

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

A very broad and basic question connected to human rights generally entails to who or what has rights or who or what is a rights holder. The human in the concept of modern human rights are the rights holders. The idea of human is inclusive (individual humans, corporations, and future generations to have a clean environment). There has also been the argument of some nonhumans as being legitimate right holders (the animal rights movements). However, the question of legitimacy of group rights is of particular importance since the last century.

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 conflicted with a constitutional right?

In the global legal world, it is increasingly recognized that every modern legal system is applying balancing as the means of applying legal principles. Balancing has subsequently over the period of time become an essential methodological criterion for weighing rights in conflict with constitutional rights.

In India the supreme court of India has not only balanced socio economic rights but also widened its scope under Article 21¹ of the Constitution of India which has resulted on notable development in human rights. The inclusion of right to clean environment², health and medical care³, right to education⁴ under the umbrella of right to life have led to constitutionalization of human rights. However, the ground realities how rights are regulated and put into practice are far from satisfactory. Article 21 of the Constitution, which guarantees right to life and personal liberty has thus become the reservoir of all those rights which are not expressly mentioned in the constitution.

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

¹ Article 21 of the Constitution of India- Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

² *RLEK v. State of UPAIR* 1987 SC 2426.

³ *Paschim Banga Khet Mazdoor Samity v. State of WB.* (1996) 4 SCC 37.

⁴ *Unni Krishnan v. State of A.P.* (1993) 1 SCC 645.

system above international human rights standards? If there are, would you please explain?

The interpretation and implementations of International Human Rights (IHR) documents is a matter of both complex, and to a certain extent, obscure. A perception that IHR may have a distinct legal character has generated interests in the must reach aims. This perception of a specified aim gives human rights documents a special relevance in legal systems. In the Indian context attempts have been made to apply IHR as the must reach aims. The recent enactments of the Mental Health Care Act, 2017 and The Rights of Persons With Disabilities Act, 2016 show the relationship between our legal system and international human rights law is self contained. However, to delve into the question whether our legal system is above the international regime is predominantly a matter of interpretation.

4. In your legal system, is the jurisdiction an actor itself to move forward human rights standards? If it is, would you please explain?

The enactment of the Protection of Human Rights Act 1993 have regionalized and expanded many aspects of human rights. The Act provided for the constitution of the National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of human rights. The appropriate division of jurisdiction among regional and national institution in India have led to the strengthening and proliferation of human rights performance in the country.

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? If your answer is yes, would you please explain?

India is one of the most prominent refugee receiving countries in the world. However, the ad hoc nature of refugee law and practice in India and its failure to define "refugees" as a class of persons and their status, rights and entitlements have affected its human rights standings.

India is not a signatory to the 1951 Convention on Refugees and also the 1967 Protocol. But India's refusal to join the Refugee Convention of 1951

does not absolve it from basic commitment to humanitarian protection of refuge. The fundamental rights such as equality before law⁵, protection of life and liberty⁶, to practice and propagate own religion⁷ as enshrined in the constitution of India are fundamental freedoms extended to all persons not just only to Indian citizens. The Indian law as it stands today provides a distorted and incomplete protection to refugees which need to be regulated in accordance with the international humanitarian law.

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

Yes, there are such rights as the one in Article 17 which abolishes the practice of untouchability and makes it a punishable offence have abolished the practice of untouchability and made it a punishable offence, Article 23 prohibits traffic in human beings and forced labour and Article 24 prohibits employment of children in factories below the age of 14 years are few of the provisions in our constitution that enshrines social justice. In spite of the constitutional guarantees as mentioned in these provisions as well as several provisions in the directive principles of state policy the practice of untouchability, forced labour and child labour, poverty, hunger and discriminations on the basis of caste etc. are still prevalent in our society.

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

The basis of individualism is the struggle for recognition of individual rights and the rise of collective rights. Human rights are primarily based on individualism and struggle to provide equal dignity to each individual. Individualism goes beyond the political and social sphere claiming the space for identity. The practices of untouchability where physical contact with persons are avoided because of social beliefs have been abolished under the constitution of India.⁸ In spite of this constitutional arrangement untouchability still remains very much prevalent in our social realities.

⁵ Article 14, Constitution of India.

⁶ Article 21, Constitution of India.

⁷ Article 25, Constitution of India.

⁸ Article 17, Constitution of India.

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

Arguably one of the most contested issues in our constitutional law is the scope of application of fundamental rights provisions. The question that is posed in these debates is whether the rights only regulate the relationship between the state and the individual (vertical application) or whether the rights are also extended to relations between private individuals (horizontal application). Unless a constitutional fundamental right is very specifically made available against 'the State' it is presumed to be applicable to both state as well as non-state actions.

