

## Value Added Course

### Human Rights

### Study Material

#### MEANING OF HUMAN RIGHTS

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. Human rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

#### DEFINITION OF HUMAN RIGHTS

**Dr. Justice Durga Das Basu** defines “Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a ‘member of human family’ irrespective of any consideration. Durga Das Basu’s definition brings out the essence of human rights.

**The Universal Declaration of Human Rights (UDHR), 1948**, defines human rights as “rights derived from the inherent dignity of the human person.” Human rights when they are guaranteed by a written constitution are known as “Fundamental Rights” because a written constitution is the fundamental law of the state.

#### CHARACTERISTICS AND NATURE OF HUMAN RIGHTS

Following are the characteristics of human rights:

- 1. Human Rights are Inalienable** - Human rights are conferred on an individual due to the very nature of his existence. They are inherent in all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.
- 2. Human Rights are Essential and Necessary** - In the absence of human rights, the moral, physical, social and spiritual welfare of an individual is impossible. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people.
- 3. Human Rights are in connection with human dignity** - To treat another individual with dignity irrespective of the fact that the person is a male or female, rich or poor etc. is concerned with human dignity. For eg. In 1993, India has enacted a law that forbids the practice of carrying human excreta. This law is called Employment of Manual Scavengers and Dry Latrines (Prohibition) Act.
- 4. Human Rights are Irrevocable:** Human rights are irrevocable. They cannot be taken away by any power or authority because these rights originate with the social nature of man

in the society of human beings and they belong to a person simply because he is a human being. As such human rights have similarities to moral rights.

**5. Human Rights are Necessary for the fulfillment of purpose of life:** Human life has a purpose. The term “human right” is applied to those conditions which are essential for the fulfillment of this purpose. No government has the power to curtail or take away the rights which are sacrosanct, inviolable and immutable.

**6. Human Rights are Universal** – Human rights are not a monopoly of any privileged class of people. Human rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.

**7. Human Rights are never absolute** – Man is a social animal and he lives in a civic society, which always put certain restrictions on the enjoyment of his rights and freedoms. Human rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws to the individuals. As such each right has certain limitations.

**8. Human Rights are Dynamic** - Human rights are not static, they are dynamic. Human rights go on expanding with socio-eco-cultural and political developments within the State. Judges have to interpret laws in such ways as are in tune with the changed social values. For eg. The right to be cared for in sickness has now been extended to include free medical treatment in public hospitals under the Public Health Scheme, free medical examinations in schools, and the provisions for especially equipped schools for the physically handicapped.

**9. Rights as limits to state power** - Human rights imply that every individual has legitimate claims upon his or her society for certain freedom and benefits. So human rights limit the state’s power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals, or in the nature of demands on the State, i.e. positive obligations of the State. For eg. Six freedoms that are enumerated under the right to liberty forbid the State from interfering with the individual.

## **THE EVOLUTION OF HUMAN RIGHTS**

The evolutions of human rights have taken place over centuries. Man had to struggle hard in order to achieve the ultimate goal – living with dignity – which still has to be realized in various societies. India itself is an example where women, children, dalits, bonded labourers, etc, is trying hard to be a part of mainstream. In spite of all these, the world recognized the U.N.Charter of 1945 which states that human rights are inalienable aspect of mankind. The origin of human rights may be traced to the theory of Natural Rights derived from the concept of Natural Law, as propounded by ancient Greek Stoic Philosophers and further developed by Thomas Hobbes and John Locke. The American and French Revolution gave further impetus to the struggle of human rights. The evolution and development of human rights in the international context can be traced to the Magna Carta and the English Bill of Rights followed by the French Declaration and the American Bill of Rights.

The twentieth century witnessed the crystallization of the philosophy of Human Rights when the United Nations adopted the UN Charter, 1945, The Universal Declaration of Human Rights, 1948 and the International Covenants on Human Rights with further emphasis to protection of rights of Women, Abolition of Slavery, Racial Discrimination, Civil and Political Rights, Economic, Social and Cultural Rights and most importantly the Rights of children. 5 In India the drafters of Constitution took care to incorporate Human Rights for its own citizens as well as for the aliens.

### **THE NATURAL RIGHTS THEORY**

Though the expression ‘human rights’ had its origin in international law, which is not older than the World War II, the concept of an individual having certain basic, inalienable rights as against a sovereign State had its origin in the doctrines of natural law and natural rights.

Thomas Hobbes (1588 – 1679), John Locke (1632 – 1704) and Jean-Jacques Rousseau (1712 – 1778) are the three main thinkers who developed the Natural Rights theory. Thomas Hobbes was the first champion of the theory of ‘natural rights’. In his celebrated book, ‘Leviathan’, he advocated that no individual could ever be deprived of the right to life, which he enjoyed in the state of nature. He asserted that all human beings are equal, without any consideration.

