

A Study of Human Rights in Indian Perspective

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Human Rights are essential for full development of human personality and for human happiness. They are inherent in our nature and without which we can not live as human being. Human rights pertain to all person and are not earned, bought or inherited nor they are created by any contractual authority. Human Rights are those rights, which are inherent in human existence and belong to all human beings irrespective of gender, race, caste and religion ect. Adoption of universal declaration of human rights (UDHR) by the united Nations on December 10, 1948 gave a globe thurst to the human rights. The present paper is an attempt to understand the outlook on human rights from Indian perspective. India is one of the few countries that protect human rights through their constitution. The civil and political rights guaranteed as fundamental rights are enforceable through the courts of law. The protection of human personality and of its fundamental rights is the ultimate purpose of all the national and international laws.

Main Words- Human Right, Human Responsibility, Universal Declaration, Constitutional law.

The term "human rights" is a dynamic concept and endeavours to adapt itself to the needs of the countries and their people. Before understanding the Human rights the words Human and Rights are need to be understood. The word 'Human' means belonging or pertaining to or of the nature of man or mankind.¹ The word 'Rights' denotes the freedom and advantages that everyone should be allowed to have.² These rights are sometimes known as basic rights, fundamental rights, natural rights or inherent rights. Human rights are those rights, which are inherent to all human beings, irrespective of a person's nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Everybody is equally entitled to human rights without discrimination. These rights are all interrelated interdependent and indivisible. The United Nations Centre for Human rights defines human rights as "those rights that are inherent in our nature and without which we can not live as human beings".³

Various definitions of human rights have been given by different scholars. In the words of Prof. Laski, Rights are those conditions of social life without which no man can seek in general to be himself at his best.⁴ Kant has aptly said that human beings have on intrinsic

value absent in inanimate objects. To violated a human rights therefore be a failure to recognize the worth of human life.⁵ According to David Selby, human rights pertain to all persons and are posed by everybody in the world because they are human beings they are not earned, bought or inherited, nor are they created by any contractual undertaking.⁶ The spectrum of human rights is so wide that it is not possible to capture its essence in one definition. However, it has been well defined by Michael freeden in his book Rights as "a conceptual device, expressed in linguistic form, that assigns priority to certain human or social attributes regarded as essential to the adequate functioning of a human being; that is intended to serve as a protective capsule for those attributes; and that appeals for deliberate action to ensure such protection".⁷ So, human rights are those rights, which are inherent in human existence and belong to all human beings irrespective of gender, race, caste and religion etc.

The universal declaration of human rights (UDHR) adopted and proclaimed by the General Assembly resolution of 10th December, 1948 forms one of the main milestones in the history of human rights. The Declaration consisted of 30 Articles, covering both civil and political rights and economic,

social and cultural rights. Human rights day is observed every year on 10th December.

Historical Development of Human Rights in India :

The concept of the rights of man and other fundamental rights was not unknown to the people of the earlier periods.⁸ In ancient India the concept of human rights can be traced back to the Vedas of the fifteenth century B.C. The most significant declaration on Human rights comes from the famous Vedic rhymes "Let everyone be happy, let everyone free from all ills." Under this Vedic framework, the king was expected not only to protect the life of subjects, but to promote their well being and prosperity.⁹ There are many references in the Vedas, which, throw light on the existence of human rights in ancient India. The Vedas proclaim liberty of body (Tan), dwelling house (Skridhi), and life (Jibasa). In 1367 B.C. Bahmani and Vijayangar kings are stated to have entered into an agreement of the human treatment of prisoners of war and the sparing of lives of the enemy's unarmed subjects.¹⁰ Human rights have always occupied a place of paramount importance in India's rich legacy because Indians believed in the principle, "Vasudhaiva- Kutumbakam"¹¹ i.e. welfare of all.

Ancient Indian thinkers like Manu, Parasara and Kautilya tried meticulously to protect the rights and dignity of individuals from the rapacity of the rulers. These Indian thinkers prescribed many duties to rulers to protect the dignity of the citizens. In the post-Vedic period, the rise of Buddhism and Jainism were certainly a reaction against the deterioration of the moral order as against the rights of the privileged class. Human rights as a concept is very ancient and some references pertaining to human rights can be found even in ancient Indian Scriptures. The historical account of ancient Bharat proves beyond doubt that human rights were as much manifest in the ancient Hindu and Islamic Civilization as in the European Christian civilization. Ashoka, the prophet Mohammed and Akbar can not be excluded from the genealogy of human rights.¹²

The modern version of human rights jurisprudence may be said to have taken birth

in India at the time of British rule. The concrete demand for fundamental rights came logically in the wake of the nationalist movement, which coincided with the birth of the Indian National Congress in 1885. The constitution of India Bill 1895 known as the "Home Rule Document" prepared by the Indian National Congress paved the way for a constitution guaranteeing everyone of the citizens the basic human rights like freedom of expression, inviolability of one's own house, right to property and equality before law.¹³

