

The Impact Of International Human Rights Instruments On Domestic Constitutional Law

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Abstract

A paramount concern on human rights is evolved during post Second World War. For the inhumane acts and the war crimes that the Nazi's had done. Even though, prior to the World Wars there is existence of Human Rights as in terms of 'natural rights', the necessity for its implementation and protection has been arisen only after conclusion of Second world war through the Nuremberg trial, a trial for the atrocities that the Nazi Germany has done against the humanity, for us it was the beginning of modern human rights era and in an un codified international laws it has been expressed through international Charters and Conventions. The adoption of Universal Declaration of Human Rights (UDHR) by UN General Assembly binding on its member States and following that Geneva Convention, 1948 on basis of International Humanitarian Laws, International Covenants of 1966 on Civil and Political Rights and on Economic, Social and Cultural Rights and International Convention on the Elimination of All forms of Racial Discrimination and like numerous instruments have given very wide connotation to the concept of human rights which being accepted by those States become legally binding upon them, then it destines to the individual beings on the fact that relationship between the State and its Citizens. For example, the principles enumerated in UDHR had applied in the part III of Constitution say Fundamental Rights of right to life, liberty and abolition of Slavery practices and rights of arrested persons and prisoners etc, Statutory laws like The Rights of Persons with Disabilities (RPwD) Act, 2016 is emphasizing the dignity of the disabled individual remarking the term expressed in Preamble of Indian Constitution which inspired from The Declaration on the Rights of Mentally Retarded Persons, 1971 and from The Convention on the Rights of Persons with Disabilities ensures the equity which also part of UDHR reminds the aim of human rights.

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1. INTRODUCTION

The origin of human rights can be traced back to times of ancient Greeks as natural rights; exactly where the famous quote 'Man is the political animal' is born. In 1860's, Abraham Lincoln, took his stands against slavery which results in the great civil war of America results in the abolition of slavery was the first crucial stand towards the recognition of basic human rights in the modern world. The shock and trauma of the holocaust of World War II jolted the global statesmanship and the importance of fundamental human rights was realized and visualized only after the establishment of United Nations and

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consequent international human rights instruments results the adoption of several Constitutions by newly independent Third World countries like India, incorporating guarantees of fundamental rights as human rights for their people. Mahatma Gandhi aptly stated, "The true source of rights is duty. If we all discharge our duties, rights will not be far to seek." The Constitution of India function as a viable instrument for securing the social, political, and economic salvation of the Indian people by rights and duties as two sides of same coin.

2. EMERGE OF MODERN INTERNATIONAL HUMANITARIAN LAWS AND ITS INSTRUMENTS

For centuries, one of the most vexing challenges of humanity had been to limit the violence generator in theatres of war by elevating the sufferings of victims and to protect their basic human dignity, by the end of 1930's the world's deadliest conflict has begun, and the world was divided into two blocks. The Second World War was devastating which approximately killed 70-85 million (3% of 1940's population), which includes 21-25 million military and 50-55 million civilians¹. The Holocaust posed an unprecedented challenge and shook the core of humanity, which gave the international human rights activists and drafters a reason to build and develop efficient human rights mechanisms. The principles of international human rights enunciated in the Nuremberg trial have brought about a revolutionary change in the laws of war and the rights of civilians at the time of war. Followed by the events of the second World war the world was not ready for another devastating war, so they built a world level organization called the United Nation Organization in 1945, at the time its main objectives were what to do with the war criminals and war. The victorious Nations aligned to form tribunals to try the war criminals of Germany and the other Nations. The most important ones are the Nuremberg trial (1945)² and The Tokyo trial (1946-1948), the Nuremberg trial which was established to try the war criminals of Nazi Germany during the war. In the trial Most of the judges from the victorious States, and the trial were also conferred the jurisdiction to try the crimes against peace and crime against humanity. The Tokyo trial was established to try the war criminals of Japan, a special feature of this trial was that its judges were not only from the Victorious States, but some of the judges belonged to other states also for example, the Eminent Indian jurist, Dr. Radha Vinodpal was one of the judges of the Tokyo trial.