Though the horizontal applications of rights is still in the process of evolution the Indian courts have had the opportunity to deal with these rights. In *Consumer Education & Research Centre v. Union of India & Others*⁹, a three-judge bench held that Article 21 not only includes the right to health of employees but also applies against private employers in the context of the occupational health hazards caused by the asbestos industry. Again in the well-known and controversial case of *Vishaka v. State of Rajasthan*¹⁰ the court applied horizontally Articles 14, 15(1), 19(1)(g) and 21 finding that they are violated by every incident of serious sexual harassment.

Although the writ petition was worded as state's failure, the intervention sought was to remedy the unfortunate developments between private citizens. Article 32¹¹ and Article 226¹² set out constitutional remedies which a person aggrieved by violation of fundamental rights can claim. But the courts have not expanded the applicability of these remedies rather provided a method that expands the public law to private individuals. The courts have also developed the concept of constitutional torts and have awarded damages to the person harmed by the state authorities.¹³

9. Are there groups in your country who have their own national, ethnic, religious and linguistic identities? Could you please give some information about them (especially if you feel yourself one of them)?

⁹ 1995 SCC (3) 42.

¹⁰ (1997) 6 SCC 241

¹¹ Article 32, Constitution of India.

¹² Article 226, Constitution of India.

¹³ E.g., *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141; *Neelbati Behera v. State of Orissa*, (1993) 2 SCC 746;

India is socially, ethnically, religiously and linguistically a mosaic of diversity. Though not specially defined, several provisions of the Constitution give special protection to minorities and vulnerable sections of the society such as small sections of cultural groups, religious and linguistic minorities, certain downtrodden groups such as the Scheduled Castes and indigenous people or scheduled tribes, Backward classes, etc. The terms such as linguistic or religious minorities have not been specifically defined but they have been identified in the national legislation as well as in judicial decisions and special commissions have also been established for the protection of their interests either in the Constitution or through laws of national Parliament. Backward classes as a group are also identified for the purposes of certain benefits granted in the Constitution.

Article 30 (1) states “all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.” The Supreme Court further elucidated in *DAV College etc. v/s State of Punjab and others*¹⁴ “a linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language; it is not necessary that the language should also have distinct script.”

10. What is the definition of the notion “minority” according to your constitutional system? What is your opinion on this concept? Do you think that minority rights should be protected broadly by the constitutional level? Do you think that constitutional regulations that would broaden the rights of minorities will solve the conflicts between majorities and minorities?

Minorities are generally those sections of people who are less in number and evidently stand distinct and are vulnerable people. The physical or cultural characteristics of these people are singled out from the majority producing inequality and collective violence. In India the Constitution safeguards the rights and privileges of the minorities. The word ‘minority’ or its plural form is used in the Constitution in some Articles such as Articles 30, 350A to 350B but has not been defined anywhere exhaustively though the courts have laid down a general proposition that in an area where the law applies for certain purposes such as religion or language persons who are less than 50 percent in that area could be designated as minorities.

¹⁴ SCR 688; AIR 1971 SC 1737

In a democratic country like India there exist tensions and insecurities amongst the minority due to domination of the majority. From mob lynching to communal riots, from manual scavenging to denial of basic human rights, the minorities have been subjugated and sometimes conquered by majoritarianism. But our constitutional arrangements allow the minorities to petition constitutional safeguards for protecting their rights and privileges.

11. What do you think on the notion and the concept of minority rights in international law? Could the international regulations/treatments be a response to the reality and problems of the peoples in your country? In other words, do they cover the reality in your country from the view of the state and the view of peoples?

An inquiry into the early legal documents was evident that international law protected minorities with the principles of equality and non-discrimination. Article 27 of the International Covenant on Civil and Political Rights was the starting point in the International Law which extended the right of minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language. But only after the United Nations Minorities Declaration, 1992 there was an emphasis on the constant promotion and realization of rights of minorities within a democratic framework. But one of the ambiguities that the concept of minority rights is facing today is its lack of definition in the international law which keeps open varied interpretations of minority and which allows the international organizations to absolve their responsibility of observing minority rights and freedoms.

The international treaties set norms in framing laws to fill gaps in matters where there is legal vacuum in the Indian Legal System. The Constitution under Article 51 mandates respect for international law and Article 253 confers exclusive power on the Parliament to make law to give effect to international agreements. In this respect, the Indian judiciary has played a proactive role in the implementation of India's international obligations under international treaties especially, in the areas of environmental law and human rights. So it can be said that India's legal framework and position in the international community have been strengthened by the application of international law and international principles.

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

The problems of human rights in India have multiplied in the last several decades. Vigilante violence aimed at religious minorities and marginalized communities have risen in the last few years. the vulnerability of tribal/ indigenous communities to displacement because of construction of dams, mining and corporate sponsored infrastructure projects; subversion and thwarting of freedom of expression and use of sedition and criminal defamation against government critics; lack of health care, quality legal assistance, and compensation to victims of sexual violence; prevalence of child labour and poverty are some of the matters of concern. Frequently it seems as if accountability of human rights abuses and violations have been indefinitely suspended in India.