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HUMAN RIGHTS: AN ILLUSION OR REALITY?

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ABSTRACT

Constitution of the nation is basic foundation for formation of any law in that particular nation and any law forms out of the boundaries created by constitution amounts to ultra vires and even if in any circumstance that ultra-vires act is need of the hour in that nation then constitution can be amended to bring that law and avoid ultra-vires (Beyond the scope or in excess of legal power or authority)

Constitution is formed so that public of the nation be protected, and democracy and human rights be implemented in the most effective manner.

The drafting committee takes various factors into consideration while drafting the constitution, and the essential feature of good constitution is its responsiveness to dynamic environment (how flexible the constitution is and how easily a new law be implemented without amending the constitution)

Human rights are the basic rights to live with dignity and equality and many others given to individuals for being humans. In simple terms some rights are given to human beings because of the virtue of being human (these are also called natural rights given by nature to all human beings).

The provision of implementation of human rights may differ from country to country because of various factors. In this paper author has tried to compare human rights laws of Norway with Indian humanitarian laws.

Points of discussion are-

Human rights laws, implementation of human rights laws, convention of human rights, benefits to all, comparison of laws.

Key words- ultra vires, human right, conventions, laws.

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HISTORY AND DEVELOPMENT OF HUMAN RIGHTS IN INDIA

Ancient	Medieval	Modern
<p>In India concept of human rights can be seen from our Vedas, Arthshartras, Gita, and other holy books. Even Ramayana-known as dharma Yudh to protect the basic rights of individual is an evidence of presence of human rights in ancient era. Mahabharatshows the fight of freedom and to live with dignity and respect. Presence of these evidence tell us that there was existence of human rights in India during ancient era. (but there were loopholes even in that era because patriarchy and male dominance was there, and one cannot deny the fact that where there is male dominance there can never be 100% applicability of human rights.</p>	<p>This period can be classified the period of Mughals-after the end of Indian rulers' era in India and starting of Mughal rule the concept of dharma and human rights starts evading and exploitation of humans by Mughals is the challenge was the challenge faced by concept of dharma and human rights. Then the polices of Akbar brought slight change in this scenario and Hindus&non-Muslims were also given some rights. But this also diminished during the rule of Aurangzeb (the most cruel of all), he forced KashmiriPandits to change their religion and convert them in Muslims but revolution started with bhakti movement (by saints , gurus and many others) to resort belief in dharma and human rights</p>	<p>With the end of Mughal era and start of British to till date can be called as modern era in human rights development- Britishers not only attempted to evade our culture but also damaged our political, economic and social practices. But they gave India concept of written laws and functioning of legal system. Britishers exploited India in every aspect and gave a irreparable damage. And various leaders and nationalists came together for protection of rights and dignity of those living in the country and eventually brought swaraj-independence in the country. And became signatory of many conventions to promote and protect rights of citizens and non-citizens of country. And even today also we are growing and moving towards its goals of providing highest level of protection of human rights.</p>

India is a signatory of UDHR and implemented and embedded various provisions in its constitution to provide protection to citizens and non-citizens.

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Part 3 of Indian constitution talks about fundamental rights of an individual. These are the basic rights given to citizens and non-citizens. There are six fundamental rights recognised by the Indian constitution:

1. Right to equality (Articles. 14-18)
2. Right to Freedom (Articles. 19-22)
3. Right Against exploitation (Articles. 23-24)
4. Right to Freedom of Religion (Articles. 25- 28)
5. Cultural and Educational Rights (Articles. 29-30), and
6. Right to Constitutional remedies (Articles. 32-35).

There are constitutional rights and fundamental rights given in Indian constitution and for violation of fundamental right one can move directly to Supreme Court to raise his voice against violation under article 32.

Whereas for violation of constitutional rights - one has to follow the prescribed path to seek justice.

INTRODUCTION

Every independent country follows what is stated in the constitution of that country. Constitution of a country is a base on which whole structure of law bodies and other functionaries of that country stand upon. Anything done or law formulated out of the boundary lines of constitution (without amending it) amounts to an ultra vires act, and it will also be unconstitutional in the eyes of law and will be void-ab-inito.

Does income/money have something to do with protection of rights of the individual?

Answer - In reality NO, legal system of every country is independent and solely look at the constitution of the country to solve the dispute (different acts are sub part of the constitution)

But let's assume yes it impacts the legal system in negative way. Let's find out how?(Based on hypothetical situations)

Division of income group in ordinary parlance in any country:

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HIGHER
MIDDLE
LOW

INCOME GROUPS

BUT IS THIS DIVISION CORRECT?

