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## DOMESTIC APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN INDIA: CONSTITUTIONAL MECHANISMS AND JUDICIAL TRENDS

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### ABSTRACT

This paper examines the domestic application of international human rights in India. The study explores the constitutional mechanisms and judicial trends adopted by India in order to incorporate the provisions of human rights and how international norms are integrated into Indian legal system. The role of constitution in facilitating this process, and the judiciary's evolving stance in interpreting and enforcing these rights has been discussed in this paper. The study highlights various cases, legislative provisions, and theoretical frameworks to acknowledge the dynamic interplay between global human rights standards and India's domestic legal system.

**KEYWORDS:** Human Rights, Judicial Activism, NHRC, Fundamental Rights, UDHR.

### INTRODUCTION

The evolution of international human rights law has impacted the domestic legal systems worldwide significantly, particularly after World War II. Universal declaration of human rights (1948) and the international covenants (1966) acted as the benchmarks for state conduct and individual dignity. India being the signatory to most of these conventions and treaties has tried its best to uphold the human rights norms in accordance with the global standards, yet the challenge lies in effective implementation of these obligations into domestic framework. India's constitution talks about human rights norms such as its preamble highlighting values of justice and equality, part III talking about fundamental rights and part IV dealing with DPSP. The judiciary has interpreted part III of the constitution expansively, focusing on international conventions and standards. Article 51(c) and Article 253 of the Indian constitution mentions legislative openness to international law while recognising parliamentary sovereignty limitations. Judicial activism has played a significant role in safeguarding the international human rights standards with domestic enforcement as seen in landmark cases such as *Vishaka*

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*vs State of Rajasthan*<sup>1</sup> related to sexual harassment at workplace and *Puttaswamy vs UOI*<sup>2</sup> which recognised right to privacy as a fundamental right under article 21.

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These judgements demonstrated transformative constitutionalism where judiciary integrated global norms into domestic system. However, challenges remain because of India's dualist legal system that often requires legislative action for implementation of treaties, leading to delays and backlogs. Moreover, Political influences may obstruct enforcement and ratification of international obligations. Institutional bodies like the NHRC have made significant progress in promoting human rights but face limitations in power and procedures.

## RESEARCH PROBLEM

The Constitution of India protects rights of the people and the framers of the constitution adopted civil and political rights mentioned under UDHR as Fundamental Rights and socioeconomic rights as Directive Principles of State Policy. But some international human rights guarantee that should have been introduced such as the right to privacy and reparation for arbitrary detention are not mentioned in it. Hence, there is a risk of violation. Under Article 19, the constitution provides for some reasonable restrictions and that in an emergency, these rights can be suspended which is contrary to international practice. Although some rights under the ICCPR cannot be derogated even in emergencies, Article 359 of the Indian Constitution permits suspension of most Fundamental Rights (FRs), except few FRs, in national emergencies. This expands on the executive's power to call emergencies compared with international norms. Preventive detention can be imposed in India during 'emergencies' or even 'peace time', while under international law there exists the restriction to 'emergencies'. Some of these rights receive inadequate protection to international human rights standards.

As a result, this condition results in low level human rights protection, unfathomable citizen hardship caused by the nonrecognition of rights and justifies state deprivation of these rights. India is understood to insufficiently respect the international human rights that inhibits overall growth of an individual. The intervention of courts has tried to enhance the rights-based protection by "importing" international norms into its domestic legal system.

## OBJECTIVES OF THE STUDY

1. To analyse the provisions mentioned in the constitution that facilitates the incorporation and enforcement of international human rights norms in India.
2. To evaluate the role of Indian judiciary in interpreting and applying international human rights law while pronouncing judgements.

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<sup>1</sup> Vishaka v. State of Rajasthan, (1997) 6 S.C.C. 241 (India).

<sup>2</sup> K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).

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3. To explore the interface between international obligation and domestic implementation and effectiveness of institutional mechanism such as National Human Rights Commission in promoting and protecting human rights in alignment with global standards.

## **HYPOTHESIS**

1. India's constitutional framework and proactive judiciary have significantly facilitated the application of human rights norms into Indian legal system.
2. Judicial interpretation in India has very much relied on global stance of human rights to expand the scope of fundamental rights, even in the absence of enabling legislation.
3. Despite India's constitutional commitment to incorporate and follow international law, the application of international human rights norms domestically remains inconsistent due to legislative gaps and executive discretion.

