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HUMAN RIGHTS TRANSFORMED: POSITIVE RIGHTS AND DUTIES¹

AUTHORED BY - SAKSHI ANAND

Chapter 1

Introduction:

The concept of human rights has undergone significant evolution, moving beyond traditional understandings focused solely on protection from harm. Contemporary discourse now emphasizes positive rights alongside corresponding duties, recognizing the interplay between individual freedoms and societal responsibilities.

This transformation signifies a broader conception of human rights, extending beyond legal frameworks to encompass social justice and collective well-being. Positive rights, such as access to education and healthcare, acknowledge the necessity of active support for individuals to fully participate in society.

Central to this evolution is the acknowledgment of duties—obligations incumbent upon individuals, institutions, and governments to uphold the rights of others. This shift highlights the reciprocal nature of human relationships and underscores the importance of mutual respect and collaboration.

In an era marked by persistent inequality and injustice, embracing a framework of positive rights and duties offers a pathway toward greater inclusivity and equity. By adopting this holistic approach, we affirm the value of every individual and commit to the collective pursuit of a fairer and more sustainable future.

The interrelation between rights and duties constitutes a cornerstone in comprehending the intricate fabric of societal interactions and individual obligations. Essentially intertwined, these concepts form a reciprocal bond wherein the assertion of one invariably entails acknowledgment of the other. This reciprocal nature underscores the essence of societal harmony, wherein individuals not only possess certain entitlements but also carry corresponding responsibilities towards their fellow beings and the collective entity of society. This equilibrium acts as a fulcrum, ensuring that individual liberties are harmonized with the broader welfare and interests of the

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community. Moreover, the framework of duties serves as a pivotal mechanism for fostering accountability, compelling individuals, institutions, and governing bodies to remain cognizant of their obligations in safeguarding rights and fulfilling societal needs. In instances where the exercise of rights may impinge upon the rights of others or jeopardize communal well-being, duties provide a necessary framework for imposing constraints. This intricate web of reciprocal obligations ultimately underscores the fundamental ethos of human relations, encapsulating notions of mutual esteem, acknowledgment, and concerted efforts toward the realization of an egalitarian and just societal order.

1.2. Equality before Law and Equal Protection of Law:

Equality before the law and equal protection of the law are not just abstract ideals but fundamental components of legal systems worldwide, enshrined in constitutions, statutes, and international human rights treaties. These principles are evidenced through various legal mechanisms and practices aimed at ensuring their application and enforcement. Firstly, constitutional provisions establish the framework for the legal system, explicitly stating individuals' rights to fair treatment under the law. Legislation, on the other hand, often contains clauses that forbid discrimination and ensure equitable treatment. Legal precedents set by courts further reinforce these principles, guiding their implementation in specific cases. Additionally, international human rights agreements recognize equality before the law and equal protection of the law as essential human rights, binding states to uphold them. Lastly, enforcement mechanisms such as independent judiciaries and oversight bodies are pivotal in ensuring compliance and accountability. Together, these measures substantiate the principles of equality before the law and equal protection of the law, forming the foundation of just and impartial legal systems worldwide.

1.3. How rights are being transformed?

Rights are in a constant state of evolution, shaped by shifts in societal values, technological progress, and global dynamics. Several key factors contribute to this ongoing change. Firstly, there is a widening acknowledgment of rights beyond traditional civil and political liberties to include economic, social, and cultural rights. This broader perspective reflects a deeper grasp of human dignity, recognizing that individuals not only need protection from government intrusion but also access to essential resources like healthcare, education, and decent living conditions. Moreover, the principle of intersectionality has become increasingly important in discussions about rights. This concept recognizes that individuals can face discrimination based on a

combination of factors such as race, gender, sexuality, disability, or socioeconomic status. As a result, there is a growing need for a more nuanced approach to rights advocacy and policy-making, ensuring that rights protections are comprehensive and equitable for all groups in society. The rise of digital technologies has introduced new challenges and opportunities for rights protection. Issues like privacy, data protection, and access to information have become central concerns as people engage more extensively in online activities. It is essential to ensure that technological advancements do not infringe upon fundamental freedoms, leading to discussions about internet censorship, surveillance, and the ethical use of artificial intelligence.

Additionally, the urgent global challenges posed by environmental degradation and climate change have led to increased recognition of environmental rights. These encompass the right to a healthy environment, access to clean air and water, and participation in environmental decision-making. Incorporating environmental rights into legal frameworks and international agreements is crucial for effectively addressing sustainability challenges.

