



Contemplating UDHR and Indian Constitutional guarantees: An analysis

Mrs. Sumitra Bhuyan

Assistant Professor of Law, Capital Law College, Bhubaneswar, Odisha, India

Email id- sumitrabhuyan12230@gmail.com

Abstract: The Universal Declaration is a foundational text that establishes the United Nations. The UDHR is recognized by the Guinness Book of Records as the *Most Translated Document* globally. Despite lacking legal enforceability, the Declaration has been either adopted or had an impact on numerous national constitutions since 1948. Furthermore, it has provided the basis for an increasing number of domestic and international legislations, as well as agreements, and regional, national, and sub-national organizations that safeguard and advance human rights. The importance of a nation's interest and the security of the state must be considered while interpreting the Universal Declaration, as well as every article that addresses fundamental rights, including Article 21 of the Indian Constitution. Several political rights, which are protected by the Universal Declaration of Human Rights (UDHR), are also recognized as fundamental rights in Part III of the Constitution. This research aims to investigate the relationship between the complex national circumstances of India and the universal human rights ideals established in the UDHR. Researchers intend to evaluate the implementation and relevance of the UDHR within the context of India by conducting an analysis of the socio-political landscape, cultural diversity, and legal framework of India respectively. The purpose of this article is to provide light on the difficulties and opportunities that are associated with the upholding of universal human rights principles in India.

Keywords: UDHR, Universal Values, Human Rights, Indian Context.

-----X-----

INTRODUCTION

Human rights are often established and maintained by legal procedures, such as international treaties. International human rights legislation mandates that governments must protect the basic freedoms and human rights of both people and groups by implementing particular measures. The term *human right* emerged in the recent past. Social economic rights; ethnic and religious rights; and fundamental freedoms or traditional civil liberties are all encompassed within its purview. The inherent human rights possessed by all individuals, which are neither imposed nor can any government revoke. Cultural, economic, and political rights, the fundamental rights encompassed within this category are freedom of association, belief, expression, information, religion, movement, and nationality, in addition to equality before the law and everything else, are upheld by a number of international conventions and treaties. Although the legalization of these rights does not constrain any nation, it does establish

a benchmark for public concern and serves as the foundation for numerous contemporary national constitutions. All human rights are universal, interdependent, according to the final text approved at the 1993 World Human Rights Conference. It is challenging to properly define human rights.

However, when it comes to the details of these freedoms, there is a broad agreement among people. There are several ways to understand the idea of human rights, with each understanding depending on the particular circumstances in which they are defined. As a result, human rights have not been able to be defined in a way that is universally accepted, which poses a challenge for international governance. However, in current international law, human rights are increasingly being categorized into three distinct groups: "first generation," "second generation," and "third generation" rights. Civil rights are classified as the first generation of rights. It is believed that cultural, social, and economic rights belong to the second generation. It is claimed that collective rights represent the third generation of these rights. It is the emphasis on communal rights rather than individual rights that sets apart this second approach from the first.

History of Human Rights and their Origin and Development

Human rights were frequently observed for a multitude of religious, cultural, and social motives that were only tangentially associated with the rationales presently cited for observing rights. During antiquity and the middle Ages, caste was defined in terms of obligation (duty) as opposed to rights in politics. The precise definition of the historical origins of human rights remains elusive. Community security, freedom of religion, the designation of Madina as a haram or sacred site, women's protection, stable tribal relations in the region were all addressed in the Constitution of Madina, also known as the Charter of Madina, an individual protection system, a dispute resolution system, and regulations regarding the payment of blood-wite. Originally considered to be a bride-price paid to the father, the dowry is now considered to be a gift given by the father to the bride, which the wife keeps as a portion of her personal property after the marriage. The general advancement of the status of Arab women, as defined by the Oxford Dictionary of Islam, simultaneously entailed the prohibition of female infanticide and the acknowledgment of women's full personhood. The concept of "natural law" originated from this place, deriving from the observation that individuals tended to conform to specific unwritten laws over the span of their lifetimes. The rational concepts that emerged from the inherent characteristics of entities formed the bedrock of Roman legislation. A

comparable collection of entitlements was ensured for Roman citizens through the jus civil, an element of Roman legislation.

Individuals are able to develop their personalities, human traits, intelligence, talent, and conscience, as well as satisfy their spiritual and other higher demands, which are an everlasting element of the essence of human beings, are needed for the development of human beings. The rule of law should safeguard these rights since they are inherent and equally belong to every individual in the human family would prevent people from being forced to use revolt as an extreme response to injustice and despotism. An individual who has a rightful and genuine claim to something is said to have that right. Individuals possess specific rights simply by virtue of being citizens of the human race. The right to the essential requirements of food and clothes, are examples of fundamental human rights.

