CHAPTER 4
INDIAN CONSTITUTION, HUMAN RIGHTS
AND GANDHIJI

"The fundamental objection surely is that a right to be protected from the distress which is inseparable from the bare knowledge that others are acting in ways you think wrong, cannot be acknowledged by anyone who recognises individual liberty as a value. For the extension of the utilitarian principle that coercion may be used to protect men from harm, so as to include their protection from this form of distress, cannot stop there. H.L.A.Hart, Law

Development of the theory and practice of human rights

The doctrine of human rights rests upon a particularly fundamental philosophical claim: that there exists a rationally identifiable moral order, an order whose legitimacy precedes contingent social and historical conditions and applies to all human beings everywhere and at all times. Accordingly moral beliefs and concepts are capable of being objectively validated as fundamentally and universally true. The contemporary doctrine of human rights is one of a number of universalist moral perspectives. The origins and development of the theory of human rights is inextricably tied up with the development of moral universalism. The history of the philosophical development of human rights is punctuated by a number of specific moral

doctrines which though not themselves full, and adequate expressions of human rights, have nevertheless provided a number of philosophical prerequisites for the contemporary doctrine. These include a view of morality and justice as emanating from some pre-social domain, the identification of which provides the basis for distinguishing between 'true' and merely 'conventional' moral principles and beliefs. The essential prerequisites for a defense of human rights also include a conception of the individual as the bearer of certain 'natural' rights and a particular view of the inherent and equal moral worth of each rational individual.

Human Rights Movement: Early Political, Religious, and Philosophical Sources

The concept of human rights has existed under several names in European thought for many centuries, at least since the time of King John of England. After the king violated a number of ancient laws and customs by which England had been governed, his subjects forced him to sign the Magna Carta, (also called Magna Carta Libertatum, was an English charter originally issued in 1215. Magna Carta is the most significant early influence on the long historical process that led to the rule of constitutional law today. Magna Carta was originally created because of disagreements between the Pope, King John and his English barons about the rights of the King. Magna Carta required the king to renounce certain rights, respect certain legal procedures
and accept that the will of the king could be bound by law) or Great Charter, which enumerates a number of what later came to be known as human rights. Among them were the right of the church to be free from governmental interference, the rights of all free citizens to own and inherit property and be free from excessive taxes. It established the right of widows who owned property to choose not to remarry, and established principles of due process and equality before the law. It also contained provisions forbidding bribery and official misconduct. Political and religious traditions in other parts of the world also proclaimed what have come to be called human rights, calling on rulers to rule justly and compassionately, and delineating limits on their power over the lives, property, and activities of their citizens.

In eighteenth and nineteenth centuries in Europe several philosophers proposed the concept of "natural rights," rights belonging to a person by nature and because he was a human being, not by virtue of his citizenship in a particular country or membership in a particular religious or ethnic group. This concept was vigorously debated and rejected by some philosophers as baseless. Others saw it as a formulation of the underlying principle on which all ideas of citizens' rights and political and religious liberty were based.

In the late 1700s two revolutions occurred which drew heavily on this concept. In 1776 most of the British colonies in North America proclaimed their independence from the British Empire in a document which still stirs
feelings, and debate, the U.S. Declaration of Independence. In 1789 the people of France overthrew their monarchy and established the first French Republic. Out of the revolution came the "Declaration of the Rights of Man."

The term natural rights eventually fell into disfavor, but the concept of universal rights took root. Philosophers such as Thomas Paine, John Stuart Mill, and Henry David Thoreau expanded the concept. Thoreau is the first philosopher to use the term, "human rights", and does so in his treatise, *Civil Disobedience*. This work has been extremely influential on individuals as different as Leo Tolstoy, Mahatma Gandhi, and Martin Luther King. Gandhi and King, in particular, developed their ideas on non-violent resistance to unethical government actions from this work. Other early proponents of human rights were English philosopher John Stuart Mill, in his Essay on Liberty, and American political theorist Thomas Paine in his essay, *The Rights of Man*.

