

PROTECTION OF HUMAN RIGHTS AND THE CONSTITUTION OF INDIA: AN ANALYSIS

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ABSTRACT

The Constitution of India has taken all possible measures to uphold human rights of people in the constitution. Human rights are inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being. So human rights are the most important rights of the people for live their lives as a human being. Realizing the truth the framers of the Indian Constitution conferred a nos of chapters in the constitution which will help the citizens of our country to live their lives like human being and also will provide opportunities for the all round development of our citizens. The framers of the constitution also evolve mechanism under the Indian Constitution to protect the human rights of the people of our country. The paper is an attempt to make an in-depth study to examine the measures that have been taken for the promotion of Human Rights in India and also to be examined the mechanism that has been evolved by the Constitution of India for the protection of human rights.

Key words: human rights, fundamental rights, constitution, mechanism

INTRODUCTION:

According to Wikipedia of Free Encyclopedia, Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people according to some legal system, social convention, or ethical theory. Rights are fundamental to civilization, as rights are regarded as pillars of society and culture, and the history of social conflicts can be found in the history of each right and its development. According to the *Stanford Encyclopedia of Philosophy*, "rights structure the form of governments, the content of laws, and the shape of morality as it is currently perceived". It has been observed that most of the countries of the world, mainly the democratic countries, have conferred chapters of rights to its citizens in their constitution. Democratic countries try to establish Justice and Equality in the political systems, hence democratic countries conferrers numerous rights for its realization. It is worth mentioning that rights are most important for the successful and sustainable of a democracy. Every citizen has to enjoy a numbers of rights in a democracy such as right to vote and the right to be elected to government. Rights are also to be provided in a democracy for the protection of the rights of the minorities from the oppression of majority. Rights play an important role in assuring security, dignity, and fraternity in a political system. As India is a democratic country therefore the constitution of India confers a list of fundamental rights to its citizens and also made some mechanism in the constitution to protect the fundamental rights of the people.

CONCEPT OF HUMAN RIGHTS:

In the most general sense Human Rights are understood as inalienable rights which essentially belong to any individual as human being. These are the fundamental rights naturally possessed by every human being irrespective of one's race, sex, nationality, ethnicity, language, religion, or any other factor that distinguishes human being from each other. These fundamental and naturally inalienable rights allow our basic human qualities to develop that include one's intelligence, talent, thoughts and physical and spiritual needs among others. The concept of human rights has grown based on mankind's inherent demand for life in which one's dignity and worth as human being is respected and one's right to equality and liberty are protected. The values of dignity, equality and liberty associated as a human being transcend all civilization across the globe, yet these rights have been disregarded in most of the parts in the world. Human rights include all the rights which are important to life of everyone. The rights may include right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.

The concept of human rights was also popularized among the nations of the world by United Nations Organization (UNO) by adopting Universal Declaration of Human Rights on December 10, 1948. But it can be said that prior to the adoption of UDHR, several countries had proclaimed comparable declarations. We can cite the example of England which adopted Bill of Rights, Bill of Rights in USA, and the declaration of the Rights of Man and of the Citizens in France. The UDHR is commonly referred to as the International 'Magna- Carta' for the protection of human rights, extended the revolution in international law ushered in by the United Nations Charter-namely, that how government treats its own citizens is now a matter of legitimate international concern, and not simply a domestic issue. The Universal Declaration of Human Rights Charter of UNO includes a preamble and 30 Articles which comprises its operative part. The preamble of the charter spells out the philosophy, motives and purposes which guided the drafts of the UDHR. The preamble becomes very significant due to several reasons. The important message that has been reflected by the preamble was very fundamental. It says that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world."

OBJECTIVE OF THE STUDY:

The main aim of our study is to examine the provisions that have been made by our framers of the constitution for the promotion and protection of human rights of the citizen of India.

