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# Justifying And Implementing Human Rights Discourse In India

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## 1. INTRODUCTION

To be born into the human race grants a person certain right known as human rights. It's something everyone's born with, no matter their race, creed, colour, or sexual orientation. Human rights are "rights about life, liberty, equality, and dignity of the person guaranteed by the Constitution or enshrined in the International Covenants and enforceable by courts in India" in the Protection of Human Rights Act, 1993. (Donnelly, 1982).

The people's progress inside a country is directly proportional to the progress of the country as a whole, making human rights protection an absolute need. Every Indian citizen is afforded the most fundamental of protections under the law according to the Indian Constitution. With great care and deliberation, the Constitution's authors laid out all the rules that must be followed. And due to these continuous shifts, human rights have expanded in scope. Nowadays, parliamentarians play an essential role in safeguarding people' rights by creating new laws, updating old ones, etc. (Donnelly, 1982).

### **Human rights have been defined as**

Essential moral protections which, ostensibly, all humans, regardless of where they live, have by their humanity. The use of the term "right" to refer to these assurances implies that they belong to certain people who may exercise them, are very important, and that adherence to them is required rather than voluntary. Many people believe that human rights are both universal in the sense that everyone should be entitled to them and independent in the sense that they can be used as a basis for both support and criticism regardless of whether or not the government or the courts of a given country recognise or enforce them. "(Nickel, 1987)

A theory of human rights ethics aims to specify the conditions under which human beings may act with respect for one another. Human rights are all about determining what makes for a reasonable level of life. With this goal in mind, the Universal Declaration of Human Rights laid the groundwork for the European Convention on Human Rights (1954) and the International Covenant on Civil and Political Rights (1996). (1948). (1966). The moral theory in these three books is the basis of a growing agreement that the present geopolitical order might benefit from something like an international bill of rights. Yet, human rights

philosophy is not intended to serve as a universal moral compass. Human rights justifications are incomplete when it comes to describing right and wrong. For instance, human rights do not provide guidelines for dealing with issues like whether or not lying is inherently wicked, or how wide one's moral duties should be to friends and lovers. Human rights seek to define the parameters within which basic public moral standards may be established and enforced as stated by James Nickel, human rights work to ensure that everyone has the chance at least to live a decent life. Many people look to the doctrine of human rights as their starting point when trying to figure out what basic moral guarantees we all have from one another and, more importantly, from the national and international institutions that can have the most direct impact on our most important interests. (Fagan, 2012).

## **2. DEVELOPMENT OF HUMAN RIGHTS**

Unlike in other countries, India's progress in human rights has been gradual. The Buddhist and Jaina teachings give a crystal-clear model for identifying it. Laws safeguarding individual liberty may be found in the Gita, Vedas, Arthasatra, and Dharmashstra, among other Hindu sacred texts. Several of Islam's greatest rulers, like Akbar and Jahangir, were admired for their dedication to justice and equality. Human rights law as we know it now had its genesis in India, where many fundamental protections were violated during the colonial period (Sen, 2004).

A Basic Rights Advisory Committee was established by the Constituent Assembly on January 24, 1947, with Sardar Patel serving as its chairman. Dr. B. R. Ambedkar, B. N. Rau, K. T. Shah, Harman Singh, K. M. Musnshi, and K. T. Shah were among the experts consulted by Congress to draught the rights document. There were few amendments proposed, but widespread agreement on the fundamental ideas. All but a few articles of the International Declaration of Human Rights are reflected in India's Fundamental Rights or Directive Principles of State Policy. In the Motilal Nehru Committee Report from 1928, the 19 rights were broken down into two categories: Basic Rights and Fundamental Responsibilities. (Krutika, 2020).

