



Subject :
**Human Rights
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SUBJECT TOPICS (NEW ADDED MATERIALS)

- 1. Meaning, Origin, and Development of Human Rights**
- 2. Case Laws Relating to Meaning, Origin, and Development of Human Rights in the
Indian Perspective**
- 3. International Covenant on Civil and Political Rights (ICCPR) 1966**
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➤ 1. Meaning, Origin, and Development of Human Rights

Meaning of Human Rights

Human rights are the fundamental rights and freedoms inherent to all human beings, regardless of nationality, sex, ethnicity, religion, or any other status. They are based on principles of dignity, equality, and mutual respect, which are intrinsic to human existence. These rights encompass a broad spectrum, including:

Civil and Political Rights: Rights to life, liberty, freedom of expression, and participation in government.

Economic, Social, and Cultural Rights: Rights to work, education, health, and an adequate standard of living.

Collective Rights: Rights held by groups, such as the rights of indigenous peoples and the right to a healthy environment.

Human rights aim to protect individuals from abuses and to ensure that everyone has the opportunity to fulfill their potential in society.

Origin of Human Rights

The concept of human rights has evolved over centuries, influenced by various philosophical, religious, and cultural traditions. Key historical milestones include:

Ancient Civilizations: Ideas of justice and rights can be traced back to ancient codes such as the Code of Hammurabi in Mesopotamia and the Edicts of Ashoka in India, which promoted moral principles and welfare of the people.

Religious Teachings: Many religious traditions, including Christianity, Islam, Buddhism, and Confucianism, have emphasized the inherent worth of the individual and the importance of compassion and justice.

Magna Carta (1215): This English document established the principle that everyone, including the king, is subject to the law and set the foundation for modern legal systems.

Age of Enlightenment (17th-18th centuries): Thinkers like John Locke, Voltaire, and Jean-Jacques Rousseau promoted ideas of natural rights and social contracts, advocating that individuals have inalienable rights by virtue of being human.

Development of Human Rights

The development of human rights can be categorized into distinct phases:

1. Early Modern Period

17th and 18th Centuries: Key documents like the English Bill of Rights (1689), the American Declaration of Independence (1776), and the French Declaration of the Rights of Man and of the Citizen (1789) articulated principles of individual freedoms and equality.

Abolition of Slavery: The 19th century saw significant movements against slavery, culminating in the abolition of the transatlantic slave trade and the emancipation of slaves in many parts of the world.

2. Post-World War II Era

Universal Declaration of Human Rights (1948): In response to the horrors of World War II and the Holocaust, the United Nations General Assembly adopted this seminal document, outlining basic rights and freedoms for all people.

International Covenants (1966): The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were adopted, creating binding obligations for states to respect, protect, and fulfill these rights.

3. Late 20th Century to Present

Regional Human Rights Systems: The establishment of bodies like the European Court of Human Rights and the Inter-American Commission on Human Rights provided mechanisms for individuals to seek redress for human rights violations.

International Criminal Justice: The creation of the International Criminal Court (ICC) and ad hoc tribunals aimed to prosecute individuals responsible for war crimes, genocide, and crimes against humanity.

Expansion of Rights: Recognition of rights has expanded to include issues such as gender equality, LGBTQ+ rights, digital privacy, and environmental rights.

Contemporary Challenges and Evolution

In the 21st century, human rights face new challenges that require continuous adaptation and vigilance:

Technological Advancements: Issues like digital privacy, cybersecurity, and the ethical use of artificial intelligence have emerged as critical areas for human rights protection.

Climate Change: Environmental degradation and climate change pose significant threats to the enjoyment of fundamental rights, particularly for vulnerable communities.

Global Inequality: Economic disparities, migration, and systemic discrimination continue to challenge the realization of human rights for all individuals.

Conclusion

Human rights are a cornerstone of modern civilization, embodying the universal values of dignity, equality, and justice. The journey from ancient principles to contemporary frameworks reflects humanity's ongoing commitment to ensuring that all people can live with freedom and dignity. As societies evolve, so too must our understanding and protection of human rights, ensuring they remain relevant and robust in the face of new challenges.

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➤ 2. Case Laws Relating to Meaning, Origin, and Development of Human Rights in the Indian Perspective

India has a rich history of judicial activism and landmark judgments that have significantly contributed to the meaning, origin, and development of human rights in the country. The Indian Constitution, especially its Fundamental Rights and Directive Principles of State Policy, serves as the bedrock for human rights jurisprudence. Here are some pivotal case laws that illustrate the Indian perspective on human rights:

1. A.K. Gopalan v. State of Madras (1950)

Context:

This was one of the earliest cases to test the boundaries of Fundamental Rights under the Indian Constitution.

Judgment:

The Supreme Court ruled that preventive detention laws did not violate the Fundamental Rights as long as they were within the procedure established by law. This case initially set a narrow interpretation of personal liberty under Article 21.

Impact:

Though restrictive, this judgment highlighted the tension between individual freedoms and state security, laying the groundwork for future expansions of personal liberties.

2. Maneka Gandhi v. Union of India (1978)

Context:

Maneka Gandhi's passport was impounded by the government without providing reasons, raising questions about the right to personal liberty and due process.

