

A study on Human Rights and the Indian Constitution

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Abstract: Human Rights are generally defined as the rights which every human being is entitled to enjoy and to have protected. Human rights are commonly understood as “inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being.” Human Rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the International Covenants and enforceable by courts. Human rights are thus conceived as universal (applicable everywhere) and egalitarian (the same for everyone). These rights may exist as natural rights or as legal rights, in both national and international law. The struggle for the recognition of human rights and the struggle against political, economic, social and cultural oppression, against injustice and inequalities, have been an integral part of the history of all human societies.

Key words: Rights, Inherent, Covenants, Enforceable.

INTRODUCTION

The origins of the contemporary conception of human rights can be traced to the period of the Renaissance and later of the Enlightenment of which humanism may be said to be the heart and soul. The issue of fundamental or (also called) human rights became an issue of prominence and fundamental significance since the last two hundred years only.

- First of all Magna Carta (Charter of Liberty) was promulgated on June 15, 1215.
- In 1225 King Andrew II of Hungary issued the Golden Bill in the words of Magna Carta.
- In 1283 King Peter III of Aragon bestowed upon his subjects the Law of Privileges
- In 1355 British Parliament re-affirmed the declaration of Magna Carta and introduced the words due process of law. It stated, No man of what state or condition so ever he be, shall be put out of his lands or tenements nor taken nor

imprisoned nor put to death, without he be brought in to answer by due process of law.

- In 1689 the British Parliament passed the Bill of Rights which Lord Acton described as the greatest thing done by the English nation
- In 1690 John Locke propagated theory of social contract attempting to reconcile sovereignty and democracy.
- There were two great revolutions at the end of 18th century, in America and in France inspired by philosophers like Samuel Adams, Jefferson, Rousseau and Kant who emphasized on the Law of Nature and the natural rights of man.
- Similarly in Virginia in 1776, Declaration of Rights was promulgated which guaranteed freedom of press and religion, rights to jury trial and other safeguards of a criminal trial. It made the military authorities to civil power and provided for free elections.
- In 1776 there was also the declaration of American independence drafted by John Locke. The preamble read: All men are created equal that they are endowed by their Creator with certain inalienable rights that among these are life, liberty and the pursuit of happiness.
- In 1789 the American Congress passed the Bill of Rights in the shape of ten amendments of the Constitution
- While in France the French Assembly adopted the Declaration of the Rights of Man and the Citizen. It recited: Men are born free and equal in rights, aim of every political association is the preservation of the practical and imperceptible right of man. The rights are liberty, property, security and resistance to oppression.
- The fourth Amendment of the American constitution in 1868 stipulated: No state shall deprive any person of life, liberty or property without due process of law, nor deny to any

person within its jurisdiction, the equal protection of law.

- In the 18th and 19th centuries the basic human rights were included in the constitutions of various nations, Sweden, Spain, Norway, Belgium, Sardinia, Denmark and Switzerland, Russia, Turkey, China, etc
- In 1917 the Declaration of the Rights of the working and Exploited People was issued by the All-Russian Congress of Soviets.
- In 1930 on January, 26th people of all over India taken the Pledge of Independence at thousands of meeting held all over the country.
- In 1931 March, the Indian National Congress in its session at Karachi adopted the resolution of Fundamental Rights and Economic Programme.
- In 1941 President Roosevelt stressed on four freedoms, Freedom of speech, Freedom of Religion, Freedom from Want and Freedom from Fear.
- The same year Winston Churchill wanted to ensure that the war ended, with the enthronement of human rights.
- France in the preamble of its Constitution of 1946 reaffirmed: Every human being without distinction of race, religion or belief possesses inalienable and sacred rights.
- The 1946 Constitution of Japan provided: The people shall not be prevented from enjoying any of the fundamental rights.
- On 22nd January 1947, the Constituent Assembly of India adopted the resolution of India' Charter of Freedom.

International treaties

- In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted by the United Nations, between them making the rights contained in the UDHR binding on all states that have signed this treaty, creating human-rights law.

Since then numerous other treaties (pieces of legislation) have been offered at the international level. They are generally known as human rights instruments. Some of the most significant, referred to

(with ICCPR and ICESCR) as "the seven core treaties", are:

- Convention on the Elimination of All Forms of Racial Discrimination (CERD) (adopted 1966, entry into force: 1969)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 1979, entry into force: 1981)
- United Nations Convention against Torture (CAT) (adopted 1984, entry into force: 1984)
- United Nations Declaration on the Right to Development adopted 1986
- Convention on the Rights of the Child (CRC) (adopted 1989, entry into force: 1989)
- The Vienna Declaration and Programme of Action 1993 (Endorsed by the General Assembly of the United Nations).
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW or more often MWC) (adopted 1990, entry into force: 2003)
- Convention on the Rights of Persons with Disabilities (CRPD) (adopted 2006, entry into force: 2008)

Human rights Enshrined in Indian Constitution.