John Locke developed the idea further in his book, ‘Two Treatises Government.’ He argued that every human being has a natural right to life, personal liberty, and property, and that no governmental authority has power to deprive individuals of these rights because they had enjoyed them even before the creation of the civil or political society.

Rousseau is regarded as the greatest master of natural law school. In his celebrated book, ‘The Social Contract’, Rousseau states that “All men are born free but everywhere they are in chains.” Rousseau proclaimed that men are bestowed with inalienable rights of liberty, equality and fraternity. These concepts became the basis for the French Declaration of the Rights of Man and of the Citizen.

Paine an American revolutionary thinker developed the doctrine of natural rights without linking it to the social contract theory. He held that rights are natural, because they were bestowed upon man by God himself. These rights exist independently of the legal code of any country.

### **LANDMARKS IN DEVELOPMENT OF HUMAN RIGHTS**

The important landmarks in the progress of human rights are as follows:

**1 The Magna Carta, 1215.** The Magna Carta, also known as the Great Charter, of 1215 is the most significant constitutional document of all human history. The main theme of it was protection against the arbitrary acts by the king. The 63 clauses of the Charter guaranteed basic civic and legal rights to citizens, and protected the barons from unjust taxes. The English Church too gained freedom from royal interferences. King John of England granted

the Magna Carta to the English barons on 15th June 1215. The king was compelled to grant the Charter, because the barons refused to pay heavy taxes unless the king signed the Charter.

**2 The English Bill of Rights, 1689.** The next source and avenue of the development of the philosophy of human rights is the English Bill of Rights, enacted on December 16, 1689, by the British Parliament. The British Parliament declared its supremacy over the Crown in clear terms. The English Bill of Rights declared that the king has no overriding authority. The Bill of Rights codified the customary laws, and clarified the rights and liberties of the citizens. It lays down the twin foundations, viz., the supremacy of the law, and the sovereignty of the nation, upon which, the English constitution rests.

**3. American Declaration of Independence, 1776.** The first colonies to revolt against England were the thirteen States of America. These states declared their independence from their mother country on 4th July 1776. The declaration charges the king with tyranny and affirms the independence of the American colonies. The declaration of independence has great significance in the history of mankind as it justified the right to revolt against a government that no longer guaranteed the man's natural and inalienable rights.

**4. The U.S. Bill of Rights, 1791.** The U.S. Constitution was enacted on 17th September 1787. The most conspicuous defect of the original constitution was the omission of a Bill of Rights concerning private rights and personal liberties. Madison, therefore proposed as many as twelve amendments in the form of Bill of Rights. Ten of these were ratified by the State legislatures. These ten constitutional amendments came to be known as the Bill of Rights. The overall theme of the Bill of Rights is that the citizen be protected against the abuse of power by the officials of the States.

**5. The French Declaration of the Rights of Man and of the Citizen, 1789** The fall of Bastille and the abolition of feudalism, serfdom and class privileges by the National Assembly ushered France into a new era. On 4th August 1789, the National Assembly proclaimed the Rights of Man and of the Citizens. The Rights were formulated in 17 Articles. The Declaration of the Rights of Man and of the Citizen has far reaching importance not only in the history of France but also in the history of Europe and mankind. The declaration served as the death warrant for the old regime and introduced a new social and political order, founded on the noble and glittering principles. Further the declaration served as the basis for many Constitutions, framed in different countries, where the framers gave top priority to human rights.

**6. Declaration of International Rights of Man, 1929.** After World War I, questions about human rights and fundamental freedoms began to be raised. In 1929, the Institute of International Law adopted the Declaration of International rights of Man. The Declaration declared that fundamental rights of citizen, recognized and guaranteed by several domestic constitutions, especially those of the French and the U.S.A constitutions, were in reality meant not only for citizens of the states but for all men all over the world, without any consideration.

**7. The UN Charter, 1945.** The United Nations Charter was drafted, approved and unanimously adopted by all the delegates of the 51 states, who attended the United Nations Conference at San Francisco. The UN Charter contains provisions for the promotion and protection of 8 human rights. The importance of the Charter lies in the fact that it is the first official document in which the use of ‘human rights’ is, for the first time traceable and which also recognized the respect for fundamental freedom.

**8. The Universal Declaration of Human Rights, 1948.** The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on 10th December, 1948. The Declaration consists of thirty Articles and covers civil, political, economic, social and cultural rights for all men, women and children. The declaration however is not a legally binding document. It is an ideal for all mankind. 1.9.

**9. International Covenants on Human Rights** The Universal Declaration of Human Rights, 1948 was not a legally binding document. It lacked enforcements. This deficiency was sought to be removed by the U.N. General Assembly by adopting in December, 1966, the two Covenants, viz,

1. International Covenant on Civil and Political Rights and
2. International Covenant on Economic, Social and Cultural Rights.

The two International Covenants, together with the Universal Declaration and the Optional Protocols, comprise the International Bill of Human Rights. The International Bill of Human Rights represents a milestone in the history of human rights. It is a modern Magna Carta of human rights.