The Universal Declaration of Human Rights (1948)

The United Nations membership understood that it should be the global community's obligation to promote human rights. Despite the United Nations' inability to incorporate human rights into its Charter. The newly established United Nations Human Rights Commission was established in 1948, gained worldwide recognition due to the influence of Eleanor Roosevelt, a famous champion of human rights and the widow of President Franklin Roosevelt. Roosevelt led the initiative to establish the UDHR. Roosevelt hailed the Declaration as the 'International Magna Carta' for the entirety of mankind. The United Nations officially accepted it on December 10, 1948 as a non-binding proclamation.

The statement represented the initial global attempt to restrict the actions of nations and emphasize their obligations towards their populations. According to the Declaration's Preamble, the foundation for liberty, justice, and peace on a global scale is the recognition of each person's inherent value and inalienable rights. Acts of brutality that have caused widespread indignation have arisen as a direct consequence of the neglect and contempt for human rights. The arrival of a world where individuals can freely express their thoughts and beliefs, and live without fear and deprivation, has been declared as the ultimate goal of every ordinary person.

These rights include different rights pertaining to individuals, as well as rights pertaining to groups and individuals in relation to one another. The articles provide an analysis of how rights are constrained, obligated, and accomplished within the context of the societal and governmental structure. The member States of the UN committed to collaborating in order to advance the 30 articles of human rights, which were compiled and organized into a unified

document for the first time in history. These rights are now included into the constitutional legislation of democratic nations in various forms. During the battle, the Allies issued proclamations with the intention of protecting human rights. The United Nations Declaration of January 1, 1942 clearly and unambiguously emphasized the necessity of safeguarding human rights, religious freedom, life, liberty, independence, and justice both inside a nation's borders and outside. It further specified that a complete victory over their adversaries was necessary for the attainment of these objectives.

The preamble of the United Nations Charter articulates the organization's resolve to reassert confidence in fundamental human rights. The group aims to foster global collaboration in promoting and defending the human rights. Well-being and stability are essential for in order to foster amicable and tranquil relations between nations. The organization will promote, among other things, the adherence and universal respect for fundamental freedoms and human rights in order to achieve this purpose.

Human Rights and Indian Constitution

The Indian Constitution was adopted, but it didn't go into effect right away on November 26, 1949. The Constitution's effective date is January 26, 1950, at which point all of its provisions came into force, with the exception of Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 380, 388, 392, and 393, all of which entered into force simultaneously. Surprisingly, the United Nations Charter was ratified on October 24, 1945, and was ratified in San Francisco before the Indian Constitution was implemented. India, one of the Charter's signatory nations, refrained from ratifying the UDHR, officially adopted on October 24, 1945.

The United Nations Economic and Social Council created the United Nations Commission on Human Rights in February 1946. It was deemed to be the most successful way to deal with the problem of human rights protection in the long term. The deliberate incorporation of the term human rights in the United Nations Charter is remarkable. The Preamble to the United Nations Charter restates the conviction in the inviolability of fundamental human rights, human dignity and value, and gender equality in rights. Article 1 of the UN states one of its objectives. Promoting and upholding everyone's fundamental freedoms and human rights, regardless of their ethnicity, sex, language, or religion.

Article 55 requires the UN to promote universal observance and respect for fundamental freedoms and human rights, irrespective of country origin, gender, race, or religious affiliation. This stipulation is additionally reinforced by Article 56, which states that "*all Members*

undertake a solemn commitment to collaborate with the organization in carrying out joint and separate actions to accomplish the objectives expressed in Article 55."

Articles 13, 62(3), 68, and 76(c) also mention fundamental freedoms and human rights. The United Nations Charter so has human rights clauses "like a golden thread." Additionally, an unsuccessful endeavor was undertaken to include a global bill of human rights in the United Nations Charter. Indeed, in remembrance of the atrocities committed by Nazi and Fascist leaders, the drafters of the Charter were resolute in their desire to elevate individual rights to the level of a global concern. This is the first international treaty to mention human rights, with the exception of the post-First World War accords for the protection of minorities, which dealt with the rights of particular groups rather than human rights in general. This is because those who drafted the charter were considering issues other than the tactical aspects of war, specifically the tyranny that supports it. Human rights would thus constitute an essential component of any discourse concerning the United Nations.