## **3. INTERNATIONAL HUMAN RIGHTS AND FUNDAMENTAL RIGHTS (PART III OF COI)**

On January 1, 1942, India became the first country in the world to formally approve the Universal Declaration of Human Rights. The fundamental rights of all Indians are spelled forth in Section III of the Indian Constitution, often known as the "magna carta" of India. In case of a violation, you can take legal action against the state to protect these rights. No legislation may be passed by the state that violates the rights guaranteed in Article 13(2). The Constitution guarantees that any provision of a law that violates a person's basic

freedoms will be nullified. If the invalid portion of an act is integral to the act itself, the whole act may be nullified (Morsink, 1999).

"The Universal Declaration of Human Rights may not be a legally enforceable document, but it illustrates how India understood the nature of human rights at the time the Constitution was enacted," the Supreme Court said in *Keshvanand Bharti v. State of Kerela*, according to (Morsink, 1999).

*Chairman, Railway Board & Ors. v. Chandrima Das & Ors.* The concepts may need to be interpreted under local legislation. (Morsink, 1999). Certain portions of the Indian Constitution correspond to the following articles of the United Nations' Declaration on Human Rights:

<b>Brief Description of Provision</b>	UDHR	COI
Equality and equal protection before the law	Article 7	Article 14
Remedies for violation of Fundamental Rights	Article 8	Article 32
Right to Life and personal liberty	Article 9	Article 21
Protection concerning the conviction of offenses	Article 11(2)	Article 20(1)
Right to property	Article 17	Earlier, a Fundamental Right under Article 31
Right to freedom of conscience and to practice, profess and propagate any religion	Article 18	Article 25(1)
Freedom of speech	Article 19	Article 19(1)(a)
Equality in opportunity for public service	Article 21(2)	Article 16(1)
Protection of minorities	Article 22	Article 29(1)

Article 26(1), Section 21A: The Right to an Education

Several of the same political and civil rights as the International Covenant on Political and Civil Rights, 1966, are included in Section III of India's Constitution (ICCPR). Upon the entry into effect of the ICCPR, India ratified it. (Morsink, 1999).

## **In India**

The International Covenant on Civil and Political Rights (ICCPR) cannot be enforced in Indian courts since the Indian Constitution does not have a particular phrase specified in the ICCPR. J. Krishna Iyer issued this proclamation in the case of Jolly George Varghese & Anr. v. Bank of Cochin. (Morsink, 1999).

The following are the provisions of the ICCPR and the comparable provisions of India's Constitution:

Brief Description of Provision	ICCPR	COI
Right to life and liberty	Article 6(1) & 9(1)	Article 21
Prohibition of trafficking and forced labour	Article 8(3)	Article 23
Protection against detention in certain cases	Article 9(2), (3) and (4)	Article 22
Freedom of movement	Article 12(1)	Article 19(1)(d)
Right to equality	Article 14(1)	Article 14
Right not to be compelled to be a witness against own self	Article 14(3)(g)	Article 20(3)
Protection against double jeopardy	Article 14(7)	Article 20(2)
Protection against ex-post facto law	Article 15(1)	Article 20(1)
Right to freedom of conscience and to practice, profess and propagate any religion	Article 18(1)	Article 25(1) & 25(2)(a)

Freedom of speech and expression	Article 19(1) & (2)	Article 19(1)(a)
Right to assembly peacefully	Article 21	Article 19(1)(b)
Right to form union/ association	Article 22(1)	Article 19(1)(c)
Equality in opportunity of public service	Article 25(c)	Article 16(1)
Equality and equal protection before law and no discrimination based on any ground such as race, colour, sex, language, religion etc.	Article 26	Article 14 & 15(1)
Protection of interests of minorities	Article 27	Article 29(1) & 30

The International Covenant on Civil and Political Rights provides access to some rights that were not initially part of Fundamental Rights. Several court decisions have all reached the same conclusion: these protections are in the category of Fundamental Rights. Among your many rights are the chance for a fair trial, protection of your personal information, the assistance of an attorney, and the freedom to go where you like. At the article's conclusion, I'll go into detail about them (Liisberg, 2001).