### **THREE GENERATIONS OF HUMAN RIGHTS**

Karel Vasak, a distinguished and very well-known human rights scholar, introduced the idea of **three generations of human rights**, which allows us to understand the types and evolution of human rights better. The first generation of human rights is **civil and political rights**. The second generation of human rights includes **economic, social and cultural rights** and the third generation of human rights are called **solidarity rights**.

The **first generation rights** i.e., **civil and political rights** are the initial form of natural rights. These rights developed during the English Revolution of the 17<sup>th</sup> century and the French and American Revolution of the 18<sup>th</sup> century. The key theme underlying these rights is **liberty**. The first generation rights include the right to life, the right to liberty, and the right to property and have expanded to include non-discrimination, freedom from arbitrary arrest, freedom of thought, freedom of religion, freedom of movement etc. These rights are often seen as a manifestation of **negative rights** since they can be enjoyed only when there is a restriction upon others. The key documents to understand the content of the first generation of human rights are Article 3 to Article 21 of the UN Declaration and the International Covenant of Civil and Political Rights of 1966 which came into force in 1976.

In the twentieth century, especially post World War II, **second-generation rights** began to earn a greater prominence. The economy of countries was torn by war and there was massive destruction as a result of the world wars. Therefore, the effort for **economic, social and**

**cultural rights** developed during the twentieth century. The rights rely on socialist assumptions and the underlying theme is **equality** which is in contrast to first-generation rights and the notion of liberty. The second-generation rights include the right to work, the right to health care, the right to education, the right to social security etc. Therefore, these rights are seen as a manifestation of **positive rights** as they place a claim on the state and a duty to oblige for action, for example, welfare provisions. The key documents to understand the content of second-generation rights are Article 22 to Article 27 of the UN Declaration and the International Covenant of Economic, Social and Cultural Rights of 1966.

The **third generation of rights** emerged post-1945 and are referred to as **solidarity rights**. This is for the simple reason that these rights are concerned with social groups and society on the whole rather than an individual. They are therefore seen as collective rights. The underlying theme of the third-generation rights is **fraternity**. Usually, these rights are shaped by the difficulties faced by the countries of the Global South. These rights include the right to development, the right to environmental protection, the right to self-determination, the right to peace etc. The Stockholm Convention of Human Environment of 1972 and the Earth Summit of 1992 at Rio can be analysed to understand these rights.

## **THE INTERNATIONAL BILL OF HUMAN RIGHTS**

Human rights are **rights** that we have simply because we **exist as human beings**. These are **universal rights** inherent to all of us, regardless of nationality, sex, national or ethnic origin, color, religion, language or any other status. They range from the most fundamental, the **right to life** to those that make **life worth living**, such as the rights to food, education, **work, health, and liberty**.

**World Human Rights Day** is observed by the international community every **year on 10th December**. It commemorates the day in **1948** the **United Nations (UN) General Assembly** adopted the **Universal Declaration of Human Rights (UDHR)**. UDHR is a part of the **International Bill of Human Rights**. Headquartered in Geneva, with many regional offices, the **Office of the High Commissioner for Human Rights** has lead responsibility in the UN system for the promotion and protection of human rights.

### **Introduction**

Following the second world war (**1939-45**), a series of declarations and covenants began to articulate **universal human rights**. In **1948**, for the first time, countries agreed on a comprehensive list of **inalienable human rights**. In December of that year, the **United Nations General Assembly** adopted the **Universal Declaration of Human Rights (UDHR)**, a milestone that would profoundly influence the development of **international human rights law**. 30 articles of UDHR provide the principles and building blocks of current and future human rights conventions, treaties and other legal instruments. In **December 1966**, the **UN General Assembly** adopted **two international treaties** that would further shape **international human rights**:

- The **International Covenant on Economic Social and Cultural Rights (ICESCR)** which is monitored by the **Committee on Economic, Social and Cultural Rights**.
- The **International Covenant on Civil and Political Rights (ICCPR)**- monitored by the **Human Rights Committee**.

These are often referred to as “the International Covenants”. **The UDHR and these two Covenants together** are known as the **International Bill of Human Rights**.

### Universal Declaration of Human Rights

- The UDHR consists of 30 articles detailing an individual’s “basic rights and fundamental freedoms”. It is universally applicable for all human beings of varying race, religions and nationality. It directly inspired the development of international human rights law, and was the first step in the formulation of the International Bill of Human Rights, which was completed in 1966 and came into force in 1976. Even though the Universal Human Rights Declaration is not legally binding, its contents has been elaborated and incorporated into subsequent international treaties, regional human rights and instruments and in the legal codes of various countries. At least one of the 9 binding treaties of the UDHR has been ratified by all 193 member states of the United Nations, with the majority ratifying four or more.

