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

With this thought, we hereby present to you

CRITICAL ANALYSIS OF THE IMPLICATION OF HUMAN RIGHTS

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INTRODUCTION

India, the world's largest democracy, has a constitution that guarantees fundamental rights to its citizens. Every individual is entitled to certain basic natural rights that are essential for their human development, and these rights are known as human rights. In discussions about human rights, an important consideration is how far these rights qualify as legal rights, or whether they are merely ideals to be observed by member states in their internal and international conduct, even after more than seventy years since the Universal Declaration of Human Rights. The concept of human rights gained international recognition in the 20th century, but its origins date back to ancient humanity. This idea has evolved over time, taking various forms in different eras. Despite being called different names, these rights encompassing social, cultural, and civil aspects have always been present. They are vital for all individuals, aligning with dignity and freedom, which ultimately fosters social welfare. However, despite these legal protections, the country has experienced numerous serious human rights violations throughout its history. These violations extend beyond state oppression and include violence perpetrated by citizens against one another, often fueled by deep-seated social, religious, and political tensions. This paper aims to examine some of the most significant human rights violations in India, including government complicity, citizen-driven violence, and the failures of the legal system to protect vulnerable populations.

Rights are social, legal, or moral norms that provide individuals with certain advantages or protections. They serve as essential guidelines that dictate what is permissible and what individuals are owed according to various legal frameworks, social customs, or ethical theories.

Rights play a crucial role in fields such as law and ethics, particularly in discussions about values. They are often viewed as fundamental to civilization, forming the foundational elements of society and culture.

It is important to note that the term "human rights" is mentioned in the Charter of the United Nations. The Preamble of the U.N. Charter reaffirms faith in fundamental human rights, the dignity and worth of every person, and the equal rights of men and women. Additionally, Article 1 of the Charter outlines one of the U.N.'s purposes as promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction based on race, sex, language, or religion. Human rights and fundamental freedoms also find mention in Articles 13, 62(3), 68 and 76(c). Thus, the provisions concerning human rights run throughout the U.N. Charter "like a golden thread". The analysis of global development shows that countries with stronger human rights frameworks tend to have higher development rates. Protecting human rights is essential for individual growth, which in turn benefits national development. This issue is acknowledged internationally, with various instruments established to safeguard human rights. ¹The concept is dynamic, adapting to the needs of nations and people. Both national and international laws aim to protect these rights, and there is growing consensus on legal standards that countries must adopt in their domestic laws, as highlighted in various articles of the ²Universal Declaration of Human Rights. All governments are obligated to promote human rights within their borders.

THE HISTORICAL BACKGROUND OF HUMAN RIGHTS IN INDIA AND GLOBALLY

Human rights have been recognized as moral or legal ideals since ancient civilizations, existing as inherent rights tied to human nature. This concept implies that moral standards are embedded in the universe and can be understood through reasoning and self-determination. Various interpretations of natural rights lead to the understanding that individuals have rights both within and against society, known as human rights. Some historians view the modern concept of human rights as an evolution of 18th century ideas. The contemporary understanding of human rights emerged after the Second World War, which caused significant loss of life and raised global concerns about humanity. This led to the adoption of the Universal Declaration

¹Dr. S. Subramanian, Human Rights International Challenges (Manas Publication, New Delhi, 1997) provides that in all ancient societies the human rights were always present in one form or another though with different names.

²Amitesh kaur "PROTECTION OF HUMAN RIGHTS IN INDIA: A REVIEW"

of Human Rights (UDHR) by the United Nations General Assembly in 1948, followed by numerous international human rights statutes and agreements.

Although Western influences have shaped human rights laws, the concept is deeply rooted in Indian culture. Its foundations can be traced back to the Vedic era, around the fifteenth century B.C. The Vedas emphasize equality, stating that no one is superior or inferior, and that everyone should work together for the common good. Kautilya highlights the welfare state's principle that a state's happiness depends on its people's happiness, while Manu established civil, legal, and economic rights. Society during this time was organized and committed to human rights, with support from Jainism, Buddhism, and other minority religions. King Ashoka famously proclaimed, "All men are my children," expressing his desire for the prosperity and happiness of all. He worked tirelessly to uphold human rights. Unfortunately, the situation regarding human rights has been deteriorating in recent times.