Both the Charter of Inter-American Rights (Part IV) and the Directive Principles of State Policy (Part IV of COI) place equal emphasis on economic, social, and cultural rights (Liisberg, 2001).

The International Covenant on Economic, Social, and Cultural Rights is often discussed in the context of arts and culture while discussing human rights (ICESCR). India's official approval of the pact came 10 April 1979. This covenant's primary provisions are laid forth in the DPSPs of Chapter IV of the Indian Constitution. Liisberg (2001).

The relevant sections of India's Constitution and the International Covenant on Economic, Social, and Cultural Rights are as follows:

<b>Brief Description of Provision</b>	ICESCR	COI
Right to work	Article 6(1)	Article 41
Equal Pay for equal work	Article 7(a)(i)	Article 39(d)
Right to living wage and descent standard for life.	Article 7(a)(ii) & (d)	Article 43
Humane conditions of work and maternity leave.	Article 7(b) and 10(2)	Article 42
Faculties and opportunities for children for prevention against exploitation.	Article 10(3)	Article 39(f)
Improving public health and raising level of nutrition and standard of living.	Article 11	Article 47
Compulsory education for children	Article 13(2)(a)	Article 45
Protection of interests of minorities	Article 27	Article 29(1) & 30

#### **4. UNREMUNERATED FUNDAMENTAL RIGHTS**

Several rights guaranteed by the covenant were not considered essential rights until after the Constitution was written. The courts' rulings have expanded the protections guaranteed by the Indian Constitution (Eeckhout, 2002).

The highest court in India said in *A.D.M. Jabalpur v. Shivkant Shukla* that Indian law only recognises rights written into the Indian Constitution and not those that arise under natural law or common law (Eeckhout, 2002).

For example, in the case *Maneka Gandhi v. Union of India*, J. Bhagwati was quoted as saying, "The expression 'personal liberty' in article 21 is of the widest amplitude and it covers a variety of rights, which go to constitute the personal liberty of man and some of them have

been raised to the status of distinct fundamental rights and given additional protection under Article 19. Restricting someone's ability to leave the country violates their right to due process and the rule of law.

In light of this judgement, the Supreme Court developed the "theory of emanation" to provide teeth to basic freedoms. The court also made an exception to the locus standi rule. These are a few of the most influential courts' perspectives on what constitutes a fundamental right: (Eeckhout, 2002).

Right	Case Law
Right to live with Human Dignity	PUCL & Anr. v. State of Maharashtra & Ors.
Right to Clean Air	M.C. Mehta (Taj Trapezium Matter) v. Union of India
Right to Clean Water	M.C. Mehta v. Union of India & Ors
Right to freedom from Noise Pollution	In Re: Noise Pollution
Right to Speedy Trial	Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar
Right to Free Legal Aid	Khatri And Others v. State of Bihar & Ors.
Right to Livelihood	Olga Tellis & Ors. v. Bombay Municipal Corporation
Right to Food	Kishen Patnayak v. State of Odisha
Right to Medical Care	Pt. Parmanand Katara v. Union of India & Ors.
Right to Clean Environment	Rural Litigation And Entitlement Kendra v. State Of U.P. & Ors

Right to Privacy	K.S. Puttaswamy & Anr. v. Union of India & Ors
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## Conclusion

When a person is fully developed as a human being, they will have a full range of rights. The role of the Constitution is to safeguard these fundamental rights, also known as DPSPs and Fundamental Rights. The rights guaranteed by the constitution now get greater protection and may be enforced more effectively in a court of law. When you look at the Indian Constitution in detail, you'll see that Articles 3 and 4 guarantee almost all of the rights listed in the UDHR (Universal Declaration of Human Rights) (Eeckhout, 2002).

The judicial branch has also made considerable strides, such as loosening locus standi restrictions so parties other than those directly harmed may bring cases before the court. The Supreme Court has interpreted the citizen's Basic Rights, expanding them to include the privacy rights, a clean environment, access to free legal counsel, a fair trial, and so on. (Eeckhout, 2002).

