

## **Protection of Human Rights – A Jurisprudential Approach**

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**Abstract.** "Thomas Paine stated, "All men are created equal, with equal inherent rights." In contrast, Rousseau remarked, "Man was born free, yet he is tied everywhere." For-profit, one was enslaved by another man and "bought and sold like an ordinary piece of goods." Tyrannical regimes suffocated his freedom. In 1776, the "American Declaration of Independence" said, "Men are born equal and endowed with certain inherent rights, such as the right to life, liberty, and happiness." The "French Declaration of the Rights of Man and Citizen," published in 1789, stated that "all men are born free and equal in rights" and that "all men are born and remain free and equal in rights". The terrible two World Wars and other liberation movements prompted the establishment of an international agency to ensure world peace and order. Following these occurrences, there was a need to safeguard some inherent rights human beings possess at the international level. The United Nations charter laid the groundwork for human rights, and the "Universal Declaration of Human Rights" was signed in 1948 to codify those ideas. According to the declaration, human beings are born free and have equal dignity and rights. Among other things, they all have the right to life, liberty, and personal security. "In 1993, the Vienna Declaration and Programme of Action said, "All human rights are universal, indivisible, interdependent, and interconnected." However, the world has witnessed numerous instances in which human rights have been flagrantly violated, casting doubt on their very existence and integrity. The purpose of this paper is to make strenuous efforts to conduct a cursory study of what is right, natural law, and natural/fundamental rights, traversing through three stages of human rights evolution, four-pillared three-generation, and new generation human rights, highlighting how human rights are violently violated, and concluding with a conclusion. In addition, the article attempts to comprehend how the Indian judiciary saw and tried to safeguard the core of human rights when interpreting the Constitution.

**Keywords:** Human Rights, Natural Rights, Judiciary, Human Rights Violation, U.N. charter

### **INTRODUCTION**

In the Age of Rights (Rajagopal, 2005), people claim many rights either for themselves or others, viz. rights of prisoners, women, unborn child, disabled, etc. (Riddall, 2005). These rights include natural, human, legal, and civil rights. From the law of nature, natural rights sprang and as an offshoot of which fundamental rights emerged. Natural Rights are absolute and inalienable rights that are "inherent in free and civilized human beings". They have a greater level of sanctity than legal rights established by the lawful sovereign [1]. Natural rights in unwritten Constitution, as in England, are termed civil rights, while 'being guaranteed and entrenched' by the fundamental law of the land, are called 'Fundamental Rights', in written Constitution (Basu, 2008) [2]. 'Human Rights' expression has an international origin which was earlier confined to the relations between sovereign states. Human rights, on the other hand, are as old as humanity itself. Human rights are fundamental and are inextricably linked to human existence [3].

Although the international law element of human rights dates from the Second World War, natural law and natural rights philosophy offers insight into the origins of the notion of these inalienable rights. (Basu, 2008). State being source of human rights principles implements Human Rights (Shaw, 2003). Human rights have evolved from natural rights to the notion of human rights in the twenty-first century [4]. According to Malcolm Shaw, individual and collective rights are distinct while the right to life or freedom to expression is purely individualistic; others are expressed collectively, such as freedom of assembly, religion even though they are individual too. Likewise, some are strictly collective: self-determination right, while others are a collective manifestation of individual rights: minorities' rights to their own culture/religion/language (Shaw, 2003). The logic of human rights is that every man gets certain rights at birth that he can exercise in the world [5]. These rights are of a nature that doesn't require any agreement or registration for its enjoyment; instead, being human is the only requirement. Every human being possesses and enjoys these rights irrespective of gender, caste, race, social, economic, and political status (Kapoor, 2017).