The Government of India Act, 1915, in pursuance of the demands for the fundamental rights, guaranteed equality of opportunity in Public services. A series of resolutions adopted by the National Congress between 1917 and 1919 repeated the demand for civil rights and equality of status with the English. In May, 1927, a committee set up, under the chairmanship of Pt. Moti Lal Nehru suggested that the fundamental rights should be incorporated in the further Constitution of India. The Sapru Committee in 1945, stressed on the need for the written code of Fundamental Rights. Finally the Constituent Assembly after serious debates incorporated natural rights names fundamental rights and directive principle in most comprehensive manner. Further on 10th December 1948, when the Constitution of India was in the making, the General Assembly proclaimed and adopted the Universal Declaration of Human rights, which surely influenced the framing of India's Constitution. Viewed from the Indian standpoint, human rights have been synthesized, as it were, not as an integrated fabric by the Preamble promises and various Constitutional clauses of the National Charter of 1950.¹⁴

Human Rights and Constitution of India :

The Constitution of India which came into force on 26th January, 1950 is one of the most elaborate fundamental laws ever adopted. Preamble to our Constitution is the key to understand Constitution. According to the Preamble of Indian Constitution, India is a "Sovereign, Socialist and Secular and Democratic Republic".¹⁵ The term 'democratic' denotes that the Government gets its authority from the will of the people. It gives a feeling

that they all are equal "irrespective of their race, religion, language, sex and culture". The Preamble to the Constitution pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring to the dignity of the individual and the unity and integrity of the nation to all its citizens.

India was a signatory to the Universal Declaration of Human Rights. A number of fundamental rights guaranteed to the individuals in the part III of the Indian Constitution are similar to the provisions of the Universal Declaration of Human Rights. The Indian Constitution is a document rich in Human rights jurisprudence and a supreme law of the land. Our Constitution contains chapters on Fundamental Rights, Directive Principles of State Policy and Fundamental Duties.¹⁶

A unique feature of Indian Constitution (Part III) is that article 14-32 is named Fundamental Rights which are basic, natural and inalienable rights. These rights have been declared essential rights in the order that human liberty may be preserved. Human rights as enumerated in the Constitution as fundamental rights are as under :

Right to Equality (Article 14 to 18)-

- Equality before law (Article 14)
- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15)
- Equality of opportunity in matters of public employment (Article 16)
- Abolition of untouchability (Article 17)
- Abolition of titles (Article 18)

Right to Freedom (Article 19 to 22)

- Freedom of speech etc. (Article 19)
- Protection in respect of conviction for offences (Article 20)
- Protection of life and personal liberty (Article 21)
- Protection against detention in certain cases (Article 22)¹⁷

Right Against Exploitation (Article 23 to 24)

- Prohibition of traffic in human beings and forced labour (Article 23)
- Prohibition of employment of children in factories etc. (Article 24)

Right to Freedom of Religion (Article 25 to 28)

- Freedom of conscience and free pursuit of profession, practice and propagation of religion (Article 25)
- Freedom to manage religious affairs (Article 26)
- Freedom as to payment of taxes for promotion of any particular religion. (Article 27)
- Freedom as to attendance at religious places or religious worship in certain educational institutions. (Article 28)¹⁸

Cultural and Educational Right (Article 29 to 30)

- Protection of interest of minorities (Article 29)
- Right of minorities to establish and administer educational institutions (Article 30)

Right to constitutional remedies (Article 32)

The right to Constitutional remedies is essentially the right to move the supreme court of India for enforcement of the above rights. (Article 32). The father and architect of Indian Constitution Dr. Ambedkar Said, "Article 32 (Right of Constitutional Remedies) is the heart and soul of the Constitution."¹⁹

Right to child Education :

Right To child education (Article 21A) is a new human right, which is included in the Constitution by Eighty Sixth Constitution Amendment Act, 2002. According to Article 21(A), the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine.

The importance of these rights was explained by Justice Bhagwati in Menka Gandhi v. Union of India²⁰ as follows: These fundamental rights represent the basic values cherished by the people of this country since the Vedic Times and they are calculated to represent the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantee on the basic structure of human rights and impose negative obligations on the state not be encroach on individual liberty in its various dimensions.

National Human Rights Commission of India:

The national human rights commission (NHRC) was established on October 12, 1993, under the provisions of the Protection of Human Rights Act, 1993. The commission serves as an independent and autonomous body for protection of human rights in the country. The Act provides that Human Rights means "the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Conventions and enforceable by the courts of India".²¹ India has enacted the protection of Human Rights Act 1993, with a view to provide for the Constitution of a National Human Rights Commission, State Human Rights Commission in State and Human Rights Court for better Protection of human rights and for matters connected therein or incidental thereto. The protection of Human Rights Act 1993, contains 43 sections and divided into eight chapters.

