

## **“Natural Rights – Human Rights and Fundamental Rights – A Conceptual Framework”**

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### **Abstract**

The rights that ensure the civil liberty of the citizens of the country i.e. the rights that able the citizens to live their life as per their wants are known as Fundamental Rights where as basic freedoms of a human from birth are known as Human Rights. Human rights has more wider scope than fundamental rights as human rights are universally accepted while fundamental rights are country specific. Most of the fundamental rights are similar to human rights as Constitution of India was highly influenced by the Universal Declaration of Human Rights 1948. The basic principle on which Fundamental rights and human rights can be distinguished is that, fundamental rights principle is rights to freedom and human rights principle is rights to life with dignity.

### **Introduction**

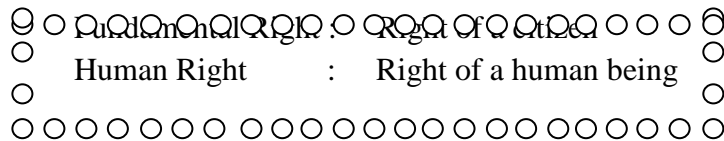
Every citizen has some rights which are protected by the government. Generally, ‘Rights’ are the legal or moral entitlement over something. As per law if rights of an individual are violated, he can reasonably claim for damages/compensation which are accepted by the society and approved by statute. It can be both Fundamental Right and Human Right. The rights of a person which forms a necessary base for humans and are approved by the Supreme Court and recognized by the society are known as Fundamental Rights. Whereas the basic rights for a real living are known as Human Rights. They just differs on a ground that each country has their own fundamental rights i.e. they are specific to a particular country, whereas human rights exists for every person and therefore accepted all over globe.

**Fundamental Rights** are preserved in our constitution and they are enforceable in the court of law, if there is any kind of violation of the right of the individual, the concerned person can go to the court for the protection of their right that is how they are known as Fundamental Rights.

Rule of law applies in case of Fundamental Rights i.e. it applies to all the people equally. Here people are not been discriminated on the basis of their caste, religion, gender, race, origin, etc. It ensures that citizens of the country must have civil liberty, so that all the citizens of the country can lead their life as per their wants.

Natural Rights are simply evolved and formed a 20th century name i.e. **Human Rights**.<sup>1</sup> It takes us back to the concept of John Locke who gave 3 rights namely LIFE, LIBERTY and PROPERTY.<sup>2</sup> Human Rights are basic rights of the people that promote fairness, equality, freedom and respect for all the people. These are extremely important for the enrichment of the society, as it terminates various practices like injustice with people, exploitation of people, discrimination and inequality amongst people.

All individuals enjoy same human rights, without any discrimination as these are essential for all the individuals, irrespective of their caste, religion, nationality, place of birth, citizenship and any other status.<sup>3</sup>



**Definition of Fundamental Right and Human Rights**

**Fundamental Rights** are defined as, ‘ The Rights that ensures the civil liberty of the citizens of the country , irrespective of their race, cast, gender, place of birth or religion and allows the citizens of the country to lead their life as per their wants are known as fundamental rights.’

**Human rights** are defined as, ‘the basic rights and freedoms of a person, from birth which all Human beings are entitled to<sup>4</sup>, and stays until death.<sup>5</sup>’ As human rights are essential for all, no one is discriminated on the basis of religion, cast, gender, place of birth, etc.

**Universal Declaration of Human Rights**

The Universal Declaration was adopted on **10 December 1948** by the General Assembly of the United Nations. It became so important for them to adopt human rights as they confronted the preceding world wars. It was the first document on which countries agreed on a comprehensive statement of inalienable human rights.<sup>6</sup> The Declaration has been converted into no less than 375 dialects and languages, making it the most broadly interpreted record on the planet. The

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<sup>1</sup> <https://www.papermasters.com/human-rights.html> 25/06/2018 04:01 P.M.  
<sup>2</sup> <https://medium.com/patrickdaniel/what-is-john-locke-s-theory-of-natural-rights-and-justification-for-a-limited-government-80fecdaaa27> 13/07/2018 09:45 P.M.  
<sup>3</sup> <https://keydifferences.com/difference-between-fundamental-rights-and-human-rights.html> 25/06/2018 04:38 P.M.  
<sup>4</sup> <http://www.legalservicesindia.com/law-india/Human-Rights-law-in-India.htm> 25/06/2018 04:50 P.M.  
<sup>5</sup> <https://www.equalityhumanrights.com/en/human-rights/what-are-human-rights> 12/07/2018 09:04 P.M.  
<sup>6</sup> <https://www.humanrights.gov.au/publications/what-universal-declaration-human-rights> 13/07/2018 09:45 P.M

Universal Declaration of Human Rights is a document which states various rights to which all humans are entitled to. Universal Declaration says that human rights are for all and every human should enjoy it irrespective of their place of birth, religion etc. The Universal Declaration consists of various civil and political rights such as right to life, right to privacy, right to speech etc and various economic, cultural and social rights such as right to social security, right to education, right to Belief and Religion etc.<sup>7</sup>

