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HUMAN RIGHTS LAW OF U.K., U.S.A. & INDIA: A COMPARATIVE STUDY

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ABSTRACT:

In the majority of the nations that are members of the United Nations Organization, the idea of human rights law is fast gaining ground. Since the Magna Carta was signed in England in 1215, the journey has begun. Then, the idea of human rights emerged as a result of several people's battles in nations like England, France, and America. The need for a much more powerful organisation was realised following the collapse of the League of Nations. The United Nations' journey officially began at that point. The United Nations Declarations of Human Rights served as the organization's founding document. Since then, the United Nations has ratified treaties, conventions, and covenants one after another, and the majority of the nations that are parties to the agreements have incorporated them into their national constitutions. The International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights quickly followed the UDHR. To strengthen the protection of human rights in those countries, the majority of nations endorsed and ratified this worldwide Bill of Rights. To safeguard, advance, and spread the noble idea of human rights throughout the world, numerous more treaties and conventions pertaining to various areas of human rights have been adopted. This essay focuses on the many Human Rights laws passed by the nations of India, the United States, and the United Kingdom. For the benefit of the populace's correct comprehension, a comparative discussion of the human rights laws in various nations has been held.

KEYWORDS:

UDHR, ICCPR, ICESCR, Human Rights, United Nations.

INTRODUCTION:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.” Article 2, UDHR¹.

Democracy has a lengthy history dating back to the dawn of humanity. The modern democratic society of today has experienced many ups and downs as it has travelled zigzag over the globe. Because it was a form of personal power, the monarchy that predominated in every nation was repressive. However, democracy was actually a form of collective rule. Therefore, democracy was regarded as the ideal system for governing the state. Separation of powers was a crucial component in establishing democracy, which is the rule of law in a nation. The modern nation-states have divided the powers among the Parliament, Executive, and Judiciary to prevent the exercise of arbitrary power. However, this allocation did not follow the rules set down in the constitutions of the various nations. From one nation to another, it differs. The current study will concentrate on how the three organs operate differently depending on the constitutional requirements of the United Kingdom, the United States of America, Canada, and India. Through this research, diverse approaches in various nations will be the main emphasis, leading to a comparison of these techniques.

In addition, this essay will concentrate on the availability and application of human rights instruments in the aforementioned nations. We'll talk about the key concerns surrounding the defence of human rights, including the role of the courts, the constitutionality of human rights regulations, and the mechanisms through which rights are safeguarded. The national constitution serves as a foundation for the protection and advancement of fundamental human rights, notwithstanding the fact that human rights procedures are implemented in a variety of ways. As a result, this project compares the constitutional and human rights laws of India, the United States, and the United Kingdom. It does so within the framework of each nation's constitution. The

¹ Article 2 of the Universal Declaration of Human Rights.

comparative study will clearly demonstrate the similarities and differences between how each country's constitution and human rights are upheld.

DEFINITION OF HUMAN RIGHTS

The term "human rights" refers to the fundamental rights that all people have, regardless of their gender, race, religion, nationality, place of residence, sex, ethnicity, or other characteristics. All people have the right to human dignity because they are also people. The rights include the freedom to live your life as you choose, the right to be free from slavery and torture, the freedom to express any form of opinion, the right to choose your job and to receive an education, among other things. Human rights must therefore be non-discriminatory.

The human rights rules strongly forbid any form of discrimination. All people have the right to all types of human rights, which is a very harsh truth, yet not everyone has access to all of those rights equitably around the world. Many times, governments themselves and other institutions blatantly violate the terms and framework of human rights and take advantage of their fellow citizens.

Human rights come in many forms, including the following:

- The Civil rights (such as the rights to life, liberty and security of the citizen),
- The Political rights (Rights to the protection of the law and equality before the law),
- The Economic rights (It includes the rights to work, to own property and to receive equal pay for equal work),
- The Social rights (The rights to elementary education and consenting marriages),
- Cultural rights (The right to freely participate in the cultural programmes of the community), and
- The Collective rights (The right to self-determination of the nations).