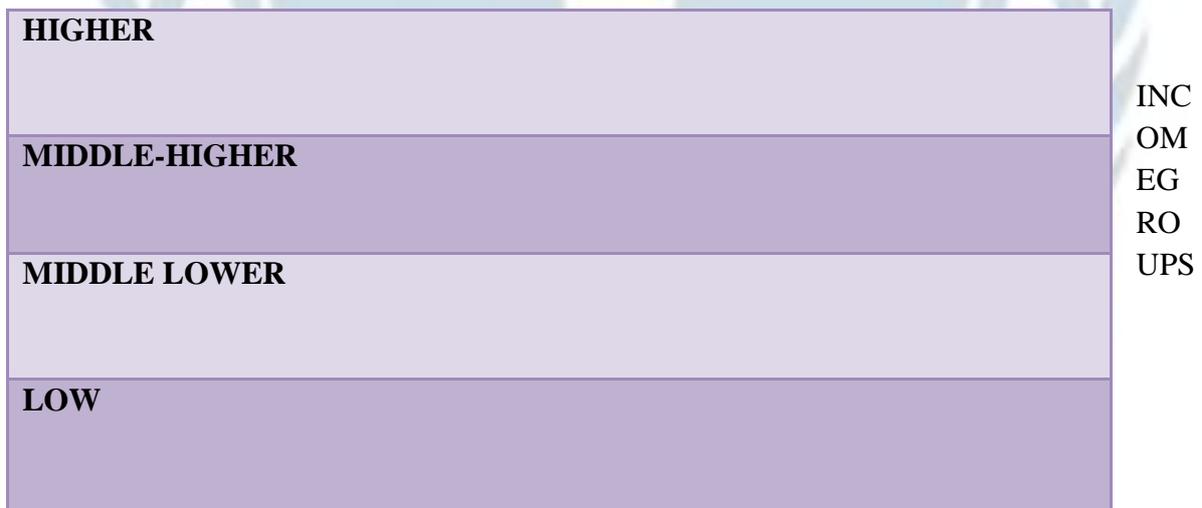
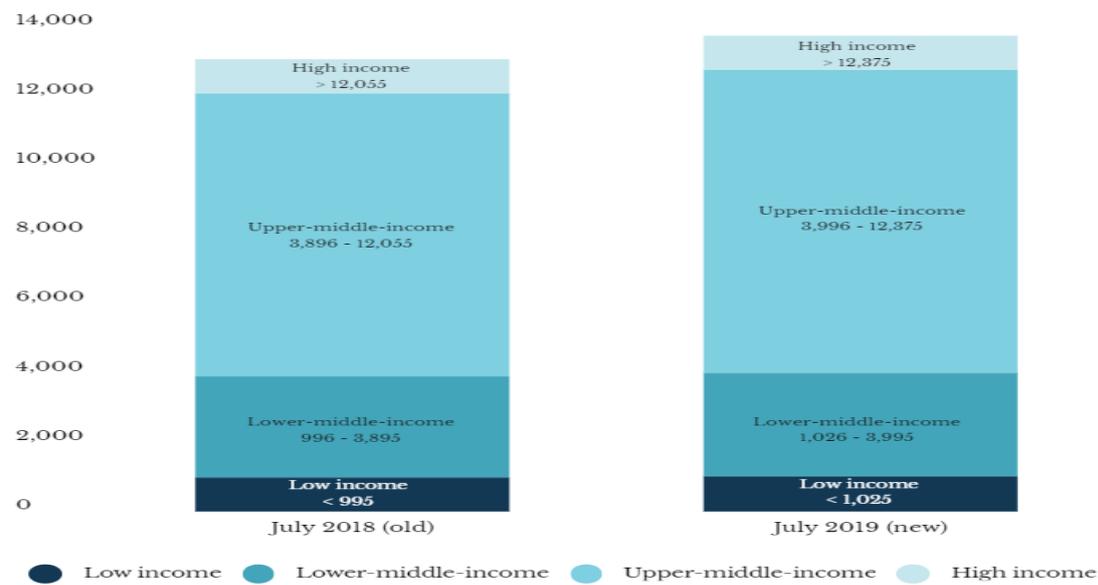
YES/NO DEPENDS ON THE MIND SET OF INDIVIDUALS