## 5. THE GLOBAL DISCOURSE OF HUMAN RIGHTS

There has been a gradual development over the last several decades of what has been termed a "global discourse of human rights," which includes both language and non-linguistic aspects about human rights. Human rights language and the policies established or pushed for by various actors (state leaders, civil society activists, corporate executives, academics, journalists, lawyers, celebrities, etc.) come under this umbrella. It is characterised by categorizing a broad variety of actions and events as violations of human rights, regardless of the specific form of human suffering or deprivation they produce. From torture and war crimes to censorship and religious intolerance, from discrimination based on gender or identity to the mistreatment of immigrants, and from extreme wealth to widespread poverty, unemployment, and disease, the term "human rights abuses" has come to encompass a wide range of wrongdoings. (Manokha, 2009).

During this discussion, various theoretical and substantive problems and worries are voiced (local, national, and global). In this issue of the Kiosque, we bring together scholars from various fields whose work touches on some of these themes. Briefly introducing the topic and outlining research issues and arguments that have been or will be addressed in more depth elsewhere, the contributions collected here make up this collection (Manokha, 2009).

Kate Nash investigates how the media might better support efforts to advance and defend human rights. Most people nowadays learn about human rights and how they work or should



work, via the media. Kate Nash calls attention to the "multiple paradox of states of human rights" that exists in a globalised world where the media routinely constructs the vast majority of humanity as "Other" and where the interests and identities of citizens conflict with the rights of humans who are not citizens, whether within national territories or elsewhere in the world. Hence, people who are not citizens will be unfairly affected by judgements made following universal human rights principles for all individuals. (Manokha, 2009).

Under the context of the War on Terror, Sebastien Botreau-Bonnetterre analyses contemporary legal justifications for torture. He shows how attempts were made to justify torture under international law and then explains why such efforts failed in light of international human rights standards. He argues that even if the international system is organised into independent states without an overriding authority, International Human Rights Law increasingly mentors governments and people. (Gamurari & Alabduljabbar, 2017).

Since Kazakhstan is the first former Soviet state to serve as OSCE president, Adrien Fauve discusses the country's challenges in implementing a national human rights strategy. Throughout the years, human rights promotion has become an OSCE priority. While the Kazakh government has made human rights a priority, the reality on the ground remains at odds with the rhetoric. In this study, we'll look at how these problems have been addressed thus far and what it could mean for the future of human rights in Kazakhstan (Gamurari & Alabduljabbar, 2017).

As a result of the recent British general election, Conor Gearty examines the implications for the country's Human Rights laws. Getting rid of this Act that ensures legislation conforms with the European Convention on Human Rights was a declared objective of the Conservative Party. It seems that the rapid repeal of the Act was blocked by a coalition government comprising Liberal Democrats, who are strong proponents of Europe and human rights. (Gamurari & Alabduljabbar, 2017).

Ivan Manokha analyses how the present economic crisis affects people's right to economic and social security (ESR). It has been stated that ESR provides a yardstick by which we may judge the present situation in both emerging and developed nations. ESR's prominent role in modern morals may be traced back to a certain era of history characterised by widespread affluence and rising living standards. But those days are long gone, and for decades, we've lived in a world where the minimalist State's top priority has been maintaining stable prices and interest rates. The crisis seems to have removed all doubts concerning the inconsistency of this mode of regulation, and in light of this, we can see a widening chasm in the discourse

of the ESR between the morality of individual rights (including basic rights) and the conditions for the realisation of these principles. (Badaru, 2011).

### **Human Rights, Discourse and Power**

Human rights are an example of what philosopher Gallie called "a contentious idea" (Gallie, 1956). After looking at the many contexts and arguments in which particular phrases are used, Gallie believes that it becomes evident that these terms do not have a single, universal definition (Gallie, 1956). Further confounding matters is the fact that many of the terms used to characterize various elements of human rights—such as "liberty," "freedom," and "democracy"—are themselves controversial notions. The struggle to arrive at a globally agreed concept of human rights has been particularly difficult since different definitions of human rights contradict or challenge one another to varying degrees. This has ramifications for the use of language, since each side will argue that their interpretation of the concept's purpose is true or primary (Grönroos, 1989). As some argue, a global language of human rights would be impossible to create if human rights are inherently contentious.

