



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ACCESS TO JUSTICE AS A HUMAN RIGHT, AN ANALYTICAL STUDY**

AUTHORED BY -<sup>1</sup>DR. SATISH CHANDRA & <sup>2</sup>ADUTIYA VEER

## **ABSTRACT**

This analytical study explores the concept of access to justice as a fundamental human right by tracing its historical evolution, philosophical foundations, and modern legal frameworks. Beginning with ancient civilizations such as Greece, Rome, and India, the research examines how the notions of natural law and natural rights laid the groundwork for the recognition of human rights globally. It delves into the development of human rights through significant legal charters like the Magna Carta, and documents like the Universal Declaration of Human Rights (1948), culminating in the codification of these rights in the Indian Constitution. The paper highlights the three generations of human rights—civil and political, economic and social, and collective rights—while stressing the specific trajectory of human rights development in India from ancient dharma-based systems to contemporary legislative frameworks. Special attention is given to the role of the Indian judiciary, particularly through judicial activism and Public Interest Litigation (PIL), in expanding the scope and enforcement of unenumerated rights. Furthermore, the study critically evaluates the institutional mechanisms, including the National and State Human Rights Commissions, under the Protection of Human Rights Act, 1993, and their effectiveness in addressing rights violations. Despite constitutional and legal safeguards, the paper acknowledges persistent challenges like ignorance, illiteracy, and state apathy in ensuring real-time access to justice. Ultimately, this research reaffirms that access to justice is indispensable for a dignified life and remains central to the realization of all human rights.

**Keywords:** Access to Justice, Human Rights, Indian Constitution, Judicial Activism, Natural Law Theory

Human Right is a general term which embraces civil rights and liberties and also includes social, economic and political rights as well. The central idea of human rights revolves around

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the notion of dignity and dignified life. The consonance of these rights with the individual liberty is what makes them sine qua non for the physical, moral, social and spiritual welfare. With the passage of time these rights have developed exponentially and the majority of them are a result of judicial discovery and evolution of law.

In light of its role in numerous international human rights conventions, India attaches particular importance to the existence of Human Rights and their implementation. However, the reality appears to be different, as there have been reports of violations, exploitations, injustice, torture, and violence against people's human rights. Despite the blessings of the constitution on the concept of human rights, the application and protection of these rights remain problematic even today due to widespread illiteracy and lack of awareness<sup>3</sup>.

**The Origin & Development of Human Rights & its Enforcement System:** - Human rights and the system that enforces them are as old as human evolution and civilization itself. Human rights have their origins in natural rights or natural law. Natural rights were first formulated by Greek philosophers. Natural law theory was created by the Stoic thinkers, and human rights were explained as a result of it. Before the stoic philosophers' articulation of natural law theory, citizens of Greek city governments had certain essential rights curtailed. These were the rights to freedom of speech, equality before the law, and respect for all people. For the administration of justice, the Romans turned to the stoic understanding of natural law. In order to distinguish between their own citizens and non-citizens, they created "Jus Civile" and "Jus Gentium," respectively. Human rights were included in the "Jus Civile" for all Roman citizens. Historically, the British monarch framed "The Magna Carta" as a code of rights for his subjects. For the first time ever in the year 1215, a permanent document outlining the rights of British citizens was created in the form of the „Magna Carta.“ Later, in 1628 and 1689, two further "Bills of Rights" were drafted. Human rights were declared to be part of democratic countries' constitutions following the 1789 French revolution. 10 human rights amendments were added to the US constitution in 1791, making it the first country in the world to guarantee human rights to its citizens. These amendments declared that human rights were granted to all citizens equally, regardless of race, religion, gender, or national origin<sup>4</sup>.

“The roots for the protection of the rights of man may be traced as far back as in the *Babylonian*

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<sup>3</sup> Kalyan, Waghmode and Desai, Role of Indian Judiciary System in Protecting Human Rights, Golden Research Thoughts, Vol.2 (1 1), 2013.

<sup>4</sup> J.S. Verma Justice, Second Justice M. Hidayatullah Memorial Lecture, Organised by Bhartiya Vidya Bhavan, Raipur Kendra, on 21 December 2002.