The Declaration consists of the following:

- The preamble gives details about the social and historical reasons that led to the formation of the UDHR.
- It contains a total of 30 articles:

Universal Declaration of Human Rights	
<b>Articles</b>  <b>1 – 2</b>	The basic concepts of dignity, liberty and equality are established.
<b>Articles</b>  <b>3 – 5</b>	Details of individual rights, such as the right to life and prohibition of slavery are explained in detail.
<b>Articles</b>  <b>6 – 11</b>	Refers to the fundamental rights as well as the remedies for their violation.
<b>Articles</b>  <b>12 – 17</b>	Set forth the rights of the individual towards the community, including freedom of movement and residence within each state, the right of property and the right to a nationality.
<b>Articles</b>  <b>18 – 21</b>	These sets of articles refer to the rights of the individual towards the community, including freedom of movement, thought, opinion, expression, religion, peaceful association and ideas through any media.
<b>Articles</b>	Sanctions an individual’s economic, social and cultural rights including healthcare. It also upholds the right to a better standard of living and makes a special mention of care given to

22 – 27	motherhood or childhood.
Articles 28 – 30	It establishes the general means of exercising these rights, the areas in which the rights of the individual cannot be applied.

The UDHR is widely regarded as a ground-breaking document that provides a comprehensive and universal set of principles in a secular, apolitical document that is beyond cultural, religious and political ideologies. The Declaration was the first instrument of international law to use the phrase “rule of law”, thereby establishing the principle that all members of all societies are equally bound by the law regardless of the jurisdiction or political system. In International law, a declaration is different from a treaty in the sense that it generally states aspiration or understanding among the parties, rather than binding obligations. For this reason, the Universal Declaration of Human Rights is a fundamental constitutive document of the United Nations and, by extension, all 193 parties of the UN Charter.

### **HUMAN RIGHTS IN INDIA**

India got its independence in the year 1947, just a year before the UDHR was adopted. The founding fathers of Indian constitution were all aware that India’s freedom struggle had taken place in the context of the demand for basic human rights. Yet economic backwardness of the country would make it impossible to immediately satisfy all the aspirations of people. So, they adopted a pragmatic approach. They described certain rights as “fundamental rights” and laid down certain other rights as fundamental duties of a citizen were also enumerated.

The Supreme Court of India is the guarantor of the rights according to the Constitution. The court takes into account fundamental duties while interpreting the constitutional right.

### **FUNDAMENTAL RIGHTS IN INDIAN CONSTITUTION**

Rights are classified mainly in three broad categories: (a) Civil (b) Political (c) Economic and Social. Fundamental Rights in India recognize certain civil rights. Certain Political and Economic and Social rights are recognized by other provisions in the Constitution. In Part III, the Indian constitution provides a number of rights to individual. These rights have been called “Fundamental Right”. The expression “Fundamental” shows that these rights are basic right.

The Supreme Court of India recognizes Fundamental Right as “natural right”. Chief Justice Patanjali Shastri has referred to fundamental right as “those great and basic right which are recognized and guaranteed as the natural right inherent in the status of a citizen of a free country”. Chief Justice Subha Rao states that “fundamental rights are the modern name for what has been traditionally known as natural right”.

## FUNDAMENTAL RIGHTS

The various civil and political human rights and also the economic, social and cultural human rights have been guaranteed by the Constitution of India and re-christened as the “Fundamental Rights”.

The provisions of Part III of the Constitution (Arts. 12 – 35) enshrine the Fundamental Rights, which are more elaborate than those of any other existing written constitutions dealing with Fundamental Rights. The constitution as amended by Forty fourth Amendment Act, 1979, classifies Fundamental Rights under the six categories. The fundamental rights are elaborated as follows:

**Article 12** defines the “State” as “In this part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

**Article 13** lays down certain restriction on violating fundamental right. The important significance of this provision lies in the fact that it makes explicit provision for judicial review of legislative enactments and executive actions as to their conformity with guaranteed fundamental rights.

### I. Right to Equality (Articles 14 – 18)

The five articles that cover the right to equality are

#### a. **Equality before law and equal protection of law – Article 14**

Article 14 consists of two parts namely equality before law and equal protection of the laws. Equality before law means that no individual should be given any special privilege by the state.

Equal protection of the laws means the right to equal treatment in equal circumstances. Equality before the law also means treating unequal unequally. For example, the Supreme Court has recommended that the ‘creamy layer’ of the Other Backward Classes’ (OBC) should not be given the benefit of reservation.

#### b. **Prohibition of discrimination on ground of religion, race, caste, sex or place of birth - Article 15**

There are four aspects of this right mentioned in following Clauses of this Article.

- i. **Prohibition of discrimination - Article 15, Clause (1):** This article prohibits the state from discrimination against any individual or group of individuals. The principle of non – discrimination is based on equality and dignity.
- ii. **Access to public places - Article 15, Clause (2):** This right provides that no citizen can be denied access to public places, places of entertainment or the use of wells, tanks, and roads that are maintained out of State funds.
- iii. **Protective laws for women and children - Article 15, Clause (3):** A positive discrimination for women and children is made in the Indian context. Thus

provision for reservation for women, free education for children etc. is provided.