India being a country with large population size and unequal distribution of population among the states create it extremely difficult to implement a law enacted by the central legislature as the state population size and customary laws differs from one to another. Similarly, the level of income of each state differs from one another. And in each state, there are individuals divided into different income groups and in general parlance these groups are said to have been divided into 3 categories but looking thoroughly into the matter the category is sub divided into further parts. This further division plays a vital role in the society and that is explained below-

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Income Classification Thresholds: July 2019 Vs July 2018



The sub-division is done because in countries with large population the area covered by middle class holds is greater than any other class, and this middle section is always in question that the policy of government is always favourable to high income and low-income groups and middle class is the one who gets grind like grains. And therefore, less attention is given to them. And not only in respect of income but also in protection of rights this division plays a vital role.

The upper middle and the lower middle class should not be comprised in one section as middle. This could affect rights of those belonging to of lower middle section.

This is also the point of comparison between Norwegian and Indian laws.

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Norway is, as compared to India, less populated and thus implementation of laws and providing benefit to all section of the country is easier in comparison.

Here in India middle section is so densely populated that providing benefit to all is a very difficult task for government.

In Indian context the population density plays vital role in formation and implementation of laws and subdivision of income group is done so that benefit and protection to all classes be provided with less hassle and difficulties.

Given below is the attempt made by author to classify these income group and how much potential they have to claim damages in case of infringement of rights with a help of a matrix.

In strategic management we have BCG matrix toknow the place of organisation in the industry with respect to industry growth rate and relative market share of organisation in industry.

Similarly, the author has tried to make a matrix which shows protection of human rights with respect to money power and contacts of the person who wants to avail the benefits of right or claim remedy on violation of his right.

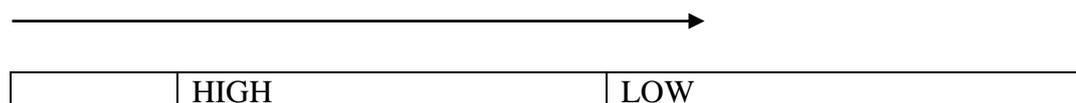
SUPREME COURT JUDGE – JUSTICE DEEPAK GUPTA during his virtual retirement (on May 7, 2020) speech said that-

THE COUNTRY’S LAWS AND LEGAL SYSTEMS FAVOUR THE RICH AND THE POWERFUL. (Article in *THE INDIAN EXPRESS*)

FORMER CJI – JUSTICE RANJAN GOGOI IN HIS LATEST INTERVIEW stated and criticised the judiciary by saying-**IF YOU GO TO THE COURT THEN YOU HAVE TO WAIT ENDLESSLY FOR THE VERDICT, YOU ONLY WASH YOUR DIRY LINEN”**

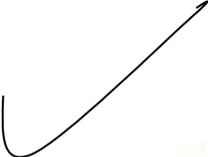
RELYING ON HIS STATEMENT AUTHOR HAS TRIED TO CREATE A MATRIX AS GIVEN BELOW CONTAIN AN HYPOTHETICAL SITUATION WHERE INFLUENTIAL PEOPLE COULD CAUSE HINDRANCE THE JUSTICE GIVING SYSTEM IN A COUNTRY and its connection WITH A CORRUPT ECONOMY.

POWER OF INFLUENTIAL INDIVIDUALS TO INFLUENCE JUSTICE SYSTEM(GROUP) (X AXIS)



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HIGH	1  	2  ?
LOW	3  	4  -----

LEVEL OF CORRUPTION IN AN ECONOMY. (GROUP) (SELF MADE GRAPH) (Y AXIS)

EXPLANATION OF THIS INFLUENCE-CORRUPTION MATRIX IS GIVEN BELOW:

Through this matrix one can classify his potential to safeguard and protect his right and in case of infringement fight back and claim damages because of such infringement.

It also tells the willingness of the plaintiff/victim of offence to make a claim against the infringer.

The x axis shows the INFLUENTIAL POWER of an individual i.e., whether the person has potential to influence the case with his worth or not.

The y axis shows the level of CORRUPTION prevailing in an economy (relation with those who are in power to influence the outcome of the case) a person or an individual have through which he can influence the outcome of the suit, proceedings.

These are just 2 factors which can influence the matter there could be others among these (not limited to these) factors.