## **METHODOLOGY**

The study adopts a qualitative, doctrinal research methodology focusing on the recognition of international human rights into Indian constitution and the role of Indian judiciary in integrating these standards into the Indian legal framework. Both primary and secondary sources have been utilised for analysis. Primary sources include Indian statutes, Supreme Court judicial pronouncements, and different international documents such as conventions, charters, declarations, treaties, and human rights committee resolutions and secondary sources such as books, articles, journals, and periodicals relevant to the research.

## **LITERATURE REVIEW**

**RAJU (2011)**, in his work talks about how the Indian constitution provides a robust framework for the protection and promotion of human rights. Part III that is the fundamental rights which are in consonance with various human rights and its framework serve as a bridge between India's domestic law and international obligation. According to him, Article 21 which guarantees the right to life and personal liberty has been interpreted exceptionally to include various socio- economic rights in alignment to the international law frameworks.

**BHATTACHARYA (2015)**, in his study argues that the constitution's directive principles of state policy, although non-justiciable, gives essential guidelines for the legislative and executive action towards the fulfilment of the human rights standards. The dynamic interplay between fundamental rights and DPSP has been judicially acknowledged as a way to achieve the goal of a just society that upholds both civil liberties and social justice.

**GUPTA (2017)**, acknowledged in his work the commendable stance taken by the Supreme court to protect the rights of marginalized groups, women and children through various judicial pronouncement. These decisions not only abide by the international norms but also prompt legislative reforms that harmonize domestic laws with international standards.

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**KUMAR (2020)**, in his work states that the seminal case of Maneka Gandhi vs UOI, 1978, serves as a keystone for understanding the judicial approach as in this case the SC held that the right to life encompasses a variety of human rights, emphasizing due process and fair hearing principles, effectively merging international human rights norms to the judgement.

**BAKSHI (2021)**, discussed about the institutional weaknesses including corruption within law enforcement agencies and the judiciary, which eventually hinders the effective implementation of human rights norms.

## **HUMAN RIGHTS: MEANING AND SIGNIFICANCE**

Human rights is a term which gained significance in the 20<sup>th</sup> century. They are the rights acquired by a person since birth and hence are also known as ‘*natural right*’. These rights are universal, interdependent, interrelated and inalienable. They are universal because every individual is born with and possess these rights by default, regardless of their gender, race, sex, religion, caste etc. Inalienable because they cannot be taken away or destroyed. Interdependent because all rights such cultural, economic, political, social and civil are interconnected and are equally important to the fulfilment of the other.

Human rights are as old as human existence and they derive from every person’s need to realize his or her essential humanity. They have their origin in the fact of the human existence and because of his origin they are by default fundamental and inalienable. “*More specifically, Constitutions, Conventions or Governments do not confer human rights, but are merely instruments and testaments of their recognition. They are important, sometimes essential, elements of the machinery for the protection and enforcement of human rights but they do not give rise to human rights. Human rights were born not of humans but with humans*”.<sup>3</sup>

Whatever may be the normative or theoretical claims behind the notion of “human rights”, what truly matters is the recognition and protection of these rights. “*Human rights ideology postulates human dignity and recognition that every human being, irrespective of race, religion, colour, or circumstances, is born equal and entitled to the rights as a human being. Far from being mere legal abstractions or moral exhortations, they are dynamic, political, social, economic, judicial as well as moral and include cultural and philosophical conditions which define the intrinsic value of man and his inherent dignity*”.<sup>4</sup>

According to B. G. Ramcharan, “*human rights are legal rights which possess one or more of the following characteristics: appurtenance to the human person, group or universality, essentiality to human life, security, survival, dignity, liberty, equality, essentiality for international legal order, essentiality in the conscience of mankind, essentiality for the protection of vulnerable groups*”.<sup>5</sup> D.D. Basu explains Human Rights as those minimum rights

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<sup>3</sup> Justice P.N. Bhagwati, “*The Right to Life and Economic, Social and Cultural Rights*”.

<sup>4</sup> Moses Moscovitz, “*International concern with Human Rights*”, JILI, 1987, p.53.