HUMAN RIGHTS IN BRITISH ERA

The modern interpretation of human rights jurisprudence indisputably originated in India during the British colonial era. The resistance against foreign rule was not merely an act of defiance but a powerful demand for fundamental freedoms and civil rights, fuelled by the rampant humiliation and discrimination faced by Indians. The freedom movement, driven by the oppressive measures enacted by the British, catalysed an unstoppable fight for civil liberties. Under British rule, human rights and democracy were treated with blatant suspicion, while socialism was outrightly rejected. This colonial period represents a significant dark chapter in Indian cultural history. Figures such as Lord Macaulay dismissed the ancient Indian legal and political system as 'dotage of Brahminical superstition' and condemned its essence as an 'immense apparatus of cruel absurdities.' Meanwhile, other British officials like Lord Wellesley and Lord Cornwallis disparaged Indians as corrupt and ignorant.³ The English East India Company systematically excluded Indians from positions of power and stripped them of their political, social, and economic rights, fostering a pervasive belief that their fundamental human rights were trampled upon for the benefit of the British crown. Mahatma Gandhi emerged as a formidable leader, rallying the Indian populace in a powerful non-violent struggle for self-governance and fundamental rights. The strong resistance from Indians compelled the British to enact measures like the Charter Act of 1813, which aimed to address the interests of

³Paramjit S. Jaswal and Nishtha Jaswal, Human Rights and the Law

Indian inhabitants, and the Government of India Act of 1833, which granted some political rights. Queen Victoria's proclamation on November 1, 1858, introduced state policy principles that closely resembled fundamental rights. The urgent demand for fundamental rights emerged in tandem with the nationalist movement and the establishment of the Indian National Congress in 1885. The Constitution of India Bill (1895), often referred to as the "Home Rule Document," laid the crucial foundation for a constitution that guarantees essential human rights such as freedom of expression, inviolability of one's home, the right to property, and equality before the law. The Government of India Act of 1915, responding decisively to these calls, assured equality of opportunity in public service. Between 1917 and 1919, the National Congress repeatedly asserted its demands for civil rights and equal status alongside the English, marking a pivotal moment in the struggle for justice and equality.

CRITICAL ANALYSIS

Human rights are generally understood as fundamental entitlements that belong to all individuals, regardless of nationality, race, gender, or belief. They are intended to protect human dignity and promote equality, liberty, and justice. However, while the universal concept of human rights is celebrated worldwide, a critical analysis reveals deeper complexities regarding their origins, applications, and limitations. One major criticism of the human rights framework is its Western-centric origins. The modern understanding of human rights, particularly as outlined in the Universal Declaration of Human Rights (1948), reflects liberal Western values such as individualism, secularism, and democracy. Critics argue that imposing these norms globally overlooks the diverse cultural, religious, and social traditions that exist. For example, communal values emphasized in many African or Asian societies may conflict with the Western focus on individual autonomy. This raises concerns about cultural imperialism, where human rights are used as a means to impose Western ideologies on non-Western societies. Human rights are fundamental entitlements inherent to all individuals, aimed at protecting dignity and promoting equality, liberty, and justice. However, critical analysis reveals complexities surrounding their origins and applications. One major criticism is the Western-centric roots of modern human rights, particularly as articulated in the Universal Declaration of Human Rights (1948). This framework embodies liberal Western values, often overlooking diverse cultural and social traditions found in non-Western societies, leading to concerns of cultural imperialism. Additionally, human rights are inconsistently applied. Powerful states have used human rights rhetoric to justify interventions, often ignoring abuses

by allies, which undermines the credibility of human rights institutions. There's also a tension between state sovereignty and the demand for human rights protection. While international law advocates for human rights, states are protective of their sovereignty, creating dilemmas about intervention during mass atrocities. The Responsibility to Protect doctrine attempts to address this but remains argumentative. Lastly, the human rights framework often emphasizes civil and political rights over economic, social, and cultural rights. In many regions, poverty and inequality hinder individuals from fully enjoying their rights, meaning that without addressing these structural disparities, human rights remain unfulfilled for millions.

In conclusion, while human rights remain a powerful tool for promoting dignity and justice, they are neither politically neutral nor universally realized. A critical approach requires acknowledging their historical biases, addressing issues of selective application, and adapting to new global realities.