Judgment:

The Supreme Court significantly broadened the interpretation of Article 21 (Right to Life and Personal Liberty), asserting that any law interfering with personal liberty must be just, fair, and reasonable.

Impact:

This landmark ruling expanded the scope of personal liberties and emphasized procedural safeguards, enhancing the protection of human rights.

3. Kesavananda Bharati v. State of Kerala (1973)

Context:

This case challenged the extent of Parliament's power to amend the Constitution, particularly with respect to Fundamental Rights.

Judgment:

The Supreme Court introduced the Basic Structure Doctrine, holding that while Parliament has wide powers to amend the Constitution, it cannot alter its basic structure, including Fundamental Rights.

Impact:

This doctrine serves as a crucial safeguard against potential abuses of power, ensuring that core human rights and constitutional principles remain inviolable.

4. Vishaka v. State of Rajasthan (1997)

Context:

Bhanwari Devi, a social worker, was gang-raped for trying to prevent a child marriage, leading to the question of workplace sexual harassment.

Judgment:

The Supreme Court laid down guidelines for preventing sexual harassment at the workplace, known as the Vishaka Guidelines, until formal legislation was enacted.

Impact:

This case was instrumental in shaping workplace safety norms and eventually led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

5. Mohini Jain v. State of Karnataka (1992) and Unnikrishnan v. State of Andhra Pradesh (1993)

Context:

These cases dealt with the commercialization of education and the right to education as a Fundamental Right.

Judgment:

The Supreme Court declared that the right to education is implicit under the right to life and personal liberty in Article 21.

Impact:

These judgments led to the recognition of education as a Fundamental Right, culminating in the enactment of the Right of Children to Free and Compulsory Education Act, 2009.

6. People's Union for Civil Liberties (PUCL) v. Union of India (2001)

Context:

This Public Interest Litigation (PIL) addressed the issue of widespread hunger and the mismanagement of food grains in government godowns.

Judgment:

The Supreme Court recognized the right to food as a component of the right to life under Article 21, directing states to ensure food security and proper distribution of food grains.

Impact:

The ruling reinforced the right to food and influenced policies aimed at improving food security and nutrition.

7. Navtej Singh Johar v. Union of India (2018)

Context:

This case challenged Section 377 of the Indian Penal Code, which criminalized consensual homosexual activities.

Judgment:

The Supreme Court decriminalized consensual homosexual acts between adults, affirming the rights to equality, privacy, and dignity for the LGBTQ+ community.

Impact:

This landmark judgment was a significant step toward ensuring equal rights and non-discrimination, fostering greater acceptance and inclusion of LGBTQ+ individuals in Indian society.

8. Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)

Context:

This case examined the constitutionality of the Aadhaar scheme and its implications for privacy.

Judgment:

The Supreme Court unanimously held that the right to privacy is a Fundamental Right under the Indian Constitution, intrinsic to the right to life and personal liberty.

Impact:

This judgment has far-reaching implications for data protection, surveillance, and personal autonomy, reinforcing the protection of individual privacy in the digital age.

Conclusion

These landmark cases highlight the dynamic nature of human rights jurisprudence in India. The Indian judiciary has played a pivotal role in interpreting and expanding the scope of human rights, ensuring that the Constitution's promises of dignity, equality, and justice are realized in practice. As societal norms evolve and new challenges arise, the courts continue to adapt and reinforce the fundamental rights and freedoms that underpin Indian democracy. _ . _

➤ 3. International Covenant on Civil and Political Rights (ICCPR) 1966

Overview

The International Covenant on Civil and Political Rights (ICCPR) is a key international treaty adopted by the United Nations General Assembly on December 16, 1966, and entered into force on March 23, 1976. It is part of the International Bill of Human Rights, along with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic,

Social and Cultural Rights (ICESCR). The ICCPR aims to protect civil and political rights and ensure that individuals enjoy fundamental freedoms and protections under the law.

Objectives and Principles

The ICCPR establishes a comprehensive framework for the protection of various civil and political rights. Its core objectives include:

Ensuring the Right to Life and Security: Protecting individuals from arbitrary deprivation of life, torture, inhuman or degrading treatment, and ensuring humane conditions of detention.

Promoting Freedom and Equality: Upholding rights to freedom of thought, conscience, religion, expression, assembly, and association, as well as ensuring equality before the law and non-discrimination.

Safeguarding Justice and Fair Trial: Guaranteeing the right to a fair trial, presumption of innocence, legal representation, and protection from arbitrary arrest or detention.

Political Participation: Affirming the rights of individuals to participate in public affairs, vote, and be elected to public office.

Key Provisions

The ICCPR contains several key articles that delineate specific rights and freedoms:

Article 1: Right to Self-Determination

Recognizes the right of all peoples to self-determination, allowing them to freely determine their political status and pursue their economic, social, and cultural development.

Article 6: Right to Life

Protects the inherent right to life, prohibiting arbitrary deprivation of life and outlining the conditions under which the death penalty may be imposed.

Article 7: Prohibition of Torture

Outlaws torture and cruel, inhuman, or degrading treatment or punishment.

Article 9: Right to Liberty and Security

Ensures freedom from arbitrary arrest or detention, mandates that any deprivation of liberty must be lawful, and grants the right to challenge the lawfulness of detention.

Article 10: Rights of Detainees

Guarantees humane treatment for all persons deprived of their liberty.

