

1. Who is "human" in the concept of modern human rights?

There is no definition of "human" either in the Human Rights Protection Act, 1993 or the Constitution of India, 1950 which guarantees Fundamental Rights to all persons. The Indian Constitution guarantees some rights to all persons including artificial persons like corporations. In some cases, it has been argued that artificial persons such as deities are capable of enjoying rights which has not been accepted.

2. How is carried out of the protection of a right which is not regulated in the Constitution in your legal system? What kind of balancing is done when a right uncounted in the Constitution is interfering with a constitutional right?

The Indian Constitution is considered the founding document for all powers and rights and it is difficult to contemplate that there are rights which the constitution does not implicitly if not explicitly endorse. If there is any right which comes into conflict with a constitutional right, the constitutional right shall prevail. Similarly the right against defamation which is a private rights will give way to the right to speech and expression which is a constitutional right

3. Do International Human Rights Documents applied in your country represent minimum standards that are already provided or the must-reach aims? Are there any regulations in your legal system above international human rights standards?

International Human Rights Documents represent minimum standards in some cases and in other are must reach aims. The right to equality and non discrimination has been very elaborately discussed which includes the power of State to take special measure for certain sections of society. These are over and above what international human rights documents provide. In other cases such as social and economic rights for example abolition of child labour, or the right to collective bargaining it is still a much reach aim.

4. In your legal system, is the jurisdiction an actor itself to move forward human rights standards?

Human rights can be enforced through the Fundamental Rights guaranteed in the Constitution of India, 1950. Article 32 of the Constitution guarantees a right to remedies, i.e.the enforcement of all fundamental rights by the Supreme Court of India. Fundamental rights cover most of the Human Rights standards. Any person can file a writ petition for the enforcement of

fundamental rights of that person or any other person also. Public Interest Litigation has been accepted by the Supreme Court of India.

5. Are there values and issues in your country that are not covered by human rights documents but need to be protected under the concept of human rights?

There are no specific human rights documents that address the question of caste or intersectionality of caste with gender or disability or sexual orientation. Caste based discrimination is a big challenge in India and needs to be addressed centrally by the convention on racial discrimination but it not. Similarly, the question of intersectionality of caste and gender and other categories needs attention.

6. Are there such human right regulations in the legal system that is protected by the constitution but contradicts social reality and justice?

Yes, there are many contradictions. To take an example, the right against discrimination on the ground of disability, should cover both public and private actors, however in many cases the courts have not applied the right against discrimination in employment against private actors.

Similarly, the right to equality based on individualism, is protected by the constitution, but contradicts social reality and justice. To give an example, the Sabarimala temple issue is one such issue. (see Indian Young Lawyers Association vs State of Kerala 2018 SCC Online SC 1690) The Sabarimala Temple is a temple in South India that does not allow the entry of women between the ages of 10-50. The Supreme Court of India has held such prohibition to be contrary to the right to equality. In spite of this, women still are not able to enter the temple because women themselves believe that it is against the freedom of religion to violate the beliefs of others and the worshippers at the temple claim it to be a part of their religious freedom to worship in a particular manner. The State is also not taking a firm position on allowing women to enter as it believes it to be a law and order issue.

7. In your legal system, are there legal mechanisms to protect human rights if fundamental rights are violated by private persons? Are these mechanisms effective?

The response to this is mixed; in that the protection of rights which are violated by private persons in some cases is available and not in others. For example the right to equality cannot be violated by private persons as well as State. On the other hand some rights are specifically available against State such as the right to seek special measures in employment.

8. Are there any social realities contradicting international human rights concept based on individualism?

Yes, India is a vast and diverse country with a large section of its population living in very poor conditions and below the poverty line. The right to privacy has been held to be negotiable where state expenditure is concerned. Thus, the State can ask for the biometric data of those who seek basic amenities from the State. (see *Puttasway vs UOI 2018 Supreme Court*). Structural inequalities, need for redistribution of resources such as land, addressing social needs like education, health and sanitation, removal of historical injustices towards indigenous communities cannot be addressed merely by the idea of a liberal constitution based on individualism. India has strong communitarian values, such as common property and strong family values and community values. These often come in contradiction to individual human right.

Social realities also do not permit the full expression of sexuality as we have only recently decriminalized homosexuality and have a long way to go before the full acceptance of gender diversity is achieved in the understanding of family. (see *Navej Johar vs UOI 2018 Supreme Court of India*)

9. What do you think is the most current human rights problem in your country?

The right to equality is yet to be realized in a real sense. The huge disparities in income, access to basic amenities, such as food, water, clean water and air, basic human dignity with practices of manual scavenging still being practiced are a huge challenge. Discrimination on caste, gender and religion and place of birth are still to be addressed. The gap between the elite and the marginalized has grown in the past few years. Technology and innovation has only worsened this divide rather than improved lives. India continues to be a hugely unequal country.