

“A Tussle of Political and Human Entitlements”

Ms. Aayushi Sharma
Research Scholar
Centre for Human Rights and Duties,
Panjab University, Chandigarh

Abstract

India, the world’s largest democracy, has made significant strides in upholding political rights and human rights for its citizens. However, the intersection of these two critical aspects of civil liberties often gives rise to complex challenges, presenting a delicate balance between democratic governance and the safeguarding of individual freedoms. India’s Constitution, adopted in 1950, serves as the bedrock of its democracy and enshrines an array of political and human rights, reflecting the aspirations of the nation's diverse populace. However, in the pursuit of political goals and governance, there have been instances where the protection of human rights has come into question, leading to a thought-provoking inquiry into the interplay between these two sets of rights. This paper aims to address the central questions pertaining to the tensions between political rights and human rights in India.

Keywords: *Political Rights, Human Rights, Civil Liberties, Electoral Process, Social Justice, Rule of Law.*

Introduction

India boasts a rich tapestry of political rights and an elaborate system of human rights protection. The country has a long history of struggles for independence and social justice, culminating in the adoption of its Constitution on January 26, 1950.

In India, political rights include the ideals of democratic government, the right to vote, the freedom to associate with any political group, and the right to occupy public office. The right to vote is guaranteed by the Indian Constitution, guaranteeing that individuals actively participate in electing officials and forming the government. This vital element of democracy empowers individuals to influence public policy and hold elected officials accountable.¹ At the same time, its Constitution incorporates a strong human rights framework that covers a wide range of civil, political, economic, social, and cultural rights. Fundamental rights including equality, freedom of speech and expression, the right to life and personal liberty, and defence against discrimination are all guaranteed by the Constitution.

However, in the pursuit of democracy and political representation, there may arise tensions and conflicts with the protection of human rights. For instance, measures taken to maintain law and order during protests or demonstrations might inadvertently infringe on individuals'

¹ Merchant, A. (2023, February 4). *Constitutional Right to Vote in India*. Lawyers Club India. Retrieved August 2, 2023, from <https://www.lawyersclubindia.com/articles/constitutional-right-to-vote-in-india-15562.asp>

freedom of expression or right to peaceful assembly. Similarly, security measures implemented during elections could potentially curtail certain civil liberties in the name of safeguarding electoral integrity.

Moreover, India's diverse social fabric, comprising numerous ethnic, religious, linguistic, and cultural groups, presents a unique challenge in balancing political rights with human rights. Ensuring the equitable representation of all communities and safeguarding minority rights while respecting the principles of majoritarian democracy poses an intricate balancing act for the country.

Review of Literature

Human Rights vs Civil Rights, USIDHR (2021)

This article opines that Human rights are universal rights granted to all human beings, while civil rights are specific rights granted to citizens of a particular country. Human rights are protected internationally by the United Nations, while civil rights are protected by national laws or constitutions. Both seek to guard against injustice and discrimination, but civil rights differ from one nation to the next. Civil rights are a byproduct of some human rights being codified into law, but human rights are a part of what it is to be human.

What is the Difference Between a Human Right and a Civil Right?, HG.org Legal Resources

The distinction between civic rights and human rights is covered in this blog. Human rights, which encompass basic freedoms including the right to life, education, expression, and a fair trial, are intrinsic to all people. They were put into place following World War II and are seen as universal and crucial to human survival. Contrarily, citizens are protected against discrimination and guaranteed liberties like free expression and due process by a legal framework like a nation's constitution.

Civil rights are peculiar to the residents of a certain country or state, but human rights are universal and apply to everyone. Actions against abuses of human rights are more likely to be taken in international situations than against violations of civil rights inside a nation. Human rights are universal, although civil rights might differ greatly between countries.

Research Objective

- To explore the various conflicts and tensions that may occur when seeking to achieve a balance between political rights and human rights;
- To research and analyse the complicated link between political rights and human rights.

Research Methodology

A doctrinal research technique will be used in this study. The doctrinal method entails a thorough analysis of the legal norms, laws, and constitutional clauses governing political rights and human rights. The research takes this technique in order to learn how the legal system interprets and implements legislation pertaining to political and human rights, which can offer important insights into how these rights are really implemented and protected.