Article 14: Right to a Fair Trial

Provides for fair and public hearings by an impartial tribunal, the presumption of innocence, and the right to legal assistance.

Article 17: Right to Privacy

Protects individuals from arbitrary or unlawful interference with their privacy, family, home, or correspondence.

Article 18: Freedom of Thought, Conscience, and Religion

Safeguards the freedom to adopt, change, or manifest one's religion or beliefs.

Article 19: Freedom of Expression

Upholds the right to hold opinions without interference and to seek, receive, and impart information and ideas.

Article 21: Right of Peaceful Assembly

Recognizes the right to peaceful assembly.

Article 22: Freedom of Association

Ensures the right to form and join associations, including trade unions.

Article 25: Political Rights

Affirms the right to participate in public affairs, vote, and be elected.

Implementation and Monitoring

The implementation and monitoring of the ICCPR are overseen by the Human Rights Committee, a body of independent experts established under the Covenant. States parties to the ICCPR are required to:

Submit Periodic Reports: Provide regular reports to the Committee on measures taken to implement the rights enshrined in the Covenant.

Respond to Individual Complaints: Under the Optional Protocol to the ICCPR, individuals can submit complaints to the Committee if they believe their rights have been violated by a state party.

General Comments: The Committee issues general comments that interpret and clarify specific provisions of the Covenant, guiding states in their implementation efforts.

Global Impact and Challenges

The ICCPR has had a profound impact on the development of international human rights law, influencing national constitutions, laws, and judicial decisions worldwide. It has helped to:

Enhance Legal Protections: Strengthen legal frameworks for protecting civil and political rights in various countries.

Promote Accountability: Hold states accountable for violations of civil and political rights through the reporting mechanism and individual complaints process.

Support Human Rights Advocacy: Provide a basis for human rights organizations and activists to advocate for better protections and reforms.

However, challenges remain in ensuring full compliance with the ICCPR:

Implementation Gaps: Some states have not fully incorporated ICCPR provisions into domestic law or have laws that contradict the Covenant's principles.

Political Obstacles: Political resistance and lack of political will can impede the effective implementation and enforcement of ICCPR rights.

Resource Constraints: Limited resources and institutional capacities in some countries hinder the realization of the rights guaranteed by the ICCPR.

Conclusion

The International Covenant on Civil and Political Rights (ICCPR) is a cornerstone of international human rights law, providing a robust framework for the protection and promotion of fundamental civil and political rights. Its comprehensive provisions and monitoring mechanisms play a crucial role in upholding human dignity, freedom, and justice globally. Despite challenges, the ICCPR remains a vital tool in the ongoing effort to ensure that all individuals enjoy their inherent rights and freedoms.

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➤ 4. International Covenant on Economic, Social and Cultural Rights (ICESCR)

1966

Overview

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a fundamental international treaty adopted by the United Nations General Assembly on December 16, 1966, and entered into force on January 3, 1976. Alongside the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR), it forms the International Bill of Human Rights. The ICESCR aims to promote and protect a broad range of economic, social, and cultural rights essential for human dignity and the fulfillment of each individual's potential.

Objectives and Principles

The ICESCR is grounded in the principle that the enjoyment of economic, social, and cultural rights is indispensable for human dignity and the free development of an individual's personality. Its primary objectives include:

Ensuring Adequate Living Standards: Guaranteeing access to essential resources and services, including food, water, housing, and health care.

Promoting Employment and Fair Working Conditions: Upholding the right to work, just and favorable conditions of work, and protection against unemployment.

Providing Education for All: Ensuring free and compulsory primary education, as well as accessible secondary and higher education.

Supporting Social Security: Protecting individuals against economic and social vulnerabilities through social security and social insurance.

Cultural Participation: Promoting participation in cultural life, scientific progress, and the protection of authors' rights.

Key Provisions

The ICESCR comprises several crucial articles that outline specific rights and state obligations:

Article 1: Right to Self-Determination

Affirms the right of all peoples to self-determination, allowing them to freely determine their political status and pursue their economic, social, and cultural development.

Article 6: Right to Work

Recognizes the right to work, including the right to gain one's living by work that one freely chooses or accepts, and obligates states to take appropriate steps to achieve full employment.

Article 7: Right to Just and Favorable Conditions of Work

Ensures fair wages, equal pay for equal work, safe and healthy working conditions, equal opportunity for promotion, and rest, leisure, and reasonable working hours.

Article 8: Trade Union Rights

Protects the right to form and join trade unions, the right to strike, and the freedom of association.

Article 9: Right to Social Security

Guarantees the right to social security, including social insurance, providing protection against economic and social risks such as unemployment, sickness, disability, and old age.

Article 11: Right to an Adequate Standard of Living

Affirms the right to an adequate standard of living, including adequate food, clothing, and housing, and the continuous improvement of living conditions.

Article 12: Right to Health

Recognizes the right to the highest attainable standard of physical and mental health, obligating states to take steps to reduce infant mortality, improve environmental and industrial hygiene, and prevent, treat, and control diseases.

Article 13: Right to Education

Ensures the right to education, mandating free and compulsory primary education and making secondary and higher education accessible to all.

Article 15: Cultural Rights

Protects the right to participate in cultural life, enjoy the benefits of scientific progress, and benefit from the protection of authors' moral and material interests in their creations.