### **Some of the Human Rights Given by UDHR are Explained Below:-**

- Article 1 – Right to Equality  
Every individual on this planet should be treated equally. No one shall be subjected to torture, inhuman treatment or punishment. Every person is equal in the eyes of law and is entitled to equal protection of the law without any kind of discrimination<sup>8</sup>.
- Article 2 – Freedom from Discrimination  
Every individual on this planet is entitled to all the rights and freedoms written in the Declaration irrespective of their color, gender, language, religion, nationality or social origin, , place of birth or other status.<sup>9</sup>
- Article 3 – Right to Life, Liberty and Personal Security  
Every person should have the right to life, liberty and their personal security.
- Article 4 – Freedom from slavery  
No one should be treated like someone actually owns the person like a piece of property.<sup>10</sup>
- Article 5 - Freedom from Torture and Degrading Treatment  
No one shall be subjected to torture, inhuman treatment or punishment.<sup>11</sup>
- Article 6 - Right to Recognition as a Person before the Law<sup>12</sup>  
Everyone has the right to be recognized everywhere as a person before law.
- Article 10 - Right to Fair Public Hearing<sup>13</sup>  
Everyone is entitled to a fair public hearing in an impartial court of law.
- Article 11 - Right to be Considered Innocent until Proven Guilty

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<sup>7</sup> <https://www.humanrights.gov.au/publications/what-universal-declaration-human-rights> 14/07/2018 06:41 P.M

<sup>8</sup> [www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf) 12/07/2018 09:49 P.M.

<sup>9</sup> <http://www.un.org/en/universal-declaration-human-rights/> 12/07/2018 10:04 P.M.

<sup>10</sup> <https://www.equalityhumanrights.com/en/human-rights-act/article-4-freedom-slavery-and-forced-labour> 13/07/2018 08:59 P.M.

<sup>11</sup> [http://www.claiminghumanrights.org/udhr\\_article\\_5.html](http://www.claiminghumanrights.org/udhr_article_5.html) 13/07/2018 09:56 P.M

<sup>12</sup> [http://www.claiminghumanrights.org/udhr\\_article\\_6.html#at6](http://www.claiminghumanrights.org/udhr_article_6.html#at6) 13/07/2018 10:07 P.M

<sup>13</sup> [http://www.claiminghumanrights.org/udhr\\_article\\_10.html#at11](http://www.claiminghumanrights.org/udhr_article_10.html#at11) 13/07/2018 10:07 P.M

The person charged with penal offence must be considered innocent until the person is proven guilty.<sup>14</sup>

- **Article 16 - Right to Marriage and Family**  
Men and women without any discrimination has the right to marry and found a family. Marriage of the spouses must include their free consent to the marriage.<sup>15</sup>
- **Article 26 - Right to Education**  
Each and every person has a right to education and at least elementary education shall be given for free.<sup>16</sup>

### **Fundamental Rights in Indian Constitution**

Constitution of India was adopted on 26<sup>th</sup> of November 1949 but came in force on 26<sup>th</sup> of January 1950. The fundamental rights of the citizens guarantee, that they will live an amicable life as long as they resides in the country.

#### **Indian Constitution Consists Of Various Fundamental Rights Which Are As Follows:-**

##### **Right to Equality (Article 14 to Article 18)**

Article 14 - Every person must be treated equally before law..

Article 15 – Every person should be treated equally irrespective of their religion, race, caste, gender or place of birth.

Article 16 - There should be equality in case of public employment opportunities.

Article 17 - Abolition of untouchability.

Article 18 - Abolition of titles.

##### **Right to Freedom (Articles 19 – Article 22)**

Article 19 - Protection of rights including freedom of speech.

Article 20 - Protection in respect of conviction for offenses.

Article 21 - Protection of life and personal liberty.

Article 22 - It deals with protection against arrest and detention in certain cases.

##### **Right against Exploitation (Articles 23 – Article 24)**

Article 23 - Prohibition of trafficking and forced labor.

Article 24 - Prohibition of employment of children in factories.

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<sup>14</sup> [http://www.claiminghumanrights.org/udhr\\_article\\_11.html#at12](http://www.claiminghumanrights.org/udhr_article_11.html#at12) 13/07/2018 10:07 P.M

<sup>15</sup> [http://www.claiminghumanrights.org/udhr\\_article\\_16.html#at17](http://www.claiminghumanrights.org/udhr_article_16.html#at17) 13/07/2018 10:14 P.M

<sup>16</sup> [http://www.claiminghumanrights.org/udhr\\_article\\_26.html#at28](http://www.claiminghumanrights.org/udhr_article_26.html#at28) 13/07/2018 10:22 P.M

**Right to Religion (Articles 25 – Article 28)**

Article 25 - Freedom to practice any religion.

Article 26 - Freedom to manage religious affairs.

Article 27 -A person should not be forced to pay for taxes for the promotion of any particular religion.

Article 28 - A person should not be forced for religious worship in certain education institutions run by government.

**Right to Culture and Education (Articles 29 – Article 30)**

Article 29 - Prevent the interests of minorities.