The concept of Human Rights owes its origin to the following:

- The Magna Carta of 1215
- The Habeas Corpus Act of 1679
- The Bill of Rights of 1689

The Second World War's atrocities, which resulted in the deaths of millions of people, caused the world to consider human rights protection to be of utmost importance on a global scale. In 1945, the League of Nations was replaced by the United Nations Organizations. The Universal Declaration of Human Rights, which was ratified on December 10th, 1948, was drafted with input from 50 UN Member States. This was the first effort to promote the protection of human rights on a global scale.

INTERNATIONAL HUMAN RIGHTS LAW:

The following are a few of the most significant international human rights laws:

- The International Covenant on Economic, Social, and Cultural Rights (ICESCR), a historic treaty, entered into force in the year 1976. It is known as the Universal Declaration of Human Rights (UDHR).
- The International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol came into effect in 1976, protecting the civil and political rights of individuals. In the year 1989, the Second Optional Protocol was approved.

1948 saw the adoption of the landmark Convention on the Prevention and Punishment of the Crime of Genocide.

- The year 1965 saw the adoption of another treaty, the International Convention on the Elimination of All Forms of Racial Discrimination (1965).
- The Convention on the Elimination of All Forms of Discrimination Against Women was adopted in 1979 in support of women's rights.

- The Convention on the Rights of the Child was enacted in 1989 to protect children's rights.
- The Convention on the Rights of Persons with Disabilities was ratified in the year 2006.

Human Rights Council

The General Assembly formed the Human Rights Council on March 15, 2006, making it the first UN body to protect human rights. As the primary UN intergovernmental entity charged with advancing human rights, this council was established to replace the 60-year-old United Nations Commission on Human Rights. The Universal Periodic Review has been the Human Rights Council's most creative project. This new system calls for every four years evaluation of the 193 United Nations member states' human rights records. It has legal force across all of the member nations.

United Nations High Commissioner for Human Rights

The United Nations High Commissioner for Human Rights is in charge of all human rights-related operations at the organisation. The High Commissioner has the only authority to take corrective and preventive measures in response to any type of human rights infringement wherever in the world. The Office of the High Commissioner for Human Rights is the United Nations agency that deals with human rights matters wherever in the world (OHCHR). It serves as the secretariat's coordinating body for the Human Rights Council, treaty bodies, and other UN human rights entities.

HUMAN RIGHT LAW IN THE UNITED KINGDOM:

Every citizen of the United Kingdom is guaranteed by the human rights laws and the provisions of the constitution's fundamental rights. Human rights are an essential part of the UK constitution and have their roots in common law statutes including the Magna Carta of 1215, the illustrious Bill of Rights of 1689, and the United Kingdom Human Rights Act 1998. Additionally, it has developed elements from other international legislation and from being a member of the Council of Europe. It is true, the UK's codification of human rights is a relatively new development. The

ancient European Convention on Human Rights is currently the primary source of law in this country, and it is incorporated into UK domestic litigation.

While the Human Rights Act became effective in India on January 8, 1994, it did not do so in the UK until October 2000. The Human Rights Act's several articles each address a separate right that has been adopted from the ECHR. This is frequently referred to as "the Convention Rights." In England, the Human Rights Act, or HRA, was enacted by the first Blair administration in 1998. The British citizen's human rights are promoted and protected by this law. In addition to the HRA, the common law and other laws enacted by the British Parliament also play a significant role in safeguarding individual rights by placing stringent legal restrictions on the government's public authority. The Equality Act of 2010 for example, prohibits any public authority from discriminating against residents on the basis of their race, sex, gender, or handicap. In contrast to the HRA, these additional legal rights protection sources do, however, serve a significant supporting role.