laws, *Babylonian King Hammurabi's Codes*, established fair wages, offered protection of poverty and required charges to be proven at trial. The codes, while often harsh in their punishments, provided a standard by which Babylonians could order their lives and treat one another. Assyrian Laws, Hittite Law and the Dharma of the Vedic period in India also devised different sets of standards by which obligation of one was provided to another.” Despite their diversity in content, all of the world's main religions share a humanist outlook that supports human rights. "Natural Law" and "Natural Rights"—both old philosophical concepts—serve as a foundation for human rights. The concept of "natural rights" was recognised by a small number of ancient Greek and Roman philosophers. One of the earliest writers to propose a universal code of ethics was Plato (427-348 B.C.). Ulpian Natural Law, according to Roman jurists, is that which nature and the state guarantee to all people. He asserted that all men are created equal and free under the laws of nature. This meant that foreigners had to be treated equally to citizens of the country in which they resided. It also meant that battles would be conducted in a civilised manner and that universal truths would be accepted by everybody. Everyone was expected to put up their best effort in order to benefit the group as a whole. Justice, virtue, and rights alter depending on the constitution and circumstances, according to Aristotle (384-322 B.C.).<sup>5</sup> Natural law and human rights were established by Roman statesman Cicero, who lived from 106-43 B.C. He was of the opinion that there should be a human rights law that overrides both customary and civil law.. First to advocate for freedom of speech against the government was Sophocles (495-406 B.C.). According to the Stoics, natural law was an ethical idea that denoted a higher grade of law that conformed to nature and served as a benchmark for civil society and government laws alike This "Natural Law" was later grounded in a divine law revealed to man and discoverable by man through his god-given right reason by Christianity, particularly St. Thomas Aquinas (1225-1274). For their residents, the City State of Greece ensured equal rights under the law, including freedom of speech and equal treatment in court. The Roman law known as the „Jus Civile guaranteed similar rights to the people of Rome. Stoic philosophy (the school founded by Zeno and Citium) thought that a universal force penetrates all creation and that human behaviour should be evaluated in accordance with the natural law, which is where the concept of human rights had its start.. In reaction to the high taxation burden brought on by the third crusade and Richard I's ransom by Henry VI, King John of England granted the English barons the magnificent Charter of

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<sup>5</sup> A. S. Anand, J., Public Interest Litigation as Aid to Protection of Human Rights, M.C. Bhandari Memorial Lecture, delivered at Jodhpur on August 25, 2001, (2001) 7 SCC (J).

Liberties of England (also known as Magna Carta) 79 on June 15, 2015 to the English barons. Due to their displeasure with the high taxes, the English lords were unwilling to allow King John to return to power unless they made some concessions. Magna Carta's overarching theme was against the King's arbitrary behaviour<sup>6</sup>. A judge must know and follow the law, taxes cannot be levied without Common Council, there can be no incarceration without trial, and merchants are guaranteed the right to travel freely both inside England and abroad. Land and property could no longer be taken. Section 39 of the Magna Carta established the premise that the King's power was not absolute by protesting arbitrary arrest and incarceration. The Magna Carta was ratified by Parliament in Henry III's reign (1216-17) and by Edward I's reign (1297) in a modified version. Even though the Charter was intended for a select group, it was eventually extended to all Englishmen in the Bill of Rights, which was passed in 1689. When the Bill of Rights was passed, it was designated as an act defining the subject's freedoms and rights, as well as one setting the Crown's line of succession. Charles-II signed it into law in honour of William of Orange and Mary Stuart's succession to the English throne, and it eventually applied to all English residents. Fortifying the Magna Carta was a petition in 1628 that said that citizens have the right to be free from unfair taxation and arbitrary detention. With the Bill of Rights of 1689, Parliament established its dominance over the Crown and provided documentary support for the rule of law in England's constitution. Aquinas, Grotious, St. Thomas, and others held that people are endowed with certain eternal and inalienable rights, as well as those mentioned above<sup>7</sup>.

More than one state has used the phrase "fundamental human rights" in official documents. Several human rights have been outlined in documents such as the Declaration of Independence, the Constitution, and the United States Constitution, which were all ratified in the 18th and 19th centuries. Because of this, all men are born free and independent and have certain natural rights, according to the Virginia Declaration of Rights. Man is born free and equal in rights, according to France's Declaration of Human Rights, which was adopted in 1789. To preserve man's natural and inalienable rights, all political organisations must aim to do so. These rights include freedom, property, security, and the ability to oppose persecution in the face of it. Other European nations followed France's lead and enacted human rights protection clauses into their own legislation. A number of countries have adopted provisions for human

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<sup>6</sup> Matthew H. Kramer, On the Nature of Legal Rights, (2003) 4 SCC (Jour) 44.

<sup>7</sup> P. L. Mehta and S. S. Jaswal, "Human Rights: Concept and Ideology", 30(1&2) Indian Socio Legal Journal (2004).

rights since their founding, including Sweden (1809), Spain (1812), Norway (1814), Belgium (1831), Denmark (1849), Prussia (1850), Switzerland (1874), and Italy (1848). Beginning in the early nineteenth century, many states' constitutional laws acknowledged that human rights possess specific rights commensurate with human individuality.<sup>8</sup>

