



### A STUDY OF HUMAN RIGHTS & ITS LAW IN INDIA

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#### ABSTRACT:-

In this regard, Human Rights & its Law are mandatory for the existence of human life. Human Rights & its Law is not only mandatory in India but also in worldwide in the interest and welfare of world human & living creatures. The accessibility of Human Rights & its Law must be for all. In this connection, Human Rights & its Law are available in whole India and also in worldwide for all but in spite of the availability of the enforcement system, Human Rights & its Law is not being able to implement. The Fair, reasonable, satisfactory and other required things, as justice, beyond all the reasonable partialities, is not being able to deliver to the persons concerned. Why is it so? What are the reasons or causes liable for the same, keeping in view the aforesaid things, this research paper has been written which is helpful and beneficial for research scholar, students, Professors, teachers, institutions or organizations, governments, society, to conduct research and other required persons concerned.

#### INTRODUCTION:-

The history of Human rights & its Law is as old as the development & civilization of human. The word 'Human Rights' first of all was used by Thomas Paine which is the English translation of 'Rights of Man' under Francis declaration and with it the term 'Human Rights' has been found in UNO Charter. In the furtherance, pursuance and respect of 'Rule of Law' while complying with the 'Principle of Natural Justice' with equity, good faith, good conscious and justice in democratic India for realising the concept of the Welfare State, not only in India but also in worldwide. Human rights & its Law are mandatory with Universality, without having Human Rights & its Law, Human life is not possible.

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No one is something in the world first of all the persons is human, being human, all human has the designation of human which has provided by Nature free of cost that is being human bound with some certain kinds of limitations of liability or liabilities for about to arise consequences having set the accountability or responsibility or liability of the person, the person is made accountable and liable as well as of all the person as corporeal and incorporeal form is started to know as the same limitations or obligation or limitation or jurisdiction of corporeal and incorporeal liability. It is said that Human is the best, supreme and beautiful master piece, incredible, matchless, supernatural, extraordinary creation and the best art of God; God exists, lives in all human and living creatures with other connected things perpetually. In advancement of aforesaid Human Rights Law is the mother of all Laws. Human Rights are the father of all rights. Fundamental Rights are sons of Human Rights. Keeping in view of all above said Human Rights and Human Rights Law are the parents of all laws. All laws origin, create and legislate form Human Rights Law and subject to Human Rights Law. In this respect, nothing is beyond the limitation of Human Rights & Human Rights Law. All rights, duties, obligations, liabilities, responsibilities, accountabilities and limitations etc. are the under Human Rights & its Law.

Human Rights & its Law have been incorporated in India, under Constitution of India which is Supreme Law of our Country Part-III, Article 12 to 35 as Fundamental Rights, Part-IV Article 36 to 51 as Directive Principles of State Policy. It is essential and compulsory over here to say that Rights are uncompleted without duties which have been incorporated Part-IVA Article 51 A (a) to 51 A (k) as fundamental duties in Constitution of India, The Protection of Human Rights Act, 1993 An act to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of human rights and for matter connected therewith or incidental thereto and subjecting to aforesaid provisions interalia under various laws have been mentioned. The leading and landmark case laws have been and are delivered by Hon'ble Supreme court as apex court and High courts of India. Many Research Papers, Articles, Magazines, Research Journals, Newspapers and whereas Human rights law is one of subjects of International law therefore many International instruments as Universal Declaration of Human Rights 1948 is one of major foundations or sources of Human Rights & its Law was adopted on



December 10, 1948 which known as the Human Rights Day. The aforesaid declaration is the major source so in pursuance and furtherance of it the main two International covenants have been adopted as extension of the above declaration namely – International covenants on Civil and Political Rights 1966 and International covenants on Social, Economic and cultural rights 1966 along with above said many International Instruments are in existence in connection with Human Rights & its Law.

