

HUMAN RIGHTS LAW AND PRACTICE, by Jatindra Kumar Das (PHI Learning Private Limited, New Delhi, 2022), pp. 808+xlvi, Price Rs. 1350.

THEORETICIANS ARE still needed to organise ideas and hypotheses about human rights law and to specify acceptable objectives. It is difficult to define because the word “right” is ambiguous and is used to refer to a wide range of legal relationships. The word “right” is sometimes used to refer to “immunity” from having a legal status, as opposed to its more strict meaning of the right holder being “entitled” to something with a co-relative duty on another. It can refer to either a “power” that establishes a legal relationship or a “privilege” to do something. Since entitlement, immunity, privilege, authority, and other concepts are categorised as rights, each one activates a unique set of safeguards and processes with unique outcomes. Sometimes human rights are described as “inalienable rights.”¹ What do we mean when we speak about unalienable rights? Do we refer to a right that is unaffected by restrictions or exceptions? Or do we mean a “*prima facie*” right with a heavy responsibility on the one who advocates any misbehaviour? Or do we mean a rule that must be obeyed unless another rule more important enough to allow deviation occurs? Or, are the moral justifications for an exception the same as those that support a right? Human rights have been described as significant, moral, and universal by several academics. When we refer to a right as “important,” we are referring to a variety of aspects, including its aesthetic worth, inherent value, usefulness, significance in the context of other rights, etc. The words “universal” and “moral” are also more difficult. Therefore, it is unclear what constitutes a right as universal, moral, and significant. Amartya Sen questioned, “What exactly are human rights?”² Perhaps for this reason, Sen advanced the social theory of human rights and more strongly emphasises “the need for a theory” of human rights in his essay “Element of a Theory of Human Rights.”³ In light of this, the author of the book⁴ on “Human Rights Law and Practice” has critically analysed the development of modern human rights law and practice, paying particular attention to India.

There are nine chapters in the book.⁵ The theoretical foundations of human rights law are presented in chapter 1.⁶ The author has looked at a number of issues in this chapter to examine the theoretical foundations of human rights law. The author has

1 Preamble, Universal Declaration of Human Rights, 1948.

2 Amartya Sen, *The Idea of Justice*, 357 (Penguin Books Ltd., London, 2009).

3 Amartya Sen, “Element of a Theory of Human Rights,” 32 *Philosophy and Public Affairs* 351-356 (2004).

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5 Jatindra Kumar Das, *Human Rights Law and Practice* (PHI Learning Private Limited, New Delhi, 2022).

6 *Id.*, Ch. 1 at 1-60.

examined the significance and range of human rights in this context and demonstrated: When and how did international human rights law begin, and how did it develop? Does the ancient Indian culture still have something to say about how human rights law is understood today? Has the protection of human rights evolved since India gained its independence? What function do the Human Rights Commissions in India serve in protecting human rights? What are the key theories that help to understand the underlying principles of human rights law? In this chapter, the author draws the conclusion that human rights are those that pertain to right to life, liberty, equality, and dignity. These are the kinds of rights that ought to be granted to everyone without restriction. They are recognised by the Constitution and laws of a civilised nation since they are an important component of existence of every human being. In India, courts have the power to enforce human rights. A person's human rights are clearly violated whenever he is refused access to one of the rights that have been granted to him by the Constitution, an International Covenant, or a statute. Therefore, it is abundantly evident that an Indian citizen has the right to live with dignity. The right to access justice is a constitutional right, thus denying someone their dignity would be a violation of their human rights. Therefore, if the investigating officer conducts an incorrect investigation, there has been a breach of human rights. Human rights have, in reality, attained considerable and significant worth. The applicable legislation provides both statutory protection and expanded constitutional protection. Therefore, it makes sense to begin by understanding the idea of natural rights, which eventually inspired the creation of the notion of human rights. It is a widely held belief that natural rights embody the reason, justice, immutability, and universality that man-made rules lacked. These rights are natural in that they derive from human nature. Since it is based on human nature, it is shared universally and equally by all people because all humans share the same human nature. These rights apply to everyone, not just a certain group, because they are necessary for the upkeep of a life deserving of a human being, i.e., for the protection and realisation of human nature and dignity.⁷ These aspects of human rights have been discussed by the author in the Chapter 1.