“Thus the term human rights came somewhat late in the vocabulary of mankind. It was first used by „Thomas Paine in the English translation of the French Declaration of the Rights of man and citizen. It is a 20<sup>th</sup> century name for what has been traditionally known as Natural Rights” or the Rights of Man”. The word "Natural Law" was dropped due to the controversy surrounding the notion, and the phrase "The Rights of Man" was deemed inappropriate due to the fact that it was not commonly recognised to encompass women's rights. People's rights are global in scope since they pertain to the complete person. International Human Rights Law, on the other hand, focuses primarily on the responsibilities of States with respect to individuals under their control. International obligations arise when states fail to ensure that people living under their jurisdiction's jurisdiction's human rights are respected. Individuals' responsibility to protect their human rights are primarily national in scope, though they can extend internationally in specific situations. As a result, despite its sovereign status, a state cannot treat its citizens whatever it pleases. Human rights legislation has had the biggest impact on reducing the amount of power that a state possesses over its citizens. As international law developed throughout the 17th century, the idea that human rights might be safeguarded by it in addition to local law steadily gained traction<sup>9</sup>. This is because state sovereignty has been a central principle of international law since its inception. When human rights issues were viewed as concerns exclusively within each state's domestic authority and completely unsuited for international regulation in the 19th and early 20th centuries, the notion of state sovereignty prevailed. Human rights were viewed as a threat to national sovereignty because of their international scope. However, the eradication of slavery and the protection of minorities were key exceptions to the rule. After the adoption of the International Convention Against Slavery in 1926 the International Labour Organization was created in 1919 and its future operations were also important to consider. End-of-World-War League of Nations Covenant: Protecting Minority Rights and Respecting Subject People's Human Rights under the Mandate System:

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<sup>8</sup> Wajahat Habibullah, Backward Minorities in India- The Role of National Commission of Minorities, Maulavi Abussabah Ahmed Ali Memorial Lecture.

<sup>9</sup> A. R. Gubbay, J., The Protection and Enforcement of Fundamental Human Rights: The Zimbabwean Experience, in Soli J. Sorabjee (Edn.): Law and Justice - An Anthology, Universal Law Publishing Co. Pvt. Ltd., Delhi, (2004).



Newly decolonized nations were to be assisted in developing their political systems through provision of national laws, which was significant when it came to human rights. It pledged protection for minority rights and respect for subject people's human rights. In 1929, the Institute of International Law issued a proclamation of rights of the individual against the state after realising the value of human personality. However, rather than listing human rights, it established six responsibilities for nations<sup>10</sup>.

Human rights violations in war-torn Europe changed international law's customary approach in the 1940s. Shocking crimes against humanity were committed and basic human rights were completely suppressed during World War II (1939– 1945). Germany's Nazi leaders have constructed a totalitarian regime that is devoid of any checks and balances. They have brutally suppressed basic human rights and principles in the areas they control. Many writers argued that sovereignty is not an ultimate notion, but rather is susceptible to specific constraints when it comes to human rights, and this was met with a strong response. In the past, violating human rights was seen as a cause of international strife, and working to safeguard those rights was seen as essential to maintaining world peace. Once the restoration of human freedoms and rights was fulfilled, the world could finally go forward with peace and security once again<sup>11</sup>. As a result, on January 6, 1941, President Franklin D. Roosevelt issued a proclamation (Document of American Foreign Relations<sup>80</sup>) known as the “Four Freedoms”, which read: - “You have the right to freedom of religion or speech, as well as the freedom from material need and fear”. This is what he said in his message: "Freedom implies human rights everywhere are supreme. The people who are fighting for these rights have our full support. Even as the Second World War raged, efforts were made to establish international organisations to try to bring about peace. Before the United Nations was formed, numerous conferences and meetings were held. The international organisation was officially constituted on October 24, 1945. The importance of human rights was emphasised in a number of the statements and instruments approved at the conferences. United States President Franklin D. Roosevelt and United Kingdom Prime Minister Winston Churchill issued the Atlantic Charter on August 14, 1941, expressing hope for a lasting peace that would allow all men to live out their lives free of dread and worry.t. The Declaration of the United Nations signed on 01 January, 1942 at Washington (*The*

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<sup>10</sup> P.N. Bhagwati, J., Public Interest Litigation, Journal on 43 rd Congress Organised by UIA India Chapter, Butterworths India, New Delhi, (1999).

<sup>11</sup> M. S. McDougal et. al., Human Rights and World Public Order (London; Yale University Press, 1906). ILL. Henkin, The Rights of Man Today (London; Stevens and Sons, 1979).