METHODOLOGY:

The methodology followed in the preparation of this paper is historical and analytical. Attempt is also made to make the work objective so far as possible. Primary sources used in this paper are contemporary literature, public and private records, biographical works and autobiographies,

personal letters and diaries, newspapers, journals, periodicals, etc. Secondary sources such as published books, journals and periodicals, newspapers, etc., are also used in this work.

PROVISIONS OF FUNDAMENTAL RIGHTS IN INDIAN CONSTITUTION:

The adoption of the UDHR in December 10, 1948, influenced the framers of the Indian Constitution greatly as the Constitution of India was being framed in the same time. Hence they enumerated a numbers of chapters in our constitution. The Constitution of India is a political document and it is found on social, economic and political aspiration of the people of India. A good number of provisions contain in the constitution which guarantees various individual rights which are similar to the one guaranteed under the UN Charter and different Covenants of the UN.

Fundamental Rights:

The Constitution of India like other liberal democratic countries of the world contains a detailed Bill of Rights which grants and guarantees the fundamental rights and freedom to the people of India. The chapter of Fundamental Rights is incorporated in Chapter-III, explaining from Article-12 to 36.

- a. **Right to Equality:** ‘Right to Equality’ can be recognized as the pillar of a democratic country. In our constitution these rights have been discussed from Article-14-18. These rights are of tremendous importance. Hence Right to Equality gets top priority in the list of Fundamental Rights.
- b. **Equality Before Law:** Article 14 guarantees to all citizens and others equality before law. All citizens are equal in the eyes of law. “The state shall not deny to any person equality before law or equal protection of the laws within its territory.” “Equal subjection of all the people to the laws of the land.” “Equal legal protection to all the persons”, are the two fundamental rights enshrined in the list.
- c. **Prohibition of Discrimination:** Article15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth.
- d. **Equality of Opportunity:** Article 16 of the Indian Constitution provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.
- e. **Freedom of Speech and Expression:** Article 19 of the constitution provides 6 types of freedom to its citizens. Freedom of Speech and expression is one of them without which democracy would be meaningless.
- f. **To Assemble Peacefully and without Arms:** This type of rights also confers by Article 19. Citizens of India can assemble peacefully in any place in the country.

- g. **To Form Associations and Unions:** The state cannot fulfill all the aspirations of its citizens due to the load of works of the government increasing day by day. Hence the constitution provides that the citizen can form organizations and unions to fulfill their demands and needs which they can fulfill by themselves. (Article-19).
- h. **To move freely throughout the Territory of India:** The Constitution of India under Article 19 provides that Indian citizen can move freely throughout the territory of India.
- i. **Protection against Arbitrary Conviction:** Article 20 of the Indian Constitution provides protection against arbitrary conviction in respect of offences committed by the people. It says that No person can be convicted of an offence except for the violation of a law in force at the time commission of the act charged of an offence. This provision prevents ex-post facto legislation which makes an innocent act an offence, which when committed was not an offence.
- j. **Protection of Life and Liberty:** Article 21 provides that ‘no persons shall be deprived of his life or personal liberty except according to the procedure established by law.’
- k. **Right against Exploitation:** Under Article 23, the constitution prohibits traffic in human beings and beggar and similar forms of forced labour.
- l. **Right to Freedom of Conscience and Free Profession, Practice and Propagation of Religion:** The Article 25 guarantees to all persons, the freedom of conscience and the right to profess practice and propagate any religion. Forcible conversions stand prohibited in India. There is no state religion in India. All religion is equal. People enjoy religious freedom and they can adopt or refrain from adopting any religion.
- m. **Rights to Constitutional Remedies:** The right to move to the court securing the fundamental rights is enshrined in the constitution. Article 32 Provides that effective provisions for the protection and enforcement of fundamental rights. Article 32 guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights. It empowers the SC to issue directions or orders or writs for this purpose.