Various aspects of civil and political rights, as well as economic, social, and cultural rights, are illustrated in the chapter 2, which is titled "International Bill of Human Rights."⁸ In this chapter, the author has explained the steps used to create the International Bill of Rights, the purpose of the Universal Declaration of Human Rights, 1948 how modern society views civil, political, economic, social, and cultural rights, how different generations of rights have developed, and how various States have made reservations, including Indian policy. The Universal Declaration of Human

7 *Id.* at 3-4.

8 *Id.*, Ch. 2 at 61-153.

Rights, 1948 notes in its Preamble that “it is essential if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.” Recognising the inherent dignity of all members of the human family the Preamble provides that “the equal and inalienable rights ... is the foundation of freedom, justice and peace in the world” and a little later: “[w]hereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedoms...” Article 1 of the Universal Declaration of Human Rights, 1948 takes up this theme and provides: “[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Citing, *inter-alia*, Article 1 of the Universal Declaration of Human Rights, 1948 the Supreme Court of India in *Common Cause v. Union of India*,⁹ held that there is no exception to the principles of equality and it has to be applied to all. Although there is no mention of “dignity” specifically in the Chapter on Fundamental Rights in the Constitution of India so is the position in the American Constitution. Nevertheless, the same course of action followed as the Indian Supreme Court read human dignity into Articles 14 and 21 of the Constitution. In *Nartej Singh Johar v. Union of India*,¹⁰ the Supreme Court observed:

The fundamental idea of dignity is regarded as an inseparable facet of human personality. Dignity has been duly recognized as an important aspect of the right to life under Article 21 of the Constitution. In the international sphere, the right to live with dignity had been identified as a human right way back in 1948 with the introduction of the Universal Declaration of Human Rights. The constitutional courts of our country have solemnly dealt with the task of assuring and preserving the right to dignity of every individual whenever the occasion arises, for, without the right to live with dignity, all other fundamental rights may not realise their complete meaning.

The author has rightly stated in the Chapter 2 that the International Covenant on Civil and Political Rights (ICCPR), 1966 contains a comprehensive catalogue of civil and political rights which the States Parties have accepted to “respect and to ensure”. The International Covenant on Civil and Political Rights (ICCPR), 1966 has elaborated relevant provisions of the Universal Declaration of Human Rights, 1948 along with few new provisions of civil and political nature, for example, Articles 1 and 27 of the International Covenant on Civil and Political Rights (ICCPR), 1966. It is the core of

9 AIR 2018 SC 1665.

10 AIR 2018 SC 4321.

the legally binding international human rights treaty, providing a range of protections for civil and political rights. The International Covenant on Civil and Political Rights (ICCPR), 1966I shares much of the substance of its well-known precursor, the Universal Declaration of Human Rights, 1948. However, these two instruments differ in one crucial respect that the Universal Declaration of Human Rights, 1948 enumerates fundamental rights that ought to be enjoyed by all human beings, while the International Covenant on Civil and Political Rights (ICCPR), 1966 binds governments that ratify it under International Law.¹¹ Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), 1966 provides, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. Hence, this article does not specify what kind of killing would not be arbitrary; it just forbids the arbitrary impairment of life. Yet, regardless of a person’s legal status, this right is grounded in the rights to liberty and security of the person as well as the ban on arbitrary imprisonment. The author makes judicial dimensions comparison between Article 6 of the International Covenant on Civil and Political Rights (ICCPR), 1966 and Article 21 of the Indian Constitution. In India, the right to life has been guaranteed under Article 21 of the Constitution of India which reads: “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” Over time the right to “life” under Article 21 of the Constitution has given a wider connotation by the Indian Supreme Court and High Courts.¹² Thus, the right to information or the right to know is an intrinsic facet of the right to life.¹³ In *Anita Kushwaha v. Pushap Sudan*,¹⁴ the Supreme Court held that the word “life” implies not only live in the physical sense but a bundle of rights that makes life worth living, there is no juristic or other bases for holding that denial of “access to justice” will not affect the quality of human life to take access to justice out of the purview of right to life guaranteed under Article 21. Thus, access to justice is indeed a facet of right to life guaranteed under article 21 of the Constitution. The right to life does not mean mere animal existence alone but includes every aspect that makes life meaningful and liveable¹⁵ such as the right against solitary confinement and prison torture and custodial death,¹⁶ right against bar fetters,¹⁷ right to free legal aid,¹⁸ right against handcuffing,¹⁹ right to compensation