<sup>5</sup> B.G. Ramcharan “*The concept of Human Rights in contemporary International Law*”, Canadian Year Book of Human Rights, 1983, pp 267, 80,

which every human should have against the state or other state authority by the fact that he or she is a member of human family, irrespective of any other consideration.

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Human rights have been classified into 3 broad categories:

**1. First Generation Rights**

They are civil and political rights, and are enforced and protected through procedural safeguard that every individual is equal before the law. Political rights are privileges and rights that are enjoyed by citizens such as right to vote or represent certain social or secular institution.

**2. Second Generation Rights**

They are economic, social and cultural rights that have gained the power to resist the threat of large-scale manipulation under the compulsion or fear of any powerful private entity.

**3. Third Generation Rights**

They are considered as solidarity or collective rights, refer to a category that emphasize the collective interests of communities, group, people or humanity at large.

Hence, Human rights are an integrated part of human survival. They are founded on the antidiscrimination principle, and they exist, in order to protect and preserve human dignity. The original definitions were largely aimed at “shielding rights of the individuals from public authority”, but the range has broadened, and now such or similar rights are available not only against public entity but also private entity and persons (i.e. non-state actors).

## CONSTITUTIONAL MECHANISMS SAFEGUARDING HUMAN RIGHTS

The relationship between human rights law and constitution of India has evolved over the years. The constitutional mechanisms in the Indian legal system provide a robust foundation for the protection and promotion of human rights. The Indian constitution adopted in 1950, is deeply formulated to inculcate the fundamental principles of justice, equality, and liberty as articulated in various international human rights norms. These principles are also enshrined under the preamble which is considered as the introduction of the constitution. Part III also known as the fundamental rights, protects individual’s rights against the state, particularly civil and political rights whereas DPSP mentioned in part IV includes social, economic and cultural rights.

The Indian constitution recognizes various rights included in the covenant on civil and political rights under fundamental rights and covenant on economic, social and cultural rights under directive principles of state policy. Some rights were incorporated in the constitution by the constituent assembly but as the society has evolved, judiciary has significantly broadened the scope of these rights, specifically with respect to article 21, for example: Right to pollution free environment (*M.C. Mehta v. Union of India*)<sup>6</sup>, Right to health (*State of Punjab v. Mahinder*

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<sup>6</sup> M.C. Mehta v. Union of India, AIR 1987 SC 1086.

*Singh Chawla*)<sup>7</sup>, Right to free legal aid (*Hussainara v. Home Secretary*)<sup>8</sup> and *M.H. Hoskot v. state of Maharashtra*)<sup>9</sup>, Right against solitary confinement (*Sunil Batra v Delhi*

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*Administration*)<sup>10</sup> etc. The Constitution (Forty-Second) Amendment Act of 1976 added Article 51A, which talks about Fundamental Duties of the citizens, aligning with Article 29(1) of the Universal Declaration of Human Rights. It is to be noted that prior to 1976, there were no constitutional provisions for citizen's duties. Article 51A mentions 11 duties, however, these duties are non-justiciable in nature.

In addition to the fundamental rights outlined in Part III of the Constitution, there are several provisions that grant individual rights. These provisions impose limitations on the State, thereby enabling individuals to seek enforcement in court if the Executive or Legislature violates them. For example, Article 265 states that taxes cannot be levied without legal authority, allowing individuals to challenge arbitrary taxation. Article 300A protects against deprivation of property without lawful authority, while Article 301 ensures freedom of trade and commerce. Additionally, Article 325 prohibits exclusion from electoral rolls on the basis of religion, race, or sex, and Article 326 grants the right to vote to all eligible citizens aged eighteen and above. Breaches of these provisions empower individuals to seek legal remedies.