It is mandatory to clarify here that access to human rights and its law for all without having any discrimination. It is expedient to explain the view of Indian Judiciary summarily in connection with Human Rights and its Law as Menka Gandhi V/s Union of India<sup>2</sup>: - Hon'ble Supreme Court of India said that the origin of Human rights is freedom movement. The major purpose to place Human Rights in Constitution of India has to develop the Banyan tree of freedom in India. Romesh Thapar V/s State of Madras<sup>3</sup>: - Hon'ble Supreme Court of India held that Supreme Court is the protector of Fundamental Rights. State of Madras V/s B.G.Rao<sup>4</sup>: - held that Supreme Court is a watchful sentinel of Fundamental Rights. Neelbati Behra V/s State of Orisa<sup>5</sup>: - in this case Article 5 (9) of International covenants on Civil and Political Rights 1966 with under Article 21 Constitution of India has been applied. The apex court namely Supreme Court of India can issue the writs, directions and orders under Article 32 and High Courts can issue also the same under Article 226 Constitution of India in the protection and preservation of Human Rights and its Law.

In this respect, it is relevant to mention over here that Dr. Bhim Rao Ambedkar who was the architect of Constitution of India because he was drafted the same. He stated that Article 32 of Constitution of India is the soul of Constitution of India which is guaranteed for the enforcement of fundamental rights as human rights & its Law in India.

In the light of above, it can be said that such rights which are available, without enforcement or implementation are worthless. Despite, the availability of enforcement system, people is not being

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<sup>2</sup>AIR 1967 SC 1643.

<sup>3</sup>AIR 1950 SC 124

<sup>4</sup>AIR 1952 SC 196

<sup>5</sup>AIR 1993 SC 1960



able to get the required justice. Enforcement system for Human Rights & its Law is as under, just at a glance: Supreme Court of India, High courts of the state Concerned, The National Human Rights Commission, State Human Rights Commissions, Human Rights Court, Public Grievance system and other required systems. Now a –days, the condition of enforcement system of human rights & its Law is very misery in India. Many reasons or causes are behind the same as under: social economic, political, moral, spiritual, scientific, psychological, technical, cultural, traditional & custom and usage, lack of awareness, literacy, accessibility to people, life style, living standard, culture, thoughts, mind, attitude, atmosphere and practice of people of India.

### **Remedies and Suggestions: –**

Remedies and Suggestions in respect of promotion, education, research, literacy, respect, Enforcement, protection and preservation of Human Rights & its Law in the interest and welfare of world people and living creatures are as under:-

- 1-First of all primary, middle, higher, doctoral, post-doctoral and others education system must be reformed & which is required to alter, amend, vary must be done.
- 2- Spread Human Rights Literacy among various sections of society and promote awareness of the safeguards available for the protection & preservation of these rights through publications the media and other available means. The accessibility of knowledge, literacy with minimum good standard atmosphere must be reached to all people.
- 3- Human Rights, its Law & Enforcement's education must be imparted to all section of people and also must be included in syllabus of schools, colleges, universities level.
- 4- All section of people must be aware with various mediums as- Seminars, Conferences, workshops, campaign, camp and etc.
- 5-The strongest steps, measures and remedies must be taken, adopted against malicious litigation, false cases, abuse the judicial procedures and the system for the same strict laws must be adopted, enacted in public and justice interest.



**6-**Encourage the efforts of Non-Governmental organization and institutions working in the field of Human Rights & its Law.

**7-** Police & jail system, remand homes, establishments and others institutions where persons are kept, custody, detained or lodged for the purpose of treatment, reformation, protection must be reformed and Human Rights Law Officers must be posted in the same for the protection and preservation of Human rights & its Law in accordance with time and circumstances.

**8-**Study centers for education and research of Human rights & its laws must be established, reformed and promoted separately.

**9-** Vacated or vacant post of judges or judicial officers in respect of Indian judiciary must be filled as a result large pendency of cases must be decreased and ended which is one of major obstacles in path of justice in judicial process.

