



## Book Review

### Jatindra Kumar Das (2016) *Human Rights Law and Practice*. New Delhi: PHI Learning Private Limited.

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*Human rights law and practice* offers a lucid, comprehensive understanding of human rights law through national and international human rights instruments and case law. In the preface, the author establishes the premise around which this book is constructed—that the term ‘human rights’ is ambiguous and can be used to describe a variety of legal relationships of entitlement, immunity, privilege and power with different results due to the different types of protection and procedures involved. Das questions the description of human rights as ‘inalienable rights’ and explains the evolution of the ‘human’ aspect of the term, with its origins in the French Revolution. The preface also echoes Amartya Sen’s question regarding whether a theory of human rights is required. The book aims to answer this question in the affirmative by expounding on various theories that form the philosophical basis of the concept of human rights.

The book is divided into nine chapters, each beginning with a short abstract. Chapter 1 addresses the theoretical foundations of human rights law by discussing various approaches to human rights, including natural rights by John Locke, the rights of man by Thomas Paine (through the English translation of the French Declaration of the Rights of Man and of the Citizen [1789]) and a social justice-based alternative approach by Charles R Beitz. It discusses the development of human rights law in India from ancient through medieval to post-independence, with an interesting British Indian perspective regarding the impeachment of Warren Hastings, governor-general of the British East India Company, for violating the eternal laws of justice. It also contains information regarding the application of rules of international law to solve disputes in pre-independence Indian courts. Five main types of theories are referred to in this chapter:

1. ‘Theories based on natural rights—a search for basic human good’. This section deals with classical natural law theory as observed in the writings of Ancient Greek philosophers such as Sophocles, Plato and Aristotle, followed by Roman philosopher Cicero and, thereafter, Aquinas, Locke, Fuller and Finnis.
2. ‘Theory based on equality of respect and concern—integrating liberty and equality’. This section addresses Dworkin’s writings formulating ‘a complex theory of law and society’ which differs from the mainstream principles of natural law theory.
3. ‘Theories based on human dignity—a search for interdependent values’. This section deals with the work of Pico Della Mirandola, Kant and Charles Taylor, as well as the contemporary work of George Kateb, David A Hyman, Myres S McDoughal, Harold D Lasswell and Lung-chu Chen.

4. 'John Rawls' theory of justice and its application to human rights law'. This section discusses John Rawls's attempt to develop a 'contractarian view of justice' derived from the traditions of Locke, Rousseau and Kant.
5. 'Amartya Sen's theory of human rights—a theory beyond legislative route'. This section questions whether Sen's understanding of rights is consistent with the United Nations' (UN) formulation of two sets of rights (i.e., civil and economical rights and economic, social and cultural rights).

Chapter 2 addresses various facets of the International Bill of Human Rights. Of note are the sections on incompatible reservations and surgical, backlash and severability doctrines. This chapter details various Indian practices regarding reservations in human rights treaties in the contexts of self-determination, compensation, aliens, restrictions to certain rights to form trade unions and freedoms of speech and expression in India, employment and International Court of Justice jurisdiction.

Chapter 3 discusses the importance of human rights law in protecting against rights violations such as genocide, apartheid, torture, racial discrimination, slavery and the slave trade, forced labour, human trafficking and the death penalty, with information regarding the Indian legal stance on these issues. Chapter 4 discusses the human right to the development and protection of the environment through the principle of sustainable development. Chapter 5 explores various issues related to human rights in Indian constitutional law, such as the right to die and to passive euthanasia, the right to privacy, the right to education, the right to freedom of speech, expression and information, the right against self-incrimination, the human rights of LGBT communities, and the interface between the right to freedom of speech and intellectual property rights.

Chapter 6 examines the role of human rights law in protecting women and children under international human rights instruments such as the Convention on the Elimination of all forms of Discrimination against Women and the United Nations Convention on the Rights of the Child. Emphasis is placed on the Indian constitutional framework for woman and child protection and on Indian statutes and case law regarding prevention of sexual harassment of women in the workplace, prohibition of sex selection through pre-conception and prenatal diagnostic techniques, protection of women from domestic violence and honour killing and protection from domestic violence within live-in relationships. The chapter also focuses on rights against child labour, children's rights to health and nutrition, prohibition of child marriage and protection given to children in conflict with law and to children in need of care and protection in an Indian context.

Chapter 7 discusses the function of human rights law in protecting indigenous people through International Labour Organization, UN and World Bank definitions of the right to self-determination (both internal and external). It also addresses the right of indigenous people to land ownership, rights against cultural and linguistic discrimination and rights regarding autochthonous education processes, traditional knowledge and tribal rights under the Indian Constitution. Chapter 8 examines how human rights law deals with the protection of minority communities, focusing on minority-run educational institutions in India. Chapter 9 discusses the utility and justifications of human rights law in protecting persons with disabilities under international and Indian laws.

This book has been primarily designed as a reference material for undergraduate and postgraduate law courses. It consolidates contemporary human rights law and practice relevant to an Indian audience. Most Indian textbooks on human rights in India are poorly written and dwell mainly on international human rights declarations and treaties and their interface with Indian constitutional law, and on enumeration of statutes and case law protecting human rights in India. This book is unique because it provides extensive information on the jurisprudential foundation of human rights, which cannot be found even in leading Indian textbooks regarding

jurisprudence. Further, each chapter covers issues of national and international significance in human rights. However, the author does not mention the legal position regarding protection of children from sexual abuse in India in Chapter 6.

Since 2016, many developments have occurred via case law to align Indian constitutional law with the principles of international human rights law. For example, the right of privacy and the right to die with dignity have been elevated as fundamental rights. The law regarding passive euthanasia has been redefined, adultery is no longer an offence and sexual intercourse with a child-wife between the ages of 15 and 18 has been criminalised. Homosexuality has been decriminalised. Menstrual discrimination has been prohibited. The author must incorporate these developments in Indian constitutional and criminal law to make this book relevant to current practice.

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