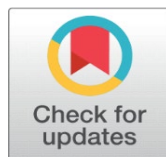
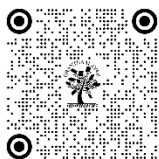


AN REVIEW FOR THE IMPLEMENTATION OF HUMAN RIGHTS IN INDIA: A STUDY

Dr. Pradeep Kumar ¹, Mr. Rajneesh ²

¹Assistant Professor, IIMT University, Meerut

²Assistant Professor, IIMT University, Meerut



DOI

[10.29121/shodhkosh.v5.i1.2024.4229](https://doi.org/10.29121/shodhkosh.v5.i1.2024.4229)

Funding: This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Copyright: © 2024 The Author(s). This work is licensed under a [Creative Commons Attribution 4.0 International License](#).

With the license CC-BY, authors retain the copyright, allowing anyone to download, reuse, re-print, modify, distribute, and/or copy their contribution. The work must be properly attributed to its author.



ABSTRACT

Human rights are fundamental rights and freedoms that are inherent to all human beings, regardless of race, nationality, ethnicity, language, religion, or any other status. These rights are considered universal, inalienable, and indivisible. They encompass a broad range of principles and values aimed at ensuring dignity, equality, and justice for every individual. The concept of human rights has evolved over centuries and is enshrined in various international documents, including the Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly in 1948. The UDHR serves as a foundational document outlining the basic rights and freedoms to which all human beings are entitled. Every individual has the right to life, liberty, and security of person. Individuals have the right to express their opinions, beliefs, and ideas freely, without censorship or restraint. All human beings are equal in dignity and rights, regardless of factors such as race, gender, religion, or social status. Right to education: Everyone has the right to education, which should be free, compulsory, and directed to the full development of the human personality. Individuals should not be discriminated against on the basis of race, ethnicity, gender, religion, disability, or any other status. Every person has the right to a fair and public trial by an impartial tribunal. Right to work and just and favorable conditions of work: Everyone has the right to work, to free choice of employment, and to just and favorable conditions of work. Right to freedom from torture and cruel, inhuman, or degrading treatment or punishment: No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. These are just a few examples of the many human rights recognized and protected by international law. Governments, international organizations, and civil society groups play crucial roles in promoting and protecting human rights, both domestically and globally. Despite progress in many areas, violations of human rights continue to occur in various parts of the world, underscoring the ongoing importance of advocacy, education, and activism in advancing the cause of human rights.

Keywords: Human Rights, Implement, Fundamental Rights, Nation

1. INTRODUCTION

The concept of human rights has deep historical roots, evolving over centuries through various philosophical, religious, and legal traditions. While the modern understanding of human rights is relatively recent, its foundations can be traced back to ancient civilizations and philosophical teachings.

The notion of inherent rights possessed by individuals can be found in ancient civilizations such as Mesopotamia, Egypt, Greece, and Rome. Philosophers like Plato and Aristotle discussed the idea of natural law, positing that certain rights and principles are inherent to human nature and transcendent of human laws.

Many religious traditions, including Judaism, Christianity, Islam, Hinduism, and Buddhism, have teachings that emphasize the dignity and worth of every human being. These religious doctrines often include principles of compassion, justice, and respect for human life, which form the moral basis for human rights.

The Enlightenment period of the 17th and 18th centuries saw a significant intellectual movement that contributed to the development of modern human rights principles. Thinkers like John Locke, Thomas Hobbes, Jean-Jacques

Rousseau, and Immanuel Kant laid the groundwork for the idea of natural rights inherent to all individuals, independent of government authority.

The American Declaration of Independence in 1776 and the French Declaration of the Rights of Man and of the Citizen in 1789 marked significant milestones in the formal recognition of human rights. These documents articulated principles of equality, liberty, and justice, influencing subsequent human rights discourse and legislation.

Adopted by the United Nations General Assembly in 1948, the UDHR represents a landmark achievement in the international recognition and protection of human rights. Drafted in the aftermath of World War II, the UDHR enshrines fundamental rights and freedoms to which all human beings are entitled, regardless of race, nationality, or other distinctions.

Since the adoption of the UDHR, numerous international treaties, conventions, and declarations have been established to protect and promote human rights. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC), among others.