## **NATIONAL HUMAN RIGHTS COMMISSION**

The National human rights commission was established under THE PROTECTION OF HUMAN RIGHTS ACT, 1993. It has been authorized to take cognizance (SUOMOTO) or any complaint about human rights violation. The committee not only passes the order but has the authority to compensate the victim and can also recommend action against the guilty. As per NHRC official data, state wise cases registered from 1<sup>st</sup> April 2023 to 31<sup>st</sup> march 2024 are 76,891 in total. The states where highest number of cases were registered are Uttar Pradesh (31,918), Delhi (5,489), and Bihar (4,671). States and union territories where least number of cases were registered are Ladakh (4), Daman & Diu (5), and Lakshadweep (6). Whereas, total no of cases disposed by NHRC with guidelines and directions are 19,260 in total, and 5,736 cases have been transferred to State human rights commissions. There is total 414 cases where NHRC has recommended monetary relief during 2023-2024.<sup>11</sup>

According to the Ministry of External Affairs Annual report 2024 “*The Third Committee of the General Assembly continued to focus on examining human rights questions and addressed important social development questions. The committee held meetings in the 79th Session of UNGA. It adopted a total of 48 resolutions covering subjects like trafficking, drugs and crimes, disability, violence against women and girls, freedom of religion, promotion and protection of*

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<sup>7</sup> State of Punjab v. Mahinder Singh Chawla, AIR 1997 SC 1225.

<sup>8</sup> Hussainara v. Home Secretary, AIR 1979 SC 1369.

<sup>9</sup> M.H. Hoskot v. State of Maharashtra, AIR 1978 SC 1548.

<sup>10</sup> Sunil Batra v Delhi Administration, AIR 1978 SC 167.

<sup>11</sup> <https://nhrc.nic.in/annualreports/2023-2024>

*human rights, social development, and country specific resolutions. India co-sponsored 18 resolutions*<sup>12</sup>

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## JUDICIARY AND HUMAN RIGHTS

The judicial incorporation being an effective way chosen by judiciary for the protection of human rights has been playing a key role in giving recognition to international human rights norms. The courts in India have been instrumental in interpreting the constitution expansively and ensuring that the rights enshrined in the constitution. The judiciary's role has been transformative especially with respect to the interpretation of article 21. In *Shafin Jahan v. UOI*<sup>13</sup>, the SC dealt with the issue of inter-faith marriages and upheld the right to marry a person of one's choice, considering it as a right under the ambit of article 21. The court also highlighted that any interference in personal relationships must not infringe upon the fundamental rights of the individual.

Recently, the apex court in the case of *Arif Md. Yeasin Jwadder vs. State of Assam and Ors*<sup>14</sup> has instructed the Assam Human Rights Commission (Assam HRC) to undertake an independent and prompt investigation into allegations concerning fabricated police encounters within the State of Assam. This directive was issued in response to a petition asserting widespread occurrences of purported "fake" encounters in the region, alongside claims of failure by state authorities to adhere to the mandates established in the case of *PUCL v. State of Maharashtra*.

In *The Calcutta Cricket & Football Club V. Karan Singh Grewal and Ors* SC observed that *"The requirement to record reasons before deciding on any matter emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence and in Anya v. University of Oxford wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "Adequate and intelligent reasons must be given for judicial decisions". In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of due process."*<sup>15</sup>

While giving the judgement in *Ch. Joseph V. The Telangana State Road Transport Corporation and Ors*<sup>16</sup> where the employee was asked to leave his job due to colour blindness, the apex court referred to its decision given in *Jeeja Ghosh v. Union of India*<sup>17</sup>, where it had observed: *"In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For*

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<sup>12</sup> <https://www.mea.gov.in/Images/CPV/140725MEAAnnualReport2024English.pdf>

<sup>13</sup> (2018) 16 SCC 408.

<sup>14</sup> MANU/SC/0790/2025.

<sup>15</sup> MANU/NL/0644/2025.

<sup>16</sup> MANU/SC/1008/2025.

<sup>17</sup> MANU/SC/0574/2016.

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*example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing antidiscrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.”*

In the landmark case of *Aruna Shanbaug v. Union of India*<sup>18</sup>, the Supreme Court deliberated on the right to die with dignity. The Court made a critical distinction between passive and active euthanasia, permitting the withdrawal of life support for individuals in a permanent vegetative state. The Court reaffirmed the right to life with dignity under Article 21, positing that such a right inherently includes the right to die with dignity, thus fortifying constitutional safeguards against arbitrary state interference with individual autonomy and human rights.

