

Module 4

Human Rights in India

Notes

ABSTRACT

The module 'Human Rights in India' discusses various aspects of the concept 'Human Rights.' The module discusses in detail about Human Rights and its origin in Colonial India. The module narrates fundamental rights enshrined in the Indian Constitution and various agencies responsible for protecting those rights. The module also reflects on major Human Rights movements of independent India and its influence on masses. Finally, the module throws light on challenges face by Human Rights in India.

INTRODUCTION

The concept of Human Right is based on the notion that human beings are born



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equal in dignity and rights. These are moral claims which are inalienable and inherent in all human beings by virtue of the member of the humanity alone. Equal dignity of all persons is the central concept of all human rights. These rights have been designated to be universal in application, inalienable in exercise and inherent to all persons. Or in other words, Human Rights and Fundamental Freedoms allow humans to fully develop and use their qualities, their intelligence, their talents and their conscience and to satisfy their spiritual and other needs.

The idea of human right is as old as social life. Even from the ancient time, it was recognized that the values are essential for human life. Rights are the most important values which a human cherishes. Human rights are rights that belong to a group or group of individuals as a consequence of being human. These rights are non-negotiable and inalienable. They are ethical norms for the treatment of individuals. Human rights are indivisible and interrelated. They are certain minimal rights, which have come to be recognized as basic condition of civilized living and fullest development of human being.

The features of human rights are they are universal, incontrovertible and subjective. Human rights are universal. It means they belong to each of us regardless of ethnicity, race, gender, sexuality, age, religion, political conviction or type of



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government. They are incontrovertible means they are absolute and innate. Human rights are subjective means they are properties of individual subjects who possess them because of their capacity of rationality, agency and autonomy.

According to S. Kim, human rights are "claims and demands essential to the protection of human life and the enhancement of human dignity, and should therefore enjoy full social and political sanctions." Subhash C Kashyap opined human rights are those "fundamental rights to which every man inhabiting any part of the world should be deemed entitled by virtue of having been born a human being." Milne defined "human rights are simply what every human being owes to every other human being and as such represent universal moral obligation". The United Nation Centre of Human Rights defines Human Rights as "those rights which are inherent in our nature and without which we cannot live as human beings."

There is no clear-cut theory regarding the origin of human rights. There exist different viewpoints regarding the origin of human rights. Some scholars trace the origin of human rights to religious tradition. Another argument is that human rights are highly indebted to the enlightenment. However, the concept of human rights was conspicuous in ancient Greece and in ancient India. For example, the ancient



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kings in India cared for the welfare of the people.

In the evolution of human rights, the modern school of natural law, led by Hugo Grotius made great contributions. He made natural law and that natural law theory got transformed into the natural rights theory. Proponents of natural rights explained that natural rights are rights belonging to a person by nature and because he was a human being, not by virtue of his citizenship in a particular country or membership in a particular religious or ethnic group.

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. Rousseau is regarded as the greatest master of Natural Law School. Rousseau proclaimed that men are bestowed with inalienable rights of liberty, equality and fraternity. Rousseau's concepts became the basis for the French Declaration of the Rights of Man and of the citizen. The American Independence Movement of 1776 and the French Revolution of 1789 were inspired by the ideal of natural rights and both movements were sought to challenge governments that curtailed the natural rights of the people.

American Declaration of Independence states that "We hold these truths to be self-evident, that all men are created equal that they are endowed by their creator with



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certain inalienable rights, that among these are life, liberty, and pursuit of happiness, that to secure these rights governments are instituted among men deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it and institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their safety and happiness.”

It is true that the French Declaration proclaiming liberty, equality and fraternity for all. However, liberty and equality were soon proving to be empty slogans for poor peasants and factory workers. Hence, beginning the mid-nineteenth century, the demand for social security and social justice, in addition to civil and political rights, appeared in the forefront of socialist movement. The Bolshevik Revolution in Russia (1917) went a step further. It emphasized that economic and social rights were as important as the civil and political rights.

It is gratifying to note that the socialist revolution in Russia introduced socio-economic dimensions to the concept of rights, which were neglected in the events and documents of English, American and French revolutions. While the three revolutions emphasized the first generation (civil and political) rights, the October



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Revolution of Russia popularized socio- economic rights; such as right to work, social security, protection of the family, right to adequate standard of living, right to education, health and right to join trade unions. These are second generation rights.

