

HUMAN RIGHTS UNDER INDIAN CONSTITUTION

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Today, human rights are central to the discourse of International Public Policy and Scholarship, and the mechanisms have evolved dramatically since the signing of the Universal Declaration of Human Rights (UDHR) on 10 December 1948. Human Rights do not exist in a vacuum¹, inevitably, individuals and State formulate them and they are implemented by states themselves. However, a number of national, regional and international bodies exercise responsibility for overseeing the monitoring of human rights and ensuring that states comply with obligation.

The Constitution of India was drafted by the Constituent Assembly on 9th December, 1946 and after long discussions and debates by the foremost legal luminaries and thinkers of our country the draft Constitution was finally adopted on 26th November, 1949. The framers of the Indian Constitution were influenced by the concept of human rights and guaranteed most of human rights contained in the UDHR. The UDHR contains Civil and Political as well as Economic Social and Cultural rights. While Civil and Political rights has been incorporated in Part III of Indian Constitution i.e. Fundamental Rights, as Economic Social and Cultural rights have been incorporated in Part IV of the Constitution i.e. Directive Principles of States Policy. The inclusion of important provisions of UDHR in the Constitution of India has given them supremacy over all other statutory provisions.

The table shows that many of Civil and Political rights enshrined in the UDHR also find mentioned in Part III of Indian Constitution as Fundamental Rights. However, these are certain rights which are contained in the UDHR but have not been expressly mentioned in the Constitution. These rights are;

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment².
- Everyone has the right to recognition everywhere as a person before the law³.
- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him⁴.

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¹ Sharma, G., 2000. *Human Rights and Legal Remedies*. Deep and Deep Publications, p. 93

² Article 5, Universal Declaration of Human Rights, 1948

³ Article 6, Universal Declaration of Human Rights, 1948

⁴ Article 10, Universal Declaration of Human Rights, 1948

- Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense⁵.
- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks⁶.
- Everyone has the right to leave any country, including his own, and to return to his country⁷.
- Everyone has the right to a nationality⁸.
- Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution⁹.

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives¹⁰. Article 21 of the Indian Constitution is of widest amplitude and several unremunerated rights fall within it. These rights are:

- Right to go abroad
- Right to privacy
- Right against Solitary Confinement
- Right against Bar Fetters
- Right to Legal Aid
- Right of Speedy Trial
- Right against Hand Cuffing
- Right against delayed execution
- Rights against Custodial violence
- Rights against Public hearing
- Rights to Health Care or Doctor's assistance
- Right to shelter

Other rights which have been held to emanate from Article 21 are the following:

⁵ Article 11(1), Universal Declaration of Human Rights, 1948

⁶ Article 12, Universal Declaration of Human Rights, 1948

⁷ Article 13 (2), Universal Declaration of Human Rights, 1948

⁸ Article 15 (1), Universal Declaration of Human Rights, 1948

⁹ Article 16 (1), Universal Declaration of Human Rights, 1948

¹⁰ Article 21 (1), Universal Declaration of Human Rights, 1948

- Right to know
- Right to Compensation
- Right to Release or Rehabilitation of Bonded Labour
- Rights against Cruel and Unusual Punishment
- Rights of inmates of protective homes

The Supreme Court started reading the some of the provisions in Part IV of the Indian Constitution i.e. Directive Principles of States Policy (DPSP) into the Fundamental Rights. The 42th Amendment Act 1976 had inserted Article 48A in Part IV of the constitution requiring the state to endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. The Supreme Court interpreted the right to life in Article 21 to mean life free from environmental pollution.

