
HUMAN RIGHTS AND THE PANDEMIC

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ABSTRACT

Freedom and non-discrimination are fundamental human rights that must be respected in all levels, yet this pandemic demonstrates why injustice and unfair policies are unacceptably harmful to everyone. In the war against the pandemic, we cannot afford to put someone behind. We are at a point where the whole world is combatting this deadly pandemic, with all our resources and help. It is very important to look at the current condition and how it equally affects each and every individual creating a huge impact on the society. It's high time we need to learn from our past epidemics and life threatening diseases to combat the current one and ensure the Human Rights remains intact. The impact of a pandemic creates a society where all human beings are facing the uncertainty of exercising their human rights. The paper provides how pandemic affects everyone equally and impacts giving rise to discrimination and restricting the Human Right of the individual along with this, the paper will also discuss the possible solutions to the problem in question. Today because we are facing one, one needs to be clear on what our Human Rights are and how can we be able to exercise while the whole world is going through a same pandemic with different impacts of it.

1. INTRODUCTION TO HUMAN RIGHTS

Every individual has integrity and worth. Recognizing and upholding, human rights is one way we acknowledge and value their intrinsic worth.

Human rights are a series of principles that deal with justice and equality. They value our autonomy in making decisions regarding our future and realising our full capacity as human beings. It's about living a life free of terror, abuse, and bigotry.

Human rights may be simply interpreted as a set of fundamental rights that citizens all around the world have accepted as essential. They include the rights to life, a fair hearing, protection from abuse and other barbaric and inhuman acts, freedom of expression, freedom of worship, and the right to health, education, and a decent standard of living.¹

This civil rights apply to all – men and women, young and elderly, wealthy and poor – regardless of our culture, where we work, or what we think or believe. This is what distinguishes human rights as "universal."²

Philosophers throughout the middle Ages, Renaissance, and Enlightenment were preoccupied with issues of justice. Most of the central ideas of this school of thought were that there was a "natural norm" that superseded the laws of kings. Individuals have such privileges merely because they were human beings, according to this definition.

The English barons compelled King John of England to sign Magna Carta (Latin for "Great Charter") in 1215. The Magna Carta was the first text to restrict the king's total authority to render him answerable to his people. It also established certain fundamental rights for citizens' security, such as the right to a hearing.³

The American Declaration of Independence (1776) was founded on the belief that such liberties, such as "freedom, liberty, and the pursuit of happiness," should be guaranteed to all citizens. Similarly, the French Declaration of the Rights of Man and Citizen (1789) questioned aristocratic power and recognised individuals' "liberty, dignity, and fraternity." The United

¹ Human Rights and Slavery available at <http://www.endslaverynow.org/act/educate/human-rights-and-slavery/> (last visited on May 14, 2021).

² Id

³ The background of Human Rights available at <https://www.youthforhumanrights.org/> (last visited on May 14, 2021).

States' Bill of Rights (1791) mirrored these principles, recognising equality of expression, faith, and the press, as well as the right of "peaceable" assembly, private property, and a fair trial.⁴

2. HUMAN RIGHTS: INTERNATIONAL APPROACH

The United Nations' Universal Declaration of Human Rights recognises basic human rights all across the globe. These declarations were made by the United Nations General Assembly on December 10, 1948, in the Palais de Chaillot in Paris, France. There were 48 votes in favour, none against, eight abstentions, and two no votes among the UN's 58 members at the time.⁵ The umbrella rights of the list of Basic Human Rights till date is:

1. All people are free and equal.⁶

Human beings are born with the same dignity and rights as other animals. They are gifted with reason and conscience and should behave in a brotherly manner toward one another.

2. There will be no prejudice/ Discrimination⁷

Everyone, regardless of race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other position, is entitled to all rights and freedoms. Furthermore, no discrimination should be established on the basis of a person's country or territory's political, jurisdictional, or international standing.

3. The right to life, liberty, and security of person.⁸

4. Slavery prohibited.⁹

No one should be kept in slavery or servitude, and slavery and the slave trade in all forms will be forbidden.

5. Torture and inhumane treatment are prohibited.¹⁰

⁴ Id

⁵ Human Rights Organisation available at <https://hroforyou.com/> (last visited on May 25, 2021).

⁶ What are Human Rights? Available at <https://globallives.org/participate/educate/?gclid> (last visited on May 25, 2021).

⁷ Id

⁸ Id

⁹ Id

¹⁰ Id

Torture, as well as cruel, inhuman, or degrading treatment or punishment, are prohibited.

6. The same legal right to utilise¹¹

Everyone has the right to be recognised as a person before the law in all places.