**The contemporary significance of human rights**

Human rights have been defined as 'basic moral guarantees that people in all countries and cultures allegedly have simply because they are people. Calling these guarantees "rights" suggests that they attach to particular individuals who can invoke them, that they are of high priority, and that compliance with them is mandatory rather than discretionary. Human rights are frequently held to be universal in the sense that all people have and should
enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country. The moral doctrine of human rights aims at identifying the fundamental prerequisites for each human being leading a minimally good life. Human rights aim to identify both the necessary negative and positive prerequisites for leading a minimally good life, such as rights against torture and rights to health care. This aspiration has been enshrined in various declarations and legal conventions issued during the past fifty years, initiated by the Universal Declaration of Human Rights –1948\(^2\) and perpetuated by, most importantly, the European Convention on Human Rights –1954\(^3\) and the International Covenant on Civil and Economic Rights-1966.\(^4\)

Together these three documents form the centrepiece of a moral doctrine that many consider to be capable of providing the contemporary geopolitical order with what amounts to an international bill of rights. However, the doctrine of human rights does not aim to be a fully comprehensive moral doctrine. An appeal to human rights does not provide us with a fully comprehensive account of morality per se. For example Human rights do not

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\(^3\) Office of High commissioner for Human Rights, 2006 April 19, http://www.hri.org/docs/ECHR50.html

provide us with criteria for answering such questions as whether telling lies is inherently immoral, or what the extent of one's moral obligations to friends and lovers ought to be? What human rights do primarily aim to identify is the basis for determining the shape, content, and scope of fundamental, public moral norms. Human rights aim to secure for individuals the necessary conditions for leading a minimally good life. Public authorities, both national and international, are identified as typically best placed to secure these conditions and so, the doctrine of human rights has become, for many, a first part of moral call for determining the basic moral guarantees all of us have a right to expect, both of one another but also, primarily, of those national and international institutions capable of directly affecting our most important interests.

The doctrine of human rights aspires to provide the contemporary, allegedly post-ideological, geo-political order with a common framework for determining the basic economic, political, and social conditions required for all individuals to lead a minimally good life. While the practical efficacy of promoting and protecting human rights is significantly aided by individual nation-states' legally recognizing the doctrine, the ultimate validity of human rights is characteristically thought of as not conditional upon such recognition. The moral justification of human rights is thought to precede considerations of strict national sovereignty. An underlying aspiration of the doctrine of human rights is to provide a set of legitimate criteria to which all
nation-states should adhere. Appeals to national sovereignty should not provide a legitimate means for nation-states to permanently opt out of their fundamental human rights-based commitments. Thus, the doctrine of human rights is ideally placed to provide individuals with a powerful means for morally auditing the legitimacy of those contemporary national and international forms of political and economic authority which confront us and which claim jurisdiction over us. This is no small measure of the contemporary moral and political significance of the doctrine of human rights. For many of its most strident supporters, the doctrine of human rights aims to provide a fundamentally legitimate moral basis for regulating the contemporary geo-political order.\(^5\)

**Human Rights and Indian Philosophy**

The concept of Human Rights as we consider today is not a concern for Indian philosophy. We can see principles favoring human rights aspects in some of the texts. But this was not the position in most of the texts. The then existing society was not actually aware of the human rights, which is equally applicable to everybody. It was the time, the cast system prevailed in it’s original rigidity.

The Laws were not equally applicable to all. In a society, which is mainly divided in to four Sections as-Brhmana, Kshatriya, Vysia, Sudra;

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Brahmanas were considered as the top in the hierarchy. At that time all Laws were in favor of them. For eg. Manusmriti says to keep off literate sudran. Moreover advocating dharma was considered as a crime, if done by sudra.

According to Manusmriti

"Dharmopadesam darpena
vipranamasya kurvatha
thaptamasechayeth thylam
vakthre srothre cha parthiva"\(^6\)

Which means, Sudra who is advocating dharma with ego to the brahmana is to be convicted by pouring hot oil into the mouth and ear. Moreover the same crime attracted different punishments to different classes.

Sudras were not even considered as human beings. Untouchability is the main example of human rights violation at that time. Each class should stay certain distances from its upper layer.

GANDHIAN PHILOSOPHY AND HUMAN RIGHTS

Mahathma Gandhi was a religious humanist who stood for truth and justice as a great defender and promoter of human rights. For Gandhi, all men are brothers and God is the father of all. According to Gandhi all have basic right for equality, human fraternity and freedom as the children of the

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\(^6\) Manusmrithi, Mathrubhumi books, Kozhikode p.362.
god. That is why as early as in 1893, Gandhi fought against the violations of the basic human rights.

Gandhi defended the value and worth of every person, and asserted the potentialities and responsibilities of man as individual and social being. Every person possesses an eternal soul and therefore should be treated with due respect. "Man alone is made in the image of God. That some of us do not recognize that status of ours, makes no difference except that then we do not get the benefit of the status."  