Civil and Political Rights

SI No.	Universal Declaration of Human Rights	Indian constitution
1	Everyone has the right to life, liberty and security of person.(Art.3)	Article 21
2	No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. (Art.4)	Article 23
3	Equality before Law and Non-discrimination (Art.7)	Article 14 and 15
4	Right to effective remedy (Art.8)	Article 32
5	Rights against arbitrary arrest, detention and right to habeas corpus (Art.9)	Article 22
6	Rights ex-post facto law [Art.11(2)]	Article 20(1)
7	Right to freedom of movement [Art.13(1)]	Article 10(1)(d)
8	Right of own property and not be deprived of property (Art.17)	Article 19 (1)(f) (but it was omitted by the Constitution) (42th Amendment)
9	Right to freedom of thought, conscience and religion (Art.18)	Article 25(1)

10	Right to freedom of opinion and expression (Art. 19)	Article 19(1)(a)
11	Right to freedom of peaceful assembly and association [Art.20(1)]	Article 19(1)(b)
12	Right to equal access to public service [Art.21(1)]	Article 16(1)
13	Right of social security (Art.22)	Article 29(1)
14	Right of form and join Trade Unions (Art.23)	Article 19(1)(c)

Economic, Social and Cultural Rights

The following table shows that most of the economic, social and cultural rights proclaimed in the UDHR have been incorporated in Part IV of the Indian Constitution. However, the Constitution of India is conspicuous by absence of express mention of certain rights proclaimed in the UDHR such as right to special care and assistance to mothers and children, whether born in or out of wedlock¹¹; Parents' right to choose the kind of education for their children¹²; Right of everyone to freely participate in the cultural life of the community to enjoy art and to share in scientific advancement and its benefits¹³; and right of every one to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author¹⁴.

In respect of the above rights absence of express mention does not mean that these rights have not been incorporated in the Indian Constitution. As a matter of fact, the above rights are either subsumed in the exiting right to any part thereof or have been expressed in a little different scope. For example Article 39(f) charges the state to direct its policy towards securing, "that Children are given opportunities and facility to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against moral and material abandonment." Similarly, Article 42 makes "provision for just and humane conditions of work and maternity relief." Article 47 provides for the "Duty of the State to raise the level of nutrition and standard of living and to improve public health."

So far as human rights concerning economic, social and cultural aspects are concerned, the fact remains that Directive Principle of State Policy contained in Part IV of the Constitution are definitely much more exhaustive than the Universal Declaration. There are number of principles

¹¹ Article 25 (2), Universal Declaration of Human Rights, 1948

¹² Article 26 (3), Universal Declaration of Human Rights, 1948

¹³ Article 27 (1), Universal Declaration of Human Rights, 1948

¹⁴ Article 27 (20), Universal Declaration of Human Rights, 1948

and rights contained in Part IV of the Constitution which do not find mention in the Universal Declaration.

Such rights and principles are:

- Equal justice and free legal aid (Article 39 A)
 - Organization of village panchayat (Article 40)
 - Participation of workers in management industries (Article 43-A)
 - Uniform Civil Code (Article 44).
 - Promotion of education and economic interests of scheduled castes, scheduled tribes and other weaker sections (Article 46).
 - Protection and improvement and safeguarding of forests (Article 48 A) etc
- Economic, Social and Cultural Rights

SI No.	Universal Declaration of Human Rights	Indian Constitution
1	Art. 23 (1) Right to work, to free choice of an employment, to just and favourable conditions of work etc,	Article 41
2	Art. 23 (2) Right to equal pay for equal work conditions of work etc,	Article 39(d)
3	Art. 23 (3) Right to just and favourable remuneration	Article 43
4	Art. 24 (1) Right to rest to leisure	Article 43
5	Art. 25 (1) Right of everyone and a standard of living adequate for his and his family	Article 39 (a) and 47
6	Art. 26 (1) Right to education and free education in elementary and fundamental stages	Article 41 and 45
7	Art. 28 Right to proper social order	Article 38

As the subject itself is so wide there is no appropriate conclusion as Human Right is concern. No doubt these rights has been incorporated in Indian Constitution, However, it is still a failure with events of human rights violation making headline in one form or the other. The violation of Human right may be in different form. We should be ashamed with rising issue of honour killing, corporal punishment, custodial death, fake encounter killing, etc.

If we want to give the exact interpretation of term Unity in Diversity it is the responsibility of every Indian to respect rights of another individual irrespective of race, colour, sex, caste, language, religion, political or other opinion, national or social origin, property, birth or other status. To erase human right violation may be impossible but it is always possible to bring changes if we take individual responsibility on our own shoulder.

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