The author did not intend to raise question on ability of our respected courts it is just an assumption –on the basis of question raised because of this i.e., what would be the scenarios if this statement said by Justice Deepak Gupta holds true? – “LAWS AND LEGAL SYSTEM ARE TOTALLY GEARED IN FAVOUR OF THE RICH AND POWERFUL”²

Explanation of matrix-

²Source: <https://scroll.in/latest/961263/indias-legal-system-favours-the-rich-and-powerful-says-retiring-supreme-court-judge>

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Quadrant 1- **STAR**- person belonging to this quadrant is situated at this point:

HIGH of INFLUENTIAL POWER and **HIGH** in respect of CORRUPTION PREVAILING IN THE ECONOMY – this quadrant generally shows that class of individuals who actually have potential to influence the case (success or no success is a different matter), and the green point here means that they are completely assured that their rights will not get violated or in any case it happens they can seek justice and claim damages occurring out of such infringement.

Quadrant 2 – **Question Mark**: person belonging to this quadrant is situated at this point:

Low- of INFLUENTIAL POWER but **High** of CORRUPTION prevailing in an economy- here the person has less potential to influence case in with his money power but has contact (corrupts) with those who can influence the outcome, (i.e. the person belongs to those of middle ^{higher} income group) the person will always be uncertain whether he will get his damages/justice for violation of his human rights. Red circle shows the point of uncertainty

Quadrant 3- **Tick Mark**- person belonging to this quadrant is situated at this point:

High of INFLUENTIAL POSITION and **Low** of CORRUPTION – here in this quadrant the person has INFLUENTIAL potential to influence the outcome but and no contacts with those who has real authority of influencing it so at first, he may go down and would not be able to get benefit of his position and could not claim damages from infringer but later with his money potential he could generate contacts and could avail benefit of his position. Here the individual belongs to middle ^{lower} income group of the nation.

Quadrant 4 – **UNKNOWN STATE**(----): - person belonging to this quadrant is situated at this point:

LOW of INFLUENTIAL POSITION **LOW** of CORRUPTION – these are those who belongs to the lower section of the society. No money potential and no contacts they live in illusion of justice i.e. unless and until the other forces (NGOs and private person or Suo motto action from authorise) help them to seek justice they did not even try to seek it themselves (subject to exceptions). Black circle shows the darkness whether they could be able to make claim against infringer or not.³

A good law abiding nation and law governance authority stops the question of influence and corruption in an economy making it a common platform for all and thus one could gain the advantage similar to those given under ARTICLE 14 of our indian constitution.

Loopholes - implementation of human rights-

³With all respect and belief in law, this comparison and matrix is done in case of countries where money plays vital role in influencing decision of decision maker

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In a survey conducted by the author 90% of people said that implementation could become better and effective

Top 10 responses are given below-

Question-What according to You Are the Loopholes in Indian law with context to human rights?

Answer/ Responses -

It isn't a loophole. Indian laws are pit in itself.

improper system, presence of corruption, lack of responsibility in citizens and government bodies

No. I think the human rights of the underprivileged are always at stake. They don't get their basic rights covered.

Human rights are nothing but bluff given to lower section of society and to secure them as vote bank

Sb kuch he haijhol 😊😊

There are many loopholes in Indian Constitution as per my views like overcrowded courts, delay judgement n many other. But there is one major loophole in our Constitution that is a man is power is always considered equals to the God even if he is wrong. Politics. Even if everyone is of the same race and tribal group, if you are associated with the group who is out of power, you can be held down by the party in power. It is a way of preserving their position.

Laws for human right is only limited to the constitution book only the privileged are benefitted

MA

Almost every day there are chilling instances of violence, ethnic cleansing, heinous torture, child abuse, man slaughter and several other human rights violations. Despite the adoption of the Universal Declaration Human Rights (1948) and special covenants provided for the rights of children, women and disabled, crimes continue unhindered and unabated. The soul-searching question is... 'Has humanity been relinquished?'

In India, various mechanisms such as the National Human Rights Commission, State Human Rights Commissions, and Women's Commissions have been constituted at the Centre and in

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the states, for upholding human rights causes. Legislative safeguards i.e. The Constitution of India, which is supreme a lex (the law of the land) and multifarious laws such as The Human Rights Act, 1997 are in existence but in vain. Human rights violations are the order of the day and the above 'law- enforcement' arsenals fall short of implementation. Rights are merely enumerated on paper and hence remain a dead letter.