2. CAUSES THE HUMAN RIGHT TO ADOPT IN INDIA

In India, the right to adopt is primarily governed by the Hindu Adoption and Maintenance Act of 1956, which applies to Hindus, Buddhists, Jains, and Sikhs. Additionally, Muslims can adopt under the Guardians and Wards Act of 1890, while Christians can adopt under the Guardianship and Wards Act of 1890 or through the provisions of the Indian Succession Act of 1925.

The causes or reasons behind the right to adopt in India are rooted in several factors:

- 1) **Social Welfare:** Adoption provides a means to ensure the welfare of orphaned or abandoned children by placing them in caring families. It addresses the needs of children who do not have biological parents to care for them.
- 2) **Legal Framework:** India recognizes adoption as a legal means to establish parent-child relationships. The legal framework surrounding adoption ensures that children have access to a stable and nurturing environment.
- 3) **Cultural and Religious Practices:** Adoption is also influenced by cultural and religious practices in India. While each community may have its own customs and traditions regarding adoption, the legal framework ensures that these practices comply with modern legal standards.
- 4) **Family Building:** Adoption provides individuals and couples with the opportunity to build families and experience parenthood. It offers an alternative means of creating a family for those who may not be able to have biological children or choose not to do so.
- 5) **Child Rights:** Adoption is seen as a mechanism to uphold the rights of children, including the right to a family, education, healthcare, and protection. By providing children with loving and stable homes through adoption, their fundamental rights are safeguarded.

3. INDIAN CONSTITUTION AND HUMAN RIGHTS

The Indian Constitution safeguards various human rights through its fundamental rights and directive principles. Here are some key aspects of human rights as enshrined in the Indian Constitution:

- 1) **Fundamental Rights (Part III):** Part III of the Indian Constitution contains the fundamental rights, which are enforceable in the court of law. These rights include:
 - **Right to Equality (Articles 14-18):** Guarantees equality before law and equal protection of laws, prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.
 - **Right to Freedom (Articles 19-22):** Ensures freedoms such as speech and expression, assembly, association, movement, residence, and profession.
 - **Right against Exploitation (Articles 23-24):** Prohibits trafficking, forced labor, and employment of children in hazardous occupations.

- Right to Freedom of Religion (Articles 25-28): Protects freedom of religion, including the right to profess, practice, and propagate religion.
 - Cultural and Educational Rights (Articles 29-30): Safeguards the rights of minorities to conserve their culture, language, or script, and the right of all groups to establish and administer educational institutions.
 - Right to Constitutional Remedies (Article 32): Provides for the right to move to the Supreme Court for the enforcement of fundamental rights through writs like *habeas corpus*, *mandamus*, *certiorari*, *prohibition*, and *quo warranto*.
- 2) Directive Principles of State Policy (Part IV): Part IV of the Indian Constitution outlines the directive principles of state policy, which are not enforceable in the court of law but are fundamental in the governance of the country. Some of these principles are aimed at promoting human rights indirectly by directing the state to take steps to ensure social justice, economic welfare, and human dignity.
 - 3) Protection of Minorities (Articles 29-30): Articles 29 and 30 specifically safeguard the rights of minorities to conserve their culture, language, or script and to establish and administer educational institutions of their choice.
 - 4) Protection of Dalits and Tribes: Special provisions are made in the Constitution for the protection and upliftment of Scheduled Castes (SCs) and Scheduled Tribes (STs) through reservation in educational institutions, government jobs, and legislative bodies (Articles 330-342).
 - 5) Protection of Women and Children: Various provisions in the Constitution aim to protect the rights of women and children, including safeguards against discrimination, protection from exploitation, and provisions for education and welfare.

Overall, the Indian Constitution serves as a cornerstone for the protection and promotion of human rights in the country, ensuring justice, equality, and dignity for all citizens.