Implementation and Monitoring

The implementation and monitoring of the ICESCR are overseen by the Committee on Economic, Social and Cultural Rights (CESCR), a body of independent experts. States parties to the ICESCR are required to:

Submit Periodic Reports: Provide regular reports to the CESCR on measures taken to implement the rights enshrined in the Covenant and the progress made.

General Comments: The CESCR issues general comments to interpret and clarify specific provisions of the Covenant, guiding states in their implementation efforts.

Optional Protocol: Under the Optional Protocol to the ICESCR, adopted in 2008, individuals and groups can submit complaints to the CESCR if they believe their rights have been violated by a state party.

Global Impact and Challenges

The ICESCR has had a significant impact on the promotion and protection of economic, social, and cultural rights worldwide. It has influenced national constitutions, legislation, and policies, contributing to:

Enhanced Legal Protections: Strengthening legal frameworks and policies to protect economic, social, and cultural rights in various countries.

Improved Social Services: Encouraging states to invest in social services such as education, health care, and social security, thereby improving living conditions for many people.

Empowered Civil Society: Providing a basis for human rights organizations and activists to advocate for better protections and reforms.

However, challenges remain in ensuring full compliance with the ICESCR:

Resource Constraints: Many states face financial and logistical difficulties in fully realizing the rights guaranteed by the Covenant, particularly in the areas of health care, education, and social security.

Political Obstacles: Political instability, corruption, and lack of political will can impede the effective implementation and enforcement of ICESCR rights.

Global Inequality: Economic disparities and inequalities between and within countries continue to challenge the realization of economic, social, and cultural rights for all individuals.

Conclusion

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a cornerstone of international human rights law, providing a comprehensive framework for the protection and promotion of economic, social, and cultural rights. Its provisions and monitoring mechanisms play a crucial role in upholding human dignity, equality, and justice globally. Despite challenges, the ICESCR remains a vital instrument in the ongoing effort to ensure that all individuals enjoy their inherent rights and have the opportunity to lead fulfilling and dignified lives.

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➤ **5. Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) 1979**

Overview

The Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations General Assembly on December 16, 1966, and entered into force on March 23, 1976. However, the 1979 reference typically pertains to the Second Optional Protocol aimed at the abolition of the death penalty, which was adopted later. This response will focus on the original Optional Protocol to the ICCPR, which primarily allows for individual complaints, and briefly touch on the Second Optional Protocol of 1989, focused on the death penalty.

Objectives and Purpose

The primary objective of the Optional Protocol is to provide a mechanism for individuals to bring complaints about violations of their civil and political rights directly to the Human Rights Committee (HRC), a body established under the ICCPR to monitor its implementation. This mechanism enhances the protection of human rights by holding states accountable for violations and providing victims with a means of redress at the international level.

Key Provisions

Individual Communications (Article 1):

The Optional Protocol allows individuals who claim that their rights under the ICCPR have been violated to submit written communications to the HRC. This mechanism is only available if the individual has exhausted all available domestic remedies.

Admissibility Criteria (Article 2):

Communications must meet certain admissibility criteria, including the exhaustion of domestic remedies, non-duplication of procedures, and sufficient substantiation of claims.

Committee's Consideration (Article 4-5):

The HRC considers the merits of the communication, examines the submissions of both the individual and the state party, and issues views or recommendations. These findings are not legally binding but carry significant moral and political weight.

Follow-Up (Article 6):

States parties are required to provide information on measures taken to give effect to the HRC's views. The Committee monitors the implementation of its recommendations and engages in dialogue with states to ensure compliance.

Second Optional Protocol (1989)

The Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, was adopted on December 15, 1989, and entered into force on July 11, 1991. It complements the original ICCPR by specifically addressing the issue of capital punishment.

Abolition of the Death Penalty (Article 1):

States parties commit to abolishing the death penalty within their jurisdictions, though they may retain it for the most serious crimes of a military nature committed during wartime, provided they notify the Secretary-General of the UN at the time of ratification or accession.

Non-Derogable Commitment (Article 2):

The commitment to abolish the death penalty is non-derogable, meaning that states cannot reintroduce it once they have abolished it under this Protocol.

Impact and Significance

Enhanced Human Rights Protection:

The Optional Protocol enhances the ICCPR's effectiveness by providing individuals with an avenue to seek redress for human rights violations when domestic legal systems fail to provide adequate remedies.

Accountability and Transparency:

It holds states accountable for their human rights obligations and promotes transparency in the protection of civil and political rights. The HRC's views, although not binding, exert pressure on states to comply with international standards.

Precedent-Setting Decisions:

The HRC's decisions contribute to the development of international human rights jurisprudence, setting precedents that guide the interpretation and application of the ICCPR.

Abolition of the Death Penalty:

The Second Optional Protocol has significantly contributed to the global movement towards the abolition of the death penalty, encouraging states to adopt more humane forms of punishment.

Challenges and Criticisms

Non-Binding Nature:

The views of the HRC are not legally binding, which limits their enforceability. Compliance relies on the political will of states.

State Cooperation:

Some states are reluctant to cooperate fully with the HRC or to implement its recommendations, undermining the effectiveness of the individual complaints mechanism.