In 1776, the phrase "Human Rights" was included in the "United States Declaration of Independence," and the Bill of Rights was subsequently included in the American Constitution. Thomas Paine created the word "Human Rights" for the first time in his book "The Rights of Man." [6]. Roosevelt then recommended that Human Rights be used instead of Human Rights, and in 1948, the "Worldwide Declaration of Human Rights" was approved with widespread support. Basic rights, natural rights, civic rights, fundamental rights, and social, economic, and cultural rights are included in the term "human rights." Human right is a broad concept that encompasses a variety of rights [7]. Human rights and their protection are considered highly important for preserving human dignity, ensuring justice, and protecting the freedom for human existence (Chandra, 1999). In the primitive period, a man had no fundamental rights, and he struggled against tyranny. The long and substantial struggle of the man to have basic rights can be traced back to the origin of rights and Natural Law philosophy [8].

### **RESEARCH METHODOLOGY**

The methodology adopted in this research paper is through the traditional approach of Doctrinal Research Methodology and an analytical evaluation approach. It requires gathering relevant data from secondary sources, primarily books and journals available in the library, and by accessing internet sources and compiling databases. It shall also include analyzing the case studies and evaluating the ways and means of human rights violations [9].

### **Evolution of Rights and Natural Rights**

Some philosophers 'reject' the idea of citizens having rights apart from what law provides them (Dworking, 2005). The concept of right was absent in ancient days. In the medieval period, the primary concern of natural philosophers was good conduct, obligations, duties (Riddall, 2005). Ancient Indian philosophy evolved the concept of right and duty, where the individual was given the right to perform his task. Justice Rama Jois quotes Vishnupuranam on the importance given to studying: "Bharat is regarded as big among the many countries because it is a land of duty, as opposed to others that are lands of enjoyment, i.e., based on rights." (Jois, 2000) The attention from 'duties' to 'rights' shifted by 17<sup>th</sup> century (Riddall, 2005) [10].

"Man is a part of the natural world. Man has a nature inside nature. His nature pushes him towards a specific goal", viz., child procreation, family protection, ensuring survival, etc. (Riddall, 2005). Seeking such ends is 'natural to him because of his nature, being a sort of creature within the world of nature. Man's achievement of these natural ends is an achievement of nature's purposes, in which certain things, termed 'Laws', assist. "Such laws that are in accord with the ultimate purposes of man constitute natural 'law'". Thus, the word 'natural' in natural law refers to an idea that provides the foundation of 'natural law, which is distinct from 'law of nature or 'state of nature (Riddall, 2005) [11].

In his Essay concerning Human Understanding, John Locke wrote that even in a state of nature, a man was not a jungle beast.' To Bentham, Right is law's child and called the idea of individual human rights 'nonsense upon stilts':

"Genuine rights come from actual law, while fake laws, such as the "law of nature," give illusory rights... Natural and imprescriptible rights (a phrase used in the United States) are foolishness; they are rhetorical gibberish, a folly on stilts." (Riddall, 2005) [12]

"Mankind originated, asserts Locke, in a condition of nature," writes Bryan Magee. Even in the wild, as a creature created in God's image, the man was not a jungle beast because God had given him reason and conscience [13]. As a result, Locke's perspective on the state of nature differs significantly from Hobbes'" (Magee, 1998). "Natural law, natural rights, is two sorts of fictions or metaphors, which play such a large role in books of legislation," Bentham adds. "The law of nature is a metaphorical term in which nature is depicted as a being; and such and such a tendency is assigned to her, which is figuratively called a rule," he explains [14]. All of the men's general inclinations, all of those that appear to exist independently of human societies and must predate the development of political and civil institutions, are referred to be laws of nature in this sense." (Bentham, 2006)

"Man was born free, yet he is chained everywhere," said Rousseau in the first section of his dissertation, *Of the Social Contract* (Rousseau, 2012). According to Thomas Paine, "Men are born equal and possess equal natural rights, and these rights also include intellectual rights or rights of the mind, as well as all those rights of acting as an individual for his comfort and happiness." (Paine, 1985) [15].

### **Comprehending Human Rights - When and How It Started?**

Human rights are moral rights held by individuals (Samantha et al., 2010). It is not possible to define According to one definition, "Human Rights" are "those rights that are essential in our nature and without which we cannot exist as human beings" (Lakshmanan, 2009)." (Rattan et al., 2014). 'Human rights' term contains a multitude of meanings that cross many academic disciplines." (Cane et al., 2008). However, Faucett gives an elaborative definition: [16].