2.1 Failure OF ICRC

The Nuremberg trial led to an adaptation and evolution of a series of human rights law instruments. Even before the formation of UNO and its instruments regarding human rights, the humanitarian organization called ICRC (International Committee of the Red Cross) emerged as an instrument of human rights but the conduct of the ICRC was roughly from 1942-1945, notwithstanding or perhaps because of the fact during the war the German Red Cross operated under Nazi control and it's leadership even participated actively in crime against the Jews the ICRC had become aware of the large - scale persecution inflicted on Jews by the Summer of 1942. It considered laundering a general public appeal to denounce these gross violations, among others and it prepared a draft for such an appeal and the fate of the war prisoners not protected by the 1929 Geneva Convention. On 14 October 1942 however, the ICRC decided against the launch of appeal believing that it would be unable to stop the atrocities. Its subsequent confidential diplomatic approaches to reach authorities and further activities in individual countries were still impressive, and it was awarded the 1944 Nobel peace prize³ for such efforts but on the Whole conduct of the ICRC was a moral failure. The first post war reaction manifested itself in determination to adapt the instruments of international human rights laws. The

large scale suffering of civilians under foreign occupations in the war apart from the atrocity of crimes, this also included the other point of the 1942 appeal that haunted the drafters of international human rights laws to re-double their efforts. The missed opportunities of the past and the atrocities of the war forced revision of the two previous Geneva conventions and led to the draftsmanship of various human rights instruments like UDHR, ICPR, ICESR and Geneva Conventions 1949.

3. CONCEPTUAL FRAMEWORK OF INTERNATIONAL HUMAN RIGHTS AND ITS INSTRUMENTS

3.1 UDHR (1948)

Following The Second World War series of declarations and covenants began to articulate universal human rights. In 1948, for the first time countries agreed on a comprehensive list of inalienable human rights on December 10 of that year. The UN general assembly adopted The Universal Declaration of Human Rights (UDHR), a milestone of UNO that influences the development of international human rights. The UDHR has inspired more than 80 international human rights treaties and declarations, a great number of regional human rights conventions which includes the Geneva Convention 1949, domestic human rights bills and a country's constitutional provisions which together constitute a comprehensive legally binding system for the promotion and protection of human rights. It represents the universal recognition that basic rights and fundamental freedom are inherent to all human beings, inalienable and equally applicable to everyone, and that every one of us is born free and equal in dignity and rights. Whatever our nationality, place of residence, gender, national or ethnic origin, colour, religion, language are any other statutes. In which prior to the adaptation of UDHR, The UN General Assembly vide its resolution 96(1) dated December 11, 1946 unanimously declared that, genocide or killing of a group of human beings is a crime under International Law⁴. The Assembly on December 9, 1948 adopted the Convention on the Prevention and Punishment of Genocide, which came into force on January 12, 1951. As on June 15, 2000, the Convention had 130 States Parties. The main purpose of the Convention was to prevent and punish the genocide.

3.2 THE GENEVA CONVENTION (1949) AND THEIR ADDITIONAL PROTOCOLS

In 1949, an international conference of diplomats built on the earlier treaties for the protection of war victims, revising and updating them into four new conventions of law-known as the Geneva Conventions of August 12, 1949. The Additional Protocols of 1977 and 2005 supplement the Geneva Conventions. The Geneva Conventions apply in all cases of declared war, or in any other armed conflict between nations. They also apply in cases where a nation is partially or totally occupied by soldiers of another nation, even when there is no armed resistance to that occupation. Nations that ratify the Geneva Conventions must abide by certain humanitarian principles and impose legal sanctions against those who violate them. Ratifying nations must "enact any legislation necessary to provide effective penal sanctions for persons committing or ordering to be committed any of the grave breaches (violations) of the Conventions".

¹ Costs of war – Thomas A. Hughes, Britannica, 2026.