11 *Supra* note 5, Ch. 2 at 76-77.

12 *State of Tamil Nadu v. Vasanthi Veerasekaran*, AIR 2019 SC 3090.

13 *Indibility Creative Pvt. Ltd. v. Govt. of West Bengal*, AIR 2019 SC 1918.

14 AIR 2016 SC 3506.

15 *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

16 *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579.

17 *Charles Sobraj v. Suptd. Central Jail*, AIR 1978 SC 1514.

18 *Khatri II v. State of Bihar*, AIR 1981 SC 928.

19 *Prem Shankar Shukla v. Delhi Administration*, AIR 1980 SC 1535.

for illegal and unlawful detention,²⁰ right to a speedy trial,²¹ right to emergency medical aid,²² right to shelter, clothing, decent environment and decent accommodation,²³ right to clean environment,²⁴ right to marriage,²⁵ right to reputation,²⁶ right to make reproductive choices,²⁷ and right to reputation.²⁸

The author pointed out that the rights including the right to social security, the right to a minimum standard of living, and the right to take part in cultural life are mentioned in the International Covenant on Economic, Social, and Cultural Rights, 1966. Following the provisions of International Covenant on Economic, Social, and Cultural Rights, 1966, cultural rights are listed alongside economic and social rights, making up three interconnected parts of a larger package. The right to an adequate standard of life forms the basis of social rights. For everyone to be able to exercise these rights, they must, at the very least, have access to the necessities of life, such as appropriate shelter, clothes, and medical care. The right of families to offer assistance is closely tied to this right.²⁹ To enjoy these social rights, there is also a need to enjoy certain economic rights. These rights are the right to property,³⁰ the right to work,³¹ and the right to social security.³² Economic rights serve two purposes. This right is a foundation for rights that can guarantee a sufficient standard of living on the one hand, and a foundation for independence and, by extension, freedom, on the other. As a result, social welfare rights are covered by the International Covenant on Economic, Social, and Cultural Rights, 1966 and have a special implementation process. The author has categorised social welfare rights as they are expressed in the International Covenant on Economic, Social, and Cultural Rights, 1966 into the following groups:³³

- (i) right to work; (ii) right to just and favourable conditions of work; (iii) right to social security; (iv) right to an adequate standard of living; (v) right to health; (vi) right to education; and (vii) right to participate in and enjoy the fruits of culture and science.

20 *Rudal Shab v. State of Bihar*, AIR 1983 SC 1086.

21 *Sheela Barse v. Union of India*, AIR 1988 SC 2211.

22 *Parmanand Katara v. Union of India*, AIR 1989 SC 2039.

23 *Shantistar Builders v. Narayan Khimala Totame*, AIR 1990 SC 630.

24 *M.C. Mehta v. Union of India*, (1997) 1 SCC 388.

25 *Lata Singh v. State of U.P.*, AIR 2006 SC 2522.

26 *Sukhwant Singh v. State of Punjab*, (2009) 7 SCC 559.

27 *Suchita Srivastava v. Chandigarh Administration*, AIR 2010 SC 235.

28 *Anita Kushwaha v. Pushap Sudan*, AIR 2016 SC 3506.