Gandhi’s doctrine of equality was a corollary of his belief in the spiritual essence of all human beings—men and women. He did not endorse any discrimination between man and woman. "We have to realize equality in the midst of apparent external inequality. Assumption of by any person over any other is a sin against God and Man."  

Gandhi claimed for all men and women fair and equal access to economic, social, educational and cultural benefits as well as to public offices and political institutions. The satyagraha in South Africa was a crusade for social equality. Gandhi’s ideas regarding a classless society have found a prominent place in India’s Constitution. Article 15 of the constitution declares that the state shall not discriminate against anyone on the ground of religion, caste, sex, descent, place of birth etc.

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7 Collected works of Mahatma Gandhi, XXX1, p101 Govt. of India 1958-1984.
9 Constitution of India, Eastern Book Company, Lucknow, 1980 p.5,
Thus “equality in the eye of law”\textsuperscript{10} is affirmed. One of the monumental achievements of Mahatma Gandhi is the removal of untouchability. In the Indian society untouchability was one of the several forms of human rights violation. Untouchability was abolished by Article 17 of the Indian Constitution\textsuperscript{11} and the practice of it became punishable. Untouchability Act of 1957 gave more particulars about the offences in this regard and fixed penalties for them.

The Mahatma unhesitantly stood for the equality of women with men. He was uncompromising in the matter of women’s rights. The process of emancipation of women in India has been accelerated through education. Gandhi tried to enlighten the womenfolk and free from the chains that held them subject to the power and arrogance of men; he guided the women of India to the fast track of emancipation. The legal and customary status of women was bad throughout the country and needed radical change. There was always one argument or other to keep women slaves of men or make them object of man’s lust. Women were in the condition somewhat of the slave of old who did not know that she could or even had to be free. “By sheer of a vicious custom, even the most ignorant and worthless men have been enjoying a superiority over women which they do not deserve and ought not

\textsuperscript{10} CWMG, LXVIII, p.90.
\textsuperscript{11} “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law- Constitution of India, Eastern Book Company, Lucknow, 1980, p.6.
Man and women are fundamentally the same and basically equal." The soul in both is the same. The two live the same life, have the same feelings. Each is a compliment of the other. The one cannot live without the other's active help.13 Gandhi decried the wrongs done to women in the name of law, tradition or religion. "Legislation has been mostly the handiwork of man; and man has not always been fair and discriminate in performing that self-appointed task; the largest part of our effort in promoting the regeneration of women should be directed towards removing those blemishes which are represented in our Shastras as the necessary and ingrained characteristics of women"14

The legal status of equality has been established through several acts. In 1955 the Hindu Marriage Act was passed. It is one of the important Acts in favour of women. After the enactment divorce proceedings can be begun by women. Monogamy has been enforced. In 1956 the Hindu Succession Act gave women rights to inherit money and property. The widow has become the full heir of her husband and guardian of her children.

All should have equal rights

"So long as a person, whether man or women, is oppressed and does not enjoy equal rights with other citizens of the country, we cannot

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enjoy the freedom". Gandhi’s doctrine of equality was a corollary of his belief in the spiritual essence of all human beings—men and women. “We have to realize equality in the midst of apparent external reality. Assumption of superiority by any person over any other is a sin against God and Man”.16

The essence of Gandhian philosophy is that Man’s dignity does not originate from his caste or class, career or success. Gandhi attacked the unfounded theory of cast or race superiority and said “A civilized race coming into contact with a savage one owes it the latter to raise it to the own level”.17 Gandhi was liberal enough to co-operate with agnostics and atheists in order to safeguard human dignity and to promote authentic humanization. And it is the respect of for this dignity that gives birth to their effective protection. According to Gandhi, more important than things and possessions is man himself.

He published in young India of October 22, 1925 a list of seven social evils: Wealth without work, pleasure without conscience knowledge without character, commerce without morality science without humanity politics without principle and worship without sacrifice. People need to know these not merely through the intellect “but know them through the heart so as to avoid them”.18

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15 Selected WMG, Vol VI, p-315, Allahabad.
Gandhi regarded the restoration of the rights of the dispossessed - be they peasants, villagers, scavengers, minorities or immigrants - as an indispensable condition for the establishment of *Ramarajya* - the Kingdom of god - in the world. Justice is devotion to the cause of the oppressed and underdeveloped. His identification with the lowliest and the despised was clear proof of his dedication to their cause. He was a lawyer who was not satisfied with 'legal justice'. "...It is possible that proceedings may be legal which are by no means just".19