“Human rights are referred to as fundamental rights, basic rights, and inherent rights. Fundamental or fundamental rights can't or shouldn't be taken away by legislation or government action and are usually codified in a constitution. They are believed to be inherent rights of men and women by their very nature. They might also be called "common rights" because they are rights that all men and women across the world would enjoy, similar to the common law in England, which controls the whole country rather than local traditions.”(Fawcett, 1968) [17].

The concept of human rights is multidimensional but is, equally emphatically, unitive (Iyer, 2000). Its basic concept is respect for human dignity (Sathasivam, 2008). From 'sense of dignity can also be measured human rights concept (Dave, 2007) “Human Rights concept is as old as the hills. . . Humanity cannot do without these rights. Such rights form part of natural rights. They are so basic for a decent, civilized and orderly life....” (Mohan, 2009) They are “not mere legal titles” ( Iyer, 2000) [18].

UN Charter, which provides a 'baseline of human rights', employs, for the first time, 'terminology of human rights'(Brownlie, 2008). U.N. General Assembly adopted the Universal Declaration of Human Rights in 1948, and the preamble to UDHR emphasizes:

“. . . The acknowledgment of all members of the human family's inherent dignity and equal and inalienable rights is the cornerstone of world freedom, justice, and peace.”(Das, 2003)

“Everyone has the right to life, liberty, and security; no one shall be tortured or subjected to cruel, inhuman, or degrading treatment or punishment; everyone has the right to recognition everywhere before the law; and all are equal before the law and are entitled to equal protection of the law without discrimination,” according to Articles 1, 3, 5, 6, and 7. “(Das, 2003) [19]

As enshrined in the UN Charter, the modern idea of human rights did not emerge overnight; rather, it grew through time as a result of conflicts and revolutions waged around the world against despotic governments for the affirmation of those rights. Fundamental Liberties and Directive Principles of State Policy in the Indian Constitution have considered the ideas of basic freedoms such as political, cultural, monetary, and social liberties (Anand, 2008). Human rights are defined as "writes about life, liberty, equality, and dignity of persons guaranteed by the Indian Constitution or incorporated in the International Covenants on Civil and Political Rights, 1966" by the Protection of Human Rights Act, 1993 (in New York, on December 19, 1966, it was opened for signatures) and the 1966 International Covenant on Economic, Social, and Cultural Rights (signed on December 16, 1966).” (Das, 2003) [20].

Fundamental Rights are as ancient as Vedas in Veda Bhoomi, India. Rigveda incorporates the Charter of Equality (Jois, 2000) and Atharvaveda talks about equal rights on natural resources, cooperation, harmonious living, etc.(Jois, 2011). Similarly, Manu Dharmashastra advocates non-discrimination of people by the State (Jois, 2011). These provisions of Dharma were reincarnated as fundamental of Right to Equality in Articles 14, 15, 16, and 17 of the Indian Constitution (Jois, 2011). Justice Rama Jois gives an illuminating instance related to Rajatarangini, showing not only the protection of a poor individual by King Chandrapida of Kashmir against the action of King's officers but also "deep-rooted faith in Rule of Law (Dharma Rajya )" (Jois, 2011).

Justice Krishna Iyer once said: "I am a human being inhabiting an integral universe of divine Creation; and so, nothing that pertains to dear Mother Earth or affects fellow human beings in their earthly home is alien to me or fails; to sensitize me into action or expression.”(Iyer, 2020)

Justice Rama Jois' English translation of recognition of Equality by most ancient of Vedas, Rigveda (5-60-5), reads: "There is no such thing as superior or inferior. All of them are brothers. Everyone should work for the common good and grow together.”(Jois, 2000) Indian culture had always kept the right of happiness with paramount importance throughout the years as a part of people's life (Jois, 2011). The essence of Rigveda, the duty of every man not to inflict suffering and misery on a fellow being, and it is the right of every human being to be happy, is very much adopted in the Universal Declaration of Human Rights (Lakshmanan, 2009).