29 Article 10, ICESCR and Article 27, CRC.

30 Art.17, UDHR.

31 Art. 23, UDHR and Article 23, ICESCR.

32 Art. 22 and 25, UDHR; Art. 9, ICESCR; Art. 9, CRC.

33 *Supra* note 5, Ch. 2, at 103.

The author has made note of the socio-economic right to health as one for which many States have agreed to uphold obligations under International Human Rights law.³⁴ According to the author in this connection, Articles 21, 39, 41, 42, 47, and other provisions of the Indian Constitution address various aspects of the realization of the right to health. As a result, the Indian government created its first National Health Policy in 1983.³⁵ The National Health Policy is adhered to while using the services of competent and skilled medical professionals.³⁶ In addition, a significant number of legislative measures have been passed in India to stop the spread of infectious diseases like COVID-19, which is brought on by the most current virus to be identified, the coronavirus. The Government of India created the National Directives for COVID-19 Management as part of the exercise of the authority granted to it by Sections 6(2)(i) and 10(2)(i) of the Disaster Management Act, 2005.³⁷ In *Mohammed Arif Jameel v. Union of India*,³⁸ the High Court of Kerala used the National Directives for COVID-19 Management and declared that certain activities are prohibited, and any social, political, sporting, entertainment, intellectual, cultural, religious, and other gatherings fell within this category. Yet, the District Magistrate will continue to control events like weddings and funerals. So, there should only be 20 people at gatherings related to funerals or final rites and no more than 50 for wedding-related gatherings. The aforementioned rules must be rigorously followed by all district magistrates. This directive's violation carries a fine in accordance with applicable laws, rules, or regulations. The author has gone into great detail about the COVID-19 problem which makes the Chapter excellent.

Chapter 3³⁹ is devoted to discuss the importance of human rights law in protection against inhuman wrongs. The fundamental ideas of civil and political rights as well as economic, social, and cultural rights were outlined in the Charter of the United Nations, 1945, the Universal Declaration of Human Rights in 1948, and two Covenants on Human Rights in 1966. Yet, these guidelines don't do anything to stop atrocities against humans. Due to their inhumane nature and the fact that they are against the dignity and worth of human beings, a number of human rights instruments have been developed to prevent the commission of specific wrongs. The author has looked into the following issues in this context: What exactly is "Genocide" and how can it be stopped? What does the term "Apartheid" mean? When and how was the anti-apartheid

34 *Id.*, at 124.

35 Government of India, *National Health Policy* (Ministry of Health and Family Welfare, New Delhi, 1983).

36 *Association of Medical v. Union of India*, (2019) 8 SCC 607.

37 Jatindra Kumar Das, "Rights of Patients - Doctors and Covid-19," *Vigyan Katha: Special Covid Issue* 2-3(2020).

38 MANU/KA/2041/2020.

39 *Supra* note 5, Ch. 3, at 154-204.

human rights law created? Is torture included in any other inhuman acts or penalties, and may torture be prevented by human rights law? What part does the law on human rights play in the abolition of the death penalty, forced labour, slavery, and the slave trade? The author comes to the conclusion that there is no specific ban on torture in either the Indian Constitution or statute law.⁴⁰ The Supreme Court of India has, however, held that Article 21 of the Constitution provides for prohibition of torture.⁴¹ The *Nilabati Behera v. State of Orissa*⁴² is considered to be the leading case on custodial death resulting from torture, in which the Supreme Court laid down the constitutional basis and nature of compensation for the infringement of Fundamental Rights. The court referred to its duty to enforce Fundamental Rights under Articles 14, 21, and 32 of the Constitution, the need to make the guaranteed remedies effective and to provide complete justice. Since the *Nilabati* decision the Supreme Court and the High Courts have awarded compensation under Article 21 of the Constitution in cases of rape, or other forms of torture,⁴³ of death in custody,⁴⁴ of “disappearances”,⁴⁵ of a case of death resulting from army action⁴⁶ as well as other cases concerning infringements of Fundamental Rights. *D.K. Basu v. State of West Bengal*,⁴⁷ is another important case regarding a death in custody resulting from torture, where the Supreme Court strongly denounced torture and, in addition to awarding compensation, directed the respondent State to take a wide range of specific measures aimed at preventing torture. The National Human Rights Commission and the Supreme Court play a noteworthy role in preventing torture and other inhuman acts, according to the author, even though India has not joined the 1984 Convention against Torture because there is no parliamentary legislation on the matter.