Awareness and Accessibility:

Limited awareness and understanding of the Optional Protocol among individuals and legal practitioners can hinder its utilization. Efforts to promote greater awareness and accessibility are necessary.

Conclusion

The Optional Protocol to the ICCPR is a crucial instrument in the international human rights framework, providing individuals with a means to seek justice at the international level for violations of their civil and political rights. By holding states accountable and promoting the development of international human rights jurisprudence, the Optional Protocol plays a vital

role in the protection and promotion of human rights worldwide. The Second Optional Protocol further strengthens this framework by advancing the global abolition of the death penalty, contributing to the overall enhancement of human dignity and the protection of fundamental rights.

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➤ **6. Role of Judiciary in Promoting and Protecting Human Rights in India**

The judiciary in India plays a pivotal role in promoting and protecting human rights. By interpreting and enforcing the Constitution and laws, the judiciary ensures that the rights and freedoms guaranteed to individuals are respected, protected, and fulfilled. The Supreme Court of India, along with the High Courts, has been instrumental in advancing human rights jurisprudence through landmark judgments and judicial activism.

Constitutional Framework

India's Constitution provides a robust framework for the protection of human rights. The judiciary's role is primarily centered around the interpretation and enforcement of:

Fundamental Rights (Part III of the Constitution):

Articles 12 to 35 guarantee essential rights such as the right to equality, freedom of speech and expression, protection from arbitrary arrest and detention, and the right to life and personal liberty.

Directive Principles of State Policy (Part IV of the Constitution):

While not justiciable, these principles guide the state in formulating policies aimed at ensuring social and economic justice, thereby indirectly promoting human rights.

Judicial Activism and Landmark Judgments

The Indian judiciary, particularly the Supreme Court, has played a proactive role in expanding the scope of human rights through various landmark judgments and principles. Key aspects of judicial activism in India include:

1. Public Interest Litigation (PIL):

The Supreme Court has relaxed the traditional rule of locus standi, allowing any public-spirited individual or organization to file petitions on behalf of marginalized and disadvantaged groups. This has enabled the judiciary to address a wide range of human rights issues.

Example: In *S.P. Gupta v. Union of India* (1981), the Court recognized the concept of PIL, enabling greater access to justice.

2. Expansion of Article 21 (Right to Life and Personal Liberty):

The judiciary has interpreted Article 21 broadly to include various rights essential for a dignified life, such as the right to privacy, health, education, clean environment, and livelihood.

Example: In *Maneka Gandhi v. Union of India* (1978), the Court expanded the interpretation of Article 21 to include the right to live with dignity and personal freedoms.

3. Right to Privacy:

The judiciary recognized the right to privacy as a fundamental right inherent in Article 21.

Example: In *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), the Supreme Court held that the right to privacy is a fundamental right under the Constitution.

4. Rights of Marginalized and Vulnerable Groups:

The judiciary has been proactive in protecting the rights of marginalized and vulnerable groups, including women, children, LGBTQ+ individuals, and persons with disabilities.

Example: In *Navtej Singh Johar v. Union of India* (2018), the Supreme Court decriminalized consensual homosexual acts, affirming the rights of LGBTQ+ individuals to equality and dignity.

Mechanisms for Human Rights Protection

The judiciary employs several mechanisms to promote and protect human rights:

Judicial Review:

The power of judicial review allows the courts to examine the constitutionality of legislative and executive actions. This ensures that any action violating human rights can be struck down.

Example: In *Indira Nehru Gandhi v. Raj Narain* (1975), the Supreme Court emphasized the importance of judicial review as part of the basic structure of the Constitution.

Habeas Corpus and Other Writs:

The judiciary issues writs such as habeas corpus, mandamus, certiorari, prohibition, and quo warranto to protect individuals from unlawful detention and ensure the enforcement of fundamental rights.

Example: The writ of habeas corpus was instrumental during the Emergency period in India (1975-77) to challenge unlawful detentions.

Human Rights Commissions:

The judiciary supports and works alongside national and state human rights commissions to investigate and address human rights violations.

Example: The National Human Rights Commission (NHRC), established under the Protection of Human Rights Act, 1993, collaborates with the judiciary in addressing human rights issues.

Challenges and Future Directions

While the judiciary has played a critical role in promoting and protecting human rights, several challenges persist:

Access to Justice:

Ensuring that all individuals, especially those from marginalized communities, have access to justice remains a challenge. The judiciary must continue to innovate and expand mechanisms like legal aid and PIL.

Implementation of Judgments:

The effective implementation of judicial decisions is often hampered by bureaucratic inefficiencies and lack of political will. Strengthening the enforcement mechanisms is crucial.

Judicial Independence:

Maintaining the independence of the judiciary is essential for unbiased and effective human rights protection. Any attempt to undermine judicial independence poses a threat to human rights.

Backlog of Cases:

The backlog of cases in Indian courts delays justice, impacting the timely protection of human rights. Judicial reforms aimed at expediting case resolution are necessary.

Conclusion

The judiciary in India plays an indispensable role in promoting and protecting human rights. Through its proactive approach, landmark judgments, and innovative mechanisms like PIL, the judiciary has significantly expanded the scope of fundamental rights. Despite challenges, the

judiciary's commitment to upholding the principles of justice, equality, and human dignity continues to be a cornerstone of India's democratic framework. Ensuring access to justice, effective implementation of judgments, and maintaining judicial independence are essential for the continued protection and promotion of human rights in India.