A global movement for the defense and advancement of human rights was ignited by these momentous events, as well as the 1948 adoption of the Universal Declaration of Human Rights and the establishment of the Human Rights commission, which was tasked with drafting an international bill of human rights, was established in February 1946 having ratified the Universal Declaration of Human Rights and being one of the founding members of the United Nations adoption on 10 December 1948, India could not have been in the dark regarding these developments. One notable observation is the conspicuous omission of the phrase "human rights" from the Constitution of India. Declining the intentionality or fortuitousness of this omission presents a challenge.

The Indian Constitution and the UDHR: An Analysis

India is not only a signatory to the UDHR but also a founding member of the UN. The authors of the Indian Constitution were influenced by the Universal Declaration of Human Rights, as evidenced by Part III's fundamental rights. Despite lacking legally binding force, the UDHR possesses considerable persuasive influence. Part III (Fundamental Rights) of the Indian Constitution is juxtaposed with UDHR provisions in the chart below. Incorporation of the UDHR's provisions into the Constitution confers legal validity upon said provisions, enabling their enforcement via suitable judicial means. The party that has been wronged has the option to immediately approach the High Court and the Supreme Court to ensure that their fundamental rights are upheld. Indeed, the ability to petition the Supreme Court is considered a basic right. The Indian judiciary has acknowledged and considered the provisions of the

UDHR while interpreting the Constitution. In the case of Vishakav in the state of Rajasthan, Chief Justice Verma, speaking on behalf of the court, made the following observation:

"To expand the meaning and content of these provisions and to further the purpose of the constitutional guarantee, any international convention that is not in conflict with fundamental rights and is in line with its principles should be incorporated." It is generally widely established in legal practice that when there is no conflict between international conventions and standards and a gap in domestic law, such foreign agreements should be considered in interpreting domestic law.

The Supreme Court reaffirmed this position in the Apparel Export Promotion case, courts must consistently consider and apply international conventions and instruments. So long as domestic law does not conflict with the international standard. The protection of all the essential and fundamental rights enumerated in the Universal Declaration of Human Rights of 1948 is guaranteed by our Constitution, specifically in Part III, according to the Court. Citizen and non-citizen, specifically alien, individuals. Particularly pertinent to Indian citizens are Articles 15, 16, and 19 of Part III of the Indian Constitution. However, other provisions in Part III apply to all individuals, including non-citizens. These provisions include Articles 14, 20, 21, 22, 23, 24, 25, 27, and Article 31 before its amendment. The modification and Article 300-A no longer guarantee a basic right. Most contemporary constitution's guarantee that its inhabitants will have access to fundamental human liberties. As a result of persons being so enamored with the validity of their aims that they rarely pause to contemplate the legitimacy of the methods, citizens require protection from their own agents.

Because of the nature of man, it is not possible to put entire faith in him to deprive other people of their rights. When it comes to public affairs, the protection of the citizen against all sorts of persons, none of whom can be trusted with unrestricted authority over others, does not lay in their tolerance but rather in the constraints that are placed on their power. The belief that underpins our Constitution lies in this phrase.

Significance and legal impact of the Universal Declaration of Human Rights (UDHR) 1948

The main purpose of the Declaration was to clarify the meaning of the phrases "fundamental freedoms" and "human rights," as they are defined in the United Nations Charter, which has worldwide force. Therefore, the Universal Declaration is considered a crucial cornerstone document of the United Nations. The UDHR holds the distinction, as acknowledged by the Guinness Book of Records, of being the document with the most number of translations in the

world. Governments promise in the preamble to take gradual measures to guarantee the meaningful and broad recognition. Eleanor Roosevelt believed it will have the same effect on global civilization that the US Declaration of Independence did on American society. She was proven accurate in this aspect. Despite lacking legal enforceability, the Declaration has been included into or has had influence on several national constitutions since 1948.

The UDHR has also served as the foundation for the formation of various state legislation and organizations dedicated to protecting and advancing human rights. There are varying perspectives on the legal consequences of this Declaration. One perspective is that the document is considered a Declaration, meaning it is not legally obligatory for the governments. An alternative perspective suggests that although it was not legally obligatory at the time of its adoption, the document has had a significant impact on the advancement and progress of both international and national laws pertaining to human rights and fundamental freedoms. Presently, it is generally acknowledged and utilized as a standard for evaluating the behavior of nations.