INDIAN CONSTITUTION AND HUMAN RIGHTS

On January 24, 1947, the Constituent Assembly formed an advisory council for fundamental rights, chaired by Sardar Patel. Key figures like Dr. B. R. Ambedkar and B. N. Rau drafted a list of rights that closely mirrored those in the Universal Declaration of Human Rights. The rights in the Universal Declaration of Human Rights were nearly identical in the Indian Constitution framework, either in Part 3 (Fundamental Rights) or in Directive principle of state policy. The Motilal Nehru Committee Report of 1928 proposed nineteen fundamental rights, of which eleven were recognized, alongside three fundamental duties. In 1942, India became one of the first countries to sign the Universal Declaration. Part III of the Indian Constitution, often referred to as the "Magna Carta," includes rights that can be enforced against the government through the Supreme Court. Article 13(2) prevents the state from making laws that violate these rights; any offending portion of a law is considered void, and if it can't be separated from the rest, the entire statute is also void.

In ⁴**Keshvanand Bharti v. state of kerela**, Supreme court of India held that the "Universal Declaration of Human Rights" may not be legally enforceable, but it reflects India's commitment to human rights during the drafting of the Constitution.

⁴AIR 24-04- 1973

DEBATES IN CONSTITUENT ASSEMBLY

The struggle against colonial power shaped the development of rights language, driven by principles of equality and freedom essential for human dignity. This effort led to the formation of the Constituent Assembly, which drafted the Indian Constitution, grounding people's sovereignty in the new nation. Key aspects that emerged included judicial backing and confirmation of rights. The debate over the courts' role in protecting these rights was significant, with advocates like K.M. Munshi proposing judicial review of fundamental rights and developing comprehensive remedies through the Supreme Court.

The discussion surrounding rights within the Fundamental Rights Subcommittee was crucial in shaping the socio-economic landscape of newly independent India. A central issue was whether the Constitution should focus solely on political rights, akin to the American model, or if it should also include economic rights, reflecting elements seen in the Soviet approach. The committee faced significant questions about addressing widespread issues such as illiteracy, poverty, and exploitation. For instance, how would land reforms be implemented, or how would the practice of untouchability be eradicated? These pressing challenges meant that certain rights, like the right to education and workers' rights, were deemed vital for social justice but complicated when considering justiciability as a foundational aspect of Fundamental Rights.

This led to the decision to categorize rights into two distinct groups: justifiable rights, which were later enshrined as Fundamental Rights, and non-justifiable rights, incorporated as Directive Principles of State Policy. This framework aimed to balance the legal enforceability of rights with the need for a broader socio-economic vision.

DIFFERENCE BETWEEN FUNDAMENTAL RIGHTS AND HUMAN RIGHTS

Fundamental Rights generally refer to the specific rights guaranteed by a constitution or legal framework within a country. In the case of India, these rights are enshrined in the Constitution and are legally enforceable. They include rights such as the right to equality, the right to freedom of speech and expression, the right to protection against discrimination, and various others aimed at protecting individual liberties from state interference. Fundamental Rights are justiciable, meaning individuals can seek legal recourse if these rights are violated.

Human Rights, on the other hand, are universal rights inherent to all individuals regardless of nationality, ethnicity, or any other status. Human rights are recognized internationally and aim to promote dignity, freedom, and justice. They include rights such as the right to life, freedom from torture, and the right to education. While human rights can influence national laws, their enforcement varies widely by country and is often reliant on international agreements and organizations.

In summary, while Fundamental Rights are specific to a country's constitution and are enforceable through its legal system, Human Rights provide a broader framework that applies globally and focuses on the inherent rights of all individuals. This distinction reflects the balance between guaranteeing specific legal protections while ensuring recognition of universal human dignity. All judicially enforceable rights were included under fundamental rights. Fundamental Rights are specific rights guaranteed by a constitution, designed to protect individuals from state interference. In India, they include the right to equality, free speech, and freedom of religion, and they are unalienable, meaning they cannot be revoked by law. Article 13 of the Indian Constitution states that any law violating these rights is null and void.

In ⁵ADM Jabalpur v. Shivkant Shukla, Justice Beg emphasized that these rights are protected from encroachment by any government branch. Chief Justice Subba Rao linked Fundamental Rights to natural rights in ⁶Golak Nath v. State of Punjab.

While Fundamental Rights encompass essential protections, their scope is narrower than that of Human Rights. Initially reflecting basic human rights, the Supreme Court has expanded their interpretation over time. In ⁷KS Puttaswamy, the court recognized the right to privacy as a fundamental right, referencing international instruments.

Fundamental Rights, as outlined in Part 3, hold significant legal enforceability. Supreme Court cases like ⁸State of West Bengal v. Subodh Gopal Bose and ⁹Ajay Hasia vs. Khalid Mujahid Seharvadi highlight the court's role in broadening these rights to strengthen human rights jurisprudence.