Political Rights in India

Any democratic society must prioritize political rights, and as India is the largest democracy in the world, the Indian Constitution guarantees its inhabitants a comprehensive set of political rights. The Constitution prohibits discrimination on the basis of caste, creed, gender, or religion and guarantees political rights to all adult citizens. These political rights are essential for determining the nation's political climate, governance, and public engagement in decision-making.²

The freedom to vote is one of the most essential political liberties in India. Every person of India over the age of 18 has the right to vote in elections, whether they be at the national, state, or municipal levels, according to the Indian Constitution's provision for universal adult suffrage.³ The foundation of India's democratic system is this right, which enables residents to choose their representatives and actively participate in determining the direction of the nation's policies and government.

Additionally, the Constitution also guarantees the right of political association.⁴ In order to express their political opinions and ideologies, citizens have the freedom to create political parties and to join them. Political parties serve as vehicles for representation and are essential for articulating the interests of different societal groups and advancing public dialogue.

The Constitution specifies the requirements and exclusions for participation in the State Legislatures and Parliament, respectively, under Articles 84 and 173. By ensuring that candidates satisfy specific eligibility requirements, including citizenship, age, and the lack of criminal convictions, these regulations protect the voting system's legitimacy.

There are obstacles to the effective execution of these political rights in India, notwithstanding the country's robust legal system. The free and fair exercise of political rights is frequently hampered by political corruption, vote-bank politics, and the use of force and money during elections. Additionally, social and economic inequalities may make it difficult for disadvantaged and poor populations to fully exercise their political rights.

² *What are the important Political Rights that every citizen of India can enjoy?* (n.d.). Preserve Articles. Retrieved August 2, 2023, from <https://www.preservearticles.com/political-science/important-political-rights/94>

³ Indian Constitution, art. 326.

⁴ Indian Constitution, art. 19(10)(c).

The Indian judicial system has been crucial in defending political liberties over the years. In *Rajeev Suri v. Delhi Development Authority & Ors.*,⁵ the Supreme Court of India showed vigilance in defending the freedom of citizens to vote, run for office, and participate in politics without fear of coercion or discrimination. It has invalidated a number of legislation and presidential orders that were judged to violate democratic values and political rights.

Political rights-related topics, including as electoral reforms, state sponsorship of elections, and the criminalization of politics, have been the subject of discussions and controversy recently. These discussions emphasize the necessity of ongoing reflection and advancement of the political system's operation in order to better the exercise of political rights and promote India's democracy.

Human Rights in India

Both in its own legislation and via its international obligations, India has a thorough system in place to defend human rights. The foundation for preserving individual rights and liberties is the 1950-adopted Indian Constitution. A number of articles in Part III of the Constitution, sometimes known as the 'Fundamental Rights' ensure that every citizen of the nation's rights is protected.

Some of the fundamental rights enshrined in the Indian Constitution include the right to equality⁶, the right to freedom of speech and expression⁷, the right to life and personal liberty⁸, and the right to protection against discrimination on grounds of religion, race, caste, sex, or place of birth⁹. In order to assure the proper execution of these rights, the judiciary has interpreted and built upon them over time.

The Supreme Court of India, in particular, has been instrumental in advancing and defending human rights in India. The courts have broadened the scope of basic rights via historic rulings, even recognizing the right to privacy as an integral component of the rights to life and personal liberty. The court has also played a significant role in holding the government responsible for abuses of human rights. Through Public Interest Litigations (PILs), it has tackled a number of social justice concerns, including environmental deterioration, access to healthcare, and education.

In addition to upholding fundamental rights, India is a signatory to various international human rights treaties and conventions, such as the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). The foundation for protecting human rights in the nation is further strengthened by these international obligations. India's acceptance of international agreements demonstrates its

⁵ *Rajeev Suri v. Delhi Development Authority & Ors.*, Transferred Case (Civil) No. 229 of 2020.

⁶ Indian Constitution, art. 14.

⁷ Indian Constitution, art. 19.

⁸ Indian Constitution, art. 21.