## **RESULTS AND DISCUSSION**

### **Human Rights Violation – Why Human Rights To Be Discussed?**

But, what do we see these days? Now, every day the world witness dreadful incidents happening everywhere. No country is an exception. Every form of human rights violation is present worldwide, from slavery, genocide, racial discrimination, terrorism, violence against women and children. With the progress in the world, there is a simultaneous increase of different forms of violation of various human rights. The idea of Human rights has undergone a drastic evolution in these years, and the more effective protective mechanism is also tailored at both the international and national levels. Recent years have witnessed much violence by humans against humans, thereby violating fundamental human rights.

### **Terrorism – A Global Threat to Human Rights**

One of the most dreaded violations of human rights these days is 'Terrorism'. An utterance of this very word sends shock waves in people's minds. The most dreaded human rights violation these days is 'Terrorism'. The statement of this same word sends shock waves in people's minds. Internationally and nationally, many terrorist activities have occurred that possess many questions upon human rights? Whether it is Terrorist activities in France, Bangladesh, the United States of America, New Zealand, or India, every incident had one shade, that of violence and violence against human rights. Terrorism knows no language, no religion, and no boundaries. Terrorism which started in a small way and restricted to certain pockets and regions, is now spreading its tentacles across countries, posing a global threat. According to Justice Krishna Iyer, "Man's inhumanity to man is escalating boundlessly before our eyes intra-nationally and internationally, and each passing day brings thoughts too deep for tears and wars too defiant of the United Nations. And those in positions of power and money are still unaffected by humanity's sorrowful melody" (Iyer, 2000).

#### **Custodial Torture – Protectors Turning Predators**

Another shade of human rights violation, in Supreme Court words, 'violent violation', is police torture, law protectors becoming lawbreakers. Police torture is always inhuman and sometimes causes death. The recent Tamil Nadu Custody death of the father-son duo during the pandemic had sent a shocking wave across the country. This human rights violation in the hands of protectors is always a question to society about their safety and existence. Concurrent findings reached by courts convicting police officers were challenged in Supreme Court. Upholding said convictions Apex Court observed:

"The diabolical recurrence of police torture has created in ordinary people a terrible fear that their life and liberty would be jeopardized when the law's defenders gore human rights to death. The fragility of human rights takes on a horrible, torture-like character when the state's police arm, whose role is to protect citizens, rather than perpetuate heinous crimes against them, as has happened in this case. Police holding cells are becoming increasingly fascinating cells if news reports are to be believed. This tendency harms our concept of human rights as well as the humanist constitutional order. We expect the state to create particular initiatives to prevent and punish police violence at the highest administrative and political levels. Otherwise, the rule of law's legitimacy in the eyes of the people of our nation would diminish." (Ragbir Singh v. State of Haryana, 1980)

#### **Violence against Women and Children – Eagles' Eye All the Time**

In India, another heart-bleeding phenomenon is heinous crimes committed on innocent girls and women. Their safety and security are at alarming levels in urban areas, even at zero levels in villages. Of late, incidents of kidnapping and raping/mass raping and killing victims to prevent killer's identity, and, to destroy evidence, even burning victims' bodies, is rising. There is no difference in terms of the victim's nationality, many instances where tourists had fallen prey to the predators. India, though have a string of family bonding, is witnessing the deteriorating state of family ties where father rapes daughters, brother rapes sisters, and other violent actions from the side of the family members to the women, which makes family surroundings completely unsafe. A large number of human rights violations happen instead of protection in the family. The increasing rate of domestic violence also points towards the same. Honor Killing and the actions of Khap Panchayats in certain parts of our country show how little I think for protecting the human rights of females in our country. These Khap panchayats mandate different types of humiliation on girls, including mass rape, which they claim is legitimate. Right to life for women in India has been at shaken hands which saw an increased number of acid attacks on women to push them into pain rest of her life. Whether it is Nirbhaya or recent Disha, they had suffered much pain before they breathed their last. Even though after Nirbhaya, there were specific changes brought to the rape laws in India, it has not put any full stop to the incidents. From a small child to aged lady, are always under the danger of sexual violence against them. Who is responsible for the suffering and ultimate death of women in the sexual offense? Perhaps Justice Krishna Iyer has answers that ". . . what do we see around us currently and hear from the whispering gallery of history? Asuric (demonic) forces overpowering Satvic (humanist) commandments, and blood and tears were drowning the joy of life and developmental prospects" (Iyer, 2000).