A Constitution is a legally binding document that establishes the structure and fundamental functions of a state's government organs. It also outlines the principles that govern the operation of these institutions. The Constitution should not be seen as just a law, but rather as the mechanism through which laws are created. A Constitution is a dynamic and natural entity that, of other tools, has the most justification to be interpreted in a comprehensive and generous manner. The Constitution of India is the highest legal authority. Following this, a few of the Universal Declaration's clauses were ratified as Fundamental Rights and guiding principles of the Indian Constitution. However, the government of India raised concern about certain freedoms and rights, notably the right to compensation for human rights breaches, when the country ratified the International Covenant on Civil and Political Rights.

Impact of the UN Charter and Universal Declaration of Human Rights on fundamental rights

The Preamble to the United Nations Charter, which was established in 1945, contains a policy declaration affirming trust in observation, preservation, conservation, and advancement. The UDHR, tyrannical, dictatorial, high-handed, repressive, and oppressive worldwide wars, serves as an official bible of human rights. This document lays forth rights that are both legally and politically universal; member states have an international duty to incorporate these rights into their own constitutions. They have been incorporated into the constitutional laws by member-States as fundamental rights or fundamental freedoms or basic rights. The idea behind

these statements is that every individual has a rights and entitlements that are specified, defined, or enumerated, and that they have a legal claim upon their community. By securing and promoting these rights, not only are we ensuring that these rights will be respected, but we are also ensuring that our societies will build stable political institutions that will be a commitment to constitutional culture and constitutionalism. UN members firmly believe in enshrining human rights in their constitutions as basic rights. Through its ultimate law, they strive to convey human rights. The UN Charter dictates the following policy:

The UN Charter establishes fundamental human rights. These rights were explained in further detail in the 1948 UDHR. A unifying benchmark for achievement for all peoples and nations is identified in thirty articles of the UDHR, which address different human rights. The historic Act (UDHR) should be widely distributed, shown, read, and explained, mainly in educational institutions, without regard to the political position of individual nations or regions. Since 1945, most laws pertaining to human rights have been based on the UDHR. A number of regional and international conventions are likewise based on the Declaration.

The major goal behind the adoption of the Declaration of Independence was to establish a common benchmark for success for all peoples and nations but it now has a moral, political, and legal impact that well beyond the objectives of many of those who created it. Many national constitutions that safeguard human rights are directly or indirectly patterned after the Universal Declaration. These domestic expressions include direct constitutional references to the Universal Declaration or adoption of its provisions.

SUGGESTIONS

To ensure that the values of the Universal Declaration of Human Rights are implemented effectively in the Indian context, consultations and cooperation are necessary. The following are some suggestions for public policy that might help bridge the gap between universal principles and national realities:

- The Indian judiciary can improve its role in protecting human rights by applying international provisions such as UDHR and other human rights charters, covenants, and conventions.
- Governments should be obligated to safeguard the fundamental human rights of their citizens. India, being a nation with a robust democratic system, is not exempt from this responsibility. Disregarding the more intricate facets of human rights, it is often beyond our capacity to safeguard fundamental rights such as the Right to dignity.

- The United Nations Declaration of Human Rights' Preamble affirms the following: the belief in fundamental human rights; the freedom from hunger and want; the belief in everyone's right to dignity and worth; and the dedication to promoting social progress and a higher standard of living within the context of greater freedom.
- As primary contributors to human rights violations in numerous instances, poverty, unemployment, illiteracy, and ignorance ought to be eradicated. However, these instances are merely natural occurrences. What ought to be described as "unnatural" is the oppression induced by the state. Severe violations of the human rights of women, children, and the impoverished are frequently attributed to the state.
- The Indian judiciary is currently playing a unique position in the world of judiciaries. It protects people's rights, including political and socio-economic rights under Parts III and IV of the Constitution.
- The aforementioned suggestions will facilitate the improvement of the current conditions in the process of safeguarding and advancing human rights through judicial proceedings and activism.

CONCLUSION

Human rights are an old concept given a new name; they are not a novel notion; in fact, they predate the human race. In the early times, these were referred to as rights; since then, they have endured numerous phases of evolution. The UDHR is examined in the particular context of India. It is found that while the article concluded that the complex domestic conditions present challenges for the application of universal standards, there are some positive aspects as well. India, an extensively populous and diverse nation, confronts a multitude of socio-economic, cultural, and political elements that influence the extent to which human rights are upheld within its territorial boundaries. In spite of India's ratification of numerous international treaties and conventions attesting to its dedication to the protection of human rights, inequities continue to exist regarding the implementation of these rights among various segments of society. Constraints such as poverty, discrimination, gender inequality, and insufficient healthcare and education access persistently impede the complete realisation of rights enshrined in the UDHR. This must be coordinated and inclusive by engaging government, civic society, the commercial sector, and the international community. India can work towards establishing a society that is more equitable and just through the implementation of the

following measures: investing in social welfare initiatives, promoting education and awareness, and confronting systemic inequalities.