Communal and ethnic violence-- Scores of hate crimes against Muslims and other religious groups, ethnic groups, including Dalits and Adivasi (an indigenous tribal people), as well as caste and gender-based crimes, took place across the country. Many were carried out by vigilante groups and mobs. Violent attacks included mob “lynching”.

Legislation against these crimes remained inadequate. In July, the Uttar Pradesh Law Commission submitted a draft bill to the state government which aimed to strengthen laws against lynching. In August, the Rajasthan government passed its Rajasthan Protection from Lynching Bill making it the second state after Manipur to criminalize mob lynching as an offence separate from murder with stronger penalties.

Government data on mob lynching by “cow protection” vigilantes remained inadequate because it failed to recognize the gravity of and discriminatory motive behind the crime and rather addressed it under provisions of the Indian Penal Code related to “rioting”, “unlawful assembly” or “murder”. The National Crime Records Bureau had not released its annual report of crime, prison and suicide statistics for the third consecutive year. The failure to collect and preserve data, along with the police’s failure to conduct an effective investigation, resulted in dozens of perpetrators being acquitted.

In June, a video of the brutal mob killing of Tabrez Ansari, a 24-year-old Muslim labourer in Jharkhand went viral. It showed him tied to a pole and being beaten by men armed with iron rods and sticks, while his attackers forced him to chant ‘Jai Sri Ram’ (Hail Lord Rama) and ‘Jai Hanuman’ (Hail Hanuman). Eleven men were charged with his murder, but the murder charge was dropped and converted to culpable homicide not amounting to murder when police claimed that the post-mortem and forensic reports found he had died of a heart attack and that the killing was not premeditated. However, on September 18, the police filed a supplementary charge sheet retaining the murder charge against 11 accused based on a fresh medical report after the police sought a second opinion from specialist doctors.

In August, six out of nine men charged with the murder of Pehlu Khan, a dairy farmer who was lynched on the suspicion of cow smuggling, were acquitted by a lower court in Rajasthan. The remaining three are juvenile and being tried by the court designated for trying juvenile offenders. While ordering their acquittal, the court held that the video which

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captured the attack on Pehlu Khan was not admissible evidence. At the same time, the police filed a case against the deceased Khan and his two sons for smuggling cows.

Mob violence against minorities, especially Muslims, by extremist Hindu groups affiliated with the ruling BJP continued throughout the year, amid rumours that they traded or killed cows for beef. Since May 2015, 50 people have been killed and over 250 people injured in such attacks. Muslims were also beaten and forced to chant Hindu slogans. Police failed to properly investigate the crimes, stalled investigations, ignored procedures, and filed criminal cases against witnesses to harass and intimidate them.

Dalits, formerly “Untouchables,” faced violent attacks and discrimination. In September, the Supreme Court issued notices to authorities to examine caste-based exclusion at universities across India following a petition filed by mothers of two students—one Dalit and one from a tribal community—who committed suicide allegedly due to discrimination.

Nearly 2 million people from tribal communities and forest-dwellers remained at risk of forced displacement and loss of livelihoods after a February Supreme Court ruling to evict all those whose claims under the Forest Rights Act were rejected. Amid concerns over flaws in the claim process, the court stayed the eviction temporarily. In July, three UN human rights experts urged the government to conduct a transparent and independent review of the rejected claims, and evict only after it exhausted all options, ensuring redress and compensation.

According to me There exist loopholes till date such as: inadequate resources, overcrowded courts fiscal deficiency, delay in judgments, inadequate legal aid, expansive legal services etc.

Inequality is prevalent...time taken to solve a case is very much...

Question 2 Do you think Indian Human rights system is working efficiently/properly?

It never was and will never be.

No

No

Not up to maximum level

Absolutely no

No, it's not working efficiently.

No

No

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Accessing the effectiveness of NHRI is complex as the system covers a great number of issues also there are so many officials that influence the working and decision of human rights environment

No

It is working fine but needs a lot of improvement.

Conclusion

In India government and our law makers are trying their best to resolve the disputes and protect the interest of public but because of large and distinctly heterogeneous density of population implementation of laws become difficult, but norms and provisions are available with us. It is only implementation where we are lagging behind and in near future the way to overcome this problem be founded and implementation of laws on satisfactory level would be done. Till then- "*savariapne saman ki khud zimedarh*" but this situation will change soon we have come far from where we began and with efforts of all the goal of proper implementation will be accomplished soon.

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