Thus, the standing of human rights principles more broadly remains up for question, as does the position of the HRA and the European Convention of Human Rights inside the UK's legal system. On the issue of how human rights should be best preserved within the confines of the British constitution, a consensus has yet to be established. Although the United Kingdom's legal rights protection is a little more comprehensive, the HRA's reach is still quite constrained. In particular, socio-economic rights are not adequately protected. International human rights law has a relatively small bearing on British law or policy. This law was passed in order to strengthen the protection of rights and liberties provided by the European Convention on Human Rights.

Main Provisions Of HRA, 1998

The European Convention on Human Rights' essential provisions, including, are incorporated into British law by the HRA, 1998. The following are some of the key articles of the Convention Rights²:

- Article 2: Right to life

- Article 3: Prohibition of torture

² The Articles of the HRA, 1998.

- Article 4: Prohibition of slavery and forced labour
- Article 5: Right to liberty and security
- Article 6: Right to a fair trial
- Article 7: No punishment without law
- Article 8: Right to respect for private and family life
- Article 9: Freedom of thought, conscience and religion
- Article 10: Freedom of expression
- Article 11: Freedom of assembly and association
- Article 12: Right to marry
- Article 14: Prohibition of discrimination

Protocol No. 1

- Article 1: Protection of property
- Article 2: Right to education
- Article 3: Right to free elections

Protocol No. 6

- Article 1: Abolition of the death penalty
- Article 2: Death penalty in time of war

HUMAN RIGHTS LAW IN THE UNITED STATES OF AMERICA:

In the Declaration of Independence, Thomas Jefferson proposed a concept of human rights that is intrinsic to all or any people in the year 1776. All men are created equal, and their Creator has endowed them with certain unalienable rights, among them are Life, Liberty, and the pursuit of



Happiness, he said. This Declaration is hailed by historian Joseph J. Ellis as "the most quoted proclamation of human rights in recorded history."

The United Nations organization's members finished crafting the United Nations charter in 1945, following the end of World War II. At that time, the USA had a big part in this process. Eleanor Roosevelt, a former first lady, served as chair of the committee that drafted the Universal Declaration of Human Rights. The US was a key player in the historic Nuremberg Military Tribunals, which tried individuals for crimes against humanity as a whole. The United States Constitution provides legal protection for a number of rights known as "human rights" throughout the country. The Bill of Rights, provisions in state constitutions, international treaties and customary law, laws passed by Congress and state legislatures, state referenda, and citizen initiatives are all protected by the constitution. Through a ratified constitution, the US federal government has guaranteed such unalienable rights to its citizens and, to some extent, to non-citizens as well. These rights have evolved through time as a result of legal precedent, fresh legislation, and constitutional changes. Federal courts have jurisdiction over international human rights laws and treaties that are violated on US soil. Concerns over individual liberty and the concentration of authority at the federal level of the states during the implementation of the new Constitution led to its revision through the ratification of the International Bill of Rights, the first ten amendments to the US Constitution.

Regarding how the US handles human rights issues, opinions are divided. The US, like several other nations, has not ratified the majority of the crucial international human rights treaties or conventions, while taking significant initiative in the 20th century. Since the nation's internal laws fall short of protecting residents' rights with regard to economic and social rights, the United Nations' foreign policy cannot respect numerous human rights issues.

Withdrawal from the Human Rights System

Despite first taking human rights concerns seriously, the US later stopped taking part in or ratifying international treaties, and in many cases, they even attacked the recently established human rights framework. Due to the fact that some atrocities during the Cold War era were done by the US itself, it was impossible for them to accept negative criticism. Additionally,

discriminatory laws still existed at the domestic level in the US at the time, preventing them from ratifying a large number of international human rights accords.

Re-engaging with the International Human Rights System

With regard to international human rights treaties, the US steadily shifted its position. The US reaffirmed, but in a different way, its adherence to a number of human rights conventions between 1960 and the 1970s. Despite having ratified most of the accords, they did not do so at the national level. The United States has not yet signed treaties like the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). But after several decades, in the 1980s or 1990s, the US ratified a number of treaties, including the ICCPR in 1992 and the Convention on the Prevention and Punishment of the Crime of Genocide in 1987. They did not ratify any of the two optional protocols to their domestic law, despite having ratified the ICCPR. They also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1994, as well as the ICERD. They once more became more active than before at this time.