**10-** Indian Judicial service (IJS) must be initiated in the interest and welfare of people which has not been constituted so far from the date of the enforcement of Constitution of India.

**11-** Our judicial system is required to amend reform, alter and vary in accordance with time and circumstances.

**12-** The State Human Rights Commissions have not been established in the States must be established without delay.

**13-** The National Human Rights Commission & the State Human Rights Commissions must be more empowered.

**14-** Human Rights Courts must be established separately.

**15-**The protection of Human Rights Act 1993 must be amended, implemented and reformed from time to time.

**16-** Vacated or vacant posts in Human Rights Commissions must be filled.



**17-** The accessibility of Human Rights & its Law with Human Rights Commissions must be for all and to each person without any discrimination.

**18-** The procedure in connection with filing complaints to Human Rights Commissions are required to reform and amend suitably & effectively and must be easiest in accordance with the facility of people but subject to Law and preventive abuse of process.

**19-** The question in respect of large pendency in the Courts must be solved which is one of major obstacles in the path of law, justice and Enforcement System.

**20-** Speedy justice must be delivered without having violations of Human Rights and its Law with respect to aforesaid slept Governments must be wake up now with vigilance mandatorily because sovereignty is found in people for welfare of people.

**21-** No one must be deprived from his life & personal liberty and precious time of Human life by the system, procedures, people, governments and laws while abusing the laws with malafide.

**22-** The Code of Criminal Procedure 1973 & The Code of Civil Procedure 1908 and other procedures must be amended and reformed and time bound delivery of justice must be ensured in the interest & welfare of people.

**23-** Limitation for delivery of justice must be made in accordance with time and circumstances.

**24-** To prevent the violation of Human Rights & its Law the philosophical, psychological, moral and other required reformatory measures & remedies must be taken applying with the help of respective specialists and persons.

**25-** The special attention must be paid in respect of the training of Advocates and Advocate training centers must be established, reformed, advanced, protected, preserved and promoted with the most effective way; The Bar Council of India & The State Bar Councils must be taken the strongest reformatory steps with relation to above for interest & welfare of Advocates and people.





**25-**Injustice, atrocities, exploitations crimes, offences, and other acts against Human & Humanity and living creatures must not be favoured and tolerated.

**26-**Collective efforts for the protection & preservation of Human Rights & its Law must be made by us with co-ordination of governments, other institutions and establishments in the interest and welfare of world human & living creatures.

**27-**Human Rights Law Officers must be engaged, appointed, employed & recruited by the National Human Rights Commission and The State Human Rights Commissions for inquiry, investigation or for other works with respect to it, awareness, literacy, promotion, protection and preservation of Human Rights & its Law.

**28-** Abuse of systems, procedures, laws and other connected things must be prevented strictly under Rule of Law and subjecting to the Principle of Natural Justice.

**29-**Our system is mainly based on evidences, witnesses, which may be planed, premeditated, tempered, and false & fabricated in consequence of all, must be reformed and preventive and required measures or remedies must be taken in accordance with requirements, subjecting to time & circumstances.

**30-** Merely death penalty cannot prevent the violation of Human Rights & its Law in aforesaid connection, when all reformatory steps, measures, possibilities, remedies, other connected things, incidental facts, facts and etc. with respect to above are closed, failed and ended absolutely, wholly, exclusively, entirely and exhaustively in consequences of all, in case of rarest of rare, exceptional, extraordinary, the most exceptional, & extraordinary, the death penalty must be imposed, punished, awarded and sentenced in the interest & welfare of world human and living creatures subjecting to all required things or facts.

**31-**The National Human Rights Commission and the State Human Rights Commissions must be empowered for punishment, penal sentence in only petty cases.



**32-**Further more Human Rights Law Officers must be posted in Jails, Police Stations, other such institutions and establishments for promotion, education, research, literacy, protection and preservation of Human Rights & its Law.