In Chapter 4,⁴⁸ the author has placed several arguments on the protection of the environment and human rights to development. However, the extent and application of this right have become debatable throughout time; hence, certain pertinent issues are raised in this chapter: What does the word “development” actually mean? How has the idea of the right to development changed and grown through time? What does the right to development entail? How will the right to development be put into practise? The right to a healthy, pollution free environment is a precondition for the right to development and is an international issue. In this situation, it is crucial to

40 *Id.*, at 178-179.

41 *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.

42 AIR 1993 SC 1960.

43 *Arvinder Singh Baggav. State of U.P.* (1994) 6 SCC 565.

44 *Amitadityuti Kumar v. State of West Bengal* (2000) 9 SCC 404.

45 *State of Punjab v. Vinod Kumar* (2000) 9 SCC 742.

46 *R.S. Sodhi v. State of U.P.*, 1994 Supp (1) SCC 142.

47 (1997) 1 SCC 416.

48 *Supra* note 5, Ch. 4, at 205-261.

decide on the following issues: What are some effective methods for describing the law governing environmental protection? Is there only one way to understand environmental legislation, using an anthropocentric perspective? Is there a connection between sustainable growth and environmental protection? What part do ideologies like intergenerational equity, the precautionary principle, and impact assessment play in environmental protection? What degree of protection of the environment and prevention of environmental pollution can the Indian laws offer? According to the author, sustainable development is a process that ensures that current demands are satisfied without sacrificing the capacity of future generations to satisfy their own needs.⁴⁹ Yet, the current human rights crises, such as the refugee and climate change crises, call for attention and action and may be considered to be of greater immediate significance than the development objectives of the “United Nations Agenda, 2030” for Sustainable Development.” The aspects of people, planet, prosperity, peace, and partnerships are the cornerstones of the “United Nations Agenda, 2030”. The Directive Principles of State Policy of the Indian Constitution are vital to the nation’s governance, and the State is required to use these principles while enacting legislation. One of the requirements of Article 48A of the Constitution for environmental protection and improvement is to protect forests and animals. Article 48A was added to the Constitution in recognition of the fact that the ideas of “sustainable development,” public trust,” and “intergenerational equality” are much more than just catchphrases in environmental law.⁵⁰

Chapter 5⁵¹ explores various issues relating to human rights in Indian Constitutional law. In this Chapter, the author has analysed the provisions of the Charter of the United Nations, 1945, the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic Social and Cultural Rights, 1966 comparing with the Constitution of India and concludes that human rights, whenever guaranteed by a written Constitution, may be called Fundamental Rights in the sense that a written Constitution is a fundamental law of the land although it is not the exhaustive source of Constitutional law which is enforceable by a court. Thus, customs or usages would have the force of law and would be enforceable if not inconsistent with the Fundamental Rights of Constitutional law. According to this, the groundwork for rights that would be enforceable as law would be laid through human rights covenants as such. A specific human rights instrument becomes a part of the country’s Constitutional law and can be enforced in the same way after it has been proven to the court’s satisfaction that it exists and is in operation. In this chapter, the constitutional component of human rights has been critically examined, along with the function of the Indian courts and

49 *Id.* at 225.

50 *Id.* at 245.