The U.S. has not ratified the following major International Treaties

One of the most significant international agreements is this covenant. It requires the government to advance and defend the rights of the nation's residents to a sufficient quality of living, health, education, and social protection. Although the US president Carter signed this pact, it has not yet been incorporated into US domestic law even though it has been ratified by more than 150 countries. In accordance with the 1979 Convention on the Elimination of All Forms of Discrimination Against Women: CEDAW, one of the most significant, comprehensive, and comprehensive international agreements designed to protect the rights of women, has been approved by 185 countries worldwide. Even though President Carter signed CEDAW in 1980, the US has not yet ratified it into its national legal system.

The Convention on the Rights of the Child, 1989

This international agreement aims to protect children from harmful employment and physical and emotional abuse. Additionally, it seeks to compel parents to enrol their children in free

elementary education. This historic agreement is the most frequently accepted convention, having been ratified by 193 nations. Bill Clinton, the president of the United States, signed the agreement in 1995, however, the US has not yet ratified it. It is surprising that only two nations, including the US, have yet to ratify it. It demonstrates how the United States views the human rights issue.

The Rome Statute of International Criminal Court, 1998

When there is no other viable option for delivering justice, this historic treaty conducts the trials of those accused of genocide, war crimes, and crimes against humanity. The US is one of the 143 countries that have signed the ICC so far. George Bush, the president of the United States, signed this agreement in 2002, but he also declared that the US was not obligated to follow by the terms of the act as a result of his signature, thus they would not ratify it in their own laws.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

This treaty was created to safeguard migrant workers and their families from mistreatment and harsh treatment in the countries where they are employed in dangerous jobs. It is regrettable that no industrialised nation, not even the highly developed US, which employs a significant number of migrant workers, has ratified the agreement.

The Convention on the Rights of Persons with Disabilities, 2006

The human rights of people with impairments are the subject of this first international treaty. Barak Obama, the US president, signed the treaty, but the US has continued its pattern of not doing so just yet.

The International Convention for the Protection of All Persons from Enforced Disappearance, 2006

The crime of forced disappearance is gradually becoming more prevalent in the modern world. The situation has gotten so bad that more people are being forced to disappear every second. To put an end to this, the United Nations has developed this convention to state that forced disappearances, when carried out in a widespread and organised fashion, constitute crimes against humanity. This convention hasn't even been ratified by the United States.

HUMAN LAW RIGHTS IN INDIA:

The largest democracy in the world is thought to be India. The protection and advancement of the people's fundamental rights is one of the nation's key goals for becoming a democratic state. Certain protections for the protection of human rights are provided by the nation's Constitution. At the same time, India is a signatory to the 1948-adopted Universal Declaration of Human Rights. And afterwards, India accepted the ICCPR and ICESCR, two crucial covenants. The central government of India passed the Protection of Human Rights Act, 1993, also known as PHRA, as part of its commitment to the international community, which is a party to the protection of human rights. The legislation was passed by the Indian government to guarantee the human rights are implemented effectively. The act significantly altered how human rights are protected on a national level. The National Human Rights Commission and State Human Rights Commissions were constituted in accordance with the terms of the statute. These were the official organisations. The act specified the commission's membership, duties, and authority. The national and state human rights commissioners' responsibilities are explicitly outlined in the statute. The creation of Human Rights Courts and the appointment of Special Public Prosecutors for the same is provided for at various levels of the state.