#### **Human Rights Protection and Response of Judiciary in India**

Till Second World War, the main focus of international law was to regulate the interactions among nations and hardly contained anything for the extensive protection for individual rights (Das, 2016). But the World War II had changed the way the entire countries think. There was a global change towards the inhuman atrocities, developing a comprehensive international human rights law. Even the UN Charter, 1945 contained general commitments to protect human Rights (Das, 2016). In 1948, the United Nations approved the Universal Declaration of Human Rights, a watershed moment in human rights history that entrenched individual rights and freedoms.

The drafters of the Constitution had a keen understanding of different elements of human rights. They wisely integrated Fundamental Rights and State Policy Directive Principles for the preservation and advancement of fundamental rights. The Supreme Court of India has issued interpretations to preserve these rights on several occasions. The Supreme Court has said that the preamble embodies the people's hopes and ambitions, while the directive principles express the country's guiding principles for the government (Das, 2016). Individual rights are prioritized over societal rights, according to the Preamble and Articles 14, 19, and 21. (Ashok Kumar Thakur v. Union of India, 2008)

"No individual shall be deprived of his life or personal liberty unless in conformity with the lawful procedure," according to Article 21 of India's Constitution. The right to life includes the ability to live, live happily and with dignity, and not take lives. The Fifth and Fourteenth Amendments to the United States Constitution, which contain "life and liberty," serve as a forerunner to Article-21. According to Justice Field, "term life" is "more than animal existence, deprivation of it extending to all those limbs and faculties by which life is experienced, as well as liberty, something more than simple freedom." The Supreme Court declared, "By the term of life, we do not merely mean animal existence." The resistance to its loss spreads to all of our limbs and faculties, allowing us to appreciate life. Amputation of an arm or leg, removal of an eye, or destruction of any other portion of the body through which the soul connects with the outer world are prohibited under this paragraph. If its efficacy is not frittered away by judicial judgment, the clause in question prevents the loss of not only life but also all God has provided to everyone with life for their progress and enjoyment." (Mane, 2006) The Constitutional Bench had held that the term liberty does not just refer to freedom from physical restraint or jail chains, but that it encompasses much more and is considerably broader in scope." (Kharak Singh v State of UP 1963)

"According to A.K. Gopalan, "the word Personal Liberty was asserted to signify liberty connected to or affecting an individual's person or body; thus personal liberty in this sense is the antithesis of physical limitation or coercion." The breadth and content of personal liberty were examined in depth in Kharak Singh v State of Uttar Pradesh (1963) when the Constitution Bench allowed the expression of a broader meaning. The majority verdict in Kharak Singh's case, on the other hand, could not be upheld for a prolonged period. In Maneka Gandhi v Union of India, the words "life and personal liberty" were first used, and the outcome represented a watershed moment in Indian constitutional law. (Mane, 2012)

Dr. T.K. Tope linked Maneka's judgment to Marbury v Madison, which established the United States' judicial review theory. "Maneka Gandhi's case has helped to India's preservation of the right to life and personal liberty," he said. It is, without a doubt, a watershed moment in the history of constitutional interpretation and fundamental rights protection" (Mane, 2012). In his book "The Indian Supreme Court and Politics," Professor Upendra Baxi writes, "Article 21 has now become the Constitution's spirit." The Supreme Court amplified some essentially ordinary instances into primary constitutional debates. If the due process had died three times during the emergency, in the Constituent Assembly, Gopalan, and Shiv Kant, it would be resurrected in Maneka. Once birthed, the justices determined to give the new baby a lot of milk: they didn't allow a single opportunity to pass where the due process interpretation of Article 21 couldn't be nursed into a giant baby. Article 21 has now begun to take on the role of the Constitution's essence." (Mane, 2012).