He sought a radical solution to violations of human rights. When he was physically attacked out of racial prejudice, he did not immediately and directly go to court to get the aggressor punished; rather he aimed at eradicating the racial prejudice itself. Such was his approach to poverty. Liberal capitalism assumed that if capital is allowed to make large profits, then the benefits of the economic growth would automatically trickle down to the poorest levels of society. But this assumption contradicts reality. Gandhi’s objective was to discover the roots and causes of poverty and to find out “remedies to vindicate fundamental equality”.20

UNIVERSAL DECLARATION OF HUMAN RIGHTS AND GANDHIAN PHILOSOPHY

On 10th December 1948 United Nations pronounced International Human Rights Declaration. Gandhi was not a participant of in the sessions of the Human Rights Commission of the UN or in the General Assembly sessions. We cannot speak of any direct influence from him on the formulation of the Universal Declaration of Human Rights. But by 1940 he had become an internationally well known figure and the impact of his words and ideas was felt over the world.

His efforts and arguments to promote and defend human rights were widely known. Gandhi was asked by Julian Huxely, the then Director General of UNESCO to give his opinion concerning the project of Universal Declaration of Human Rights. His reply was very brief as he had no time for a long and studied comment. Insistence on fulfilling one's duties was the main point therein. He disclosed that he had learned one precious thing from his illiterate but wise mother, i.e., rights derive from duties as well. The right of one person invokes the obligation of others to recognize and respect it. Article 29 of the Universal Declaration refers to duties. UNESCO gathered into a book the views or texts which exercised some moral influence on the experts who drafted the declaration. Gandhi's short comment has been given

the pride of place as the first article in this volume. There were different types of humanism that influenced the commission on human rights. Gandhi stood for the ideal of brotherhood and sisterhood of all humanity. The first article of the Universal Declaration reflects exactly what Gandhi stood and worked for: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.  

India has no prominent heritage regarding the principle of Human Rights. As stated earlier the concept is something new, while comparing with the history of Indian philosophy. Later various renaissance movement emerged in India which has some significance with that of human rights. The principles of Gandhiji, the ideological as well as social resistance initiated by Sree Narayana Guru can be described as the foundation stones of Human Rights movements in India. The fight against Sathi (the system of burning wife along with the body of her deceased husband – the concept was that she is voluntarily submitting to the flames) lead by Rajaram Mohan Roy and the social agitations for widow remarriage can also be considered as the movements for human dignity; which is the basis of human Rights.

The cast system and it's heinous practice is the worst example of Human rights violation in India. In south India Sree Narayana fought against

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this. According to him “Whatever may be the language, etc – because they
belong all to the same kind of creation, there is no harm at all in their dining
together or having marital relations with one another”. 

Gandhian Philosophy even stood as a guidance to the world scenario of
Human Rights. For the same reason UNESCO requested Gandhiji to send his
opinion, in a view to include his ideas in the project of Universal Declaration
of Human Rights.

The legal development regarding Human Rights in India reached only
upto the enactment of The Protection of Human Rights Act-1993 and
formation of National, State Human Rights Commissions. There are certain
sections in the Indian Penal Code which is to be changed or modified with
reference to the human Rights principles. Criminal Procedure Code is another
example. The social perspectives of early Victorian stage is reflected in these
enactments. Death penalty is a prominent example, which is to be deleted in
the light of present Human Rights Concepts. It is a violation of human rights
primarily in the light of Article 3 and 5 of Universal Declaration of Human
Rights 1948

23 Nataraja Guru, Life and teachings of Narayana Guru ,East West University
Nataraja Guru (P. Natarajan) was a direct disciple of Narayana Guru, a great sage
and social reformer of India. Nataraja Guru founded Narayana Gurukulam, a world-
wide contemplative community based on the teachings of Narayana Guru. He
translated into English and wrote commentaries on all the major works of Narayana
Guru.
Article 3

"Everyone has the right to life, liberty and security of person"

Article 5.