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➤ 7. Remedies for Violation of Human Rights in the Indian Scenario

Introduction

Human Rights are the basic rights and freedoms to which every person is entitled, regardless of nationality, sex, ethnicity, or religion. In India, constitutional provisions, statutory laws, and judicial mechanisms provide robust remedies for the violation of human rights.

Sources of Human Rights in India

The Constitution of India

Fundamental Rights (Articles 12–35)

Directive Principles of State Policy (Articles 36–51)

International Instruments

Universal Declaration of Human Rights (UDHR)

International Covenant on Civil and Political Rights (ICCPR)

Statutory Laws

Protection of Human Rights Act, 1993

Right to Information Act, 2005

Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989

Judicial Decisions

Constitutional Remedies (Article 32 and 226)

The most direct and effective constitutional remedy is through writs.

1. Article 32 (Supreme Court)

Allows individuals to move the Supreme Court for enforcement of Fundamental Rights.

Described by Dr. B.R. Ambedkar as the "heart and soul" of the Constitution.

2. Article 226 (High Courts)

Empowers High Courts to issue writs for enforcement of both Fundamental Rights and other legal rights.

Types of Writs as Remedies

Writ	Purpose
Habeas Corpus	To produce a person who is detained unlawfully
Mandamus	To direct public officials to perform their legal duties
Prohibition	To prevent a lower court from exceeding its jurisdiction
Certiorari	To quash an unlawful order or judgment
Quo Warranto	To challenge the legality of a person holding a public office

Judicial Remedies and Landmark Case Laws

1. Maneka Gandhi v. Union of India (1978)

Held: The right to life includes the right to live with dignity.

Impact: Expanded the scope of Article 21 to include various human rights like privacy, travel, education, and livelihood.

2. Vishaka v. State of Rajasthan (1997)

Held: Laid down guidelines to prevent sexual harassment at the workplace.

Impact: Filled a legal vacuum by interpreting human rights obligations under international conventions.

3. D.K. Basu v. State of West Bengal (1997)

Held: Issued guidelines against custodial violence and abuse of power by police.

Impact: Reinforced human dignity and protection from torture.

4. Olga Tellis v. Bombay Municipal Corporation (1985)

Held: Right to livelihood is an integral part of Article 21.

Impact: Recognized economic rights as human rights.

5. People's Union for Civil Liberties (PUCL) v. Union of India (2001)

Held: Right to food is part of the right to life under Article 21.

Impact: Directed the government to implement mid-day meal schemes and ensure food security.

Statutory Remedies

1. Protection of Human Rights Act, 1993

Established the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs).

Powers include:

Inquiries into complaints of rights violations

Recommendations for compensation

Advising governments on human rights policies

2. Legal Services Authorities Act, 1987

Provides free legal aid to marginalized groups to protect their human rights.

Public Interest Litigation (PIL)

PILs have empowered citizens and NGOs to approach courts in cases involving collective human rights violations.

Example:

Sheela Barse v. State of Maharashtra (1983) – Concerned rights of children and women in custody.

M. C. Mehta v. Union of India – Series of cases addressing environmental rights as part of Article 21.

Compensatory Remedies

Courts have increasingly awarded monetary compensation for human rights violations:

Nilabati Behera v. State of Orissa (1993): Compensation awarded for custodial death.

Recognized the public law remedy under Article 32/226 for state liability in human rights cases.

Conclusion

India offers comprehensive remedies for the violation of human rights through its Constitution, judiciary, statutory frameworks, and PIL mechanism. Despite systemic challenges, Indian courts have played a proactive role in interpreting, protecting, and expanding the scope of human rights.

“Human rights are not a gift of the state; they are the birthright of every individual.” – Justice Krishna Iyer

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➤ 8. Human Rights and the Constitution of India

Introduction

Human Rights are the inherent, inalienable rights that belong to every individual by virtue of being human. They aim to ensure dignity, freedom, and equality for all. In India, these rights are enshrined and safeguarded by the Constitution, especially under Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy).

Nature of Human Rights in the Indian Constitution

India’s Constitution is a living document that incorporates civil, political, economic, and cultural rights akin to the Universal Declaration of Human Rights (UDHR). These are enforceable either directly through courts or indirectly through legislative and executive action.

Key Constitutional Provisions Relating to Human Rights

Part III – Fundamental Rights (Articles 12–35)

Article 14 – Right to Equality

Article 15 – Prohibition of Discrimination

Article 19 – Freedom of Speech, Expression, Movement, etc.

Article 21 – Right to Life and Personal Liberty

Article 22 – Protection against arbitrary arrest and detention

Article 25-28 – Freedom of Religion

Part IV – Directive Principles of State Policy (Articles 36–51)

Though non-justiciable, they reflect socio-economic and cultural human rights.

Article 39 – Equal pay, health, education

Article 41 – Right to work and education

Article 47 – Duty of the state to raise nutrition and public health

Other Provisions

Article 32 – Right to Constitutional Remedies

Article 51(c) – Promotion of international peace and respect for international law, including human rights treaties

Judicial Interpretation and Expansion of Human Rights

The Indian judiciary, especially the Supreme Court, has played a transformative role in expanding the scope of human rights through progressive judgments.