- iv. **Reservation for backward classes – Article 15, Clause (4):** The constitution recognizes the Scheduled Caste, Scheduled Tribes and Other Backward Classes as weaker sections of the population. It authorizes the state to make special provisions for the advancement of these sections of the society.

c. **Equality of opportunity in matters of public Employment - Article 16:**

The aim of article 16 of Indian Constitution is to provide equal opportunity to all citizens in employment offered by the state or its agencies. This article has five clauses

- i. **Equality of opportunity – Article 16, Clause (1)** wherein it is stated that equality of opportunity should be given to all citizens in matters relating to employment or appointment to any office under the state.
- ii. **Prohibition of discrimination - Article 16, Clause (2)** This clause prohibits discrimination on grounds only of religion, race, caste, sex, descent, and place of birth, residence or any of them in respect of any employment of the state.
- iii. **Residential requirements - Article 16, Clause (3)** It allows the Parliament to make laws that require residential (domicile) requirements in a State for public employment or appointment.
- iv. **Protective laws - Article 16, Clause (4)** This Clause allows the Parliament to make protective laws for appointment of backward classes of citizens who are not adequately represented in the services of the state.
- v. **Preference to certain persons in religious institutions - Article 16, Clause (5)** This clause prescribes that the Parliament can make laws which require only a person professing a particular religion to be appointed in a body or institution of that religion. For example, a Hindu can only be appointed as a priest in a Hindu temple.

d. **abolition of Untouchability - Article 17**

This is a unique article that has been incorporated only in the Constitution of India. Article 17 declares that not only Untouchability has been abolished but it also makes any practice and propagation of Untouchability in any form punishable in accordance with the law.

e. **Abolition of Titles - Article 18**

The Clause of the Article prohibits the State from conferring any title at all upon any person. However the State is not prevented from awarding military distinctions, such as Mahavir Chakra, Param Vir – Chakra etc. for honoring men for their acts of valour or academic distinctions.

## II. Right to Freedom (Articles 19 – 22)

### a. Six fundamental freedoms - Article 19

Article 19 (1), as amended by the Constitution (Forty Fourth) Amendment Act, 1979, guarantees to all citizens the following six freedoms:

- i. Freedom of speech and expression
- ii. Freedom of peaceful assembly
- iii. Freedom of forming associations or unions
- iv. Freedom of movement throughout the territory of India
- v. Freedom of residence and settlement in any part of the territory of India, and
- vi. Freedom of profession, occupation, trade or business.

**b. Protection in respect of conviction for offences - Article 20**

This right guarantees protection in respect of conviction for offences, to those accused of crimes. There are three clauses to this article.

- (i) **Protection against ex – post, facto legislation** – It means that a person cannot be punished under such a law, for his actions which took place before the passage of the law.
- (ii) **Protection against double punishment** – it says that no person shall be prosecuted for the same offence more than once.
- (iii) **Protection against self-incrimination** – this clause states that no person accused of an offence shall be compelled to be a witness against himself.

**c. Protection of life and personal liberty - Article 21**

Article 21 of the Indian Constitution recognizes the right to life and personal liberty. It provides that “no person shall be deprived of his life or personal liberty except according to procedure established by law.”

**d. Protection against arrest and detention in certain cases. - Article 22**

The provisions of Article 22 are complimentary to those of Article 21. Article 22 has two parts; the first part consisting of clauses (1) and (2), deals with persons, who are arrested under ordinary criminal law and the various rights, they are entitled to; and the second part consisting of the remaining clauses (3) to (7), is concerned with persons, who are detained under a law of preventive detention.

**III. Right against Exploitation (Articles 23-24)**

**a. Prohibition of traffic in human beings and forced labour - Article 23**

The article prohibits traffic in human beings and ‘begar’ and other similar forms of forced labour.

**b. Prohibition of employment of children - Article 24**

Article 24 of the constitution prohibits child labour. Children below fourteen years of age cannot be employed in any factory or mine or in any other hazardous employment.

#### **IV. Right to Freedom of Religion (Articles 25 – 28)**

**a. Freedom of Conscience and Religion - Article 25**

Article 25 reflects the spirit of secularism and recognized freedom of religion to everyone in India.

**b. Freedom to manage religious affairs - Article 26**

It recognizes the right of every religious order to establish and maintain institutions for religious and charitable purposes and manage its own affairs in matters of religion.

**c. Freedom as to payment of taxes for promotion of any particular religion - Article 27**

The state shall not compel any person to pay any taxes for the promotion of maintenance of any particular religion or religious denomination.

**d. Freedom to attend religious instruction in education Institution - Article 28**

This article prohibits imposition of religious beliefs by educational institutions on those who are attending them. Taken together the four Articles (25 to 28) establish the secular character of democracy.