Lastly, globalization and migration have emphasized the importance of protecting migrant rights and the rights of marginalized populations. As people move across borders seeking opportunities or safety, it is vital to ensure their rights are upheld regardless of their immigration status. Efforts to combat human trafficking, address forced displacement, and protect refugee rights are integral to global human rights agendas.

The evolution of rights reflects society's evolving understanding of justice, equality, and human dignity. As new challenges emerge and societal norms evolve, the concept of rights continues to adapt, expanding to address emerging issues and guaranteeing that all individuals have access to the protections and opportunities they deserve in an ever-changing world.

Chapter 2

2.1. What are generation rights?

"Generation rights," also referred to as "generational rights," involve rights that are specific to different age groups or generations within society. These rights acknowledge the distinct needs, vulnerabilities, and interests of various cohorts, underscoring the importance of tailored protections and opportunities. For instance, children's rights encompass access to education, healthcare, and safeguards against exploitation. Youth rights focus on empowerment, including access to education, employment, and freedom of expression. Rights for the elderly aim to maintain dignity and well-being, covering access to healthcare, social security, and measures against age discrimination. Environmental rights for future generations prioritize sustainability

and responsible resource management. Lastly, intergenerational equity emphasizes fairness across generations, ensuring that actions taken today do not compromise the rights of future generations. In summary, generation rights are crucial for promoting social justice, solidarity, and sustainable development across all age groups within society.

2.2. Generation rights:

1. First Generation Rights (Civil and Political Rights):

These rights aim to protect individual freedoms from government intrusion, encompassing liberties such as freedom of speech, religion, assembly, and the right to a fair trial. Originating during the Enlightenment period, they were enshrined in foundational documents like the Bill of Rights in the United States and the French Declaration of the Rights of Man and of the Citizen.

2. Second Generation Rights (Social, Economic, and Cultural Rights):

These rights address economic and social disparities, striving to ensure fair access to resources and opportunities for all members of society. They include rights such as education, healthcare, social security, housing, and decent working conditions. These rights gained prominence after World War II with the adoption of the Universal Declaration of Human Rights and subsequent treaties, aiming to address post-war reconstruction efforts and social welfare needs.

3. Third Generation Rights (Collective Rights):

Third generation rights focus on the rights of groups, communities, and peoples, rather than just individuals. They include issues such as environmental protection, peace, and self-determination. Emerging in response to globalization, they underscore the importance of addressing shared concerns and ensuring the well-being of entire communities and future generations.

4. Fourth Generation Rights (Digital Rights):

Fourth generation rights relate to technology and the internet, addressing concerns like privacy, data protection, freedom of expression online, and access to information. These rights are increasingly relevant in today's digital age, responding to challenges and opportunities posed by advancements in technology and the internet.

5. Fifth Generation Rights (Environmental Rights):

Fifth generation rights emphasize the protection of the environment for current and future generations. They include rights like access to a clean environment, clean air and water, and protection of biodiversity. These rights have gained prominence due to escalating environmental challenges, such as climate change, pollution, and habitat destruction, highlighting the need for responsible environmental stewardship and consideration of future generations.

2.3. Transfer of rights in form of duty of state:

In India, the transmission of rights commonly translates into the state's obligation to uphold and safeguard the fundamental rights outlined in the Constitution. These fundamental rights cover a wide range of liberties, including civil freedoms like equality, freedom of speech and religion, and the right to life and personal liberty. The state is mandated by the Constitution to ensure the protection of these rights, which entails various duties such as enacting and enforcing laws, establishing institutions to safeguard rights, and providing mechanisms for citizens to seek redressal in case of rights violations.

For instance, the right to equality encompasses the state's responsibility to enact laws and policies that foster equality and prevent discrimination based on factors like religion, race, caste, sex, or place of birth. Similarly, the right to life and personal liberty mandates the state to safeguard individuals from arbitrary arrest or detention and ensure access to a fair judicial process.

Moreover, India's judiciary, particularly the Supreme Court and High Courts, assumes a pivotal role in upholding fundamental rights. They have the authority to enforce these rights through various legal avenues, serving as custodians of the Constitution and possessing the power to nullify laws or government actions that contravene fundamental rights.

The transfer of rights manifests through the state's duty to uphold, protect, and fulfill the fundamental rights guaranteed by the Constitution. This duty underscores the state's commitment to safeguarding the well-being and dignity of its citizens and forms a fundamental aspect of the country's democratic framework.

Chapter 3

3.1. Right to Surrogacy in India:

The legal framework surrounding the right to surrogacy in India has undergone significant changes in recent years. Initially, India became known for commercial surrogacy due to its relatively relaxed laws and lower costs compared to other countries. However, concerns about the potential exploitation of surrogates and ethical dilemmas prompted the enactment of stricter regulations.

