

4.1 Human Rights in India

Human Rights India is an issue complicated by the country's large size & population, widespread poverty, lack of proper education & its diverse culture, even though being 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 and well as bodies to look into issues of Human Rights.

The 2016 report of human rights watch accepts the above-mentioned faculties 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. but in the recent years , more emphasis is given to minority rights & freedom of speech. The government is yet to repeal laws that grant public official s and security forces immunity from **prosecution for abuses**.

The Asian Centre for human rights estimated that from 2002 to 2008, over four people per day died while in police custody, with "hundreds" of those deaths being due to police use of torture.

According to a report written by the institute of correctional administration in Punjab, up to 50% of police officers in the country have used physical or mental abuse on prisoners.

Instances of torture, such as through a lack of sanitation, space, or water have been documented in west Bengal as well

Child sexual abuse in India

India is home to the largest number of sexually abused children in the world. About 53% of children have been subjected to some form of sexual abuse. In 2012, India introduced the protection of children from sexual offences act (pocso) to deal with cases of child sexual abuse.

However, it took two years to record the first cases under the law and there are huge gaps in its implementation with the conviction rate under the act being only 2.4%. It is argued that the prevalence is driven by reluctance to expose relatives, who are often the abusers.

As a result, more than 50% of adults who were abused surveyed wanted the matter to stay within the family and only 17% wanted harsh punishments for offenders.

India has the highest number of people living in conditions of slavery, 18.3 million, three times more than the next highest nation.

Most of those in India living in slavery are in bonded labour,[19] where a person pledges himself or herself against a loan. Debt bondage can be passed on from generation to generation, with children required to pay off their parents' debt.

India has the largest number of child labourers under the age of 14 in the world with an estimated 12.6 million children engaged in hazardous occupations.

Human trafficking in India and child trafficking in India

Human trafficking is a \$8 billion illegal business in India. Around 10,000 Nepali women are brought to India annually for commercial sexual exploitation.[24] each year 20,000–25,000 women and children are trafficked from Bangladesh.[25]

Communal conflicts between religious groups (mostly between Hindus and Muslims) have been prevalent in India since around the time of its independence from British rule. Among the oldest incidences of communal violence in India was the Moplah rebellion, when militant Islamists massacred Hindus in Kerala. Communal riots took place during the partition of India between Hindus/Sikhs and Muslims where large numbers of people were killed in large-scale violence.

4.2 The Indian Constitution

The constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers and duties of government institutions and sets out fundamental rights, directive principles and the duties of citizens.

Preamble To The Constitution of India

Preamble to the constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document, and it indicates the source from which the document derives its authority, meaning, and the people.

The hopes and aspirations of the people as well as the ideals before our nation are described in the preamble in clear words. It may be considered as the heart and soul of constitution. The preamble can be referred to as the preface which highlights the entire constitution. It was adopted on 26 November 1949 by the constitution assembly and came into effect on 26th January , 1956.

Sovereignty

Sovereignty is understood in jurisprudence as the full right and power of a governing body to govern itself without any interference from outside sources or bodies. In political theory, sovereignty is a substantive term designating supreme authority over some polity .

It is a basic principle underlying the dominant west folian mode of state foundation

It means free from the control of any foreign power and internally has a free government which is directly elected by the people and makes laws that govern the people. She allies in peace and war.

The popular sovereignty is also one of the basic structures of constitution of India. Hence, citizens of India also enjoy sovereign power to elect their representatives through elections held for the parliament, state legislature and local bodies as well.

People have supreme right to make decisions on internal as well as external matters. No external power can dictate the government of India.

India's membership of the commonwealth or of the united nations does not impose any external limit on her sovereignty. The commonwealth is a free association of sovereign nation.

The sovereignty empowers India to either acquire a foreign territory or cede a part of its territory in favour of a foreign.

The concept of sovereignty has been discussed throughout history, and is still actively debated. It has changed in its definition, concept, and application

throughout, especially during the age of enlightenment.