In short, Human rights are broadly classified into civil and political rights on the one hand and economic, social and cultural rights on the other. Italian philosopher Norberto Bobbio stated that we now live in an age of rights. Here, right is a multi-dimensional dynamic concept, embracing almost all areas of life like social, cultural, economic and political fields.

Karel Vasek, a former director of Human Rights and Peace Division of the UNESCO was the major proponent of the classification of human rights in to three generations. Vasek stated that civil and political rights constitute the first-generation rights. Social, economic and cultural rights constitute the second-generation rights. The group rights, such as the right to development and environmental rights formed the third-generation rights. Third generation Rights include: the right to self-determination, right to development, right to participate in and benefit from the common heritage of mankind; and the right to a healthy environment.



HISTORICAL BACKGROUND

In India humanitarian ideas became popular from the beginning of the nineteenth century during the British colonial rule. The abolition of sati (1829), abolition of slavery (1843), and abolition of female infanticide (1870), the formation of torture commission in the Madras Presidency (1855), introduction of widow remarriage by legislation (1856), and prohibition of child marriage (1929), were restraints imposed tradition and the beginning of humanization of legislation.

Later the demands for civil liberties formed an important part of the Indian independence movement, with one of the objectives of the Indian National Congress (INC) being to an end discrimination between the British rulers and their Indian subjects. This demand was explicitly mentioned in resolutions adopted by the Indian National Congress between 1917 and 1919. The demands articulated in these resolutions included granting to Indians the rights to equality before law, free speech, trial by juries composed at least half of Indian members, political power, and equal terms for bearing arms as British Citizens.



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Mahatma Gandhi's rise to prominence brought drastic changes in the activities of the Indian National Congress. It also reflected in its attitude on civil rights. Instead of arguing for equality between Indians and British then focus shifted towards assuring civil liberty for all Indians. It led to framing of a constitution by a subcommittee which was led by Annie Beasant. The document known as the Commonwealth of India Bill which had the support of various political parties who were active in the Indian independence movement.

The Commonwealth of India Bill (1925)

Commonwealth of India Bill, drafted by Annie Beasant in 1925, consisted of 127 Articles organized around ten chapters. It specifically included demands for seven fundamental rights:

- individual liberty
- freedom of conscience
- free expression of opinion
- freedom of assembly
- non – discrimination on the grounds of sex



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- free elementary education
- free use of public spaces

Another major development took place in this direction in 1931 during the annual Congress session at Karachi.

The Karachi Resolution, 1931

In 1931, Indian National Congress adopted resolutions during the annual Congress session which took place in Karachi. It was drafted by none other than Jawaharlal Nehru, the future Prime Minister of India. These resolutions were committing itself to the defense of fundamental civil rights, as well as socio- economic rights such as the minimum wage and the abolition of untouchability and serfdom.

The major points of the Karachi Resolution are following:

- The Defense of fundamental civil rights
- A living wage for industrial workers, limited hours of labour, health conditions of work, protection against the economic consequence of old age, sickness and unemployment.
- Labour to be free from serfdom or conditions bordering on serfdom.
- Protection of women workers.



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- Prohibition against employment of children of school going age in factories.
- Rights of labour to form unions to protect their interests.

A notable development during India's Independence that having significant effect on the Indian constitution took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights and demanded all member states to adopt those rights in their own constitutions.

Naturally, the fundamental rights were included in the First Draft Constitution (February 1948), the Second Draft Constitution (17 October 1948) and Final Third Draft Constitution (26 November 1949) prepared by the Drafting Committee. As already mentioned, the drafting of the Fundamental Right was influenced by the adoption of the Universal Declaration of Human Rights by the UN General Assembly and the activities of the United Nations Human Rights Commission, as well as decisions of the US Supreme Court in interpreting the Bill of Rights in the American Constitution.

The writers of the Indian constitution regarded democracy of no avail if civil liberties, like freedom of speech and religion were not recognized and protected by the state. According to them, "democracy" is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the



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people of a democratic nation. In short, all people, irrespective of race, religion, caste or sex, have been given the right to move the Supreme Court and the High Courts for the enforcement of their fundamental Rights.

