattu, Mr. Santhosh Singh the son of a Retired Police Officer was sentenced to death by the Delhi High., Court on 30<sup>th</sup> October 2006 for his diabolic act of raping ant then murdering Priyadarshini Mattu 11 years ago in a grotesque manner. The Delhi High Court was of the opinion that a case of this crime in which the crime is committed in a pre meditated approach and. grotesque manner, the convict deserves nothing other than death penalty.
  - b) In respect of Jessica Lall, the acquittal by the trial court had generated country wide outrage- Exactly 300 days later, the Delhi High Court overturned the verdict. The Delhi High Court questioned the bonafides of the Judgement of the trial court delivered by Mr. Bhayana, who is now himself a Judge of the High Court. Manu Sharma, the Killer of Jessica Lall was awarded Life sentence on 20<sup>th</sup> December by the Delhi High Court. The High Court said that the acquittals of killer Manu Sharma and his accomplices Vikas Yadav and Amardeep Singh by trial Judge Mr. Bhayana were immature assessment based on misreading of Material.
  - c) The sentencing of Mr. Santhosh Singh and Mr. Manu Sharma has given hope to many others fighting for Justice like the family of Prathiba Shetty alias Srikanta Murthy. A BPO employee Prathibha Shetty was brutally murdered allegedly by a taxi driver on 13<sup>th</sup> December 2005.

## 2. RIGHTS OF CHILDREN:

- a) child Labour prohibition is one of the Human Rights - Political, civil, Economic, Social and Cultural. Awareness and concern for the welfare of children has been indicated at the national and international levels by various national policies, constitutional provisions, legislations and also by international covenants and human rights instruments. Article 25(2) of the universal declaration of the human rights 1948 provides that the

mother hood and children are entitled to special care and assistance. In 1959 came the Declaration of the rights of the child by the U.N.O. General Assembly.

- b) At home, there have been various legislations and constitutional provisions dealing with the rights of the children. A number of enactments in India have made special provisions for the protection of the children. Article 24 of the Indian Constitution has made provision for prohibition of employment of children in factories. No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- c) The Employment of the Children Act 1938 prohibits the employment of the children in hazardous occupations and prevents their exploitation.
- d) The Factories Act of 1946 provides stringent provisions to ensure the protection of the children.
- e) The Employment of the Children Act 1960 is another land mark for the protection of the children.
- f) Article 45 of the Indian Constitution lays down-

“The state shall endeavor to provide within a period of 10 years from the commencement of this constitution for free and compulsory education for all children until they complete the age of fourteen years”.

This directive principle has acquired the status of Fundamental Right after the after the decision by the Constitution Bench of the Supreme Court vide Unnikrishnan’s case 1993 (1) SCC 645.

### 3. Human Rights Enshrined in Indian Constitution :

Preamble to the Indian Constitution and provisions of Part 3 on Fundamental Right and Provisions of the Part 4 on Directive Principles and provisions of part 4A on fundamental duties and article 226 300A, 325 and 326 are described as the core of the constitution. They reflect the basic principles of the universal declaration of human rights and covenants on Civil and Political Rights and Economic, Social and Cultural Rights.

Presidential Address delivered by Hon’ble Justice Dr. A.S.Anand at the Teen Murthi auditorium New Delhi on 10<sup>th</sup> December 1999 and published by International Institute of Human Rights Society, New Delhi. (Summarized Version) The Preamble is the philosophy of our constitution. Right to equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Education Rights, Right to Constitutional Remedies, Directive Principles of State policy, Fundamental Duties and some other provisions like 226, 300A, 325 and 326. Reflect the Human Rights declared by U.N.O.

### 4. Indian Laws relating to Human Rights :

The following is the list of some other important National Statutes which have a bearing on the promotion & protection of human rights

1. Constitution of India (Preamble Parts III, IV and IVA, Articles 226, 300A, 325 and 326.
2. Protection of Human Rights Act, 1993.

“The Act provides for the constitution of a National Human Rights Commission, State Human Rights Commissions, and Human Rights Courts for better protection of human rights”

3. National Commission for scheduled Castes and scheduled tribes.

“Article 338 of the Constitution requires constitution of the National Commission for Scheduled Casts and Scheduled Tribes for better protection of the rights of the members of the scheduled castes and scheduled Tribes”.

4. National Commission for Minorities Act,1992.

"An Act to constitute a National Commission for Minorities for better protection of the rights of the minorities”.

5. National Commission for Women Act, 1990.

"An Act to constitute a National Commission for Women for better protection of the rights of women”.

6. Protection of Civil Rights Act, 1955.

“Under Article 17 of the Constitution, untouchability is abolished and its practice in any form is forbidden. By this Act, enforcement of any disability arising out of untouchability has been made an offence punishable in accordance with the relevant provisions.

7. Scheduled Castes and Scheduled Tribes prevention of Atrocities) Act, 1989.

“An Act to prevent the commission of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, for constitution of special courts for trial of such offences, and to provide relief and rehabilitation to the victims”.

8. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

“Fraternity, assuring the dignity of the individual is one of the objects proclaimed in the Preamble to the Constitution Article 47 requires the State to raise the standard of living and improve and health of the people. This act has been enacted to achieve those objectives. It provides for the prohibition of all manual scavengers and for the regulation of construction and maintenance of water-seal latrines”.