² The International Military Tribunal, Nuremberg, (1946) Cmd 1964, A.J.I.L., Vol. 41 (1947), p. 172.

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³ The Nobel Peace Prize 1944. NobelPrize.Org.

⁴ Raphael Lemkin, "Genocide as a crime under International Law", A.J.I.L., Vol. 41 (1947) p. 145 p. 150.

3.3 THE INTERNATIONAL BILL OF HUMAN RIGHTS

Building on the achievements of UDHR, The ICCPR (International Covenant on Civil and Political Rights, 1966) and The ICESCR (International Covenant on Economic, Social and Cultural Rights, 1966) it forms the international bill of human rights adopted by the UN in 1966 and the came into effect in 1976, The ICCPR and ICESCR is a cornerstone of global human rights protection, ratifying Nations like India commit to protecting essential human rights, including life, dignity, equality, freedom of speech, assembly, religion and privacy, freedom from torture and arbitrary detention, gender equality, fair trial rights, family life and minority rights. The governments are obligated to implement these measures and provide remedies to ensure these rights. Our constitution is aligned with its principles and we participate in the periodic UN reviews and engage in international human rights dialogues to ensure implementation of tenants of The UDHR, ICCPR and The ICESCR in the civil, political and economic context of India.

4. RELATIONSHIP BETWEEN INTERNATIONAL HUMAN RIGHTS AND CONSTITUTIONAL RECOGNITION AS FUNDAMENTAL RIGHTS

Mahatma Gandhi, who led India's freedom struggle, fought not merely for political independence but for the comprehensive freedoms later reflected in the Universal Declaration of Human Rights (UDHR), with deep concern for the oppressive human condition. In relating International Human Rights norms to domestic constitutional law, the framers of the Indian Constitution clearly recognized the principles embodied in the UDHR. Although India did not formally sign the UDHR at the time of its adoption, it was a founding member of the United Nations and strongly supported the Declaration on 10 December 1948. In *Kesavananda Bharati v. State of Kerala*⁵,

the Supreme Court observed that although the UDHR is not a legally binding instrument, it reflects India understands of the nature of human rights at the time the Constitution was adopted.

4.1 PREAMBLE

The Preamble to the Indian Constitution is regarded as the key to understanding the intentions of the Constitution-makers. One of its primary objectives is the protection and promotion of human rights. For the instance, the emphasis on "dignity" in the Preamble resonates with the opening words of the UDHR "Whereas recognition of the inherent dignity...", which recognize the inherent dignity of all human beings. This constitutional commitment to dignity has informed subsequent legislation, such as the *Rights of Persons with Disabilities Act, 2016*⁶, aligning domestic law with the UN Convention on the Rights of Persons with Disabilities (2006) to protect, promote, and ensure dignity for persons with disabilities.

4.2 FUNDAMENTAL RIGHTS

The first generation of human rights - often referred to as "blue rights" consists of civil and political rights. These are incorporated as Fundamental Rights under Part III of the Indian Constitution and are considered natural rights. In *Golaknath v. State of Punjab*,⁷ the Supreme Court recognised fundamental rights as natural rights inherent to human beings. The provisions under Part III closely correspond with Articles 3 to 21 of the UDHR and the ICCPR, 1966. Consequently, human rights are legally enforceable in India through Fundamental Rights. India acceded to and ratified the ICCPR on 10 April 1979. Article 4(2) of the ICCPR identifies non-derogable rights, many of which are reflected in the Indian Constitution, including:

Indian Constitution			
Human Right	UDHR	ICCPR	Indian Constitution
Right to life and personal liberty	Art. 3	Art. 6	Art. 21
Equality and non-discrimination	Arts. 2, 7	Arts. 3, 26	Arts. 14, 15
Constitutional remedies	Art. 8	Art. 2	Arts. 32, 226
Freedom of speech and expression	Art. 19	Art. 19	Art. 19(1)(a)
Freedom of religion	Art. 18	Art. 18	Arts. 25–28
Protection from arbitrary detention	Art. 9	Art. 9	Arts. 21, 22
Right to fair trial	Arts. 10, 11	Art. 14	Arts. 14, 21
Prohibition of torture	Art. 5	Art. 7	Art. 21
Prohibition of slavery	Art. 4	Art. 8	Art. 23