In Djajic's view, we live in the human rights era, and governments have been using, misusing, and abusing human rights language due to the widespread but undefined usage of legal conceptions of human rights. (Jahren, 2013). Human right is a notion that has proven challenging to place in a global context due to its purported universality and the wide range of cultural and political norms that exist across the globe. Both "terrorism" and "human rights" may be used as rhetorical devices. To paraphrase Montaigne (Royters, 2022): "nothing is so firmly held as that which we least know." Peck claims that using "terrorism" in propaganda is a gloomy confirmation of this (Royters, 2022). Human rights are similar in that their nebulosity benefits policymakers who can put it in their own words (Kratochvil, 2011).

This subject involves language and discourse, so it's important to talk about those things and how they relate. This research takes the notion that ideology is intrinsic to language, which starkly contrasts the liberal concept that language is the product of the unrestrained exchange of ideas. Language is seen as "both a social force and a form of political behaviour," as Corcoran put it. Yet, the research focuses not on language per se but on language as discourse. Discourse is now often regarded as "systems of meaning which shape the identities of subjects and objects," a definition that expands on its linguistic origins (Howarth, 2000). Foucault sees discourse as a prism to investigate the creation of knowledge and meaning, and this view forms the basis of his reformulation of the notion (Heizmann & Olsson, 2015). Due to language's central role in the rhetorical appropriation of human rights, analysing discourse permits inquiry into how political connections are mirrored in language.

Power in today's world is more exerted in the cognitive sphere, away from the primitive resort to force, and discourse may play a crucial role in both the development and reproduction of power in international relations. Seeing power as dynamic is essential to the concept of speech as generative of knowledge and meaning. Discourse's role in power's production and reproduction becomes clearer when we see power as a relationship that must be maintained via ongoing social interaction. Returning to Foucault, his ideas on the relationship between knowledge and power are useful for figuring out the relationship between power and discourse. For Foucault, information entwined with power can make itself true: if everyone accepts what is offered, it will become 'true' regarding concrete consequences, even if it is not so in the absolute sense (Bargh et al., 2002). Although most people assume that language serves to describe the world, a Foucauldian perspective on power may provide light on how discourse creates that world.

Discourse analysis requires us to consider the relationship between authority and the audience's ability to grasp a topic (Van Dijk, 1993). As we've seen, power is habitually exerted rather than coercively because it is constantly generated and reproduced via speech. But, for discursive power to be successful, it must be acknowledged by those that are submissive to it. This is understandable in light of Gramsci's idea of hegemony, which describes how socially dominant groups influence less powerful ones to adopt their beliefs (Reskin, 1988). In this way, speech is the vehicle through which power exerts its persuading impact. Foucault's definition of social power as "a form of acting upon the acts of others" is consistent with this (Van Dijk, 1993). Discourse and power are inextricably linked, and the former has consequences for who among several players may claim that their version is the "correct" one.

## **6. CONCLUSION**

When a person is fully developed as a human being, they will have a full range of rights. The role of the Constitution is to safeguard these fundamental rights, also known as DPSPs and Fundamental Rights. The rights guaranteed by the constitution now get greater protection and may be enforced more effectively in a court of law. Studying the Indian Constitution in depth reveals that Articles 3 and 4 protect almost all of the rights enumerated in the UDHR (Universal Declaration of Human Rights).

The judicial system has also made significant progress, including the relaxation of locus standi rules that formerly prevented parties other than those injured from bringing lawsuits before the court. In its interpretation of the Bill of Rights, the Supreme Court has added protections for citizens, such as the right to an unpolluted setting, the availability of legal representation at no cost, and the guarantee of a fair trial.

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