#### **V. Cultural and Educational Rights (Article 29)**

**a. Cultural right of the individual as well if minorities - Article 29**

This Article states that every section of the society has the right to conserve its distinct language, script or culture.

**b. Right of minorities to establish and administer Educational institution - Article 30**

The State cannot discriminate in granting aid to any educational institution on the ground that it is under the management of a religious or linguistic minority.

#### **VI. Right to constitutional Remedies (Article 32)**

Article 32 provides for the Constitutional Remedies, under which, one can move the Supreme Court for the enforcement of the Fundamental Rights and this provision itself is made one of the Fundamental rights. This is something unique. Dr. Baba sahib Ambedkar considered it as the very heart and soul of the constitution.

## UNSPECIFIED FUNDAMENTAL RIGHT

The Covenant on Civil and Political Right is an international treaty. So it is applicable to States rather than to individual. Therefore, rights enshrined therein become the obligation of a state only when they have been incorporated in the State's internal law. Several judgments of Indian Court have held this.

However, even though several rights are not specified in Part III of the Constitution as Fundamental Right, they have been regarded as fundamental by Supreme Court. This has been done by emanation.

We list here those rights which are incorporated in the Covenant on Civil and Political Right and which are available to the citizens of India, even though they are not specifically mentioned in the Constitution.

**1. Right to privacy:** This right is incorporated in the Covenant on Civil and Political Right (ICCPR) under Article 21. This right covers a number of other rights. No person shall be subjected to arbitrary interference with his privacy, family, home or correspondence.

**2. Right to travel abroad:** The right to travel abroad is laid down under Article 12(2) of the Covenant. But this right finds no place in part 3 of the Constitution. However, in *Maneka Gandhi v. Union of India*, it was held that the expression "personal liberty" was of the widest possible amplitude. The Court held that no person can be deprived of his right to go abroad unless there is a law made by the state prescribing a procedure which cannot be arbitrary, unfair or unreasonable.

**3. Right to speedy trial:** Article 9(3) of the Covenant on Civil and Political Rights lays down that anyone arrested or detained on a criminal charge is entitled to trial within a reasonable time or to release.

There is no specific mention of the right to speedy trial in the India Constitution. However, the Supreme Court has held that this right is covered by Article 21.

**4. Right to free legal aid:** Article 14(3) of the Covenant provides for the right to free legal assistance. But Indian Constitution does not provide this right. However, in *M.H.Hoskat v. State of Maharashtra*, the Supreme Court held that free legal aid to poor and deserving is a part of personal liberty under Article 21. The court went even further in *Sukh Das v. Arunachal Pradesh* case. It said that right of a poor person to legal aid exists even if it is not demanded by him.

**5. Right of prisoners to be treated with humanity:** Article 10(1) of the Covenant on Civil and Political Right lays down that all persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person. But in part 3 of the Indian Constitution there is no such provision.

Under Article 21, the Supreme Court has developed a whole charter of dignity. The court has held that the dignity belongs to all human beings, both inside and outside the prison.

**6. Right not to be imprisoned for inability to fulfill a contractual**

**obligation:** Article 11 of the Covenant on Civil and Political Right lays down that no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. But in part 3 of the Constitution this right is not specifically provided.

**7. Right to compensation:** Article 9(5) of the Covenant on Civil and Political Right provides for enforceable right to compensation to the victim of unlawful arrest or detention. But the Indian Constitution has no such provision.

However, the Supreme Court has held that Compensatory justice comes into play in case of (a) wrongful arrest, detention and torture and (b) custodial death.

**8. Right to Information:** Article 19(2) of Covenant on Civil and Political Right provided for the right to Covenant on Civil and Political Right provides for the right to seek, receive and impart information. The Indian Constitution guarantees the freedom of speech and expression as fundamental right under Article 19(1) (a); but the right to information is not specifically mentioned.

The Right to Information Act was passed in 2005 by the Parliament. It is proving to be a great weapon against corrupt and inefficient government officials.

### **THE PROTECTION OF HUMAN RIGHTS ACT, 1993**

The Protection of Human Rights Act, 1993 defines “Human Rights” as 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 in India. The National and the State Human Rights Commissions are the embodiment of India’s concern for the promotion and protection of human rights.

Way back in 1948 India signed and adopted the universal declaration of human rights comprising objectives to secure the universal recognition and observance of human rights. India also incorporated in the constitution of India including the fundamental rights and banking the significance and development of human rights thereafter between 1968 and 1993 India ratified several international treaties in relation to the protection of human rights that includes:

- The international convention on the elimination of all forms of racial discrimination
- The international covenant on civil and political rights
- The international covenant on economic social and cultural rights
- The convention on the elimination of all forms of discrimination against women
- The convention on the rights of the child.

India through its parliament passed landmark legislation namely the protection of human rights act on December 18, 1993.