⁹ Indian Constitution, art. 15.

readiness to accept responsibility for human rights abuses occurring inside its boundaries on a global scale.¹⁰

India still has a long way to go before all of its residents can effectively realize their rights, despite the existence of a strong legal system to defend such rights. The disconnect between constitutional protections and how they are actually put into practice is a significant problem. For a sizable portion of the population, especially those in disadvantaged groups, economic, social, and cultural rights including access to healthcare, education, and decent housing remain unmet.

Additionally, there have been instances of governmental actors, notably security personnel, violating human rights, particularly in regions hit by insurgency or conflict. Concerns about the lack of accountability and the requirement for more effective methods to resolve such crimes are raised by reports of extrajudicial murders, deaths in custody, and claims of torture.

The defence of minority rights is a crucial topic of concern. Although the Indian Constitution guarantees the freedom of religion, reports of acts of communal violence, religious intolerance, and prejudice towards religious minorities underscore the difficulties in defending minority rights.

In India, the topic of freedom of expression is also up for discussion. While the Constitution guarantees this right, there have been instances of censorship and restrictions on media and dissenting voices, raising questions about the state of free speech and its limitations.

Conflicts and Challenges

There are several areas where political rights and human rights may intersect and potentially clash. These conflicts can arise due to competing interests and priorities of various stakeholders within the political and societal landscape. Some key areas of conflict include following –

- *Freedom of Expression vs. Hate Speech*: The right to freedom of expression is a fundamental political right that allows citizens to voice their opinions and criticisms. However, this right sometimes conflicts with the need to combat hate speech and protect vulnerable communities from discrimination. Striking a balance between free speech and hate speech regulation becomes challenging, as curbing hate speech can sometimes be seen as impinging on political rights.¹¹

¹⁰ India: Human Rights Assessments. (2023, July 5). In *Congressional Research Service*. Retrieved August 2, 2023, from <https://crsreports.congress.gov/product/pdf/IF/IF12198>

¹¹ *The Battle Between Hate Speech And Freedom Of Speech*. (n.d.). Legal Service India. Retrieved August 2, 2023, from <https://legalserviceindia.com/legal/article-2800-the-battle-between-hate-speech-and-freedom-of-speech.html>

- *Right to Protest vs. Public Order:* Peaceful protests are an essential means for citizens to voice their grievances and demand accountability from the government. However, in certain situations, protests can disrupt public order, leading to potential clashes with law enforcement. Balancing the right to protest with the maintenance of public order can be a delicate task for authorities.
- *Electoral Process and Campaign Finance vs. Fair Representation:* The democratic electoral process is the cornerstone of political rights in India. However, the influence of money and corporate interests in politics can raise concerns about fair representation. The concentration of wealth in politics may undermine the principle of equal political participation for all citizens.¹²
- *Minority Rights vs. Majority Rule:* Protecting the rights of minority communities can sometimes be at odds with the principles of majority rule in a democratic system. The needs and interests of minority groups may not always be adequately addressed, leading to tensions between political and human rights.
- *Surveillance and Privacy:* The expansion of surveillance technologies in the name of national security can potentially infringe on individual privacy rights. Balancing the need for security measures with the protection of personal privacy is a challenging task for lawmakers and policymakers.

In India's history, there have been instances where political considerations have influenced the protection of human rights, leading to concerns about impartiality and justice. Similarly, the pursuit of human rights agendas may sometimes take a backseat when political expediency is prioritized. Some notable instances are as follows¹³ –

- *Emergency Period:* During the period of emergency, civil liberties were suspended, and political dissent was curtailed in the name of maintaining law and order. Human rights violations, including unlawful detentions and censorship, occurred as a result of political decisions to suppress opposition.
- *Anti-Terrorism Measures:* In the aftermath of terror attacks, there have been instances where stringent anti-terrorism measures were implemented, leading to allegations of human rights abuses, such as arbitrary detentions and encounters.
- *Caste-based Discrimination and Affirmative Action:* Political considerations surrounding caste-based vote-bank politics have sometimes impacted the proper implementation of affirmative action policies meant to uplift marginalized communities.