INDIAN CONSTITUTION AND HUMAN RIGHTS

When Human rights are guaranteed by a written constitution they are known as fundamental rights. Fundamental rights are the modern name for what has been traditionally known as natural rights. The Fundamental Rights and Directive Principles had their origins in the Indian Independence movement, which strove to achieve the values of liberty and social welfare as the goals of an independent Indian state. The development of constitutional rights in India was inspired by historical documents such as England's Bill of Rights (1689), the United States Bill of Rights (15 December 1791), France's Declaration of the Rights of Man (26 August 1789) and the Universal Declaration of Human Rights (10 December 1948).

The Fundamental Rights are enshrined in the Constitution of India. It guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal



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democracies such as equality before law, freedom of speech and expression, freedom of association and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as *habeas corpus*. Violation of these rights result in punishments as prescribed in the Indian Penal Code, subject to discretion of the judiciary.

The Fundamental Rights are defined as basic human freedoms which every Indian Citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, colour or gender. They are enforceable by the courts subject to certain restrictions. The Fundamental Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.

Universal Declaration of Human Rights, 1948

A notable development during India's Independence that having significant effect on the Indian constitution took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) and invoked all member states to adopt those rights in their respective



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constitutions. It is regarded as a common standard of achievements for all peoples and all nations. The Universal Declaration of Human Rights was proclaimed in Paris on 10 December 1948. This milestone document was a byproduct of the joint effort of scholars from different legal and cultural backgrounds.

The following are the six fundamental rights recognized by Indian Constitution:

- 1) Right to equality, including equality before law, prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth, and equality of opportunity in matters of employment.
- 2) Right to freedom of speech and expression, assembly, association or union, movement, residence, and right to practice any profession or occupation (some of these rights are subject to security of the state, friendly relations with foreign countries, public order, decency or morality).
- 3) Right against exploitation, prohibiting all forms of forced labour, child labour and traffic in human beings.



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- 4) Right to freedom of conscience and free profession, practice and propagation of religion.
- 5) Right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice.
- 6) Right to constitutional remedies for enforcement of Fundamental Rights.

Fundamental Rights for Indians have also been aimed at overturning the inequalities of pre – independence social practices. Specifically, they have also been used to abolish untouchability and hence prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They also forbid trafficking of human beings and forced labour.

AGENCIES FOR PROTECTING HUMAN RIGHTS

Although we have many laws and covenants to promote human rights, violations in various levels are still going on. There is a wide gap between the ‘promise’ and ‘performance’ because of the absence of any effective implementation machinery.



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The important agencies which protect the human rights in India are Judiciary, National Human Rights Commission and Media.

Judiciary

Judiciary is the guardian of fundamental rights. Judiciary always tries to protect the rights of the people. It protects the rights of the citizens from government and private encroachment. The major contributions of judiciary to the human rights jurisprudence are as follows: 1. Substantial expansion of the concept of human rights under Article 21 of the constitution, 2. Procedural innovation of Public Interest Litigation based on Article 39A of the constitution.

Public Interest Litigation (PIL) stands for litigation in the interest of the public. It emerged as a by-product of the influence of welfare ideology on the judiciary. The liberalization of the provision of *locus standi* empowers a person to approach the court for addressing injustice in which he may not be a party or victim. This gives power to the people to approach the court for the protection of the right of the vulnerable or marginalized who are not in a position to argue for the rights. PIL was first admitted in Indian courts by Justice P.N Bhagwati of Supreme Court of



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India in 1980.

National Human Rights Commission

The National Human Rights Commission of India (NHRC) is an autonomous statutory body established on 12 October, 1993, under the provisions of The Protection of Human Rights Act, 1993 (TPHRA). TPHRA mandates the NHRC to perform the following functions:

- 1) Proactively or reactively enquire into violations of human rights or negligence in the prevention of such violation by a public servant.
- 2) Visit any jail or other institution under the control of the State Government, where persons are detained or lodged for purpose of treatment, reformation or protection, for the study of the living conditions of the inmates and make recommendations.
- 3) Review the safeguards provided by or under the constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
- 4) Review the factors, including acts of terrorism that inhibit the enjoyment of



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human rights and recommend appropriate remedial measures.

5) Study treaties and other international instruments on human rights and make recommendations for their effective implementation.

6) Undertake and promote research in the field of human rights.

7) Spread literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.

8) Encourage the efforts of NGOs and institutions working in the field of human rights.