Human Rights in Indian Constitution can be found in the Preamble of the Constitution of India, Part III of the Constitution on Fundamental Rights and Part IV of the Constitution on Directive Principles, which together have been described as forming the core of the Constitution which together reflect the basic principles of the Universal Declaration of Human Rights and the Covenants on Civil and Political Rights, Economic, Social and Cultural Rights, and Part IVA of the Constitution on Fundamental Duties, Articles 300A, 325 and 326.

1. Preamble:

The Preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document. That the preamble is not an integral part of the Indian constitution was first decided upon by the Supreme Court of India in the Beru Bari case, therefore it is not

enforceable in a court of law. However, the Supreme Court of India has, in the Kesavananda case, recognized that the preamble may be used to interpret ambiguous areas of the constitution where differing interpretations present themselves. In the 1995 case of Union Government Vs LIC of India also the Supreme Court has once again held that the Preamble is an integral part of the Constitution. As originally enacted the preamble described the state as a "sovereign democratic republic". In 1976 the Forty-second Amendment changed this to read "sovereign socialist secular democratic republic".

2. The Fundamental Rights

The Fundamental rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, color or Gender. They are enforceable by the courts, subject to certain restrictions,

The six fundamental rights recognized by the constitution are.

1. Right to equality

Right to equality is an important right provided for in Articles 14, 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights and liberties, and guarantees the following:

- Equality before law: Article 14 of the constitution guarantees that all citizens shall be equally protected by the laws of the country. It means that the State [5] cannot discriminate any of the Indian citizens on the basis of their caste, creed, colour, sex, gender, religion or place of birth.
- Social equality and equal access to public areas: Article 15 of the constitution states that no person shall be discriminated on the basis of caste, colour, language etc. Every person shall have equal access to public places like public parks, museums, wells, bathing Ghats and temples etc.
- Equality in matters of public employment: Article 16 of the constitution lays down that the State cannot discriminate against anyone in the matters

of employment. All citizens can apply for government jobs. There are some exceptions.

- Abolition of untouchability: Article 17 of the constitution abolishes the practice of untouchability. Practice of untouchability is an offense and anyone doing so is punishable by law
- Abolition of Titles: Article 18 of the constitution prohibits the State from conferring any titles. Citizens of India cannot accept titles from a foreign State. However, Military and academic distinctions can be conferred on the citizens of India. The awards of Bharat Ratna and Padma Vibhushan cannot be used by the recipient as a title.

2. Right to freedom

The Constitution of India contains the right to freedom, given in articles 19, 20, 21 and 22, with the view of guaranteeing individual rights that were considered vital by the framers of the constitution.

The right to freedom in Article 19 guarantees the following six freedoms:

- Freedom of speech and expression, which enable an individual to participate in public activities.. Reasonable restrictions can be imposed in the interest of public order, security of State, decency or morality.
- Freedom to assemble peacefully without arms, on which the State can impose reasonable restrictions in the interest of public order and the sovereignty and integrity of India.
- Freedom to form associations or unions on which the State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.
- Freedom to move freely throughout the territory of India though reasonable restrictions can be imposed on this right in the interest of the general public
- Freedom to reside and settle in any part of the territory of India which is also subject to reasonable restrictions by the State in the interest of the general public or for the protection of the scheduled tribes

- Freedom to practice any profession or to carry on any occupation, trade or business on which the State may impose reasonable restrictions in the interest of the general public
- The constitution guarantees the right to life and personal liberty, which in turn cites specific provisions in which these rights are applied and enforced:
- Protection with respect to conviction for offences is guaranteed in the right to life and personal liberty.

According to Article 20,

- No one can be awarded punishment which is more than what the law of the land prescribes at that time.
- Moreover, no person accused of any offence shall be compelled to be a witness against himself.
- The other principle enshrined in this article is no person can be convicted twice for the same offence
- Protection of life and personal liberty is also stated under right to life and personal liberty.

Article 21- Declares that no citizen can be denied his life and liberty except by law.

Article 21(A), - Makes a fundamental right of every child to get free and compulsory education. Rights of a person arrested under ordinary circumstances are laid down in the right to life and personal liberty. Article 22 - No one can be arrested without being told the grounds for his arrest. Also an arrested citizen has to be brought before the nearest magistrate within 24 hours.

The constitution also imposes restrictions on these rights. The government restricts these freedoms in the interest of the independence, sovereignty and integrity of India. In the interest of morality and public order, the government can also impose restrictions. However, the right to life and personal liberty cannot be suspended. The six freedoms are also automatically suspended or have restrictions imposed on them during a state of emergency

3. Right against exploitation

Child labour and Begar is prohibited under Right against exploitation. The right against exploitation, given in Articles 23 and 24, provides for two provisions. Article 23- The abolition of trafficking in human beings and *Begar* (forced labor). Article 24- Abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. An exception is made in employment without payment for compulsory services for public purposes. Compulsory military conscription is covered by this provision

4. Right to freedom of religion: Right to freedom of religion, covered in Articles 25, 26, 27 and 28, Article 25 - Provides religious freedom to all citizens of India.