4.3 DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP)

The Directive Principles of State Policy, enshrined in Part IV (Articles 36–51) of the Constitution, correspond with Articles 22–27 of the UDHR and ICESCR, 1966. Though non-justifiable, DPSPs have acquired practical enforceability through judicial interpretation, political accountability, and

public pressure. In *Chairman, Railway Board v. Chandrima Das*,⁸ the Supreme Court observed that Article 51 obligates the State to foster respect for international law and treaty obligations. Article 51(c), in particular, reflects India's commitment to international law. DPSPs reflecting international human rights standards include:

International Human Rights Standards			
Right	UDHR	ICESCR	Indian Constitution
Right to Work	Art. 23	Art. 6	Art. 41
Fair Wages & Humane Work Conditions	Art. 23	Art. 7	Arts. 39(a), 39(d), 43
Social Security	Art. 22	Art. 9	Art. 41

⁵ AIR 1973 SC 146

⁶ ACT NO. 49 OF 2016

⁷ AIR 1967 SC 1643

⁸ (2000) 2 SCC 465

Protection of Women & Children	Art. 25(2)	Art. 10	Arts. 39(e), 39(f), 42
Adequate Standard of Living	Art. 25	Arts. 11, 12	Arts. 47, 39(b)
Right to Education	Art. 26	Arts. 13, 14	Arts. 21A, 45
Equal Pay for Equal Work	Art. 23	Art. 7	Art. 39(d)
Social Justice & Reduction of Inequality	Art. 22	Art. 2	Arts. 38, 46

Apart from Preamble, Fundamental Rights, and DPSPs several other constitutional provisions reinforce international human rights norms for instance, Article 253 empowers Parliament to legislate for implementing international treaties; Articles 325 and 326 uphold universal adult suffrage. Thus, Constitution as well as legislations in India guarantees human rights to both citizens and non-citizens, incorporating almost all principles of International human rights instruments.

5. ROLE OF CONSTITUTIONAL COURTS IN HARMONISING INTERNATIONAL

5.1 HUMAN RIGHTS OBLIGATIONS WITH DOMESTIC LAW

For the better interpretation to the courts section 2(1)(d)⁹ of the *Protection of Human Rights Act, 1993* defines 'human rights' and highlights the judiciary's central role in enforcing human rights.

5.2 SURVIVAL OF HUMAN RIGHTS DURING EMERGENCY

India has proclaimed national emergencies three times, during which human rights severely disturbed. During the 1962 Emergency following the Sino-Indian War, the *Defence of India Act, 1962*¹⁰ and associated Rules (DIR) which were essentially identical to the *Defence of India act, 1939*¹¹ enacted during World War II, suspended Articles 14, 21, and 22, leading to arbitrary detentions. Rule 30 permitted detention without trial, violating habeas corpus protections. Although similar derogation clauses exist under Article 4¹² of the ICCPR and Article 27¹³ of the American Convention on Human Rights, such measures must be strictly necessary and proportionate. In the landmark judgment of *ADM Jabalpur v. Shivkant Shukla*¹⁴, the majority held that during Emergency, Article 21 was the sole repository of the right to life and liberty, where the rule of becomes question. Justice H.R. Khanna's dissent recognised the inalienable and nature of these rights. This dissent was later vindicated in *Justice K.S. Puttaswamy v. Union of India*¹⁵, where *ADM Jabalpur* was expressly overruled.