The current notion of state sovereignty contains four aspects consisting of territory, population, authority and recognition.

According to Stephen D. Crashner the term could also be understood in four different ways:

Domestic sovereignty – actual control over a state exercised by an authority organized within this state,

Interdependence sovereignty – actual control of movement across state's borders, assuming the border exist,

International legal sovereignty – formal recognition by other sovereign states

West pholia – lack of other authority over state other than the domestic authority (examples of such other authorities could be anon-domestic church, a non-domestic political organization, or any other external agent)

Secularity :

Secular means the relationship between the government and the people which is determined according to constitution and law. By the 42nd amendment in 1976, the term "secular" was also incorporated in the preamble.

The government respects all religions. It does not uplift or degrade any particular religion. There is no such thing as a state religion for India.

Democracy :

It stands for the right to freedom of religion for all citizens. Explaining the meaning of secularism as adopted by India, Alexander Owics has written, "secularism is a part of the basic of the Indian constitution and it means equal freedom and respect for all religions.

DA system of government by the whole population or all the eligible members of a state, typically through elected representatives.

The first part of the preamble “we, the people of India” and, its last part “give to ourselves this constitution” clearly indicate the democratic spirit involved even in the constitution. India is a democracy.

The people of India elect their governments at all levels (union, state and local) by a system of universal adult franchise popularly known as "one man one vote".

Every citizen of India, amendment years of age and above and not otherwise debarred by law, is entitled to vote.

Every citizen enjoys this right without any discrimination on the basis of caste, creed, color, gender, religious intolerance or education. The word 'democratic' not only refer to political but also to social & economic democracy

Republic:

In a republic form of government, the head of the state is an elected person and not a hereditary monarch .

This word denotes a government where no one holds a public power as proprietary right .

As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a life time or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure.

The president of India is elected by an electoral college for a term of five years. The post of the president of India is not hereditary. Every citizen of India is eligible to become the president of the country. The leader of the state is elected by the people.

Liberty:

Liberty, in philosophy, involves free will contrasted with determinism.

In politics, liberty consists of the social and political freedoms to which all community members are entitled.

In theology, liberty is freedom from the effects of "sin, spiritual servitude, [or] worldly ties."

Generally, liberty is distinctly differentiated from freedom in that freedom is primarily, if not exclusively, the ability to do as one wills and what one has the power to do; whereas liberty concerns the absence of arbitrary restraints and takes into account the rights of all involved Equality:

Social equality is a state of affairs in which all people within a specific society or isolated group have the same status in certain respects, including civil rights, freedom of speech, property rights and equal access to certain social goods and services. However, it also includes concepts of health equity, economic equality and other social securities.

Civil rights freedom of speech

It also includes equal opportunities and obligations, and so involves the whole of society. Social equality requires the absence of legally enforced social

class or caste boundaries and the absence of discrimination motivated by an inalienable part of a person's identity.

"equal opportunities" is interpreted as being judged by ability, which is compatible with a free-market economy.

Relevant problems are horizontal inequality— the inequality of two persons of same origin and ability and differing opportunities given to individuals – such as in education or by inherited capital.

Social equality may vary per philosophy and individual and other than egalitarianism it does not necessarily require all social inequalities to be eliminated by artificial means but instead often recognizes and respects natural differences between people.

Fraternity:

This refers to a feeling of brotherhood & a sense of belonging with the country among its people.

It embraces psychological as well as territorial dimensions of national integration. It leaves no room for regionalism, communalism, casteism etc. Which hinders the unity of the state.

The inclusion of the word "fraternity" is proposed by Dr. B.R.Ambedkar.

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4.3 The Citizenship



An Act to provide for acquisition and determination of Indian citizenship. Citation Act No 57 of 1955 Enacted by

Parliament of India

Date assented to

30 December 1955

Amendments

The Citizenship (Amendment) Act, 1986, the Citizenship (Amendment) Act, 1992, the Citizenship (Amendment) Act, 2003, and the Citizenship (Amendment) Act, 2005 Summary

Along with the Constitution of India, the Citizenship Act, 1955, is the exhaustive law relating to citizenship in India.