Bibliography

1. Alfredsson, G., & Eide, A. (Eds.). (2023). *The Universal Declaration of Human Rights: a common standard of achievement*. Martinus Nijhoff Publishers.
2. Ali, S. S. (2021). *Gender and human rights in Islam and international law: equal before Allah, unequal before man?* Brill.
3. Annas, G. J., & Grodin, M. A. (2018). Human rights and maternal-fetal HIV transmission prevention trials in Africa. *AIDS: Society, Ethics and Law*, 411-414.
4. Bunch, C. (2018). Transforming human rights from a feminist perspective. In *Women's rights, human rights* (pp. 11-17). Routledge.
5. Cook, R. J. (2020). International human rights and women's reproductive health. *Women, Medicine, Ethics and the Law*, 37-50.
6. Cranston, M. (2018). Human rights, real and supposed. In *Talking about welfare* (pp. 133-144). Routledge.
7. De Varennes, F. (2021). *Language, minorities and human rights* (Vol. 45). Brill.
8. Donnelly, J. (2019). *The concept of human rights* (Vol. 19). Routledge.
9. Donnelly, J., & Whelan, D. J. (2020). *International human rights*. Routledge.
10. Fierro, E. (2021). *The EU's approach to human rights conditionality in practice* (Vol. 76). BRILL.
11. Freeman, M. (2022). *Human rights*. John Wiley & Sons.
12. Henkin, L. (2019). *The rights of man today*. Routledge.
13. Henrard, K. (2021). Devising an adequate system of minority protection: individual human rights, minority rights and the right to self-determination (Vol. 62). Brill.
14. Ishay, M. R. (2022). *The human rights reader: Major political essays, speeches, and documents from ancient times to the present*. Routledge.
15. Krause, T. (2023). *Inspiration: The Universal Declaration of Human Rights*. Coalescence.
16. Madani, R. A. (2019). Analysis of educational quality, a goal of education for all policy. *Higher Education Studies*, 9(1), 100-109.
17. McDougal, M. S., Lasswell, H. D., & Chen, L. C. (2018). *Human rights and world public order: the basic policies of an international law of human dignity*. Oxford University Press.
18. Nowak, M. (2021). *Introduction to the international human rights regime* (Vol. 14). Brill.

19. Rahman, M. H. (2020). The Universal Declaration of Human Rights (UDHR) as Foundation of the International Human Rights Law.
20. Raso, F. A., Hilligoss, H., Krishnamurthy, V., Bavitz, C., & Kim, L. (2018). Artificial intelligence & human rights: Opportunities & risks. Berkman Klein Center Research Publication, (2018-6).
21. Richardson-Little, N. (2018). The Universal Declaration of Human Rights in East Germany. *Socialist Appropriation and Dissident Contestation, 1948-1989*.
22. Risse, M. (2019). Human rights and artificial intelligence: An urgently needed agenda. *Hum. Rts. Q.*, 41, 1.
23. Rodrigues, R. (2020). Legal and human rights issues of AI: Gaps, challenges and vulnerabilities. *Journal of Responsible Technology*, 4, 100005.
24. Seatzu, F. (2019). On the meaning and scope of individual human duties and obligations in the American declaration of the rights and duties of man of 1948. *REIB: Revista Electrónica Iberoamericana*, 13(3), 13-33.
25. Sidi Bonabi, S. B., & Nedaei, M. (2018). A comparative study on human rights in the Universal Declaration of Human Rights and the Imam Sajjad.
26. Smith, R. K. (2022). *International human rights law*. Oxford University Press.
27. Svensson-McCarthy, A. L. (2021). *The International Law of Human Rights and States of Exception: With special reference to the travaux préparatoires and case-law of the international monitoring organs (Vol. 54)*. Brill.
28. Von Peter, S., Aderhold, V., Cubellis, L., Bergström, T., Stastny, P., Seikkula, J., & Puras, D. (2019). Open dialogue as a human rights-aligned approach. *Frontiers in Psychiatry*, 10, 449674.
29. Waltz, S. E. (2022). *Human rights and reform: Changing the Face of North African politics*. Univ of California Press.