51 *Id.*, Ch. 5, at 262-376.

the ramifications that flow from the Constitution of India's protection of human rights. In India, the protection and enforcement of human rights are limited to "civil and political rights" in the form of "Fundamental Rights" and "economic, social and cultural rights" in the form of "Directive Principles" in the Constitution of India. These rights express the Constitution's framers' aspirations for the type of society they wanted to create in the nation.⁵² The Indian Constitution's system of Fundamental Rights is built on this concept, which has been strengthened by the inclusion of Directive Principles of State Policy and Fundamental Duties. By defining a set of Fundamental Rights, guiding principles, and essential duties, the Supreme Court upholds various human rights.⁵³

The significance of human rights law in defending women and children is covered in Chapter 6.⁵⁴ The author of this Chapter made it clear that the extent to which human rights law protects women and children is a contentious topic. Although this is a feature of gender neutral human rights law, the equality and non-discrimination principles are frequently applied to safeguard the human rights of women. So, the issues of whether the genderneutral human rights law is useful for protecting women and why proponents of genderspecific women's rights advocate at the global level arise. How well does the Indian Constitution protect women's human rights under international law? How has Indian law been written to address sexual harassment of women? What part does Indian law play in regulating surrogacy, reproductive rights, and pregnancy termination? Does Indian law recognise the need to end violence against women? What legal guidelines govern the protection of children's rights in India? The purpose of human rights law for protecting indigenous peoples is covered in Chapter 7.⁵⁵ In this chapter, the author emphasised how the details of indigenous peoples' rights have been argued throughout the previous few decades in order to re-articulate them within the context of human rights. In this regard, it has been suggested that indigenous peoples have experienced economic exploitation, violent socialisation, and policy discrimination. So, it is vital to study a wide range of topics in order to ascertain the extent and range of indigenous peoples' rights. These concerns include: When and how have indigenous peoples' rights developed and evolved? What did early international law say about this situation? What significant developments resulted from post-second world war international human rights law? What part have the ILO and UN played in defending the rights and interests of indigenous peoples? How successfully did the UN Working Group on Indigenous Populations protect the rights of indigenous peoples? What issues arise when attempting to define the term "indigenous peoples"? Should the "scheduled tribes" of India be considered "indigenous

52 *Id.*, 375.

53 *Id.*, 376.

54 *Id.*, Ch.-6 at 377-486.

55 *Id.*, Ch.7 at 487-617.

peoples”? What is the extent and scope of indigenous peoples’ right to self-determination? What measures does India use to defend the rights of indigenous peoples? The author does a fantastic job of presenting the problem of indigenous peoples’ rights in the Chapter 7.

The focus of Chapter 8⁵⁶ is on the specific provisions of the human rights law that deal with minority protection. Minority protection has generated debate in both international and Indian human rights law. The Constitution of India, which controls the legal framework for the protection of Indian minorities, is the highest law in the land. The chapter discusses the scope and range of the term of minority in comparison with international human rights law in light of Indian constitutional law. The International Covenant on Civil and Political Rights, 1948 and Minority Declaration, 1992 both recognise minorities’ rights on a global scale. In Chapter 8, the impact and effectiveness of these rights are critically examined, paying particular attention to how they are put into practise. The chapter also explains how minorities’ human rights are safeguarded by Indian law. The purpose and rationale of human rights law in protecting persons with disabilities under international and Indian law are discussed in Chapter 9.⁵⁷ What role do disabilities have in human rights discourse, for example, is investigated by the author in this chapter. What forms the cornerstone of the rights of people with disabilities? What roles does the UN play in defending the “soft” human rights of people with disabilities? How much of the UN’s “soft” human rights law is supplemented by its “hard” counterpart? How are the constitutional rights of people with disabilities protected in India? How well are people with mental disabilities protected under Indian criminal law? Whether the Indian mental health law is operating effectively? What functions do the National Trust Act, 2018, the Disability Act, 2016 and the Rehabilitation Council of India Act, 2016 play in defending the rights of people with disabilities? The author criticised some of the laws in this Chapter as being out of date. India has passed two Acts: the Mental Healthcare Act of 2017 and the Rights on People with Disabilities Act of 2016. These Acts have been analysed by the author well. The book also has a thorough index, table of cases, and bibliography. This book distinguishes out because it provides vast knowledge on a variety of human rights issues.

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56 *Id.*, Ch. 8, at 618-679.

57 *Id.*, Ch. 9, at 680-751.

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