Dr. DD Basu, the commentator of Indian Constitution, very aptly summed up the post-Maneka scenario by observing that "a glaring paradox of Indian Constitutional Jurisprudence is that the concept of 'due process' which had been rejected by the makers of the Constitution and by the early judges of the Supreme Court, has come to be enthroned by a roundabout process of reasoning to expand the sweep of Article 21" (Mane, 2012).

Constitutional expert, HM Seervai, commenting on Gopalan, said that "... Several difficulties that caused the Judges considerable worry in Gopalan would have been eased if this legislative history (of Art. 22, and notably of Clause (1) and (2) wherein the essence of "due process" was restored) had been brought to the Court's notice (H.M. Seervai, 1993). "The most valuable human right in the arc of all other rights is the right to life," Justice Bhagwati remarked, emphasizing that "right to life is about living with dignity" (Francis Coralie Mullin v Union Territory of Delhi, 1981). No man, whether a citizen or a foreigner, will be deprived of his life until legal procedures are followed, according to Article 21 of India's Constitution. (Mane, 2012)

In the same decision, Justice Bhagwati broadened the concept of the right to life to include the right to live with dignity and all it involves, including the fundamental needs of life. "The right to life includes the right to live with human dignity and everything that comes with it, including the bare necessities of life like adequate nutrition, clothing, and shelter over one's head, as well as facilities for reading, writing, and expressing oneself in various forms, freely moving about, and mixing and mingling with fellow human beings," he believes. Naturally, the breadth and content of this privilege would be governed by the economic growth of the country; however, it must

encompass the right to the most basic requirements of existence, as well as the right to perform the tasks and activities that are the very minimum manifestation of the human self. Every act that offends or lowers human dignity is a deprivation pro tanto of this right to life, and it must be carried out following a legal procedure that is reasonable, fair, and, and meets the test of other fundamental rights.”(Francis Coralie v Union Territory, 1981) & (Swarup, 2006)

Torture, cruelty, inhuman or humiliating treatment, or any other kind of inhuman or degrading treatment would be considered an affront to human dignity and so come within the right to life. "Article 21 contains, in essence, the right to protection against torture or cruel, inhuman, or degrading treatment, as enshrined in Article 5 of the Universal Declaration of Human Rights and protected by Article 7 of the International Covenant on Civil and Political Rights," Justice Bhagwati stated.”(Swarup, 2006)

Justice Bhagwati broadened the idea of the right to live with dignity to include the right of convicts to conduct interviews with their friends and family members. He said, "Obviously, the prisoner or detainee cannot move freely beyond the prison walls, nor can he freely mingle with individuals outside the jail." He would, however, be entitled to have interviews with his family and friends as part of the right to a dignified existence, which is a fundamental component of the right to life. No jail regulation or process governing the right to have conversations with family and friends may be recognized as legally legitimate under Articles 14 and 21 unless it is justified unless it is reasonable, fair, and just.”(Swarup, 2006)

### CONCLUSION

To repeat, the Right to Life does not entail the right to kill. Justice Krishna Iyer's words say the right to life is to live happily with human dignity, 'from the cradle to the grave'. This is the sole purpose of human rights, not their 'violent violation', 'Man's inhumanity to Man'. It is high time and need of the hour that Nations across the world contain, with an iron hand, terrorism and violence in all its multi-faceted demonic forms, whosoever, by updating and strengthening intelligence skills, exhibiting strong political-will, enacting (most) stringent laws, fastened with fool-proof systems, and, above all, taking quick decisions and implementing immediate execution of orders, by powers that may be at the helm of affairs at all levels concerned. Destroy terror camps, kill not men but evil in men, and transform misguided youth to live life as real human beings as valuable and responsible citizens in assisting nation-building. Live, let live for universal peace, as ancient Hindu philosophy preaches: "Surve Janaha Sukhino Bhavantu."

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