¹² Merchant, A. (2023, February 4). *Constitutional Right to Vote in India*. Lawyers Club India. Retrieved August 2, 2023, from <https://www.lawyersclubindia.com/articles/constitutional-right-to-vote-in-india-15562.asp>

¹³ *What are the important Political Rights that every citizen of India can enjoy?* (n.d.). Preserve Articles. Retrieved August 2, 2023, from <https://www.preservearticles.com/political-science/important-political-rights/94>

- *Armed Conflicts and Insurgencies:* In regions affected by armed conflicts and insurgencies, the state's security-oriented approach may sometimes overshadow the protection of civilian human rights, leading to allegations of excessive use of force and impunity.

Resolving and minimizing conflicts between political rights and human rights require a nuanced and balanced approach that upholds democratic values and protects the dignity of every citizen. Some strategies to address these conflicts include following -

- *Strengthening Judicial Independence:* Ensuring the independence of the judiciary can facilitate impartial adjudication of cases involving political rights and human rights, ensuring a fair and equitable resolution.
- *Promoting Awareness and Education:* Increasing public awareness and education about the importance of both political rights and human rights can foster a culture of respect for diverse viewpoints while discouraging hate speech and discrimination.
- *Policymaking Based on Human Rights Principles:* Policymakers should adopt a human rights-based approach while formulating laws and policies, ensuring that the protection of human rights is not compromised for short-term political gains.
- *Effective Implementation of Human Rights Mechanisms:* Strengthening human rights institutions and mechanisms can enhance accountability and ensure that human rights concerns are adequately addressed in the political process.
- *Dialogue and Consultation:* Encouraging open dialogue and consultation between civil society organizations, political representatives, and citizens, can foster understanding and collaboration in addressing conflicts between political rights and human rights.

Conclusion & Recommendations

The country's democratic framework, as enshrined in the Constitution, guarantees citizens' political rights to participate in governance and freely express their opinions. Simultaneously, India has also recognized the significance of human rights, encompassing a wide array of civil, political, economic, social, and cultural rights. However, the study has shown that there are tensions and conflicts in the Indian context between political rights and human rights. Political concerns may occasionally take precedence over protecting specific human rights, which can result in violations and make it harder to uphold social justice and inclusion. On the other side, putting too much emphasis on protecting human rights can make it more difficult for the democratic system to operate effectively.

It is crucial to acknowledge that protecting political liberties and human rights is a shared duty. Regardless of their political inclinations, citizens, civil society groups, government institutions, and media all have important responsibilities to play in promoting an atmosphere

that respects the rights and dignity of all people. Furthermore, it is critical to take a human rights-based approach to government and policymaking in order to resolve possible disputes. With this strategy, decision-makers would have to evaluate how political choices affect human rights and vice versa. India may make considerable strides toward achieving fair solutions by encouraging communication and cooperation between political players, members of civil society, and human rights activists.

Hence, a rights-based perspective to democracy will not only strengthen democratic institutions but also lead to more inclusive and just governance, benefiting all segments of society. By embracing this approach, India can continue on its path towards a more vibrant and thriving democracy that upholds the principles of liberty, equality, and justice for all.

By implementing the following recommendations and continuously engaging in critical dialogue, India can progress towards a society where both political rights and human rights thrive in harmony, creating a stronger foundation for democracy and social justice -

- Strengthen the human rights education curriculum to foster a deeper understanding of rights and their interdependence;
- Ensure the judiciary maintains a consistent and robust approach to reconciling conflicts between political rights and human rights;
- Encourage political parties and leaders to adopt a human rights-based approach in their manifestos and policy agendas;
- Promote active participation of civil society organizations and human rights defenders in monitoring and advocating for both political and human rights;
- Enhance transparency and accountability in the electoral process to safeguard the integrity of political rights;
- Establish a mechanism for constructive dialogue between stakeholders to address potential conflicts and find equitable solutions.

References

- *Globalisation emerging as a factor towards violation of Human Rights in Developing Nations: A Critical Analysis*, Vol. 2, Issue 3, Jus Corpus (2022).
- *Human Rights vs Civil Rights*, USIDHR (2021).
- The Universal Declaration of Human Rights, Claiming Human Rights.
- *What is the Difference Between a Human Right and a Civil Right?*, HG.org Legal Resources.