7. Before the law, everyone is treated equally.¹²

Everyone is equal in the eyes of the law, and everyone is entitled to equal protection under the law. Everyone has the right to equal protection against discrimination in violation of the law, as well as against encouragement to prejudice.

8. Right to be treated fairly in court everyone has the right to an effective recourse from competent national courts for actions that violate his constitutional or legal rights.¹³

9. No arbitrary detention¹⁴

10. The right to a fair trial¹⁵

In the determination of his rights and responsibilities, as well as any criminal accusation against him, everyone has the right to a fair and public hearing by an independent and impartial judiciary.

11. Guilty unless proven innocent¹⁶

Everyone accused with a crime has the right to be assumed innocent unless proven guilty in a public trial in which he has been given all the protections he needs to defend himself.

12. Right to personal privacy¹⁷

No one should be subjected to arbitrary intrusions into his or her private, family, home, or communication, or assaults on his or her honour or reputation. Everyone has a legal right to be protected from such interference or assault.

¹¹ Id

¹² Id

¹³ Id

¹⁴ Id

¹⁵ Id

¹⁶ Id

¹⁷ Id

13. Mobility and residence freedom¹⁸

Within each state's boundaries, everyone has the right to free movement and residence. Everyone has the freedom to leave and return to any nation, even his or her own.

14. The right to seek refuge¹⁹

This power cannot be used in prosecutions that are legitimately based on non-political offences or conduct that are opposed to the United Nations' goals and objectives.

15. Nationality rights²⁰

A nationality is a right that everyone possesses. No one's nationality or right to change nationality should be taken away from them arbitrarily.

16. The Right to marry and have a family²¹

Men and women of full age have the right to marry and have a family without regard to race, ethnicity, or religion. They have equal rights when it comes to marriage, both during it and after it ends.

17. The right to possess property²²

18. Religious and philosophical liberty²³

Everyone has the right to freedom of thought, conscience, and religion, which includes the freedom to change one's religion or belief and the freedom to express one's religion or belief in teaching, practise, worship, and observance, whether alone or in community with others and in public or private.

19. The right to freedom of thought and expression²⁴

¹⁸ Id

¹⁹ Id

²⁰ Id

²¹ Id

²² Id

²³ Id

²⁴ Id

Everyone has the right to freedom of thought and expression, which includes the freedom to hold beliefs without interference and the freedom to seek, receive, and transmit information and ideas via any medium and across all borders.

20. Right to assemble²⁵

The right to peaceful assembly and association is guaranteed to everyone. No one may be forced to join an organisation.

21. The right to participate in democracy²⁶

Everyone has the right to participate in his country's governance, either personally or via freely elected representatives. In his nation, everyone has the right to equal access to public service.

22. Right to social security²⁷

Everyone has the right to social security as a member of society, and is entitled to the realisation of the economic, social, and cultural rights that are essential for his dignity and the free development of his personality, through national effort and international cooperation, and in accordance with the organisation and resources of each State.

23. Right to work²⁸

Everyone has the right to work, to choose their own job, to work in equitable and beneficial circumstances, and to be protected against unemployment. Everyone has the right to equal compensation for equal effort, regardless of race or gender. For the protection of his or her interests, everyone has the right to create and join trade unions.

24. The right to relax and holiday

Everyone has the right to rest and recreation, which includes a fair restriction on working hours and paid vacations.

25. The right to social assistance²⁹

²⁵ Id

²⁶ Id

²⁷ Id

²⁸ Id

²⁹ Id

Everyone has the right to a reasonable standard of living for himself and his family, including food, clothing, housing, medical care, and other necessary social services, as well as the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other inability to work due to circumstances beyond his control.

26. Education as a right³⁰

Education is a right that everyone possesses. At least in the early and basic phases, education must be free. Elementary education will be required of all students. Technical and professional education must be widely available, and higher education must be open to everybody on a merit-based basis.

27. Cultural and artistic rights³¹

Everyone has the right to have his or her moral and monetary interests protected as a consequence of any scientific, literary, or creative work of which he or she is the creator.

28. Everyone has the right to a social and international order that allows them to fully exercise the rights and freedoms outlined in this Declaration.³²

29. Subject to Law³³

Everyone has responsibilities to the community, which is the only place where a person's individuality may develop freely and fully. Everyone shall be subject only to such limitations in the exercise of his rights and freedoms as are imposed by law solely for the purpose of ensuring due recognition and respect for the rights and freedoms of others, as well as meeting the just requirements of morality, public order, and the general welfare in a democratic society.

30. Human rights cannot be revoked.³⁴

Nothing in this Declaration should be construed as granting any State, organisation, or individual the right to participate in any action or conduct intended at undermining any of the rights and freedoms enshrined herein.