Granting of Citizenship

Cover of an Indian passport:

Citizenship at the commencement of the constitution of India

Persons domiciled in the territory of India as on 26 November 1949 automatically became Indian citizens by virtue of operation of the relevant provisions of the Indian Constitution coming into force, and most of these constitutional provisions came into force on 26 January 1950.

The Constitution of India also made provision regarding citizenship for migrants from the territories of Pakistan which had been part of India before partition.

Citizenship by birth

Any person born in India on or after 26 January 1950, but prior to the commencement of the 1986 Act on 1 July 1987, is a citizen of India by birth.

A person born in India on or after 1 July 1987 is a citizen of India if either parent was a citizen of India at the time of the birth. Those born in India on or after 3 December 2004 are considered citizens of India only if both of their parents are citizens of India or if one parent is a citizen of India and the other is not an illegal migrant at the time of their birth.

In September 2013, Bombay High Court gave a judgement that a birth certificate, passport or even an Aadhaar card alone may not be enough to prove Indian citizenship, unless the parents are Indian citizens.

Citizenship by descent

Persons born outside India on or after 26 January 1950 but before 10 December 1992 are citizens of India by descent if their father was a citizen of India at the time of their birth. Persons born outside India on or after 10 December 1992 are considered citizens of India if either of their parents is a citizen of India at the time of their birth.

From 3 December 2004 onwards, persons born outside of India shall not be considered citizens of India unless their birth is registered at an Indian diplomatic mission within one year of the date of birth. In certain circumstances it is possible to register after one year with the permission of the Central Government. The application for registration of the birth of a child must be made to an Indian diplomatic mission and must be accompanied by an undertaking in writing from the parents of the child that he or she does not hold the passport of another country.

Citizenship by registration

The Central Government may, on an application, register as a citizen of India under section 5 of the Citizenship Act 1955 any person (not being an illegal migrant) if s/he belongs to any of the following categories:

- a person of Indian origin who is ordinarily resident in India for seven years before making application under Section 5(1)(a) (throughout the period of twelve months immediately before making application and for six years in the aggregate in the eight years preceding the 12 months)
- a person of Indian origin who is ordinarily resident in any country or place outside undivided India
- a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration; minor children of persons who are citizens of India;
- a person of full age and capacity whose parents are registered as citizens of India.

- a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;
- a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration.

Citizenship by Naturalization

Citizenship of India by Naturalisation can be acquired by a foreigner (not illegal migrant) who is ordinarily resident in India for 12 years (throughout the period of 12 months immediately preceding the date of application and for 11 years in the aggregate in the 14 years preceding the 12 months) and other qualifications as specified in Third Schedule to the Citizen Act.

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4.4 Fundamental Duties

The fundamental duties of citizens were added to the constitution by the 42nd amendment in 1976, upon the recommendations of the Swaran Singh Committee that was constituted by the government earlier that year.

Originally ten in number, the fundamental duties were increased to eleven by the 86th amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years.

The other fundamental duties obligate all citizens to respect the national symbols of India, including the constitution, to cherish, its heritage preserve its composite culture and assist in its defence.

They also obligate all Indians to promote the spirit of common brotherhood, protect the environment and public property, develop scientific temper, abjure violence, and strive towards excellence in all spheres of life.

Citizens are morally obligated by the constitution to perform these duties. However, like the directive principles, these are non-justifiable, without any legal sanction in case of their violation or non-compliance. There is reference to such duties in international instruments such as the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, and article 51 brings the Indian constitution into conformity with these treaties.