**33-**With such other incidental or required things, amended, inserted, substituted and required or other functions and acts which are expedient, necessary, compulsory, essential & mandatory in accordance with social change, time & circumstances for promotion, education, research, literacy, protection and preservation of Human Rights & its Law in the interest of world people and living creatures must be made, subjecting to Law and adopting the dictum of Natural Justice.

**34-** The Vigilance Department separately of Human Rights & its Law must be established, reformed, advanced, protected and preserved with the requirements under time and circumstances.

**35-**The National Human Rights Commission and States Human Rights Commissions, Indian Judiciary, other Institutions, and agencies must be more vigilant, watchful sentinel for Protection and preservation of Human Rights & its Law.

**36-** Media must be more effectively co-operative with co-ordination of people collectively to assist of all section of people without having any kind of discriminations with veracity, truthiness for Protection and preservation of Human Rights & its Law.

**37-** Direct Recruitment for the post of Independent Human Rights Law Officer as Specialist must be started in India under Central Government with the establishment of Institution for Human Rights & it Law. Further more Human Rights Law Officers must be posted in Jails, Police Stations, other such institutions or organizations or establishments for promotion, education, research, literacy, protection and preservation of Human Rights & its Law.

**38-** Human Rights & its Law must be included in the syllabus as compulsory subject of Schools, Colleges, Universities and in other required institutions or organizations or establishments and Human Rights & its Law must be taught or imparted education, knowledge and literacy as well as above also to Employees, workers and all persons from time to time.





To sum up Law is the means of social change. We want to get the goal of justice with help of Law with collective efforts, co-ordination and co-operation with humanity of society, governments, agencies, institutions, establishments and us; the aforesaid remedies and suggestions are not exhaustive; all are subject to change, amend, alter, substitute & vary in accordance with time & circumstances for the interest & welfare of world human and living creatures.

### **CONCLUSION: –**

In a nut shell, Human Rights are the universal, inalienable, indispensable, Natural, basic or fundamental rights of individuals which are mandatory, essential and compulsory for the existence of human. The access of Human Rights & its Law must be for all without having any discrimination. Human rights are inherent to all human beings. These rights all interrelated, interdependent and indivisible. Human Rights & its Law have been placed under supreme law that is Constitution of India in our country. Romesh Thapar V/s State of Madras AIR 1950 SC 124 held that Supreme Court is the protector and watchful sentinel of Human Rights and its Law under Article – 32 and can issue Writ, direction and order High Courts have power to the same above said under Article – 226, Constitution of India for the protection and preservation of Human Rights and its Law as well as above the inheritance power has been vested in High Courts only in criminal cases but in civil cases all Civil Courts subject to law have inheritance power for preventing abuse of process and for the ends of justice. The Special Leave Petition can be filed under Article 136 Constitution of India. Rupa Ashok Hurra V/s Ashok Hurra AIR 2002 SC1771 It is the leading & landmark Judgment delivered by the Constitutional Bench of Hon'ble five Justices of Supreme Court, in this case propounded the Rule of Curative Petition; the Supreme Court of India has power in respect of Curative Petition. District & Session Court, Tribunals, other courts, Human Rights Commissions also are functioning in India for the protection and preservation of Human Rights & its law with aforesaid the provisions pertaining to Human Rights Court have been mentioned under section 32 of The Protection of Human Rights Act 1993 and other Institutions, NGOs, Societies and establishments are in existence. Recently India has been elected in second time as a member of United Nations Human Rights



Council (UNHRC) .India got 162 votes, with India 15 countries for three years have been elected which is worth appreciating and welcoming for our Country.

Indian Judiciary has played & is playing a key role for promotion, education, research, literacy, respect, protection and preservation of Human Rights & its Law in the interest and welfare of people and living creatures by means of Judicial Review, Judicial Activism, public interest Litigation, Writs etc. which worth remarkable & has gone down history and with it delivered many leading, landmark judgments. Various ambiguities have been found in respect of The National Human commission and State Human Commissions because Whether the establishments of said commissions are mandatory or not ?