Landmark Case Laws on Human Rights in India

1. Maneka Gandhi v. Union of India (1978)

Held: The phrase “procedure established by law” under Article 21 must be just, fair, and reasonable.

Impact: Expanded Article 21 to include a range of human rights such as the right to travel, privacy, and dignity.

2. Kesavananda Bharati v. State of Kerala (1973)

Held: Introduced the Basic Structure Doctrine.

Impact: Ensured that fundamental rights, including human rights, cannot be destroyed through constitutional amendments.

3. Vishaka v. State of Rajasthan (1997)

Held: Laid down guidelines for sexual harassment at the workplace using international conventions like CEDAW.

Impact: Enforced international human rights norms domestically in absence of legislation.

4. Olga Tellis v. Bombay Municipal Corporation (1985)

Held: Right to livelihood is included in Article 21.

Impact: Recognized socio-economic rights as essential to life and dignity.

5. D.K. Basu v. State of West Bengal (1997)

Held: Laid down guidelines to prevent custodial violence.

Impact: Strengthened human rights protections in police procedures.

6. Puttaswamy v. Union of India (2017)

Held: Recognized Right to Privacy as a fundamental right under Article 21.

Impact: Elevated privacy as a human right in the digital era.

Statutory Protection: The Protection of Human Rights Act, 1993

Established the National Human Rights Commission (NHRC) and State Human Rights Commissions.

Investigates complaints of human rights violations by public servants.

Recommends compensation and legal measures.

Public Interest Litigation (PIL) as a Tool for Human Rights

Indian courts have allowed PILs for:

Environmental protection (e.g., M. C. Mehta cases)

Prisoners' rights (Sunil Batra v. Delhi Administration)

Bonded labour and child rights (Bandhua Mukti Morcha v. Union of India)

International Human Rights and Indian Constitution

India is a party to:

Universal Declaration of Human Rights (UDHR)

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Courts often refer to these instruments for interpretative support (e.g., Vishaka case).

Conclusion

The Constitution of India stands as a powerful guardian of human rights, blending the ideals of liberty, equality, and dignity with enforceable legal remedies. Through progressive judicial interpretation and proactive enforcement, India continues to uphold the spirit of human rights as an essential component of its democratic framework.

“Human rights are not a gift from the state to the people, but the natural rights of every human being.” – Justice V.R. Krishna Iyer

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➤ 9. The Protection of Human Rights Act, 1993 – Indian Scenario

Introduction

The Protection of Human Rights Act, 1993 (PHRA) was enacted by the Indian Parliament to provide for the protection and promotion of human rights in India. It aims to establish institutional mechanisms like the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) to ensure accountability for human rights violations and to promote awareness and legal reform.

Objectives of the Act

To investigate complaints of human rights violations and negligence by public servants.

To review constitutional and legal safeguards for human rights.

To promote research, awareness, and literacy in human rights.

To encourage efforts of NGOs and civil society groups in human rights protection.

Definition of Human Rights (Section 2(d))

“Human Rights” means the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in international covenants and enforceable by Indian courts.

This includes rights under:

Part III of the Constitution (Fundamental Rights)

International covenants like the:

Universal Declaration of Human Rights (UDHR)

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Key Features of the Act

1. National Human Rights Commission (NHRC)

Composition: Former Chief Justice of India as Chairperson, and members with judicial and human rights expertise.

Functions:

- a. Inquire into complaints of human rights violations (Suo motu or on petitions).
- b. Visit prisons and detention centers.
- c. Review constitutional and legal safeguards.
- d. Promote awareness and education in human rights.

2. State Human Rights Commissions (SHRCs)

Established at the state level with similar functions limited to state subjects under the Seventh Schedule.

3. Human Rights Courts

Section 30 of the Act provides for the establishment of Special Human Rights Courts in each district to ensure speedy trial of offences.

Powers of NHRC (Section 12)

- A. Summon witnesses, require documents.
- B. Recommend actions including compensation.
- C. Visit and inspect jails or detention centers.
- D. Intervene in any court proceedings related to human rights violations.

Note: NHRC's recommendations are not binding, but they carry moral and persuasive authority.

Amendments to the Act

Amendment Act, 2006: Allowed the Chairperson of SHRCs to be a retired Chief Justice of a High Court.

Amendment Act, 2019:

Reduced the tenure of Chairperson and members from 5 years to 3 years.

Expanded eligibility criteria for NHRC Chairperson.

Allowed reappointment of Chairperson and members.

Limitations of the Act :

NHRC and SHRCs have recommendatory powers only.

Cannot inquire into matters older than one year.

Limited jurisdiction over armed forces (Section 19 restricts full inquiry).

Significant Case Laws Involving the Act

1. D.K. Basu v. State of West Bengal (1997)

Issue: Custodial torture and deaths.

Held: Supreme Court laid down guidelines for arrest and detention.

Role of NHRC: Actively monitored compliance and implementation.

2. Nilabati Behera v. State of Orissa (1993)

Issue: Custodial death of petitioner's son.

Held: Compensation awarded; human rights violation recognized under Article 21.

Significance: Strengthened the role of public law remedies in human rights enforcement.

3. Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India (2016)

Issue: Fake encounters in Manipur by armed forces.