⁵1976 AIR 1207

⁶1967 AIR 1643

⁷AIR 2017 SC 4161

⁸1954 AIR 92

⁹1981 AIR 487

DIRECTIVE PRINCIPLE OF STATE POLICY AND HUMAN RIGHTS (No enforceable rights by judicially)

Part IV of the Constitution outlines judicially non-enforceable rights primarily of an economic and social nature. Article 37 clarifies that, despite their non-enforceability, these rights remain fundamental to the State's duty in lawmaking and governance. The ¹⁰Supreme Court's jurisprudence has expanded Article 21 (right to life and personal liberty) to enforce principles promoting justice. The State is tasked with ensuring social, economic, and political justice while reducing inequalities (Article 38). It must guarantee equal access to adequate livelihoods for all citizens (Article 39(a)), distribute community resources for the common good (Article 35(b)), prevent wealth concentration that harms the public (Article 39(c)), and enforce equal pay for equal work for both genders (Article 39(d)). The text outlines essential provisions for promoting social welfare and justice, including: - Preventing labour abuse, especially child labour (Article 39(e)) and ensuring child development (Article 39(f)). - Guaranteeing equal justice and free legal aid (Article 39A) and organizing village democracies (Article 40). - Providing the right to work, education, and public assistance for unemployment, old age, sickness, and disability (Article 41), along with humane working conditions (Article 42) and a living wage (Article 43). - Encouraging worker participation in industry management (Article 43A) and establishing a uniform civil code (Article 44). - Ensuring early childhood care and education for children under six (Article 45) and protecting the interests of weaker sections (Article 46). - Improving public health, nutrition, and living standards (Article 47), alongside scientific advancements in agriculture (Article 48) and environmental conservation (Article 48A). - Preserving cultural heritage (Article 19), ensuring judicial independence (Article 50), and promoting international peace (Article 51).

IMPORTANCE OF HUMAN RIGHTS

Human rights guarantee access to essential needs like food, shelter, and education, particularly protecting society's most vulnerable members. They ensure freedom of speech and expression, religious freedom, and the right to education. Additionally, human rights promote environmental protection for the benefit of individuals and society as a whole, serving as a foundation to ensure that people's rights are upheld.

The judiciary plays a crucial role in upholding individual dignity and liberty, acting as the

¹⁰V.R. Krisha Iyer, The Dialectics and Dynamics of Human Rights in India: Yesterday Today and Tomorrow, Tagore Law Lectures

guardian of human rights by not only protecting but also interpreting fundamental rights. Over time, significant court rulings in India have expanded the understanding and scope of human rights. However, a study from the U.S. highlights that India faces serious human rights challenges, including unlawful killings, restrictions on freedom of speech and press, corruption, and violations of religious freedoms. Despite these issues, various organizations, particularly the National Human Rights Commission (NHRC), are working diligently to promote human rights and assist individuals facing violations in India. Established in 1993 through the Public Health Reform Act, the NHRC follows the Paris Principles to safeguard human rights and reinforce support for the marginalized and underprivileged. Its mission includes taking proactive measures to ensure that individuals' rights remain protected. The NHRC's efforts encompass various areas related to human rights, such as raising awareness about laws and procedures, advocating for healthcare rights, and addressing environmental issues. Additionally, numerous NGOs and organizations share a common goal of educating the public about their rights and empowering them to stand against violations when they occur.

CONCLUSION

The Indian Constitution safeguards these rights not only through its articles but also in the Preamble, which emphasizes individual freedoms and dignity. The Indian Judiciary has played a vital role in protecting human rights by relaxing the rule of locus standi, enabling Public Interest Litigation (PIL). This has allowed courts to address various human rights violations affecting women, workers, children, and prisoners, affirming the judiciary's role as a protector of dignity. Globally, the protection of human rights is a key concern, and numerous international instruments have led to national initiatives, such as the Protection of Human Rights Act of 1993. This Act established the National Human Rights Commission, State Human Rights Commissions, and Human Rights Courts to ensure justice for victims at all levels. However, amendments to the Act could further empower the Human Rights Commissions, enhancing their ability to fulfil the law's objectives. India needs more stringent laws to address new forms of human rights violations that emerge with societal advancements, particularly in cyberspace where cybercrime is on the rise. To combat these issues, it is crucial to educate people about their rights from an early age and increase the presence of NGOs focused on human rights. Additionally, the government should support monitoring and reporting of violations, while comprehensive research on human rights is necessary to identify and prevent infringements effectively.