*Declaration was signed by 26 States including the four great Powers-U.S.A., U.K., U.S.S.R. and China*) was the first document which used the terms „Human Rights“. In this documents the signatories who were fighting against the axis power recognized the need “to preserve human rights and justice in our own land an well as on other lands” The declaration reaffirmed the Atlantic Charter's values by stating that one of the desired outcomes of the victory over the axis would be the safeguarding of human rights in all countries. At a conference in Moscow on 30 October 1943, a declaration was signed, stating that individual Germans will be held responsible for more blatant violations of international law moving forward. On August 8, 1945, they agreed to prosecute and punish the European Axis' most notorious War Criminals. Along with the accord came the International Military Tribunal Charter. Individual liability for war crimes and crimes against humanity was explicitly highlighted in the Nuremberg Charter. The Nuremberg Trial was later formed by the Allies. "The Dumbarton Oaks proposals featured only a brief mention to the envisaged General Assembly and Economic and Social Council's role in promoting human rights."<sup>12</sup>

The United Nations Organization was founded on October 24th, 1945 as a result of this. So the terms "Human Rights" are found in the UN Charter explicitly and authoritatively in the UN Charter. the following articles in the UN charter deal specifically with human rights: Articles 01.13 (1) (b), 55.56.62.2.68 and 76. (c). On December 10, 1948, the United Nations General Assembly ratified the Universal Declaration of Human Rights, which became known as "International or World Human Rights Day." There are two main international covenants adopted by the UN as an extension of the above declaration: the International Covenant on Civil and Political Rights 1966 (enforced on 23 March 1976) and the International Covenant on Social, Economic and Cultural Rights 1966. The Universal Declaration of Human Rights is the major foundation or source of Human Rights & its Law on an international level (enforced on 03 January, 1976). There are a number of other international instruments and protocols relating to human rights<sup>13</sup>.

### **The Stages of Development of Human Rights:-**

With regard to this, the stages of development of human rights which have been described by *Louis B. John* are as follows:-

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<sup>12</sup> Durga Das Basu, Human Rights in Constitutional Law, Prentice-Hall of India, New Delhi, (1994).

<sup>13</sup> H.M. Seervai, Constitutional Law of India, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 4th Edn. Reprint, Vols. 1,2,3, (2004).

**Human Rights of First Generation:-** Human rights date back to the 1966 International Covenant on Civil and Political Rights. These are long-standing individual rights that arose in Greek city states as a result of their regular exercise. All democratic countries' national constitutions, as well as international treaties such as the European and African conventions, recognise these rights. Part III, Articles 12 to 35, of the Indian Constitution contains the first generation of human rights, sometimes known as the foundational set of rights. Because these rights are absolutely necessary and mandatory for everyone, they are included in the first set of human rights.

**Human Rights of Second Generation:-**“Human rights of the second generation are those outlined in the 1966 International Covenant on Economic, Social, and Cultural Rights. These rights came to light and developed when the Civil and Political Rights Act was passed. These human rights must be effective for the rights of the first generation to have any significance or purpose. Part-IV Articles 36 to 51 of the Indian Constitution comprise the Second Generation of human rights as Directive Principles of State Policy. As a follow-up to the human rights of the first generation, these new rights are necessary for everyone”.

**Human Rights of Third Generation:-**“Some of the rights enshrined in the United Nations Charter are known as human rights of the third generation. Right to self-determination, growth, and peace are all third-generation human rights that must be protected. In order to bring about the fulfilment of these rights, the United Nations is exerting considerable effort”.<sup>14</sup>

**The Development of Human Rights in India: -**Human rights development and enforcement have a long history in India. India's human rights and enforcement system occupy a unique, notable, and historic position. Human rights and the system for enforcing them are of critical importance to India. Human rights do not have their historical roots exclusively in Western countries. Human rights have its roots in Indian antiquity, which dates back thousands of years. The existence of human rights and the mechanism for upholding them in India is indisputable because the country has a rich cultural heritage. Evidently, the terms "human rights" were first used in recent times. They used to know human rights by different names in Ancient India, but everyone knew they existed. Human rights are inextricably linked to India's past and history. As a result, there is no hesitance in declaring that neither the Western Civilization idea of

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<sup>14</sup> M.P.Jain, Indian Constitutional Law, Vols. I and II, Wadhwa and Co. Nagpur, (2003).



human rights nor the current system are valid. Western countries have done more work than any other to uncover human rights, yet human rights have also been discovered by other names in the deepest roots of Indian history. Murders were committed with ferocity and heinousness on an extraordinary scale in mediaeval Europe as well as in British or modern India. There were a few exceptions to the rule during the Dark Ages. Due to this, human rights and the system for enforcing those rights existed in India for as long as the Indian people developed and civilization evolved, but human rights precedent in Indian law is not devoid of notable exceptions and criticism<sup>15</sup>.