Held: Supreme Court allowed probe even against armed forces despite Section 19 limitations.

Impact: Reasserted that no one is above the law, even in conflict zones.

4. NHRC v. State of Arunachal Pradesh (1996)

Facts: State failed to protect Chakma refugees.

Held: Supreme Court directed the state to ensure protection of refugees' human rights.

Significance: Reinforced NHRC's recommendations as aligned with constitutional obligations.

Impact of the Act:

- Increased public awareness of human rights.
- Provided a forum for victims to seek justice.
- Played a key role in policy suggestions and legislative reform.

Challenges and Criticism

Issue	Explanation
Non-binding powers decisions.	NHRC can only recommend, not enforce
Backlog and delays response.	Large number of complaints leads to slow
Resource constraints effectiveness.	Inadequate funding and staffing hamper

Conclusion

The Protection of Human Rights Act, 1993 is a vital legislative tool in India's human rights framework. It institutionalizes the protection of rights and reflects India's commitment to international human rights norms. However, to make it more effective, the recommendations of the NHRC should be made binding, and the jurisdiction over armed forces should be widened.

“The dignity of the individual is the real foundation of the human rights movement.” – Justice V. R. Krishna Iyer

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➤ 10. Universal Declaration of Human Rights (UDHR), 1948

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly on December 10, 1948, as a response to the atrocities committed during World War II. It marked the first global expression of rights to which all human beings are inherently entitled.

Nature and Importance of the UDHR:

- Not legally binding, but it sets out universal values and a common standard for human rights for all nations.
- Contains 30 articles outlining civil, political, economic, social, and cultural rights.
- Recognized as a foundational document for many national constitutions, international treaties, and judicial decisions across the world.

UDHR and the Indian Constitution:

Although India ratified the UDHR after its independence, its principles were already reflected in the Constitution of India, 1950. The Preamble, Fundamental Rights (Part III), and Directive Principles of State Policy (Part IV) echo many of the UDHR's provisions.

Examples:

Article 1 UDHR – "All human beings are born free and equal in dignity and rights."

↳ Reflected in Article 14 (Right to Equality) of the Indian Constitution.

Article 3 UDHR – "Everyone has the right to life, liberty and security of person."

↳ Reflected in Article 21 (Right to Life and Personal Liberty).

Article 19 UDHR – "Everyone has the right to freedom of opinion and expression."

↳ Reflected in Article 19(1)(a) of the Indian Constitution.

Indian Judicial Interpretation and UDHR:

Indian courts have often referred to the UDHR while interpreting constitutional and statutory provisions to expand the scope of fundamental rights. Although not enforceable in Indian courts on their own, UDHR principles strengthen the legitimacy of rights-based arguments.

Key Indian Case Laws Involving UDHR Principles:

- Vishaka v. State of Rajasthan (1997) 6 SCC 241

Issue: Sexual harassment at the workplace.

Judgment: Supreme Court laid down guidelines (Vishaka Guidelines) to prevent workplace sexual harassment.

Relevance to UDHR: The Court explicitly referred to Articles 11 and 23 of the UDHR and CEDAW, emphasizing international human rights standards in the absence of domestic legislation.

Quote: "Any international convention not inconsistent with fundamental rights and in harmony with its spirit must be read into those rights."

- People's Union for Civil Liberties (PUCL) v. Union of India (1997) 1 SCC 301

Issue: Telephone tapping and the right to privacy.

Judgment: Right to privacy was recognized as part of the right to life under Article 21.

UDHR Reference: Relied on Article 12 of the UDHR, which protects individuals from arbitrary interference with privacy.

- Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981) 1 SCC 608

Issue: Rights of prisoners and humane conditions in jail.

Judgment: Supreme Court held that Article 21 includes the right to live with human dignity, which includes basic necessities of life.

UDHR Connection: Reinforces Article 5 (freedom from torture or cruel, inhuman or degrading treatment).

- Chairman, Railway Board v. Chandrima Das (2000) 2 SCC 465

Issue: Gang rape of a Bangladeshi woman by railway employees in India.

Judgment: The Court ruled that human rights do not depend on nationality and upheld the dignity of the victim.

UDHR Citation: Emphasized Articles 3, 5 and 12 of UDHR, affirming the state's responsibility to protect basic human rights.

- National Legal Services Authority (NALSA) v. Union of India (2014) 5 SCC 438

Issue: Rights of transgender persons.

Judgment: Supreme Court recognized transgender persons as the 'third gender' and granted them constitutional protection.

UDHR Link: Referred to Articles 1, 2, and 6 of the UDHR, affirming equality and dignity of all humans.

Significance of UDHR in Indian Context:

Interpretive Aid: Indian courts use the UDHR as an interpretive guide to broaden the scope of constitutional rights.

Moral Authority: Adds international legitimacy to domestic rights jurisprudence.

Harmonization: Promotes alignment of Indian laws with global human rights norms.

Conclusion:

The Universal Declaration of Human Rights, 1948, although not enforceable by law, has been a guiding beacon for the evolution of human rights jurisprudence in India. Through progressive judicial interpretation and reference to UDHR principles, the Indian legal system has significantly expanded the meaning and scope of constitutional rights. Thus, the UDHR continues to influence and inspire legal, social, and constitutional reforms in India.

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