National Human Rights Commission (NHRC) was established in conformity with the Paris Principles, adopted for the promotion and protection of human rights in Paris (October 1991) and endorsed by the General Assembly of the United Nations on 20 December 1993. The Paris Principles is a set of international standards which frame and guide the work of National Human Rights Institutions (NHRIs)

The Protection of Human Rights Act, 1993 came into force with retrospective effect from September 28, 1993. It applies to the whole of India and in the case of J&K, it applies to matters pertaining to Union List and the Concurrent List only. The Protection of Human Rights Act, 1993 was enacted to provide for the constitution of:

National Human Rights Commission (NHRC),

State Human Rights Commission (SHRC) and

Human Rights Courts for the protection of human rights.

### **THE NATIONAL HUMAN RIGHTS COMMISSION**

The National Human Rights Commission or NHRC is a standalone entity of the Government of India with the mission of promoting and protecting human rights. It is a statutory body mentioned in the constitution of India that was established in 1993 under the 'Protection of Human Rights Act.' This act was further amended in 2006.

Human Rights are an indispensable part of society and Human Rights in India are watched by NHRC.

#### **Introduction**

NHRC acts as a watchdog of human rights in the country. NHRC looks over the rights that are related to life, dignity, liberty and equality of the individual that is defined in Section 2(1) of the PHR Act. They are guaranteed by the Constitution of India, embodied in the international covenants and are enforceable by the courts of India as well. NHRC was established in compliance with the Paris Principles of Human Rights, 1991 which were adopted for the promotion and protection of Human Rights and were endorsed by United Nations at its General Assembly of 1993. In 1948, the UN adopted the UDHR (Universal Declaration of Human Rights). In 1991, the Paris Principles were established by the National Human Rights Institutions (NHRIs). In 1993, and the UN adopted these Paris Principles at its General Assembly. In 1993, India enacted the Protection of Human Rights Act. This led to the formation of the National Human Rights Commission (NHRC). The Protection of Human Rights Act also allowed state governments to establish the State Human Rights Commission.

#### **NHRC Composition – Members of NHRC**

The National Human Rights Commission (NHRC) is composed of a Chairperson and eight other members.

Those eight members are:

Four full-time members.

Four deemed members.

Composition of NHRC	
Chairman of NHRC	Retired Chief Justice of India
Member 1	One who is/has been a Judge of Supreme Court of India or One who is/has been a Chief Justice of a High Court
Three Members	Candidates with the knowledge or practical experience in the matters of Human Rights (at least one to be a woman member)
Deemed Members (Ex-officio Members)	Deemed members are chairpersons of the below national commissions: <ol style="list-style-type: none"><li>1.National Commission for Minorities</li><li>2.National Commission for Scheduled Castes</li><li>3.National Commission for Scheduled Tribes</li><li>4.National Commission for Women</li><li>5.National Commission for Protection of Child Rights</li><li>6.National Commission for Backward Classes</li><li>7.Chief Commissioner for Persons with Disabilities</li></ol>

### **Appointment of NHRC Members**

A Selection Committee will recommend the candidates to the President.

The Selection Committee includes:

Prime Minister (Chairman)

Speaker of Lok Sabha

Union Home Minister

Deputy Chairman of Rajya Sabha

Leaders of the Opposition in both Houses of the Parliament.

The Chairperson or the Members of the National Human Rights Commission holds office for a term of three years or until they attain the age of 70 years, whichever is earlier.

### **Functions & Powers of NHRC**

The functions of the National Human Rights Commission (NHRC) as stated in Section 12 of the Protection of Human Rights Act, 1993 includes enquiry into complaints of violation of human rights or negligence in the prevention of such violation by a public servant. The

Commission also studies treaties and international instruments on human rights and makes recommendations for their effective implementation to the Government.

- NHRC can investigate any complaints related to violations of Human Rights in India either suo-moto or after receiving a petition.
- NHRC can interfere in any judicial process that involves any allegation of violation of Human Rights.
- It can visit any prison/institute under the control of the state governments to observe the living conditions of inmates. It can further make recommendations based on its observations to the authorities.
- NHRC can review the provisions of the Constitution that safeguard Human Rights and can suggest necessary restorative measures.
- Research in the field of Human Rights is also promoted by the NHRC.
- Human Rights awareness and literacy through different media are promoted by NHRC in various sectors of society.
- NHRC has the power to recommend suitable steps that can prevent violation of Human Rights in India to both Central as well as State Governments.
- The President of India gets an annual report from NHRC which is laid before both the Houses of the Parliament.

### **Limitations of NHRC**

They are mentioned below:

- The Recommendations made by the NHRC are not binding.
- Violation of Human rights by private parties cannot be considered under NHRC Jurisdiction.
- NHRC doesn't have the power to penalise the authorities that don't implement its recommended orders.
- 3 of the NHRC members are judges which give the functioning of the Commission a judicial touch.
- The other members that are recommended by the Selection Committee may not necessarily be Human Rights experts.
- The NHRC does not consider the following cases:
  - Cases that are older than one year.
  - Cases that are anonymous, pseudonymous or vague.
  - Frivolous cases.
  - Cases pertaining to service matters.
- The NHRC has limited jurisdiction over cases related to armed forces.
- The NHRC faces other issues like excess cases/complaints, insufficient funds, bureaucratic functioning style, etc.