9. Immoral Traffic (Prevention) Act, 1956.  
“Article 23 of the Constitution prohibits traffic in human beings. On 9 May 1950, India ratified the International Convention for Suppression of immoral Traffic in women and Girls. This is an Act to give effect to the same”.
10. Indecent Representation of women (prohibition) Act, 1986.  
“An Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures, or in any other manner”.
11. Dowry Prohibition Act, 1961.  
“This is an Act to prohibit the evil practice of giving and taking of dowry”.
12. Commission of Sati (Prevention) Act, 1987.  
“Sati or burning or burying alive of widows or women is revolting to the feelings of human nature and is nowhere enjoined by any of the religions of India as an imperative duty. This is an Act for effective prevention of the commission of Sati and its glorification:.
13. Maternity Benefit Act, 1961. “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”.
14. Child Marriage Restraint Act, 1929.  
“This was enacted with a view to preventing child marriages, namely, a marriage to In which either of the contracting parties is under the specified age:.
15. Children (Pledging of Labour) Act, 1933.  
“An Act to prohibit the pledging of the labour of children and the employment of children whose labour has been pledged.
16. Orphanages and other Charitable Homes (Supervision and Control) Act, 1960.  
“An Act to provide for the supervision and control of orphanages, homes for neglected women or children and other like institutions and to penalize criminal activities indulged in such institutions”.
17. Children Act, 1960.  
“An Act to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of children and for trial of delinquent children in the Union territories”.
18. Child Labour (Prohibition and Regulation) Act, 1986.  
“The Act bans employment of children in specified occupations and processes, lays down a procedure for inclusion in the schedule of banned occupations and processes and regulates the conditions of work of children in employment where they are not prohibited from working”.
19. Juvenile justice Act, 1986.  
“An Act to provide for the care, protection treatment development and rehabilitation of neglected or delinquent juveniles and to provide a specialized approach for the juvenile justice system.
20. Young Persons (harmful Publications) Act, 1956.  
“Pictorial and other publications containing stories of crime, violence, cruelty or incidents of repulsive or horrible nature would tend to corrupt a young person and incite or encourage him to commit such acts. The Act seeks to prevent the dissemination of publications which are harmful to young persons”.
21. Caste Disabilities Removal Act, 1950. “The Act provides that when in a civil suit the parties belong to different persuasions, the laws of the religions of the parties shall not be permitted to operate to deprive such parties of any property to which but for the operation of such laws, they would have been entitled”.
22. Mental Health Act, 1987. “The Act regulates determination of lunacy, reception, care and treatment of mentally ill persons.
23. Bonded Labour (System) Abolition Act, 1976.  
"Article 23 of the Constitution prohibits “beggar” and other similar forms of forced labour and further provides that any contravention of the said prohibition shall be an offence punishable in accordance with law. The Act provides for the abolition of bonded labour system to prevent the economic and physical exploitation of the weaker sections of the people.
24. The Pre-Natal Diagnostic Techniques (Regulation and prevention of Misuse) Act, 1994.
25. Medical Termination of pregnancy Act, 1971.
26. The Transplantation of Human Organs Act, 1994.
27. Orphanages and other charitable Homes (supervision and Control) Act, 1960.
28. The SAARC Convention (suppression of Terrorism) Act, 1960.
29. Environmental Protection Act, 1986.
30. Beedi and Cigar workers (Conditions of Employment) Act, 1966.
31. Beedi Workers Welfare Fund Act, 1976.
32. Trade Unions Act, 1926.
33. Industrial Disputes Act, 1947.

34. Workmen's Compensation Act, 1923.
35. Industrial Employment Standing Orders Act, 1946.
36. Factories act, 1948.
37. Employees State Insurance Act, 1948.
38. Minimum wages Act, 1948.
39. The Employees Provident Funds and Miscellaneous Provisions Act, 1952.
40. Apprentices Act 1961.
41. Equal Remuneration Act, 1976.
42. Payment of Wages Act, 1936.

## 5. CONCLUSION:

It is difficult to evaluate the work of the U.N.O. in promoting respect for and observance of human rights. The universal Declaration of Human Rights has served a useful purpose to the extent that it has provided goal of achievement and standards against which we can measure the progress of various states. Efforts to achieve a legal formulation of these rights and to put the sanctions and means of enforcement have completely failed. It is not clear how effective the U.N.O. can be in dealing with specific complaints of violation. There is the strong feeling and the legal argument that since the charter does not commit members to respect defined rights and freedom, there is no basis for saying that the member has violated a particular rights. General Assembly resolutions and debates may be ineffective in dealing with a particular complaint. For the time-being and for the foreseeable future, the role of the U.N.O. in promoting respect for human rights is a more limited one.

Quotation from Honourable Justice M.C. Chagla Individual Freedom and Welfare State "The Declaration of Human Rights has no validity, nor has it any legal sanction behind it., but it supplies a moral standard and a sure touch-stone by which all legislation and social conditions in different countries can be judged. No country can be legally hauled up for passing a Law which deviates from the principles enunciated in the Declaration, but it can be put in the dock and condemned by inter- national opinion. The Declaration has undoubtedly awakened the social conscience of every government in the world. The Declaration is like a brave banner flying from the highest tower in the world which no one can ignore"<sup>14</sup>

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