The fundamental duties noted in the constitution are as follows: it shall be the duty of every citizen of India—

- To abide by the constitution and respect its ideals and institutions, the national flag and the national anthem;
- To cherish and follow the noble ideals which inspired our national struggle for freedom;
- To uphold and protect the sovereignty, unity and integrity of India;
- To defend the country and render national service when called upon to do so;
- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

To value and preserve the rich heritage of our composite culture; to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

- To develop the scientific temper, humanism and the spirit of inquiry and reform;
- To safeguard public property and to abjure violence;
- To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- Who is a parent or guardian to provide opportunities for education to his child or ward, as the case may be, between the age of six to fourteen years

→ Chapter i—the executive ,the president and vice-president

→ Chapterii—parliament

→ Chapter iii—legislative powers of the president

→ Chapter iv—the union judiciary

→ Chapter v— auditor-general of India

Chapter i.—general

- Chapter ii.—the executive
- Chapter iii.—the state legislature
- Chapter iv.—legislative power of the governor
- Chapter v.—the high courts in the states
- Chapter vi.—subordinate courts

Part vii the states in part b of the first schedule

Part viii the union territories

Part ix the panchayats

Part ixa the municipalities

Part x the scheduled and tribal areas

Part xi relations between the union and the states

- Chapter i.—legislative relations
- Chapter ii.—administrative relations general
- Chapter i.—finance
- Chapter ii.—borrowing
- Chapter iii.—property, contracts, rights, liabilities, obligations and suits
- Chapter iv.—right to property

Chapter i.—services

Part xvi Special provisions relating to certain classes part

xvii official language

*Chapter i.—Language of the union

*Chapter ii.—Regional languages

* Chapter. Language of the supreme court, high courts ,etc.

*Chapter iv.—Special

part xviii Emergency part xix

Miscellaneous

Part xxi Temporary, transitional and special provisions

Part xxii short title, commencement, authoritative text in Hindi and repeals

Critical evaluation of fundamental rights public opinion

- No rights outside the constitution
- Too many limitations
- Preventive detention and fundamental rights
- Rights can be suspended during emergency
- Absence of economic rights
- Vague and complex language
- Supremacy of parliament over fundamental rights

Special concessions for minorities and backward classes are against the principle of equality.

4.5 Fundamental Rights

Fundamental rights are incorporated from article 12 to 35 in the third chapter of the Indian constitution. Rights are the basic facilities which we need for our growth. These are the claims of individual recognised by the society and enforced by the state. The existence of democracy can't be imagined without fundamental rights. Rights are the pillars of democracy. The six fundamental rights recognized by the Indian constitution are:

Which includes equality before law, prohibition of discrimination on grounds of religion, race, caste, gender or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles. Right to equality is provided from article 14 to article 18 of Indian constitution.

Right to freedom

Which includes freedom of speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation, right to life and liberty, protection in respect to conviction in offences and protection against arrest and detention in certain cases. Right to freedom is provided from article 19 to 22 of constitution.

1. Right against exploitation:

Which prohibits all forms of forced labour, child labour and traffic of human beings. It is provided under articles 23 and 24 of Indian constitution.

2. Right to freedom of religion:

Which includes freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes. Article 25 to 28 enumerates the right to freedom of religion.

Cultural and educational rights:

Preserve the right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice. Article 29 and article 30 of Indian

constitution provides for cultural and educational rights.

Fundamental rights for Indians have also been aimed at over turning the inequalities of pre-independence social practices. Specifically, they have also been used to abolish untouchability and thus prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They also forbid trafficking of human beings and forced labour (a crime). They also protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own education institutions. They are covered in part iii (articles 12 to 35) of Indian constitution

Directive principles: part iv

The **directive principles of state policy** are the guidelines or principles given to the central and state governments of India, to be kept in mind while framing laws and policies.

These provisions, contained in part iv (article 36-51) of the Constitution of India are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the state to apply these principles in making laws to establish a just society in the country.

The principles have been inspired by the directive principles given in the constitution of Ireland relate to social justice, economic, welfare foreign policy, and legal and administrative matters.

Directive Principles are classified under the following categories :

Economic and socialistic , political and administrative , justice and legal , environmental , protection of monument and peace and security.