4. POWER OF THE NATIONAL HUMAN RIGHTS COMMISSION IN INDIA

The National Human Rights Commission (NHRC) in India is a statutory body established under the Protection of Human Rights Act, 1993. It has been granted significant powers and functions to safeguard human rights across the country. Some of the key powers and functions of the NHRC in India include:

- 1) Investigation: The NHRC has the authority to investigate complaints of human rights violations either suo motu (on its own) or based on complaints filed by individuals or groups. It can inquire into violations committed by public servants or by any authority within the control of the Government of India.
- 2) Recommendations: After investigation, the NHRC can recommend appropriate measures to the government concerned for the prevention of human rights violations and for the protection and promotion of human rights. These recommendations are not binding, but they carry significant moral and persuasive weight.
- 3) Intervention in Legal Proceedings: The NHRC can intervene in any proceeding involving allegations of human rights violations pending before a court with the court's permission. This allows the NHRC to provide its expertise and recommendations to ensure that justice is served.
- 4) Awareness and Education: The NHRC is tasked with promoting human rights awareness and education through various means, including publications, seminars, workshops, and other outreach programs. This aims to enhance public understanding of human rights issues and empower individuals to assert their rights.
- 5) Advisory Role: The NHRC advises the government on matters relating to human rights, legislation, and policy formulation. It can make recommendations for the effective implementation of international treaties and agreements relating to human rights.
- 6) Monitoring: The NHRC monitors the implementation of its recommendations and the effectiveness of measures taken by the government to prevent human rights violations. It can call for reports and information from authorities to assess compliance with its recommendations.

The NHRC plays a crucial role in protecting and promoting human rights in India by investigating complaints, making recommendations, raising awareness, and advising the government on human rights-related matters. While its recommendations are not legally binding, they carry significant moral authority and can influence policy and legal reforms.

5. RELATING INDIAN CASES THE HUMAN RIGHT

In India, there have been numerous cases related to human rights violations that have been brought before courts, including the Supreme Court of India. Some landmark cases that have shaped the discourse around human rights in India include:

- 1) *Maneka Gandhi v. Union of India*¹ : This case expanded the interpretation of the right to life and personal liberty under Article 21 of the Constitution. The Supreme Court held that the right to life includes the right to live with dignity, travel abroad, and the right to be heard.
- 2) *Vishaka v. State of Rajasthan*² : This case addressed sexual harassment in the workplace and resulted in the formulation of guidelines known as the Vishaka Guidelines. These guidelines provided a framework for preventing and addressing sexual harassment at workplaces until a specific legislation, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, was enacted.
- 3) *Narmada Bachao Andolan v. Union of India*³: This case dealt with the issue of displacement and rehabilitation of people affected by large-scale development projects such as the Sardar Sarovar Dam on the Narmada River. The Supreme Court laid down guidelines for the resettlement and rehabilitation of displaced people, emphasizing the protection of their human rights.
- 4) *Shah Bano Begum v. Union of India*⁴ : This case involved the interpretation of Muslim personal law regarding maintenance for divorced Muslim women. The Supreme Court held that Muslim women are entitled to maintenance under the Code of Criminal Procedure, overriding the Muslim Personal Law.
- 5) *Kartar Singh v. State of Punjab*⁵: In this case, the Supreme Court upheld the constitutional validity of TADA (Terrorist and Disruptive Activities (Prevention) Act) while striking down certain provisions that were deemed violative of fundamental rights.
- 6) *Mohini Jain v. State of Karnataka*⁶: This case addressed the right to education as a fundamental right under Article 21 and Article 21-A of the Constitution. The Supreme Court held that the right to education is inherent in the right to life and personal liberty.
- 7) *National Human Rights Commission v. State of Gujarat*⁷: This case involved the Gujarat riots of 2002 and the role of the state government in failing to protect the rights of citizens. The Supreme Court emphasized the duty of the state to protect the life and property of its citizens and ordered compensation for victims.
- 8) *Sheela Barse v. State of Maharashtra*⁸ : This case addressed the inhuman conditions prevailing in Indian prisons, particularly regarding women prisoners. The Supreme Court laid down guidelines to safeguard the rights of female prisoners and improve the conditions of incarceration.
- 9) *Aruna Shanbaug v. Union of India*⁹ : This case dealt with the issue of euthanasia or passive euthanasia in India. The Supreme Court allowed passive euthanasia in certain circumstances and provided guidelines for its implementation, ensuring the right to die with dignity.
- 10) *Nilabati Behera v. State of Orissa*¹⁰ : This case addressed the issue of custodial violence and the state's liability for custodial deaths. The Supreme Court held that the state was vicariously liable to pay compensation to the family of a victim of custodial death, emphasizing the state's duty to protect the rights of individuals in its custody.