In 2015, the Indian government implemented the Surrogacy (Regulation) Act to govern surrogacy arrangements and curb the commercialization of the practice. This legislation prohibited commercial surrogacy and allowed only altruistic surrogacy, where surrogates carry a child for intended parents without financial compensation beyond medical expenses and insurance.

Additionally, the Act set eligibility criteria for intending parents, including a requirement to be married for at least five years, have no biological children, and suffer from infertility or specific medical conditions. It also mandated the establishment of national and state surrogacy boards to oversee surrogacy arrangements and ensure compliance with the law.

The Surrogacy (Regulation) Act, 2015, aimed to safeguard the rights and well-being of surrogate mothers, prevent the commercialization of surrogacy, and promote ethical practices in assisted reproductive technologies. However, its implementation has encountered challenges, and ongoing discussions have questioned its effectiveness and addressed its provisions.

In 2019, the Indian government introduced the Surrogacy (Regulation) Bill, 2019, which sought to further regulate surrogacy arrangements and address existing loopholes and concerns. This bill proposed expanding eligibility for altruistic surrogacy to include heterosexual married couples, single women, and widows, while upholding the ban on commercial surrogacy.

The right to surrogacy in India is governed by stringent regulations aimed at safeguarding the interests of all parties involved, including surrogate mothers, intended parents, and children born through surrogacy. The evolving legal landscape reflects ongoing efforts to balance ethical considerations and complexities surrounding assisted reproductive technologies with the rights and welfare of individuals engaged in surrogacy agreements.

3.2. Right to Surrogacy in India:

1. Baby Manji Yamada Case²

This internationally recognized case involved a Japanese couple who engaged an Indian surrogate. However, complications arose as the couple divorced before the child's birth, leading to a legal dispute over the child's citizenship and custody. This case raised complex legal and ethical issues concerning surrogacy, citizenship, and the child's rights, highlighting the necessity for clear legal frameworks to address such situations.

2. Jan Balaz v. Anand Municipality³

In this case, the Gujarat High Court addressed the legality of commercial surrogacy in India. The petitioner contested the legality of a surrogacy agreement, arguing it violated Indian laws prohibiting commercial surrogacy. The court's ruling shed light on regulatory gaps in surrogacy laws, emphasizing the requirement for comprehensive legislation governing surrogacy

² AIR 2009 SUPREME COURT 84, 2008 AIR SCW 6964

³ Appeal No 11364 of 2009.

arrangements within India.

3. Baby M Case (In Re Baby M)⁴

Though not specific to India, this influential case in the United States dealt with surrogacy and parental rights. It involved a surrogate mother who refused to give up custody of the child she carried, sparking a prolonged legal battle over parental rights and the validity of surrogacy contracts. This case prompted significant legal and ethical debates surrounding the rights of surrogate mothers, intended parents, and the welfare of the child.

3.3. What rights Surrogates have?

1. **Right to Informed Consent:** Surrogates have the right to receive comprehensive information about the surrogacy process, including potential risks, medical procedures, and legal implications. They should be able to make informed decisions about participating in surrogacy arrangements freely and without coercion.
2. **Right to Medical Care and Support:** Surrogates are entitled to appropriate medical care and support throughout the surrogacy journey, including prenatal care, assistance during labor and delivery, and access to healthcare professionals who prioritize their well-being.
3. **Right to Privacy and Confidentiality:** Surrogates have the right to privacy regarding their personal information and medical history. Confidentiality should be maintained throughout the surrogacy process, and any sharing of sensitive information should be with the surrogate's consent.
4. **Right to Legal Representation:** Surrogates have the right to legal representation to ensure that their rights and interests are safeguarded in surrogacy agreements. Legal counsel can assist surrogates in understanding their rights, negotiating fair terms, and navigating legal complexities.
5. **Right to Financial Compensation and Support:** Surrogates have the right to fair and reasonable financial compensation for their time, effort, and associated expenses during the surrogacy process. Compensation should be negotiated transparently and in compliance with relevant laws and ethical standards.
6. **Right to Respect and Dignity:** Surrogates are entitled to be treated with respect, dignity, and compassion throughout the surrogacy journey. They should not face discrimination, coercion, or exploitation based on their decision to become a surrogate.
7. **Right to Withdrawal:** Surrogates have the right to withdraw from the surrogacy arrangement

⁴ 537 A. 2d 1227, 109 N.J. 396 (N.J. 02/03/1988).

at any stage before the pregnancy is established, as long as it aligns with the terms of the surrogacy agreement and applicable laws. They should not be pressured to continue with the surrogacy against their will.