**Human Rights in Ancient India:** -These supreme moral principles of law, according to Indian philosophers, were in effect for at least the next 5000 years. People could establish the relevance in social order by balancing external, internal, spiritual, and factual lives with these concepts, which related to Dharma, Economics, Work and Salvation. The Dharma distributed power equitably among all of its subjects. The Dharma concept expresses "Equality before the Law" and "Equal Protection of the Laws," which is the current situation in human rights law. Back then, the government was run on the basis of "Raj Dharma," which was based on the King instilling moral precepts in his subjects. The dharma was used to make judgments about what was right and wrong. Natural Justice, the Vedas, the Purans, the Scriptures, the Mahabharata, Shri Mad Bhagwat Geeta, and other sacred texts of ancient India. Ancient Indian philosophers were well-versed in human rights issues. In reality, the Dharma concept served as a permanent example of how to maintain peace and order. The battle for Dharma, humanism, freedom, and equality laid the foundations of human rights in Vedic times. Vedanta demonstrates that human rights are more important than the state or the ultimate source of all power. Due to moral authority, the rights of the heavenly source are unassailable. Vedic philosophers stated that human rights are "naturally inherent rights," without which we cannot function as human beings. As long as we have rights and freedoms, we can grow, develop, and make use of such traits and abilities in all areas of our lives. They also stated that human rights are based on the inherent dignity of people, respect, and protection, in order to carry out these rights. They mentioned this. Vadas contains the rights to life and liberty, as well as the right to abode. Bahmani and Vijayanagar kings agreed prior to 1367 that they would not wage war on armless, human rights violating prisoners of war and treat them humanely among other prisoners. For the sake of mankind, it was the King's duty to make his subjects happy. Everyone in the

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<sup>15</sup> Paras Diwan, Human Rights and the Law - Universal and Indian, Deep and Deep Publication, New Delhi, (1998).

Kingdom was treated like a member of the same family. For example, Panini, a Buddhist philosopher who lived in the 5th century B.C., interpreted the Dharma as being a nature and an act of customary practises, usage, and qualities. According to the Mahabharata, the Dharma forbids fighting among people and provides equal opportunity to everyone. As a result, human rights were safeguarded in Ancient India thanks to the Dharma. As well as explaining King Manu's rights, Kautilya espoused numerous economic freedoms. Inhumane treatment of captives of battle was outlawed by Emperor Ashok, according to legend. The final King, Harshvardhan, had the view that a king has a duty to look out for the interests of the people. 85 Other terms for human rights in ancient India included the enforcement of the King's wishes as well as of those who were directly affected by those wishes<sup>16</sup>.

The notion of human rights and the enforcement system that accompanied it existed in Ancient India or Ancient Indian History, but they were referred to by other names, and therefore the rights that were available to people because of their human or humanity. As long as we are all human, human rights are guaranteed, even if our names are different. All of the above points show that human rights in India have a long and rich history that dates back to the dawn of time.<sup>17</sup>

**Human Rights in Medieval India:-** Accordingly, human rights were infringed, as well as declared demise and restriction on a huge scale as a result of conflict and wars undertaken under Islamic rule. Muslim Kings implemented regulations that discriminated against Hindus and Muslims, and by doing so, they are violating Islam Dharma/Muslim Religion, which expresses equality for all. When the Emperor Alauddin Khilji remarked, „The Law is not a Law which has been placed in the holy Quran Sharif, but the Law is that which I say, he was breaking religious law. As a result, equality ideas received little attention in mediaeval India. Human rights were upheld to a point under Akbar's rule, but the necessary and complete attention was not paid to the same, so in mediaeval India, the devotional period (the Bhaktikal) formed and rose; with the devotion to God, Saint Kabir and others defined and expanded the concepts of equality. As a result, human rights and the enforcement system in Medieval India were not as good as they may have been given the circumstances.<sup>18</sup>

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<sup>16</sup> S.P. Sathe, *Judicial Activism in India - Transgressing Borders and Enforcing Limits*, Oxford University Press, New Delhi, (2002).

<sup>17</sup> Upendra Baxi, *The Indian Supreme Court and Politics*, Eastern Book Company, Lucknow, (1980).

<sup>18</sup> Kalyan, Waghmode and Desai, *Role of Indian Judiciary System in Protecting Human Rights*, Golden Research Thoughts, Vol.2(1 1), 2013.

**Human Rights in British India:** - Under British Rule and British India, human rights were publicly destroyed and violated in the most serious and terrible ways. In India, Englishmen exploited the concepts of English law for their own ends, putting their own interests ahead of those of the country. Indians were subjected to the horrors of slavery, brutality, and exploitation under British Rule & Government at this time, which was a crime against humanity on an unprecedented scale. When it comes to human rights and their enforcement, the time of British India is known as the "Destruction" or "Downfall" period. The historical period just mentioned has been referred to as the "Dark Ages" in terms of human rights and the enforcement system. Indians were denied civil, political, and economic rights by the British and English rulers. Executive, Legislative, and Judicial branches of government at the time prioritised the interests of Englishmen and their close relatives, whereas Indians were ignored. Because the British Rulers were violent and unrighteous, M.K. Gandhi declared that the existence of human rights and the system for enforcing them in India under British Rule was worthless.<sup>19</sup>