Article 26 - Religious communities can set up charitable institutions of their own.

Article 27 -No person shall be compelled to pay taxes for the promotion of a particular religion

Article 28 - State run institution cannot impart education that is pro-religion.

5. Cultural and educational rights: Articles 29 and 30 are there to protect the rights of the minorities.

Article 29 - Any community which has a language and a script of its own has the right to conserve and develop it. No citizen can be discriminated against for admission in State or State aided institutions and Article 30 - All minorities, religious or linguistic, can set up their own educational institutions to preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution.

Right to Life: In recent judgment Supreme Court of India extended scope of right to life which was mentioned earlier.

6. Right to constitutional remedies

This right covered under Article 32 of the Constitution. Article 32 empowers the citizens to move a court of law in case of any denial of the fundamental rights. This procedure of asking the courts to preserve or safeguard the citizens' fundamental rights can be done in various ways. The courts can issue various kinds of writs. These writs

are habeas corpus, mandamus, prohibition, quo warrant and certiorari. When a national or state emergency is declared, this right is suspended by the central Government.

Right to property was originally a fundamental right, but is now a legal right.

2. Directive Principles of State Policy

The Directive Principles of State Policy, embodied in Part IV of the Constitution, are directions given to the State to guide the establishment of an economic and social democracy, as proposed by the Preamble. The State is expected to keep these principles in mind while framing laws and policies, even though they are non-justifiable in nature. The Directive Principles may be classified under the following categories: ideals that the State ought to strive towards achieving; directions for the exercise of legislative and executive power; and rights of the citizens which the State must aim towards securing

- Article 37, while stating that the Directive Principles are not enforceable in any court of law, declares them to be "fundamental to the governance of the country" and imposes an obligation on the State to apply them in matters of legislation.
- Article 38 emphasize the positive duty of the State to promote the welfare of the people by affirming social, economic and political justice, as well as to fight income inequality and ensure individual dignity, in order to ensure equitable distribution of land resources.
- Article 39 lays down certain principles of policy to be followed by the State, including providing an adequate means of livelihood for all citizens, equal pay for equal work for men and women, proper working conditions, reduction of the concentration of wealth and means of production from the hands of a few, and distribution of community resources to "sub serve the common good,
- Article 39A requires the State to provide free legal aid to ensure that opportunities for securing justice are available to all citizens irrespective of economic or other disabilities.
- Article 40 states The State shall also work for organization of village panchayats and help enable them to function as units of self-government.
- Article 41 states The State shall Endeavour to provide the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, within the limits of economic capacity.
- Article 42 provide for just and humane conditions of work and maternity relief.
- Article 43 The State should also ensure living wage and proper working conditions for workers, with full enjoyment of leisure and social and cultural activities. Also, the promotion of cottage industries in rural areas is one of the obligations of the State.
- Article 44he State shall endeavor to secure a uniform civil code for all citizens,
- Article 45 provides free and compulsory education to all children till they attain the age of 14 years. This directive regarding education of children was added by the 86th Amendment Act, 2002.
- Article 46 states State should and work for the economic and educational upliftment of castes, scheduled and other weaker sections of the society.
- Article 47 commit the State to raise the level of nutrition and the standard of living and to improve public health, particularly by prohibiting intoxicating drinks and drugs injurious to health except for medicinal purposes.
- Article 48 State should organize agriculture and animal husbandry on modern and scientific lines by improving breeds and prohibiting slaughter of cows, calves, other mulch and draught cattle
- Article 49 it shall be the obligation of the State to protect the monuments, places and objects of historic and artistic interest and national importance against destruction and damage.
- Article 50 states for the separation of judiciary from executive in public services
- Article 51 ensure that the State shall strive for the promotion and maintenance of international peace and security, just and honorable relations between nations, respect for international law and treaty obligations, as well as settlement of international disputes by arbitration.

4. Fundamental Duties

The Fundamental Duties are a novel feature of the Indian Constitution in recent times. Originally, the Constitution of India did not contain these duties. The Forty Second Constitution Amendment Act, 1976 has incorporated ten Fundamental Duties in Article 51(A) of the constitution of India. The Eighty-Six Constitution Amendment Act, 2002 has added one more Fundamental Duty in Article 51(A) of the constitution of India. As a result, there are now 11 Fundamental Duties of the citizen of India.

CONCLUSION

The violation of Human Right may be in any form. We should be ashamed with rising issue of honor killing, corporal punishment, custodial death, fake encounter killing, etc. if we want to give the exact interpretation of term Unity in Diversity it is the responsibility of every Indian to respect rights of another individual irrespective of race, color, sex, cast, language, religion, political or other opinion, national or social origin, property birth or other status.

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