9) Such other function as it may consider it necessary for the protection of human rights.

10) Take *suo moto* action, if required in a case if the victim is not in a position to access a court.

National Human Rights Commission consists of a Chairperson, five full time Members and four deemed Members. The Chairperson and members of the NHRC



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are appointed by the President of India. The Chairperson of NHRC has been a Chief Justice of the Supreme Court of India. Justice Ranganath Misra was the first Chairperson of the National Human Rights Commission of India. It is situated in New Delhi, the national capital.

State Human Rights Commissions

In India every state having their own state human rights commissions. The Kerala State Human Rights Commission was set up on 11 December 1998 as per sub-section (1) of section 21 of the protection of Human Rights Act 1993 (Central Act 10 of 1994), to exercise the powers conferred upon and perform the functions assigned to a State Commission under Chapter V of the said Act.

The State Commission shall inquire into violation of human rights in respect of matters relating to any of the entries enumerated in list II and list III of the Seventh Schedule to the Constitution of India. Provided, if such matters has already been inquire into by any other Commission duly constituted by any other law for the time being in force, the State Commission shall not inquire into the said matter. While inquire into complaints under the Act, Commission shall have all the powers



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of a civil court trying a suit under Code of Civil Procedure, 1908.

State Human rights Commissions shall consist of a Chairperson and two other members. Chairperson who has been a Chief Justice or a Judge of a High Court. The Chairperson and other members shall be appointed by the Governor. Justice M.M Pareed Pillay was the first Chairperson of the Kerala State Human Rights Commission. It is situated in Thiruvananthapuram, the state capital.

Media

The relationship of the media to human right is well recognized since the very beginning. Media was essential to preserve human rights and the freedom of the press in the liberal democratic constitutions was depicted as a fundamental human right closely connected to freedom of opinion and expression. Media has considered as the fourth estate, which shows its political significance. The existence of the media itself is based on the principle of freedom. Therefore, the media is the child and the parent of the rights and the freedom. That means media can effectively function only in a democratic state where there is freedom of speech and



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expression. At the same time the media can use its freedom to protect the freedom and the rights of people.

The media promotes human rights by making people aware of their rights and duties. Media can inculcate certain values in society like peace and non-violence, fraternity etc. and thereby promote the importance of human rights. The media publish the human rights violation stories and invite the attention of the authorities in the concerned matter. The media also popularises human rights by providing publicity to individuals and organizations engaged in human rights protection activities. To conclude, in a democratic society free media can be a powerful tool against abuse and violation of human rights.

IMPORTANT HUMAN RIGHTS MOVEMENTS IN INDIA

There are several Human Rights Movements in Independent India. However, discuss all is beyond the scope of our subject. Hence, we will discuss only some of them.

People's Union for Civil Liberties (PUCL)

People's Union for Civil Liberties (PUCL) is one of the most popular NGO,



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working in India, for the protection and promotion of human rights. The founding motto of this organization was to organize people on non-political and non-partisan, bases for the defence of civil liberties and human rights. The organization emerged out of the People's Union for Civil Liberties and the Democratic Rights (PUCLDR) founded by Jaya Prakash Narayan in 1976. PUCLDR was organized to protest against the emergency and the undemocratic practices of the Indira Gandhi regime.

People's Union for Civil Liberties (PUCL) founded on 23rd November, 1980 after the death of legendary leader Jaya Prakash Narayan. V.M Tarkunde and Arun Shourie were elected as founding President and General Secretary of the Organization. The following are primary functions of PUCL:

1. To increase consciousness about commitment to human rights and civil liberties among all sections of our people.
2. To provide platforms for all groups including political parties to come together for furthering the cause of human rights.



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3. To energize and creatively use existing institutions like the courts and the press, so that they may become more sensitive to the human rights situation in India.
4. To intervene directly in cases of where gross violations of human rights take place.

Environmental Movements:

Environmental movements have an important place in the studies related to water, air, natural resources or explicitly to have a clean environment are all part of the third-generation rights. Environmental movements emerged as a by-product of the development paradigm which totally ignored the importance of nature in human life. The massive destruction of nature affected the life of people of the world in a number of ways. The problems ranging from deforestation, water scarcity, pollution, ozone depletion, soil erosion, acid rains, species extinction, desertification, unequal access resources etc. got large scale movements having their base on natural protection. Here, I would like to explain some of the major environmental movements of independent India.