In this connection, India has twenty nine States and seven union territories but total twenty four Human Rights Commissions have been constituted so far in which Meghalaya State has constituted the State Human Rights Commission but Chairperson/Members has not been appointed so far. The renaming states have not constituted the State Human Rights Commissions in their States. The list of States where the State Human Rights Commissions have been set up: - 1.Andra Pradesh 2.Assam 3.Bihar 4.Chhattisgarh 5.Gujrat 6.Himachal Pradesh 7.Jammu & Kasmir 8. Jharkhand 9.Karnataka 10.Kerala 11.Madhya Pradesh 12.Maharashtra 13.Manipur 14.Orissa 15.Punjab 16.Rajasthan 17.Tamil Nadu 18.Sikkim 19.Uttar Pradesh 20.West Bengal 21.Goa 22.Uttarakhand 23.Haryana 24.Tripura, Meghalaya; Presently Chairperson's and member's posts are vacant in respect of Himachal Pradesh State Human rights Commission. Constitution of State Human rights Commission has been notified but the appointment of chairperson or member in respect of Meghalaya State Human rights Commission has not been done.The post of Human Rights Law Officer or Human Rights Officer has not been found in The National Human Rights Commission as per conferred information by the National Human Rights Commission. On perusal of above things and facts, we come to the finding with respect to the condition of Human Rights & its Law are miserable, extremely misery, worth considering, reviewing, revising and most required for due deliberations.



In case of the role of The National Human rights commission & Human rights commissions have no power of penalty, have no separate independent agency for inquiry and investigation for the same are dependent on Government agencies in spite of all above said have played and are playing important role in case of Police custody, atrocities, exploitation, torture, fake encounters, death and others which is worth praising but are required to more empowered subject to law while amending the Protection of Human Rights Act 1993. Human Rights Courts under the said act must be constituted separately. Here it is worth describing that Constitution of India has been enforced with some provisions on 26 November, 1949 which is known as the Day of Law or constitution Day and whole has been enforced on 26 January, 1950 which is known as the Republic Day but since then 'All India Judicial Service' has not been constituted so far, Now is the controversial issue, magnum largest issue in respect of our system and Government of India is in question? Why is it so? Human Rights & its Law in historical perspective, the history of Human Rights & its Law originally is as old as the development & civilization of Human & their humanity which have developed bit by bit but due to some selfish, self-seeking ill feelings, grudges, thinking, thoughts abstracts and feelings have produced and got produced as a result fights, conflicts, wars have been waged that is the destruction of human being and Humanity have been done and got done in consequence of it the First & Second world wars, war between India- Pakistan and India-China etc. namely Human and their humanity destructed on the widest level. The condition of Human Rights & its Law in ancient India up to a specific limit used to good with spiritualism in good faith but not exhaustively. The people mostly effected by the Ramayan, Mahabharat, Geeta etc. but from the existence of crimes & violation of Human Rights & its Law cannot be refused. In medieval and modern India the condition of Human Rights & its Law was very misery, anxious as Dark Age. The destruction of Human and their humanity were on extreme; make & be slave under compulsion, slavery, inhuman, degrading treatment castes & religious issues, atrocities, exploitation Fiercely, flagrantly were in existence and people were highly or highest suffered and murdered.

Now in present scenario, the condition of Human Rights & its Law are not good so far, in spite of existence of the respective, protective machineries, mechanism still Human Rights & its Law are being violated, contravened, and infringed grossly, grievously rashly, heinously, brutally, cold



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ISSN: 2455-443X

Vol. 1, Issue-IV  
Sep. 2016

Impact Factor : 4.012 (IIJIF)

blooded murders openly, broad day light on the widest level. Every section of people are suffering from the system, crime, corruption, degrading, inhuman treatment castes & religious issues, atrocities, exploitations and the act against human & their humanity which is the most required to reform and prevented.