



"Literature Survey on Protection of Human Rights In India"

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Abstract: The concept of "human right in patient care" refers to the application of human rights principles to the context of patient care. It provides a principled alternative to the growing discourse of "patients' rights" that has evolved in response to widespread and severe human rights violations in health settings. Protection of the dignity of an individual is essential for harmony in the society, as its violation can have grave impact on individual in particular and on society in general. Each individual is entitled to some rights which are inherent to human existence. Such rights should not be violated on the grounds of gender, race, caste, ethnicity, religion etc. these are called human rights. Human rights are also known as basic rights, fundamental rights, natural rights or inherent rights. The concept of human right is in all ancient societies though referred by different names⁴, it includes civil rights, liberties and social cultural and economic rights. These rights are essential for all individual as these are consonant with the freedom and dignity and ultimately contribute to social welfare. Human rights constitute a set of rights and duties necessary for the protection of human dignity, inherent to all human beings, irrespective of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status.

1.1 INTRODUCTION

The State maintains the framework of social order by implementation of various laws without which well ordered social life would not be possible. Various philosophers of social contract theory are of the view that object of the creation of state is to maintain and protect the rights of individuals. According to Aristotle, State came into existence out of basic necessities of life and continues for the sake of good life.¹ Prof. Laski expressed that State is known by the rights it maintains.² Similarly Locke was of the view that end of state is to remove the obstacles that hinder the development of an individual.³ Thus, the existence of the state is recognized with the protection of rights and liberties of individual which is the main object of state. The history of human rights is contemporaneous to the development and evolution of early man.

The concept of human rights as it is understood today has evolved over the centuries. Though the expression "Human Rights" seems to have modern face, human rights are as old as human civilization. Human rights have existed in however, nascent a form, ever since man, as a gregarious animal, has lived in communities, family, clan, tribe village, town or nation and now in an independent world community.¹³ Looking at the concept of human rights from a historical perspective, it would be seen that it is neither entirely western nor so modern, rather it is the crystallization of values that are common heritage of mankind.

Kautilya in his famous and immortal work "Arthashastra" has defined and described the human rights of war prisoners. The human rights were reformed to as civil rights, political rights, personal rights, legal rights, natural or divine rights, economic and social rights in ancient period. Hence, there is a variety of expression, like 'inherent rights', 'natural rights', 'inalienable rights', 'basic fundamental rights', which are interchangeable terms to express the rights that a human being possess.

While introducing the concept of human rights a well-known scholar says, "Human rights are twentieth century name or what has been traditionally known as natural rights or in more exhilarating phrase, the rights of man."¹⁴ The concept of human rights was first, reflected in ancient Greece and Rome, where it was closely tied to Pre-modern natural law doctrine of Greek stoicism. The Greek idea of divine law and freedom and the practice of Roman law are at the heart of today's ideas of human rights. During the 18th Century, the so called Age of Enlightenment, a growing confidence of human reason and of course, the perfection of human affairs led it to become more comprehensive one. John Locke in England, Montesquieu Voltaire and Jean Jacques Rousseau in France and others supported human reason and also tried to prove the superiority on natural law.



Human rights, as the term is most commonly used, are basic entitlements underlying idea of such rights is to ensure that all men, women and children are treated with respect and dignity. For example, as human beings, it is our birthright that all of us should be given equal treatment and should not be discriminated on any account due to differences of religion, caste, class, colour, gender or anything else either by the State or the community or for that matter the family. This is because each person is special with their own individual talents and abilities and none are inferior or superior to each other. Likewise, it is our birthright to have access to opportunities, whereby we can develop to our fullest potential and achieve all that we aspire to become. These rights include the right to life, freedom and justice. These rights guarantee our dignity as human beings. It is precisely for these reasons that human rights are sometimes called 'natural rights'.

1.2 WHAT DO RIGHTS MEAN?

Rights are those claims and demands of an individual or group of individuals to good life which are accepted by the community or society as essential for the common good and recognized by the State. In other words rights are also those essential factors without which human life cannot sustain .

what are the 7 main human rights?

The rights covered by the covenants

- Freedom from discrimination.
- Right to equality.
- Right to life.
- Freedom from slavery.
- Rights to liberty and security of person.
- Right to be treated with humanity in detention.
- Freedom of movement.

1.3 WHAT ARE HUMAN RIGHTS?

Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status. They range from the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty.

The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, was the first legal document to set out the fundamental human rights to be universally protected. The UDHR, which turned 70 in 2018, continues to be the foundation of all international human rights law. Its 30 articles provide the principles and building blocks of current and future human rights conventions, treaties and other legal instruments.

The UDHR, together with the 2 covenants - the International Covenant for Civil and Political Rights, and the International Covenant for Economic, Social and Cultural Rights - make up the International Bill of Rights.

Human rights in India is an issue complicated by the country's large size and population as well as its diverse culture, despite its status as the world's largest sovereign, secular, democratic republic. The Constitution of India provides for fundamental rights, which include freedom of religion. Clauses also provide for freedom of speech, as well as separation of executive and judiciary and freedom of movement within the country and abroad. The country also has an independent judiciary as well as bodies to look into issues of human rights.

The 2016 report of Human Rights Watch accepts the above-mentioned facilities but goes to state that India has "serious human rights concerns. Civil society groups face harassment and government critics face intimidation and lawsuits. Free speech has come under attack both from the state and by interest groups. Muslim and Christian minorities accuse authorities of not doing enough to protect their rights. The government is yet to repeal laws that grant public officials and security forces impunity from prosecution for abuses.



1.4 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

The General Assembly, Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world, Reaffirming also the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter, Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance, Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms, Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State, Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels, Declares :

Article 1

All human beings are born free and equal in dignity and rights. Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other



fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- a. To meet or assemble peacefully;
- b. To form, join and participate in non-governmental organizations, associations or groups;
- c. To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

- a. To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- b. As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- c. To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia :

- a. To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;



- b. To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;
- c. To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.
5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.
2. Such measures shall include, inter alia :
 - a. The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;
 - b. Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.
3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training



and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

CONCLUSION

The development of state institutions to promote and protect human rights is a critical safeguard to ensure that people can obtain recourse and redress in the face of injustice. A dynamic and autonomous human rights commission can play a role in this process. For that reason, it is important that existing human rights commissions are encouraged to play an active and central role in the upholding of human rights. In some cases, where the political will is present, this task requires only training and funding opportunities. In other cases, greater pressure on a government is required for it to allow formal and actual independence of its human rights commission. Human rights commissioners also need to be supported and pushed by the international community to push the limit of their boundaries and to withstand the inevitable resistance from other government agencies. This is a process that can only be achieved with sustained national and international attention over a period of time. Therefore, the NHRC should be provided more powers for the speedier disposal of cases.

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