³⁰ Id

³¹ Id

³² Id

³³ Id

³⁴ Id

All of the aforementioned universal human rights are usually referred to as the "30 fundamental human rights" that must be recognised and safeguarded by the law.

3. UNDERSTANDING HUMAN RIGHTS IN INDIAN CONTEXT

Part III of the Constitution enshrines judicially enforceable basic rights, which include all basic civil and political rights as well as certain minorities' rights (Articles 12 to 35³⁵). The right to equality, the right to freedom, the right against exploitation, the right to religious freedom, cultural and educational rights, and the right to constitutional remedies are among them.

Fundamental rights are distinct from conventional rights in that they are unalienable. They cannot be abridged or taken away by any law, ordinance, custom, usage, or administrative order. Any legislation that violates a fundamental right is null and invalid.

Justice Beg remarked in *ADM Jabalpur v. Shukla*³⁶ that the purpose of defining some generic features of rights basic is to protect them against illegitimate invasion by the state's executive, legislative, or judicial organs. In *Golak Nath v. State of Punjab*³⁷, Chief Justice Subba Rao correctly said, "Fundamental rights are the current designation for what had been historically regarded as natural rights."

These essential rights are recognised by the Indian Supreme Court as Natural Rights or Human Rights. In *Keshavananda Bharati v. State of Kerala*³⁸, Sikri, the then Chief Justice of the Supreme Court, said, "I am unable to hold these laws to prove that rights are not inherent or inalienable rights." In truth, India was a signatory to the Universal Declaration of Rights, which declares some basic rights to be inalienable.

Fundamental rights are those great and basic rights that are recognised and secured as the natural rights inherent in the position of a citizen of a free society, according to Chief Justice Patanjali Shastri in *State of West Bengal v. Subodh Gopal Bose*.³⁹

Article 14⁴⁰ of the Indian Constitution declares that all people have the right to equal treatment under the law, while Article 15⁴¹ prohibits the state from discriminating against citizens based

³⁵ The Constitution of India.

³⁶ (1976) 2 SCC 521

³⁷ 1967 AIR 1643

³⁸ AIR 1973 SC 1461.

³⁹ 1968 AIR 281

⁴⁰ The Constitution of India

⁴¹ Id

on religion, race, caste, sex, or place of birth, and prohibits any restriction on citizens' access to public places, such as wells and tanks. Article 16⁴² guarantees equal opportunity for all people in terms of public employment. Untouchability is outlawed and made a crime under Article 17⁴³ of the Constitution. All non-military or non-academic titles are abolished under Article 18.⁴⁴

Article 19⁴⁵ guarantees all citizens the right to freedom of speech and expression, the right to peaceful assembly without arms, the right to form associations or unions, the right to freely move throughout India's territory, the right of residence, and the right to practise any profession or carry on any occupation, trade, or business.

Protection against ex post facto criminal legislation, the concept of another time convict, and the right against self-incrimination are all included in Article 20's⁴⁶ protection of a person who has been convicted of a crime. Article 21⁴⁷, the cornerstone of the Indian Constitution's basic rights protections, states that "no person shall be deprived of his life or personal liberty unless in accordance with the procedures provided by law."

The Eighty-sixth Constitutional Amendment Act of 2002 inserted Article 21A to the Constitution. Article 21A declares that the state must offer free and compulsory education to all children aged six to fourteen years in the manner determined by law. Article 22 outlines the rights of a person who has been arrested and detained by the government. These rights include the right to know the reason for your arrest, the right to legal counsel, and the right to appear in front of a magistrate within 24 hours after your arrest (except where one is arrested under a preventive detention law).⁴⁸

The right against exploitation includes the ban of human trafficking and forced labour (Article 23), as well as the employment of minors under the age of 14 in any factory, mine, or other dangerous occupation. All people have the same right to freedom of conscience and the right to profess, practise, and promote religion, subject to public order and morals (Article 25). Every religious denomination or segment has the right to create, operate, and govern religious

⁴² Id

⁴³ Id

⁴⁴ Id

⁴⁵ Id

⁴⁶ Id

⁴⁷ Id

⁴⁸ Id

institutions and concerns (Article 26). Nobody can be forced to pay religious taxes (Article 27).⁴⁹

Religious teaching is not permitted in publicly sponsored educational institutions (Article 28). Any group of citizens or a minority has the right to promote its own language, script, or culture, as well as to have access to State-funded educational institutions (Article 29) and to create and maintain educational institutions of their own choosing (Article 30).¹⁰ The right to Constitutional remedies include the ability to petition the Supreme Court of India to have the foregoing rights enforced (Article 32). The Supreme Court has broad constitutional authority in this area. Article 32(2) gives the government the ability to make instructions, orders, or writs to enforce basic rights. State (i.e. province) High Courts have the same authorities as the Supreme Court (Article 226).⁵⁰