1. Chipko Movement

The Chipko Movement, which began in 1971 in the hills of Uttarakhand. The term Chipko means ‘embrace’ or ‘hug’, referring to the first action of the movement at Mandal Village in the Alakananda Valley. The movement was sparked by the government decision to allot a plot of forest land to a sports goods company while denying the villagers permission to use local timber to make agricultural tools. Women, being most affected by the hardships of both the ongoing degradation to their environment and the privatization of basic resources, played a prominent and decisive role in this movement. The simple action of hugging translated in to an organized and peaceful movement under the leadership of Chandi Prasad Bhatt. Sundar Lal Bahuguna was the most popular face of the Chipko Movement, who was a Gandhian activist and philosopher and declared the slogan “Ecology is permanent Economy.” The movement largely drew on Gandhian principles of non-violent Satyagraha. This was the first movement of this kind, not just in independent India, but also across the world. Chipko Movement is regarded as one of the hallmarks in the history of Indian environmental movements **(see photo below.)**



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photo courtesy: www.indiatimes.com

2. Narmada Bachao Andolan

Narmada Bachao Andolan (NBA) is a movement to save the river valleys of the Narmada River in central India. It was mobilized people at the grass root level on a



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scale unprecedented for an environmental movement in post-independent India. The movement is primarily against the construction of the Sardar Sarovar Dam which is estimated to displace 300,000 people—largely peasants and tribal people – and inundate farming land and forest area which is inhabited by rare species. Narmada Bachao Andolan has succeeded in provoking a larger public debate on development and the environment within India. It has initiated discussion about which model of development is appropriate for India; one of large-scale industrialization on the lines of the west, which has done irreparable damage to the natural environment, or one based on small- scale enterprise and sensitivity to the needs of local communities and ecology. Medha Patkar and Baba Amte were the major leaders of this movement.

Medha Patkar, a central organizer of NBA, stated that “the model of development symbolized by projects like the Sardar Sarovar Dam represent the ‘epitome of unsustainable development,’ and there is no other way but to redefine ‘modernity’ and goal of development, to widen it to a sustainable, just society based on harmonious, non-exploitative relationships between people and nature.” The movement has drawn attention to the conflicts between environment and development at a popular level (**see photo below**)



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photo courtesy: <https://rightlivelihood.org>



CHALLENGES TO HUMAN RIGHTS IN INDIA

There are several challenges to Human Rights in India which includes atrocities against vulnerable sections of society such as Dalits, Adivasis, women and children. These sections are victims of tradition and status. Dalits and Adivasis are regarded as lowest stratum of Indian society and they are susceptible to atrocities from dominant communities. The patriarchal nature of Indian families harms the interests of women and adolescents. The weaker sections of society also face various forms of police brutalities and atrocities. However, the Government tries to protect the vulnerable sections of society through various acts such as SC/ST (Prevention of Atrocities Act) 1989, National Commission for Women Act 1990 and Juvenile Justice Act 1986. Still, India has to travel a long way to achieve international standards in the realm of Human Rights.

CONCLUSION



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I would like to conclude this module with major findings and some foresights. This module attempts to invite the attention of students into various aspects of Human Rights such as its modern development especially after the great revolutions of eighteenth century, its Influence on Indian society through colonial rule and its development in the independent India. At present, Human Right is a well-regarded and widely recognized subject. Indian constitution considers it as a major topic of national interest. Hence, Human Rights in India enjoy special attention and protection from constitution through various provisions. Media also play their part in defense of basic rights. However, the module reveals that there are gaps in the implementation of law in regards with fundamental rights. Diverse nature of Indian society also hampers the cause. However, various Human Rights movements are successful in bringing an awareness about rights of every Indian citizen irrespective of religion, caste, creed, age and gender. This awareness reflected in Human Rights movements sprouted in different parts of country. These movements were largely unaffected by any political allegiance. They were primarily led by illiterate villagers and women. It shows the awareness of their basic rights among even remote villagers. Media and local intellectuals also played their part. Marginalized sections are also more concerned about their rights as citizens of Indian Republic than before.



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India still has to improve a lot in this subject. As a functioning democracy, India's responsibilities are much higher than her neighbours and other Third World countries around. India is still far away from developed democracies of West in this regard. We can only hope things will improve for better in coming years.



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