3.4. Specific rights concerning science and technology:

1. **Right to Education:** It ensures compulsory and free education for children aged 6 to 14.⁵ This provision guarantees access to quality education, including science and technology learning, crucial for fostering scientific literacy and nurturing future innovators.
2. **Right to Information:** It empowers citizens to access information held by public authorities.⁶ This law enhances transparency in governmental decisions, including those concerning science and technology policies, research funding, and public projects.
3. **Right to Health:** Although not explicitly stated in the Constitution, the Supreme Court has interpreted Article 21's right to life to include the right to health. This encompasses access to healthcare services, medical advancements, and treatments.
4. **Intellectual Property Rights:** India's intellectual property laws safeguard innovators' rights, including patents, copyrights, and trademarks. These laws encourage innovation and knowledge dissemination while ensuring accessibility to essential technologies.
5. **Data Protection and Privacy:** The Personal Data Protection Bill aims to regulate personal data collection, processing, and sharing, thereby safeguarding individuals' privacy rights, crucial in today's digital age.
6. **Environmental Protection:** India's environmental laws, such as the Environment Protection Act of 1986, mitigate the adverse effects of technological development. They empower the government to protect and improve the environment.
7. **Freedom of Expression and Scientific Inquiry:** Under Article 19 of the Constitution, freedom of speech and expression includes the liberty to engage in scientific inquiry and discourse. This freedom fosters scientific progress, innovation, and the exchange of ideas.

Chapter 4

4.1. Human rights and Environmental issues:

Human rights within environmental realms involve protecting basic freedoms amidst concerns about ecological conservation and sustainability. These rights emphasize the crucial connection

⁵ The Right to Education Act of 2009.

⁶ The Right to Information Act of 2005.

between a healthy environment and fundamental human entitlements like the right to life, health, clean water, food, and unpolluted surroundings. Ensuring people have access to a safe environment, free from contamination and hazards, is essential. Similarly, it's vital to provide clean water, sanitation, and nutritious food to maintain dignity and prevent waterborne diseases. Environmental degradation, such as deforestation and climate change, can profoundly affect food security and livelihoods, necessitating safeguarding the right to food security. Moreover, addressing environmental pollution is crucial for public health and access to healthcare. Recognizing the rights of indigenous peoples and local communities to their lands and resources is also vital, preserving their culture and traditional ways of life. Ultimately, human rights within environmental issues advocate for holistic approaches that prioritize both environmental preservation and safeguarding fundamental human rights.

4.2. What protective rights are there?

Protective rights constitute a wide array of legal and moral principles geared towards shielding individuals and communities from various forms of harm, exploitation, discrimination, and mistreatment. These rights serve as vital safeguards to ensure that every individual is treated with dignity, fairness, and reverence. At their core lies the right to life, ensuring individuals are free from unjust deprivation of life, including acts like extrajudicial killings and genocide. Additionally, there's the right to personal security, safeguarding individuals from physical harm, torture, and cruel treatment. The right to liberty and security further guarantees protection against arbitrary arrest or detention without proper legal procedures. Furthermore, protective rights encompass the right to privacy, freedom from discrimination, and freedom from slavery and forced labor. These rights ensure equitable treatment, opportunities, and security for all individuals, irrespective of their race, ethnicity, gender, religion, or other attributes. Moreover, they entail freedoms such as freedom of expression and opinion, freedom of assembly and association, and the right to education and health, essential for nurturing societies where individuals can live autonomously with dignity while contributing positively to the collective welfare. Ultimately, protective rights serve as the bedrock of human rights frameworks globally, fostering environments where human dignity is revered, social justice prevails, and individuals can thrive harmoniously.

4.3. Duties of citizens:

Citizens are entrusted with a variety of duties crucial for societal well-being. Among these is the

imperative to adhere to the legal framework, ensuring community order and stability. Additionally, citizens are required to contribute financially through tax payment, sustaining government operations and public services. Engaging in democratic processes, including voting and civic involvement, serves to fortify democratic principles and ensure governance aligns with public sentiment. Furthermore, citizens are obligated to honor the rights and dignity of all individuals, irrespective of differences. This encompasses defending the nation, preserving the environment, and advocating for social equity. Ultimately, these duties underscore the interdependent relationship between individuals and society, emphasizing active participation, ethical behavior, and collective accountability in fostering a flourishing and fair community.