Because any legislation that are inconsistent with or in violation of the rights provided by Part III of the Constitution are unconstitutional (Article 13), the courts have the authority to rule on their constitutionality. Furthermore, according to Article 141, the Supreme Court's decision is binding on all Indian courts. For the purpose of convenience, the Indian Constitution's fundamental rights may be separated into two categories: stated basic rights and other basic rights (rights not specifically enumerated)⁵¹

4. SIGNIFICANCE OF HUMAN RIGHTS

Tolerance, dignity, and respect are also values that will help minimise societal conflict. Putting human rights ideals into motion will assist us in creating the world we want.⁵²

The way we learn of and incorporate human rights theories has changed dramatically in recent decades. This has resulted in a number of promising outcomes: human rights awareness will inspire people and provide answers to complex problems.

Human rights play a significant role in how citizens engage with one another at all aspects of culture, including the families, government, classrooms, workplace, politics, and foreign affairs. As a result, it is important that all aspire to recognise what human rights are. It is simpler

⁴⁹ Id

⁵⁰ Id

⁵¹ Id

⁵² Supra note 3

for individuals to promote justice and the well-being of humanity because they have a stronger understanding of human rights.⁵³

5. IMPACT OF PANDEMIC ON HUMAN RIGHTS

Pandemics are a disaster for civil rights around the globe. Although adherence to maintaining human rights values has been eroding throughout the continent for many years, the pandemics generally hastens the breakdown of our society's political fabric, which is essentially what protects human rights.⁵⁴

This pandemic that the world is facing right now can be a lesson for the world to understand how the pandemic has unequal impacts.

However, the weak and marginalised in our societies are not only at higher risk of getting deprived of Human Rights during a pandemic, but they will always be disproportionately impacted by the harmful consequences of such circumstances. To put it another way, the limits have a significant effect on people's ability to exercise their complete spectrum of human rights.⁵⁵

History shows us how other epidemic like SARS has affected not just our life, economic and social conditions it has also created a huge Impact on the human rights. The government of different states had to even put up special provisions not to create discrimination as it is in direct proportion to the violation of Human rights and on the other hand it also created rules to discriminate amongst the citizens of the state. The pandemic or epidemic, often leave the sovereign to operate under pressure which if done poorly may lead to elimination of the concept of Human Rights while forming the strategies to combat the issue.

The 2009 influenza A/H1N1 pandemic also became a threat to the life, the lethal disease ended up creating the same level of discrimination as the doctors were forced to work and they were not covered under the umbrella of equal protection from the exposure to the virus. Any life threatening disease would surely put the life and human survival in jeopardy leaving some of the people with no Human rights to exercise a goal to put their vision to the greater good.

⁵³ Human Rights available at <https://www.ageuk.org.uk/> (last visited on May 14, 2021).

⁵⁴ The impact of the COVID-19 crisis on human rights available at <https://en.odfoundation.eu/a/27533> (last visited on May 14, 2021).

⁵⁵ COVID-19 and its human rights dimensions available at <https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx> (last visited on May 13, 2021).

The pandemics infect and destroy people of all ages, including children, the elderly, the wealthy, the poor, and those with existing medical conditions. Race, colour, sex, language, sexuality, sexual orientation or gender identification, political or other opinions, racial, cultural, or social heritage, land, disability, birth, or any other position are all unaffected. The pandemics are not prejudiced, and we shall not be prejudiced in our reaction to the danger it presents.⁵⁶

The pandemic generally causes perpetual circle in which high levels of inequity fuel its spread, which then deepens inequity. Long-standing inequalities and unfair underlying determinants many and intersecting dimensions of segregation and inequalities, like systemic gender disparity, must be included in the crisis response. But we must still stick to not allowing them to continue once the pandemic gets over.⁵⁷

6. CONCLUSION

I believe that not just in case of pandemics a person is born with the pre-determined basic 30 rights, which in any situation except a war, shall not create a huge impact on them. Going through different articles from the past epidemics and this pandemic I could only realise how much they affect not just our health but our polity, our rights. It is our duty to help revive the Human rights considering how important it remains for our dignity and peace at every chance we get, pandemic or not.

⁵⁶ <https://interactive.unwomen.org/multimedia/explainer/covid19/en/index> ((last visited on May 15, 2021).

⁵⁷ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19> (last visited on May 13, 2021).