In its 30 articles, the Universal Declaration of Human Rights (UDHR) covers a wide range of civil, political, economic, social, and cultural rights. The majority of the human rights outlined in the UDHR are confirmed by the Indian Constitution. Civil and political rights are included in the list of fundamental rights in Part III of the Indian constitution. The economic, social, and cultural rights are discussed as a guiding principle of state action in Part IV of the Constitution. The idea and purpose of the Indian Constitution are outlined in the preamble. It includes the ideas of liberty, equality, and the protection of the human dignity of all of the nation's residents. It also

includes the concept of justice in all its manifestations. To achieve this goal, Part III of the constitution ensures that everyone has the fundamental rights necessary for a person's personality to flourish. The list of fundamental rights includes the right to equality, the right to freedom, the right to practise one's religion freely, the right to be free from exploitation, the right to cultural and educational freedoms, and the right to legal recourse. Every state government, as well as the federal government, has a responsibility to ensure that each person has the necessary conditions to avail their rights.

The Indian Constitution explains the obligations on the government to work for the welfare of the people in Part IV, which is dedicated to the Directive Principles of the State Policy and the defence of peoples' human rights. These are the rules by which the state should base its policies on distributive justice. This covers the right to equitable and humane working conditions, the right to an education, social security, and the advancement of the interests of the weaker segment. Additionally, it requires raising the bar for nutrition, raising the bar for living, and generally enhancing public health. the preservation and advancement of ecology, the environment, and other related fields to ensure that everyone has access to a cleaner, greener environment.

The goal of "protection of an individual's dignity" cannot be achieved just by the rules for fundamental rights. The rights' unrestricted access must be made sure of. As a result, the right to constitutional remedies is guaranteed under Article 32 of the constitution. Any Indian citizen has the option to petition the Supreme Court to have their fundamental rights upheld thanks to this right. The judicial branch is required by the constitution to protect citizens' human rights. The Supreme Court and each state's High Courts have the authority to take the necessary steps to uphold these rights. The constitution's Articles 32 and 226 have redress systems in place. A person who feels wronged can directly appeal to the Supreme Court or High Court of the relevant state to have his or her fundamental rights protected. Citizens can so seek redress for grievances and exercise their fundamental rights. The courts have the authority to issue the proper orders, directives, and writs of habeas corpus, mandamus, prohibition, quo warranto, and certiorari in these types of situations. As a result, the judiciary is the primary guarantor or protector of the people's human rights in the state. By interpreting and extending the definition of essential rights, it not only defends the rights listed in the Constitution but also acknowledges

those rights that aren't listed. As a result, the people can take advantage of both the enumerated and unenumerated rights.

Human rights organisations, civil society, and other non-governmental organisations play a significant role in the preservation of human rights in addition to the government and the judiciary. In many instances, non-governmental organisations (NGOs) contribute significantly to society. These groups pinpoint and concentrate on the government's shortcomings while also aiding in the defence of citizens' rights. These NGOs, or non-profit organisations, operate independently and range in size from tiny groups to large international organisations with branches in the majority of the world's nations.

A COMPARATIVE STUDY OF HUMAN RIGHTS AMONG THE COUNTRIES U.K, U.S.A, AND INDIA

Even though there are some discrepancies in the way that human rights are implemented in the four countries under review, it is simple to conclude that the fundamental civil, political, economic, and cultural rights of the inhabitants have been protected by them in the majority of cases. The international treaties serve as the foundation for one of the primary causes of this. Since each of these four nations has ratified the major conventions, covenants, and other international treaties, the majority of them have been integrated into the country's constitution. Although some of them have outlawed the death sentence, India has not yet included it in its human rights framework.

These states have largely protected the rights of the three generations. Along with its state commissions, India has a national commission for the protection of human rights. There is a Human Rights Commission for the US, the UK, and Canada. Environmentalism and sustainable development are viewed as important global rights issues by the global population. The basic idea of national rights is evolving to converge with the universal rights of every citizen of every nation. The rights of stateless individuals, refugees, and asylum seekers speak to the eroding of national borders and the emergence of global citizens. The preconceived notions of national boundaries are being abandoned by humanity. Thus, it can be said that when we discuss human

rights, we are talking about the rights of all people, regardless of where they are in the world. The UDHR, ICESCR, ICCPR, CEDAW, and other global human rights treaties are examples of international law. There isn't a national boundary around it. The concept of human rights has received the attention it deserves both in the national and international domains since the end of World War II.