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."\[^{24}\]

PRINCIPLES OF HUMAN RIGHTS IN CONSTITUTION AND INTERNATIONAL HUMAN RIGHTS DECLARATION

The concept of Human Rights is novel as it reflects the basic moral principles. The principle of Natural justice is also embodied in it. It is a fact that colonial laws stood only for penalising against crimes. It also kept vigilance against breach of contacts. Human rights is not a concern the colonial law makers. Even natural justice principles was defined with the tune of the state and also for the benefit of upper class. But modern law tried to be progressive. There are a number of reasons for this change. The first and second world wars changed the outlook of the rulers. The miseries of the war victims open the eye of politicians. Many political thinkers and social organisations pointed out violation of human rights during the war. The emergence of United Nations paved way to an organised movement towards Human Rights. The International Human Rights Declaration made a new era in this scenario. On 10th December 1948 United Nations pronounced an

International Human Rights Declaration which includes 30 sections. The situation which compelled the UN to pronounce such a declaration was the massacre done by the Nazis against Jews. Between 1936 to 1945 about 60 lakh of Jews were killed by Hitler. Moreover, Second World War was also a warfront against Human Rights and democracy.

Preamble to The Human Rights Declaration itself shows the aim and purpose of the document. These can be read as follows:

_Whereas_ recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

_Whereas_ disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

_Whereas_ it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

_Whereas_ it is essential to promote the development of friendly relations between _nations_.

_Whereas_ the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of
the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

Now, therefore, the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the people of Member States themselves and among the peoples of territories under their jurisdiction.²⁵

Indian Constitution and Human Rights

Indian constitution which came into force on 26th January 1950 shows an eager consideration towards Human Rights. The makers of the constitution

adopted a number of principles from various sources. Normally the concept of modern political thinkers and legal philosophers might have influenced them.

Examining various articles of the Declaration with the articles of our constitution we can find essence of Human Rights Declaration in our constitution.

Article 1 of the Declaration directs-

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article-7 says

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.\(^{26}\)

Article14 of the constitution ensures-

The state shall not deny to any person equality before the laws within the territory of India.\(^{27}\)

Other articles of Declaration and corresponding articles of the constitution were given below:

Declaration-Art 2


Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.  

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(3) Nothing in this article shall prevent the State from making any special provision for women and children.

Declaration-Art 3

Everyone has the right to life, liberty and security of person. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 4-

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.\(^{30}\)

Corresponding articles in the constitutions are

Art 21

*Protection of life and personal liberty.* - No person shall be deprived of his life or personal liberty except according to procedure established by law.\(^{31}\)

Article-23

Prohibition of traffic in human beings and forced labour.-

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.\(^{32}\)

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\(^{32}\) Ibid p.9.
Article 20 of the constitution states

Article-20. Protection in respect of conviction for offences.- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (2) No person shall be prosecuted and punished for the same offence more than once. (3) No person accused of any offence shall be compelled to be a witness against himself.33

The essence of Article 20 of the constitution could be read in the articles 11, 6, of the Declaration.

They are

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article-6

Everyone has the right to recognition everywhere as a person before the law.

Important articles of Indian constitution Article-32&226 have close similarity to the Article 8 of the Declaration.

Decl. 8-"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."\(^{34}\)

Corresponding articles ensures-

Art-32

Remedies for enforcement of rights conferred by this part-

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.\textsuperscript{35}

Article 226 of Constitution ensures similar rights-

Power of High Courts to issue certain writs.-

(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings

relating to, a petition under clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4)] The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.36

Illegal arrest and detention are the evil parts the state. Advocates of the Human Rights are always keeping vigilance against these vices. Sections 9&10 of Declaration directs certain guidelines –

36 Constitution of India, Eastern Book Company, Lucknow. 1980 p. 76-77
Article 9-

No one shall be subjected to arbitrary arrest, detention or exile.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.\(^{37}\)

Articles 22 and 39a are equivalent contribution in The Constitution.

39(a) Equal Justice and Free Legal aid

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.\(^{38}\)

Art-22. Protection against arrest and detention in certain cases

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.


(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply-

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).
(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe-

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).39

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These are the main Articles of International Human Rights Declaration and corresponding Articles of Indian Constitution which shows a give and take relationship. The legal system of a country draw ample materials for it’s development not only from the social setup of it’s own but also from relevant international covenants. As stated earlier Indian Constitution is an example for this. Here the International Human Rights Declaration is an essence noble principles and humanitarian philosophies selected from the entire world. Various theories relating Justice and Humanism inspired the articles.

The declaration came into force on 1948 and nearly 48 years elapsed. Philosophical and legal outlook were apparently changed. Amendments are necessary in the Declaration. Eco-Feminist political theories developed in the recent years should be considered while defining Human Rights. There need change in Human Rights protection laws. Articles in the constitution without humanitarian face should also be changed.