4.4. Article 21 concerning Environmental issues:

Article 21 of the Indian Constitution⁷, originally focused on the right to life and personal liberty, has been broadly interpreted by the judiciary to encompass environmental concerns. While not explicitly mentioning environmental rights, the courts have recognized that a clean and healthy environment is essential for the enjoyment of life and liberty. Consequently, Article 21 has been invoked in various environmental cases, addressing issues like pollution and industrial activities that threaten environmental health. Judicial rulings have emphasized that environmental degradation directly impacts individuals' quality of life, thus violating their right to life. As a result, courts have mandated measures to enforce environmental laws, restrict polluting industries, and promote sustainable development practices. Additionally, the judiciary has stressed public participation and access to environmental information, recognizing these as integral to ensuring transparency and accountability in environmental decision-making. In summary, while Article 21 doesn't explicitly mention environmental rights, its interpretation by the judiciary has been instrumental in advancing environmental protection and sustainability in India.

1. M.C. Mehta v. Union of India⁸

This significant legal battle centered on the pollution of the Ganges River caused by industrial and municipal waste discharge. The Supreme Court ruled that the right to a clean environment is an essential part of the right to life enshrined in Article 21. It ordered the closure of polluting industries and instructed the government to take steps to restore the river's health.

⁷ Indian Kanoon; <https://indiankanoon.org/doc/1199182/>.

⁸ M.C. Mehta And Anr vs Union Of India & Ors on 20 December 1986, AIR 1086, 1987 SCR (1) 819.

2. Vellore Citizens Welfare Forum v. Union of India⁹

This case focused on pollution in the Palar River due to industrial discharge in Tamil Nadu. The Supreme Court reiterated the right to a clean environment as part of Article 21. It mandated that industries comply with pollution control regulations and compensate for environmental harm.

3. Indian Council for Enviro-Legal Action v. Union of India¹⁰

Addressing vehicular pollution in Delhi, this case emphasized the government's duty to ensure a pollution-free environment under Article 21. The court directed the use of compressed natural gas (CNG) as a cleaner fuel and the establishment of pollution control centers.

4. T.N. Godavarman Thirumulpad v. Union of India¹¹

Concerning forest and wildlife protection in the Nilgiris region, this case stressed environmental conservation under Article 21. It called for the removal of encroachers from forest land, implementation of conservation measures, and appointment of special officers for oversight.

5. Subhash Kumar v. State of Bihar¹²

In this instance, the Supreme Court affirmed that Article 21 encompasses the right to live in an environment free from pollution. It ordered the closure of tanneries operating without pollution control measures in Bihar and compensation for pollution-related health issues.

Chapter 5

Conclusion and suggestion:

In summary, the shift towards recognizing positive rights alongside corresponding duties represents a significant advancement in contemporary legal and ethical discourse. While traditional human rights frameworks emphasized freedoms from government intervention, the acknowledgment of positive rights underscores the importance of advancing individual well-being and societal welfare. By addressing systemic inequalities through rights to education, healthcare, and housing, positive rights contribute to fostering a more inclusive and equitable society.

Moreover, the inclusion of corresponding duties complements the assertion of positive rights by underlining individual and collective responsibilities towards realizing these rights. Duties such

⁹ 1996 5 SCR 241, ILDC 443 (IN 1996), 1996 5 SCC 647, 1996 AIR 2715, JT 1996, 375, 28th August 1996.

¹⁰ 1996 AIR 1446, 1996 SCC (3) 212.

¹¹ (1997) 2 SCC 267

¹² 1991 AIR 420 1991 SCR (1) 5 1991 SCC (1) 598 JT 1991 (1) 77 1991 SCALE (1)8.

as respecting others' rights, contributing to the common good, and preserving the environment are crucial for promoting social cohesion, justice, and sustainable development. Integrating duties into human rights discourse promotes a more balanced approach, emphasizing the reciprocal relationship between rights and responsibilities.

Looking ahead, it is imperative to raise awareness and understanding of positive rights and associated duties among policymakers, stakeholders, and the public. Education and advocacy efforts can play a pivotal role in fostering a culture of rights-awareness and civic engagement, encouraging individuals to fulfill their duties towards themselves and others. Additionally, governments and international bodies should prioritize implementing policies and initiatives aimed at realizing positive rights, ensuring equitable access to essential services and resources for all members of society.

Furthermore, legal mechanisms and accountability frameworks need to be reinforced to effectively enforce both rights and duties. This involves establishing robust monitoring mechanisms, enhancing access to justice, and holding duty-bearers accountable for upholding their obligations towards positive rights. By embracing a rights-based approach that integrates both rights and duties, societies can make strides towards achieving a more just, equitable, and sustainable world for everyone.