The National Human Rights Commission (NHRC) is consisting of a Chairperson and seven other members. Out of the seven members, three are ex-officio members and four other are appointed by the President on the recommendation of a Selection Committee. The Committee is consisting of the Prime Minister who is the chairman of this Committee, Union Home Minister, Deputy Chairman of the Rajya Sabha, Speaker of the Lok Sabha and the Leaders of the opposition in the both Houses of Parliament.

The apex Court significantly held that it was fully empowered to look into the propriety of orders passed by such commission and observed "the National Human Rights Commission headed by a former chief justice of India is a unique expert body in itself. The chairman of the Commission in his capacity as a judge of Supreme Court or as Chief Justice of India and so also to other members who have held high judicial offices as Chief Justice of the High Courts, have throughout their tenure, considered, expounded and enforced the fundamental rights and are, in their own way, expert in the fields."²² In deciding the matters referred by Supreme Court, National Human Rights Commission is given a free hand and is

not circumscribed by any conditions. Therefore the jurisdictions exercised by the National Human Rights Commission in these Matters is of a Special nature not covered by enactments or law, and thus acts sui generis.

Article 12 of the protection of Human Rights Act described the functions of Commission. Its primary function is to look into the complaints of human rights violation or abatement thereof or negligence in the prevention of such violation by a public servant. Intervene in any proceedings involving allegation of violation of human rights with the approval of such court, visit any jail, review of safeguards provided by or under the constitutions or any law, review the act of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measure, study treaties and other international instrument of human rights. The commission also undertakes and promotes research in the field of human rights and spreads human rights literature among the people. Proper encouragement is given to the NGOs and other institutions that are interested in the field of human rights.²³

The NHRC has urged all states and Union Territories to constitute State Human Rights commission and notify a court of sessions to be a Human Rights Court in each district as envisaged by Sections 21 respectively of the protection of Human Rights. The NHRC submits annual report to the Centre Government and it is placed before each house of the parliament. Comprehensive powers have been given to the NHRC for the performance of its functions. It has all the power of a Civil Court including the power to summon and enforce the attendance of witnesses, discovery and production of any document, calling for the production of any public records etc.

The Supreme Court in all cases are there to protect human rights, the court observed, "the power and jurisdiction of the Supreme Court under Act- 32 of the Constitution can not be curtailed by any statutory limitation, including those contained in sec. 36(2) of the Act. If Supreme Court exercise that the power unaffected by the prohibition contained in Sec. 36(2), there is no reason why the commission, at the request of Supreme Court, can not investigate or look into the violations of human

rights, when though the period of limitation indicated in sec. 36(2) might have expired.²⁴

It is clear from above analysis that the National Human Rights Commission of India is a unique and vibrant institution working for protection as well as promotion of human rights of various sections of Indian society. The Protection of Human Rights Act 1993, is very important land-mark in history of human rights jurisprudence.

Some other Measures of Protection of Human Rights under Indian Law:

- The Protection of Civil Rights Act, 1955
- Suppression of Immoral Traffic in Women and Girl Act, 1956
- Maternity Benefit Act, 1961
- Dowry Prohibition Act, 1961
- Equal Remuneration Act, 1976
- Bonded Labour (Abolition) Act, 1976
- Employment of Children Act, 1938 (Amended in 1985)
- The Child Labour (Prohibition and Regulation) Act, 1986
- Juvenile Justice Act, 1986
- Indecent Representation of Woman (Prohibition) Act, 1986
- Sati (Prevention) Act, 1987
- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
- The National Commission for Women Act, 1990
- The National Commission for Minorities Act, 1992
- The National Commission for Safai Karamcharis Act, 1993
- The National Commission for Back Ward Classes Act, 1993
- The Mental Health Act, 1993
- The Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995

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The purpose of securing human rights as such are to provide protection to these rights against the abuses of power by state organs; to establish institution for the promotion of living condition of human beings and for the development of their personality; and at the same time, to provide effective remedial measures for obtaining redress in the event of violation of those rights.²⁵

CONCLUSION:

Thus, Human rights are very much essential for a good and qualitative human survival. These rights are possessed by every body in the world because they are human beings. They are concerned with the human dignity of the individual that is the level of self-esteem that secures personal identity and promotes human community. The civil, social, cultural and economic safeguards provided under Indian constitution in the form of fundamental rights. Part III of Indian constitution may be characterised as the 'Magna Cart' of India. NHRC of India plays a significant role in protecting of Human rights. There is no doubt that human rights are fundamental to the peace, stability, democracy and development of countries. Human rights are essential for the physical, mental moral and spiritual upliftment of human personality. The protection of human personality and of its fundamental rights is the ultimate purpose of all the national and international laws. Although human rights are necessary for sustaining human life and promoting development of man yet the internal political structure, level of social, technological and economic development, the resource bases and the religiocultural background of the countries, do have a profound bearing on the policies and priorities of various countries towards human rights.

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