¹ (1978) 1 SCC 248

² AIR 1997 SUPREME COURT 3011

³ AIR 2000 SUPREME COURT 3751

⁴ AIR 1985 SC 945

⁵ 1994 SCC (3) 569

⁶ 1992 AIR 1858

⁷ (2003(9) SCALE 329)

⁸ 1983 AIR SC 378.

⁹ AIR 2011 SUPREME COURT 1290

¹⁰ 1993 AIR 1960

These cases demonstrate the Indian judiciary's proactive role in safeguarding human rights and promoting justice and equality in various spheres of life. They have contributed significantly to the development of human rights jurisprudence in India.

6. CHALLENGES IN THE IMPLEMENTATION OF HUMAN RIGHT IN INDIA

India has a robust legal framework for the protection of human rights, including the Constitution of India, which guarantees fundamental rights to all citizens. Additionally, India is a signatory to various international human rights treaties and has ratified conventions such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

- Established in 1993, the NHRC is an independent statutory body tasked with protecting and promoting human rights in India. It investigates complaints of human rights violations, conducts inquiries, and recommends measures for their prevention.
- While India has made progress in advancing civil and political rights, challenges persist in ensuring the realization of socio-economic rights, such as the right to education, healthcare, and adequate standard of living. Disparities in access to basic services and opportunities remain a concern, particularly for marginalized and vulnerable populations.
- India has made efforts to address gender-based violence and discrimination through legislative measures such as the Protection of Women from Domestic Violence Act and the Criminal Law (Amendment) Act, 2013. However, issues such as gender inequality, violence against women, and lack of access to justice continue to be significant challenges.
- Protection of minority rights, including those of religious and ethnic minorities, remains a concern in India. Incidents of communal violence and discrimination against marginalized communities highlight the need for strengthened efforts to ensure the rights of all citizens, irrespective of their religious or cultural background.
- Human rights defenders in India often face threats, harassment, and violence in their work. Upholding the rights of activists and providing a safe environment for their advocacy is crucial for the protection and promotion of human rights in the country.

Overall, while India has made progress in advancing human rights, there is still work to be done to address existing challenges and ensure the full realization of human rights for all its citizens. Continued efforts by the government, civil society organizations, and other stakeholders are essential in achieving this goal.

7. CONCLUSION

Implementing human rights requires a comprehensive approach involving multiple stakeholders at various levels. To effectively implement human rights, promote education at all levels of society, raise awareness about principles, laws, and mechanisms for redress, align domestic laws with international standards, and provide training to legal professionals, law enforcement agencies, and judiciary. Establish independent national human rights institutions, strengthen existing ones, and foster an environment for civil society organizations to advocate for human rights. Ensure transparency, accountability, and responsiveness to human rights concerns, and strengthen oversight mechanisms. Provide training and capacity-building programs to government officials, law enforcement agencies, and stakeholders on human rights principles. Prioritize the protection and empowerment of marginalized groups, address structural inequalities, and engage in constructive dialogue with the international community. Collect disaggregated data, involve affected communities, launch public awareness campaigns, and use various communication channels to mobilize public support for human rights. By adopting a holistic approach that combines legal, institutional, societal, and international dimensions, countries can effectively implement human rights principles and create a more just, inclusive, and sustainable society for all.

CONFLICT OF INTERESTS

None.

ACKNOWLEDGMENTS

None.

REFERENCES

Universal declaration of human rights (UDHR):
International covenant on civil and political rights, 1966
International covenant on economic, social and cultural rights, 1966
European convention of human rights (ECHR)
American convention of human rights (ACHR)
African charter of human and people's rights (ACHPR)
International human rights treaties and conventions
National constitutions and laws
Judicial decisions
Reports and publications
Human rights institutions and mechanisms
United nations and regional bodies
D.D. Basu, human rights in constitutional law, lexis nexis
Upendra Baxi, the future of human rights, oxford university press
Thomas Buergenthal, international human rights in a nutshell, west publisher company
Henry Steiner & Philip Alston, international human rights in context: law, politics, morals: text and materials, oxford university press
S. K. Kapoor, international law and human rights, central law agency
M. K. Sinha, implementation of basic human rights, lexis nexis.