5.3 CUSTODIAL RIGHTS AND DIGNITY

In *Nilabati Behera v. State of Orissa*¹⁶, the Supreme Court awarded compensation for custodial death, relying on Article 9(5) of the ICCPR. And in *Sunil Batra v. Delhi Administration*¹⁷, the human rights champion Justice Krishna Iyer has affirmed that prisoners retain fundamental rights and must be treated with dignity. The issue of handcuffing was

addressed in *Prem Shankar Shukla v. Delhi Administration*¹⁸ and *DK Basu v. State of West Bengal*¹⁹, where the Court held that handcuffing is prima facie inhuman and permissible only in exceptional circumstances with recorded reasons. However, Section 43(3) of the BNSS has revived concerns by expanding police powers to use handcuffs in an exceptional situation.

5.4 COMPREHENSIVE LEGISLATION ON HUMAN RIGHT

The supreme legislation on head of Human Rights in India is "Protection of Human Rights Act, 1933" which constitutes NHRC²⁰, SHRC²¹ and brings Courts for Human Rights²², though they are in dormant in most of the times. The NHRC in its 1998-99 report has drawn attention to the ambiguity as to the precise nature of offences that could be tried by these courts. These Courts cannot serve any fruitful purpose until a comprehensive legislation is passed specifying that what offences are classified as human rights offences. As per the 2023-24th Annual Report of NHRC, particularly from State of Tamil Nadu totally 2,958 cases were registered in NHRC from April 2023 to March 2024 and during 2023-24 476 cases were disposed of and grand totally 282 cases pending as on 31st March 2024. By expanding the jurisprudence of Human Rights a meeting of the Core Group on HRD and NGOs was held on 22 August, 2023, under the chairmanship of J. Shri Arun Mishra, Chairperson, NHRC suggestion like asking States across the country for status of implementation of the existing Transgender Act and for formulating a clear rehabilitation policy akin to Kerala and Tamil Nadu to prevent members of the transgender community from indulging in beggary and prostitution.

6. CONCLUSION

Those human rights protect an individual from being abused or discriminated against because everyone should have the equal opportunity to grow physically and intellectually. Even though the international organizations like UNO and the Government of sovereign state's like India adopt and enforce the instruments of human rights there are still some emerging challenges regarding human rights which results violation of human rights in the theatres of war is still prevailing all around the world in the name of war casualties. One of the most well-known genocide after the holocaust is Bangladesh Genocide (1971, Estimated deaths 3 Million)²³, Rwandan Genocide (1994, Estimated deaths 1 Million) and Sri Lankan Tamil Genocide (2009, Estimated deaths 2 Lakhs). These are not the results of collateral war damages but the systematic killing of civilians

⁹ 'human rights' means the rights relating to life, liberty, equality, and dignity guaranteed by the Constitution or embodied in international covenants and enforceable by courts in India;

¹⁰ ACT NO. 51 OF 1962

¹¹ (Act No. 35)

¹² suspension of the human rights guaranteed by the Government in time of public emergency, which threatens the life of the nation

¹³ suspension of human rights guaranteed by the Convention in time of war, public danger or other emergency that threatens the independence or security of a State Party.

¹⁴ AIR 1976 SC 1207

¹⁵ AIR 2017 SC 4161

¹⁶ AIR 1993 SC 1960

¹⁷ (1978) AIR 1675

¹⁸ 1980 AIR 1535

¹⁹ (AIR 1997 SC 610)

²⁰ From sections 3 to 20

²¹ From sections 21 to 29

²² section 30

²³ M. K. Nawaz - "Bangladesh and International Law", I.J.I.L, Vol. 11 (1971), p. 251 at p. 261.

which includes sexual harassment, torture, bombing and etc..., apart from the above discussed the violation of human rights may be committed by the state knowingly or by State negligence that the subject of human rights has widely spread its roots across various concerns which includes violation of fundamental rights of prisoners and the right of women's in the theocratic states like Afghanistan which they are forced on women to testify their virginity every time arrested for moral charge. The main concern regarding these human rights violations that the UN unable to enforce its instruments of human rights before the world because of its respect to state sovereignty, voluntary nature of treaties, lack of direct coercive power and its limited resources to implement its goals.

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