Every infringement of human rights wherever in the world is addressed by the international commission on human rights. And it must be acknowledged that countries like the United Kingdom, the United States of America, Canada, and India all make significant contributions to the operation of international organisations. However, it must be noted that a lot of state-sponsored human rights incidents are known to occur in these four countries even in these modern times of human rights. Many Human Rights Organizations and NGOs are working in this field to protect people's rights in various fields. Civil society members are coming forward to protest and oppose these incidents and are requesting that the governments of the concerned countries take appropriate action to protect, promote, and propagate human rights of the citizens of the country.



CONCLUSION:

“When it can be said by any country in the world, my poor are happy, neither ignorance nor distress is to be found among them, my jails are empty of prisoners, my streets of beggars, the aged are not in want, the taxes are not oppressive, the rational world is my friend because I am the friend of happiness. When these things can be said, then may that country boast its constitution and government. Independence is my happiness; the world is my country and my religion is to do good.”

- Thomas Paine, Rights of Man³

In many places, the human rights and constitutions of the United Kingdom, the United States, Canada, and India converge into one. When it comes to human rights, it is important to note that all four of these nations have ratified numerous international conventions and treaties, including

³ Thomas Paine was English born American political activist, Political theorist and Philosopher

the International Covenant on Civil and Political Rights, the International Covenant on Social, Economic, and Cultural Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights, all of which were signed in 1966. In addition to these additional agreements, these nations are parties to a large number of other agreements. Therefore, it makes sense that there are many similarities among the Human Rights Laws enacted in the various countries' constitutional frameworks given that the fundamental source of including the Human Rights is the same. However, it should be noted that various countries have different laws regarding the death sentence, the right to suicide, and other rights. In addition, all of these countries have agreed on the rights to sustainable development and to a clean environment. Despite some minor discrepancies, all four of the countries I studied are working to guarantee their citizens' fundamental human rights. As a result, they are serving as an example of a civilised country.

And while there are numerous parallels between the Constitutions of these four nations, there are also many areas where they diverge. As an illustration, the United Kingdom, United States do not adhere to the concept of rigorous separation of powers among their respective branches of government, but India does. While some federal rights are fully enjoyed by Indian states, similar rights are not entirely enjoyed by the provinces in the US or the UK. India follows the US in this regard even though the US has a strong centre. In the UK, the queen or the king rules, even if the parliament has the last say. In India, however, there is no tradition of hereditary rule; instead, the head of the executive is chosen by the legislators and members of the parliaments and legislative assemblies. In general, all four of these countries place a high priority on fundamental rights. All people of these nations are equally entitled to these rights without exception. They are subject to limitations in how courts and lawmakers can enforce them. As a result, these countries' constitutions grant the right to constitutional remedies. As a result, the constitutional rules of these nations have substantially evolved via their numerous modifications to satisfy the requirements and rights of contemporary residents.

REFERENCES:

1. Pylee M.V., Constitutions of the World, universal law publishing co, New Delhi, 1991.

2. Malik, Surendra, Malik Sudeep, Supreme court on Human Rights and Civil Rights, Volume one &two, EBC.
3. V.N. Shukla, Constitution of India (M.P. Singh, New Delhi) 2008
4. Bakshi P.M., The Constitution of India, universal law publishing co, New Delhi, 1991.
5. Pylee M.V. Indians Constitution, S. Chand and company publication, New Delhi, 1999, p.63
6. Gautam Bhatia, 2016, Offend, Shock, or Disturb: Free Speech under the Indian Constitution. 1st Edn., Oxford University Press, USA. p.88
7. Hogg. Peter.W, Constitutional law of Canada, insomniac press Publication, New Delhi 2003, p. 68.