**Freedom Movements of India and Human Rights:-** Freedom movements arose in India as a result of the British Rule/Rulers' oppression and grave violations of human rights, which were at the extreme end of the human rights spectrum. These liberation campaigns lasted for more than a century and a half. The wellbeing and interests of Indians were firstly placed in a Charter issued by the British Rulers in 1813. Indians were granted limited political rights under a Charter in 1833. <sup>20</sup>After that, on November 1, 1858, Queen Victoria issued a new Charter, granting citizens in India religious freedom and the right to be appointed to public office on an equal basis based on qualifications. Human rights were only demanded when the founding of the Indian National Congress was made. To begin, India's Constitutional Bill of 1895 included provisions for fundamental rights. The Indian National Congress drafted the aforementioned independent documents (Home Rule Documents). But many were not content with the right of equality provided to Indians in public offices by Government of India Act 1915. The Indian National Congress enacted numerous bills in the mid-1917s and early-1919s about Civil Rights and the Right to Equality on par with English men. It was advocated by the Indian National Congress at its Madras Session in 1927 that future Indian constitutions include fundamental rights. Shri Moti Lal Nehru's Constituted Committee reported in 1928 that the citizens of India

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<sup>19</sup> J.S. Verma Justice, Second Justice M. Hidayatullah Memorial Lecture, Organised by Bhartiya Vidya Bhavan, Raipur Kendra, on 21 December 2002.

<sup>20</sup> A. S. Anand, J., Public Interest Litigation as Aid to Protection of Human Rights, M.C. Bhandari Memorial Lecture, delivered at Jodhpur on August 25, 2001, (2001) 7 SCC (J).



should first be endowed with the fundamental right. The British Rulers/Government-constituted Simon Commission, which had been established in 1929, abandoned the Nehru Committee's proposals. It was not until 1930 that the Congress Executive approved the full autonomy plans. In 1932, at the Karachi Session, Congress accepted the fundamental rights, duties, and social and economic reforms. The British Rulers/Government failed to include essential rights in the Government of India Act 1935, leaving the Indian Leaders of the Freedom Movement unhappy. The Teg Bahadur Committee was established in 1945 to prepare a Fundamental Rights Code, and as a result, the Constituent Assembly included the Fundamental Rights and Directive Principles of State Policy.<sup>21</sup>

### **The Development of Human Rights on the basis of Constituent Proposal(s)/Bill(s) and**

**Argument (s) in India:** - “The first meeting of the *Constituent Assembly* was conducted on 09 December, 1946. Dr. Rajendra Prasad was elected as a president of the *Constituent Assembly* on 11 December, 1946. The Bill of Fundamental rights was produced by Pt. Jawahar Lal Nehru on 23 December, 1946 and the Bill was adopted on 22 January, 1947. Many people participated in the argument of this bill and finally the Fundamental rights were placed under Part-III of the Constitution of India. The Social and Economic Rights were included under Part-IV of the constitution of India as Directive principles of state policies”. In support of this bill Dr. Radha Krishnan said that human freedoms should be protected. Shri N.V. Godvil said that the relevancy should be established among various freedoms as described in this bill. Smt. Vijaya Lakshmi Pandit said about it that this bill is a step of the social and economic freedoms. Shri Somnath Lahri, Shri K. Santhanam, Shri Radha Krishnana &etc participated in the arguments in favour and disfavours for devising the Fundamental rights and Directive principles of state policies as Civil and social rights. Finally Pt. Govind Ballabh Pant produced a bill of advisory Committee for the practical solutions of the problem on 24 January, 1947 on the ground of this bill Shri Sardar Ballabh Bhai Patel was elected as a President of this Advisory Committee on 27 February, 1947 subsequently 05 Sub-Committee were made by this Advisory Committee. One Committee was relating to Fundamental Rights out of the Committee. J.P. Kripilani was elected as a Chairman of this Committee. Shri K.M. Munshi, Shri M.R. Mashani, “Prof. K.T. Shah was not in favour of inclusion of the social and Economic Rights with the fundamental rights. Consequently, the Civil and political Rights were placed in a separate part and social & economic rights also in separate parts of the Constitution of India.”<sup>22</sup>

<sup>21</sup> Matthew H. Kramer, On the Nature of Legal Rights, (2003) 4 SCC (Jour) 44.