In *Charles Sobharaj v. Superintendent, Central Jail, Tihar*<sup>19</sup>, the apex court held that imprisonment does not take away a person’s fundamental right. It reinforced the idea that prisoners must be treated with dignity and that the jail authorities are bounded by constitutional limitations. In *Sheela Barse v. State of Maharashtra*<sup>20</sup>, the SC focused on the rights of the female prisoners, especially regarding legal aid and protection from custodial violence. It directed the authorities to ensure that women prisoners are not subjected to inhumane treatment and they have the right to live their life with dignity. The supreme court of India has increasingly recognized the human rights of sex workers or women engaged in “sexual commercial activity”, affirming that they are entitled to the same constitutional protections as any other citizen. Although, prostitution itself is not illegal in India but activities such as brothel keeping, solicitation, and trafficking are crime under *Immoral Traffic (Prevention) Act, 1956* and hence it creates a legal paradox where women engaged in this profession are marginalized and are often denied basic rights. In *Budhadev Karmaskar v. State of West Bengal*<sup>21</sup>, the court reaffirmed that sex workers should not be treated as second class citizens and must be protected from abuse and discrimination. In the case of *Minerva Mills Ltd. v. Union of India*<sup>22</sup>, the Supreme Court emphasized that the basic structure of the Constitution, including the protection of human rights, cannot be altered or abrogated by any amendment.

## **CHALLENGES IN ENFORCEMENT OF HUMAN RIGHTS**

Despite the judicial innovations and the robust framework in place, several challenges persist in enforcing international human rights norms in India. One of the major obstacles is the inadequate implementation of rule and regulations. While the courts have broadened the scope of human rights through their pronouncements, the actual enforcement of these rights at the ground level remains problematic and inadequate. For example, in cases related to police

<sup>18</sup> (2011) 4 S.C.C. 454 (India).

<sup>19</sup> AIR 1978 SC 1514.

<sup>20</sup> AIR 1983 SC 378.

<sup>21</sup> (2011) 10 SCC 283.

<sup>22</sup> (1980) 3 SCC 625.

brutality or untouchability practices, despite strong law and legal provisions, social realities often hinder the effective and full enforcement of these rights. Another challenge is the delayed justice in India's judicial system, where it is also said that "justice delayed is justice denied". Long pendency of cases often diminishes the impact of judicial rulings. Moreover, the judiciary's ability to enforce human rights across such a vast and diverse country requires substantial administrative resources and coordination with different organs of the state. The need for greater judicial activism coupled with better administrative mechanisms to enforce human rights remains a critical concern.

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Human rights watchdogs and human rights commission often lack autonomy and face political pressure and investigations involving state actors are often delayed or diluted. Bodies like NHRC or state human right commissions suffer from staff shortages, limited budgets, and procedural delays. Lack of awareness is again a very critical concern as many citizens are unaware of their legal and fundamental rights as a human and about the mechanism to get their rights enforced.

## **CONCLUSION**

India's commitment to recognize and enforce human rights is deeply embedded in its constitutional ethos, legislative framework, and judicial activism. From the guarantees of equality, justice and liberty mentioned in part III to the progressive interpretation of supreme court, the legal system has consistently sought to uphold the dignity of every citizen. However, the journey from rights on paper to rights in practice remains a consistent challenge starting from institutional lacuna and social inequality to political interference and lack of awareness among the general public. The doctrine of basic structure acts a safeguard to prevent amendments that would undermine the fundamental rights and core beliefs and principles of the constitution. Through this doctrine the judiciary ensured that the core values embedded in the constitution remained intact in order to protect the rights of the citizens values of the nation.

## **SUGGESTIONS**

1. By empowering the institutions like NHRC and SHRCs with binding authority and better funding. There should be independence from political influence and reformation regarding appointment procedure should be considered.
  2. Fast track court in case of human rights violations should be set up through dedicated human rights benches at various district courts for timely and effective disposal of the case. Legal aid especially for marginalized communities should be expanded.
  3. Implementation of proper surveillance in police stations and jails in order to curb custodial violence. Regular visits in jails and stations by senior officers to keep a check on the wellbeing and health of the inmates.
  4. Integrating human rights education in school, and by introducing awareness campaigns to make people aware about their rights and enforcement mechanisms.
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5. By strengthening whistleblower protection laws in order to encourage reporting of the cases.

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