### **Major Issues related to NHRC**

India faces Human Rights violations on a large scale due to various reasons. The National Human Rights Commission (NHRC) takes up most of the issues around the country. Some of them are mentioned below:

- Arbitrary arrest and detention
- Custodial torture
- Child labour
- Violence and discrimination against women and children
- Extrajudicial killings
- Excessive powers
- Sexual violence and abuse
- LGBTQ community rights
- SC/ST, disabled people and other religious minority issues
- Labour rights and right to work
- Conflict induced internal displacement
- Manual scavenging

## **STATE HUMAN RIGHTS COMMISSION**

The State Human Rights Commission was created at the state level under the **Protection of Human Rights Act 1993**, which also brought the National Human Rights Commission into existence. Apart from protecting human rights, the SHRC is also supposed to probe the violation of human rights, but it can only deal with those subjects that are mentioned in the List II of the State List and List III of the Concurrent list

### **State Human Rights Commission**

The subjects of the SHRC must conform to are mentioned in the Seventh Schedule of the Indian Constitution. The respective State Governments are given the power to create a Human Rights Commission for their particular state if needed.

### **State Human Rights Commission Member**

The State Human Rights Commission, or SHRC, comprises two members and one chairperson who head the commission. Here are other details about SHRC Composition.

- **Appointment of SHRC Members:** The State Human Rights Commission members are appointed by the Governor. They can only be removed by the President, though.
- **Tenure of SHRC Members:** The Chairperson and the members of the State Human Rights Commission are appointed for a term of three years or till they reach the age of 70 years.

## **Qualification of SHRC Members**

There are certain conditions under which a State Human Rights Chairman & the members need to be appointed.

- The SHRC chairman will be eligible if he/she is a retired judge of the High Court or a retired Chief Justice.
- The members will also be eligible only if they have been serving or are retired as a Judge of the High Court or a District Judge with at least seven years of experience as a District Judge.
- The candidates should also possess prior experience or knowledge of human rights.
- The office to be held by the SHRC chairman & members has a term of three years or until they reach 70, whichever is first.
- The Chairman and members of the State Human Rights Commission are only appointed by the Governor based on recommendations made by a specific Committee of Chief Ministers (head of the committee) & the Legislative Assembly speaker.
- Irrespective of the appointment of the Chairman & State Human Rights Commission members, made by the Governor, their tenure can only be terminated by the President of India.

## **Functions of State Human Rights Commission**

Having the protection of human rights as the major goal, the State Human Rights Commission has to perform various other functions and responsibilities in order to fulfil its main aim.

- To look into the violation of human rights in the given state and especially prevent it from happening in the case of a public servant.
- To arbitrate in case of pending legal proceedings, including the claim of human rights violations at any given time in the state.
- To assess the living conditions of prisoners & people who have been spending time in other detention centres.
- To advocate more research and development on the subject of human rights.
- To evaluate the conditions that hampers people's lives & rob them of their basic human rights and recommend solutions for the same.
- To raise general awareness of people with respect to human rights and make them aware of the various ways in which they can protect their rights from getting violated.

## **Powers of SHRC**

The State Human Rights Commission protects human rights and prevents violations by adopting various measures. It has been given certain powers to accomplish the given task easily.

- The State Human Rights Commission is given complete power to manage the whole process independently.
- It possesses a complete set of powers similar to a civil court and conducts judicial proceedings in the same way as a court.

- The SHRC has been vested with the power to demand information from the Governor of the State or any other authority with respect to the case & can also ask for compensation to be paid to the victim.
- It can also reach out to the Supreme Court or the State High Court if a direction or order is required.

Despite all the powers given to the State Human Rights Commission, it is required to take any action with respect to a case only within the year of its occurrence, or else it stays no more in its purview.

### **Limitations of SHRC**

The State Human Rights Commission (SHRC) is a statutory body established in 1993 in India. While the SHRC is important in promoting and protecting human rights in India, its functioning has several limitations. Some of these limitations include:

- The SHRC has limited jurisdiction and can only investigate cases related to human rights violations in India.
- The SHRC has no enforcement powers and relies on the government to implement its recommendations.
- The SHRC does not have the authority to take action against violations of human rights committed by private parties.
- The State Human Rights Commission has little jurisdiction over cases that concern the armed forces.

While the SHRC has effectively raised awareness about human rights issues in the country, there is always room for improvement. For starters, the SHRC should be given more powers to investigate and punish human rights violations. This is because the Commission currently can only recommend action, but it does not have the power to enforce its recommendations.

Furthermore, the State Human Rights Commission must create more awareness about human rights in the country by organizing seminars, workshops, and training sessions.