<sup>22</sup> Paras Diwan, Human Rights and the Law - Universal and Indian, Deep and Deep Publication, New Delhi,

**The Inclusion of Human Rights in the Constitution of India:** - The Universal Declaration of Human Rights was adopted on December 10th, 1948, at the same time as the Indian Constitution was being formed or prepared. This is significant. Dr. Bhim Rao Ambedkar was the chairman of India's Constitution Drafting Committee, and as a result, the Constitution owes a great deal to the preceding Declaration of Independence from 1948. Preparation of the Indian Constitution lasted two years, eleven months, and eighteen days". Some of the Constitution's articles went into effect on that date, which was the 26th of November, 1949. On this day in India, the following laws go into effect: Article 394, 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380 and the rest of the Constitution of India's provisions that went into effect on January 26, 1950: Articles 388, 391, 392 and 393. Article 394 of the Indian Constitution designates January 26 as Republic Day. a total of 395 Articles (numbered from 1 to 395), 22 Constituents and 12 Schedules are specified in the Indian Constitution. The number 102 (One hundred Two Amendments have been done so far). Part-III Articles 12 to 35 of the Human Rights Law are derived from the American Constitution as fundamental rights, and Part-IV Articles 36 to 51 are borrowed from the Irish Constitution as Directive Principles of State Policy.<sup>d</sup>, Part-IVA Article 51 A (51A (a) to 51A (k)) of the Purv Soviyat Sangh Constitution contains fundamental duties because it is well-established that rights are incomplete without duties. As a result of the Swaran Singh Committee's recommendations, India's Constitution was amended forty-second time in 1976 to include fundamental obligations (w.e.f. 03.01.1977). "The Constitution of India does not provide for the enforcement or justification of Directive Principles of State Policy and Fundamental Duties but Fundamental Rights are provided for in Article 32 of the Honourable Supreme Court and in Article 226 of the Honourable High Court of India, respectively. Article 32 guarantees the execution of fundamental rights in India's Supreme Court and is also one of such rights. Article 226 does not guarantee the foregoing, and it is merely one of a number of constitutional rights protected by the document. Articles 136,137, and 139 of the Indian Constitution also deal with the enforcement of human rights and fundamental freedoms. Originally, the right to property was included as a basic right in India's constitution under Article 300A, but that was amended to include it under Article 300A as a constitutional right by the forty-fourth amendment to the Indian constitution in 1978".<sup>23</sup>

**The Protection of Human Rights Act 1993:-** Moreover, in light of this, "In this regard, an ordinance known as the Protection of Human Rights Ordinance 1993 was promulgated prior to

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(1998).

<sup>23</sup> M.P.Jain, Indian Constitutional Law, Vols. I and II, Wadhwa and Co. Nagpur, (2003).

the enactment of this act, and it was repealed under section 43.92. Thereafter, the Parliament of India passed the Protection of Human Rights Act 1993, which went into effect on September 28, 1993. There are 43 sections in total in this Act, which is divided into 8 Chapters. This act establishes the National Human Rights Commission, State Human Rights Commissions, and Human Rights Courts to provide stronger protection for Human Rights and related issues.. In this connection, the definition of human rights has been incorporated as human rights meaning 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”. “In addition to everything previously stated, the conditions for Human Rights and its Law are the worst in India, with all of the justifications and behaviours that go along with them. The Indian National Human Rights Commission was established on October 12, 1993, as per the Protection of Human Rights Ordinance of September 28, 1993. It is an independent public organisation. The 1993 Protection of Human Rights Act established a legal framework for it. Section 2(1)(d) of the Protection of Human Rights Act 1993 designates the National Human Rights Commission as the National Human Rights Institution charged with protecting and promoting human rights. Section 21 of the Act contains provisions relating to the establishment of State Human Rights Commissions in India. Human rights commissions in each state are given the same powers and resources under federal law, except for section 12(f) of the act, which states that: - Procedure shall be prescribed by the Commission, functions shall be carried out, powers shall be related to inquiries and investigations; statements made to the Commission; persons likely to be adversely affected shall be heard”, complaints shall be investigated; and steps shall be taken following the investigation The country's twenty nine states and seven union territories each have a Human Rights Commission, but a total of twenty-six have been established thus far. However, no State Human Rights Commissions have been set up in the newly renamed states. Currently, this law is being implemented in accordance with its purpose, the Legislature's objective, as well as the passage of time, changing circumstances, and the needs of the people.<sup>24</sup>

### ***Role of the Judiciary***

The judiciary is the last line of defence for citizens' human rights. Furthermore, it has protected and expanded the extent of unenumerated rights by interpreting fundamental rights mentioned in the Constitution. persons not only have the rights that are listed, but they also have those that

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<sup>24</sup> H.M. Seervai, Constitutional Law of India, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 4th Edn. Reprint, Vols. 1,2,3, (2004).



aren't.

“Supreme Court in *Maneka Gandhi v. Union of India*,<sup>25</sup> interpreted the right to life, broadened its application, and derived hitherto unacknowledged rights, such as the right to live with human dignity. For the existence of a basic right to have meaning, the Supreme Court developed the doctrine of emanation.. Thereafter, in many cases court such as *People's Union for Civil Liberties and another v. State of Maharashtra and others*<sup>26</sup>, *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*<sup>27</sup> the right to live involves the right to be treated with respect for one's own personal dignity”. As a result, despite the fact that certain rights are not explicitly stated in Part III of the Constitution, the courts have recognised them.