Article 30 - Right of minorities to set up and oversee educational institutes.

**Right to Constitutional Remedies (Article 32)<sup>17</sup>**
**Difference between Human Rights and Fundamental Rights**

<b>Basis For Differences</b>	<b>Human Rights</b>	<b>Fundamental Rights</b>
<b>Meaning</b>	Basic rights of the people that promote fairness, equality, freedom and respect for all the people.	The Rights that ensures the civil liberty of the citizens i.e. to lead their life as per their wants.
<b>Scope</b>	These are universal i.e. accepted all over globe.	These are country specific i.e. only exists for a people of particular country.
<b>Guarded By</b>	These are guarded internationally as they are universally accepted.	These are guarded by the constitution as they are country specific.

<sup>17</sup> <https://www.mapsofindia.com/government-of-india/fundamental-rights-citizens.html> 14/07/2018 10:22 P.M

<b>Enforcement Authority</b>	Enforced by the organization of United Nations.	Enforced by the law of specific country. <sup>18</sup>
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### **Similarities between Human Rights and Fundamental Rights**

- Both human rights and fundamental rights aim at protection of individual's interest and work toward formation of peaceful environment.
- Both human rights and fundamental rights can be enforced by law of the country but fundamental rights cannot be enforced by the international authorities.
- Both works in a positive direction as one promotes fairness, equality, freedom and respect for the people where as another ensures the civil liberty of the citizens.

### **What is the need to protect human rights by the rule of law i.e. all should be treated equally?**

Human rights protect the interest of every person equally but as a matter of reality these are not same for all the people residing universally. For the people with high resources, money, position in the society, human rights have become the dominating part for the middle class society. While for developing or underdeveloped places like Asia, Africa etc these are also the ground for survival. Since human rights give the right to be the being of earth one must be treated equally.<sup>19</sup>

### **How Does Police Authorities Violates Human Rights**

'POLICE' one of the most trusted organizations to protect the right of the individuals. The policemen, hence, happen to be the most obvious delegates of the administration. In a hour of need, peril, emergency and trouble, when a resident does not realize what to do and whom to approach, the police headquarters and a policeman happen to be the most proper and agreeable unit and individual for him.<sup>20</sup> Police exists for the sake and security of the citizens and to maintain law and order in a country. But now a day's people often hesitate to approach police because of the casual and dominating attitude of the department. People even avoid filing a complaint if something unlawful has happened to them. Even many a time's human rights are violated by the police department. For example :- If police is investigating for a murder case and if they have doubt on a person, they will just took him with them and treats him in such a

<sup>18</sup> <https://keydifferences.com/difference-between-fundamental-rights-and-human-rights.html> 26/06/2018 05:22 P.M

<sup>19</sup> <http://www.legalservicesindia.com/law-india/Human-Rights-law-in-India.htm> 27/06/2018 5:19 P.M.

<sup>20</sup> <http://www.legalserviceindia.com/legal/article-61-violation-of-human-rights-by-police-authorities.html> 27/06/2018 5:49 P.M.

degrading and cruel conditions that even if he is not the culprit he will admit the charges vested on him. There are no. of incidents of violation of human rights by police and public servants but most of them even don't reach out of the police department and if some approach for the remedy under human rights, law guards them by sovereign immunity.

In most of the cases of violation of human rights by police, 3 rights are violated which are as follows:-

Article 3 of UDHR which deals with right to life and personal liberty,

Article 6(1) of the ICCPR (International human rights treaty, providing a range of protections for civil and political rights) which deals with that, every human being has the inherent right to life.

Article 5 of UDHR which deals with a statement that no human being shall be treated by inhuman conditions.<sup>21</sup>

### **Organizations for Human Rights in India**

- Asian Front of Human Rights
- Honour for Women National Campaign
- Middle Finger Protests Group
- Manab Adhikar Sangram Samiti Assam
- National Confederation of Human Rights Organizations
- Forum for Fact-finding Documentation and Advocacy
- Human Rights Documentation Centre
- Human Rights & Social Justice Mission
- National Campaign on Dalit Human Rights
- Vigil India Movement
- Kashmir Human Rights Commission
- Youth for Human Rights International

### **Special Courts for Human Rights in India**

One of the objects of the Assurance of Human Rights Act, 1993 as expressed in the introduction of the act, is the foundation of human rights courts at local level. Till date there are no special courts governed for the cases related to infringement of human rights. The

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<sup>21</sup> <http://www.legalserviceindia.com/legal/article-61-violation-of-human-rights-by-police-authorities.html>  
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Protection of Human Rights Act 1993 states that the special courts for human rights must be formed which can help in speedy trial of offences. It gives that the state Government may, with the simultaneousness of the Chief Justice of the High Court, by notice, that one of the local Court Sessions to be a Human Rights Court sessions to attempt the said offenses. The protest of foundation of such Courts at local level is to guarantee faster disposal of cases identifying with offenses emerging out of infringement of human rights.<sup>22</sup>

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<sup>22</sup> <http://www.legalserviceindia.com/articles/huri.htm> 15/07/2018 04:29 P.M.