Because of this, the rule of locus standi has been modified, allowing anyone who has been wronged to file a lawsuit in court to seek remedy. By now, the court has allowed public-spirited people who are not in a position to assert their own jurisdiction over the issue to do so through public interest litigation to vindicate the rights of others or a class of people.

“In *S.P. Gupta v. Union of India and others*,<sup>28</sup> For individuals who cannot travel to court due to poverty or other impairments, the Supreme Court has ruled that anyone can approach the court to enforce their constitutional or legal rights”. A person might even file a complaint by writing a letter to the court. Bringing a case in the public interest gives the underprivileged and vulnerable in the community a voice and a stake in the outcome. “Any public-spirited person can seek the court to safeguard their rights on behalf of aggrieved people who cannot contact the court themselves due to their vulnerable conditions through public interest litigation to ensure vulnerable social, economic and political justice”. “Similar observations have been made by Supreme Court in various judgments such as in *Bandhua Mukti Morcha v. Union of India*<sup>29</sup>, *Ramsharan Autyanuprasi and another v. Union of India and Others*<sup>30</sup>, *Narmada Bachao Andolan v. Union of India*”<sup>31</sup>.

As a result, public interest litigation has emerged as a key instrument for defending Indian

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<sup>25</sup> AIR 1978 SC 597.

<sup>26</sup> 2014 (10) SCC 635.

<sup>27</sup> (1981) 2 SCR 516.

<sup>28</sup> AIR 1982 SC 149.

<sup>29</sup> (1984) 2 SCR 67.

<sup>30</sup> AIR 1989 SC 549.

<sup>31</sup> (2000) 4 SCJ 261.

citizens' human rights. Human rights abuses are more likely to occur in oppressed communities. Children, women, and those from socio economically or educationally marginalized backgrounds are the most at risk segments of society. Many initiatives have been taken by the judiciary to defend the human rights of those who live in these regions.

Children have a higher risk of being exploited or abused. Because of their sensitivity, children's rights must be safeguarded. "In 1989 the United Nations enacted the Convention on the Rights of the Child as a result of this concern<sup>32</sup>. The purpose of this agreement is to bring together the human rights of children, because children need protection and safety in order to grow and develop. The judiciary has an excellent record of defending children's rights. Various instances of judicial intervention in children's rights".

## CONCLUSION

60 years after the passage of the UDHR, the UN's human rights performance merits a passing grade, but not a stellar one. "Greatest accomplishments include standard-setting and acceptance that human rights are not a sovereign concern but an issue of actual international commitment (even if not always consensus). Progress has also been made in the increased mainstreaming of human rights by international and national organisations such as the OHCHR". They have had a mixed record when it comes to their political institutions, with some accomplishments like the formation of special processes and some failures like putting political point-scoring ahead of human rights protections. "The human rights jurisprudence produced by the treaty organisations is outstanding and significant, but the compliance record of States with their recommendations is not so impressive". Unfortunately, as previously said, efforts to hold human rights violators accountable have had little success in changing their behaviour. "It was thus in setting standards through the creation of treaties and interpretations thereof by specialised human rights organisations that success was achieved". It is believed that the new millennium will bring a renewed emphasis on improving the effectiveness and credibility of global norms and UN human rights organisations.

A person cannot live with dignity if they do not have certain essential fundamental rights. The Indian Constitution safeguards citizens' fundamental rights, including their human rights. These provisions are found not only in the Constitution's Articles but also in the Preamble,

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<sup>32</sup> Available at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (Last visited on April 5, 2025).

“which mentions freedoms guaranteed by the Constitution and the protection of an individual's dignity. To allow for the development of Public Interest Litigation, the Indian judiciary even loosened up the rule of locus standi for the protection of human rights. Various cases of human rights violations had been brought before the Courts as a result of public interest litigation”.

“Women's, labourers, children's, and others' rights were upheld by the courts. That is why the judiciary is playing such an important role in upholding people's human rights and allowing them to live free from oppression. It is critical to preserve human rights around the world, and as a result, several international treaties have been enacted, including the 1993 Protection of Human Rights Act, which is based on the requirements of those international documents. The Act makes provisions for the establishment of the National Human Rights Commission and of State Human Rights Commissions in various States, as well as the constitution of Human Rights Courts at the district level, so that victims of human rights violations can receive justice at every level. These provisions have been made under the Act”. Because of the National Human Rights Commission's work preserving people's human rights and providing financial assistance to victims and their families, it has done an admirable job. Despite the fact that the Act requires some adjustments, the following proposals have been made: if such changes can be made, the human rights commission's position can be strengthened, and the Act's goals can be readily achieved.

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