ENUMERATION OF CULTURAL, SOCIAL AND ECONOMIC RIGHTS UNDER THE DIRECTIVE PRINCIPLES OF THE CONSTITUTION OF INDIA:

Article 36-51 of the Constitution of India contains the Directive Principles of State Policy. It forms the Part-IV of the constitution. Their uniqueness lies in the fact that these are not enforceable in any law court yet these are very important in the governance of the country. These Directive Principles of State Policy aims to make India a welfare state. These are some of the directions to the government to use while framing or enacting laws or policies.

- 1. Promotion of welfare of the people. (Art-38)
- 2. Adequate means of Livelihood. (Art-39)

3. Right against Economic Exploitation. (Art-39(e).
4. Equal pay for equal work for the men and women. (Art-39 (d)
5. Right to work. (Art-41)
6. Right to leisure and rest. (Art-41)
7. Educational and Economic interest of the weaker section of the population and in particular in scheduled caste and tribes and the protection of them from social injustice and exploitation. (Art-46)
8. Right to public assistance in case of unemployment, old age sickness. (Art-41)
9. Protection and improvement of environment and safeguard of forests and wild life. (Art-48A)
10. Separation of the Judiciary from Executive. (Art-50)

PROVISIONS OF LAWS IN INDIA RELATING TO THE PROTECTION OF HUMAN RIGHTS:

The Government of India has been working for the protection and preservation of human rights since India's independence. Some of the laws which are enacted for the purpose are as under-

a. **Constitution of India:** The Constitutional provisions on human rights arise from the Constitution of India itself. The Preamble to the Constitution of India is the key to open the minds of the framers of the constitution. The preamble reads as follows-

“We the people of India having solemnly resolve to constitute India into Sovereign, Socialist, Secular, Democratic, Republic and to secure to all its citizens-

JUSTICE-Social, Economic, Political

LIBERTY of Thought, Belief, Faith and Worship,

EQUALITY of Status and Opportunity

And to promote among them all

FRATERNITY assuring Dignity of the Individual and the

UNITY and INTEGRITY of the Nation.”

The preamble unmistakably sets out quintessence of human rights which represents the aspirations of the people, which have given to themselves by this constitution. In fact, the preamble reflects the total philosophy of the human rights jurisprudence.

- b. Reforms of Family Law concerning Hindus give more rights to Hindu Women, 1955.
- c. Reforms of Family Law concerning Hindus give more rights to Hindu Women, 1978.

- d. Supreme Court rules in *Menaka Gandhi Vs Union of India* that the Right to Life under Article 21 of the constitution cannot be suspended even in an emergency, 1985-86.
- e. The *Shah Bano* case, where the Supreme Court recognized the Muslim woman's right to maintenance upon divorce, sparks protests from the Muslim community. To nullify the decision of the SC, Rajiv Gandhi government enacted the Muslim Women (Protection of Rights on Divorce) Act 1986 in 1989.
- f. Scheduled Caste and Scheduled Tribes (Protection of Atrocities) Act, in 1989 was passed in 1992.
- g. A constitutional Amendment establishes Local Self Governance (Panchayati Raj) as the third tier of governance at the village level, with one third of seats reserved for woman. Reservations were provided for SC and ST as well, in 1993.
- h. National Human Rights Commission is established under the protection of Human Rights Act of 1993.
- i. The SC passes extensive orders to implement the Right to Food in 2001.
- j. A powerful Right to Information Act was enacted in 2005.
- k. National Rural Employment Guarantees Act (MGNREGA) guarantees universal rights to employment and reforms in the field of human rights is still continuing.
- l. In 2006, Supreme Court orders police reforms in response to the poor human rights record of Indian Police.

MECHNISM FOR ENFORCEMENT OF HUMAN RIGHTS IN INDIA:

The courts, especially the Supreme Court of India plays a vital role in the protection of human rights in India. Apart from judiciary there are a number of specialized bodies created by the legislatures of our country to deal with the issues of rights of the people.

1. NATIONAL HUMAN RIGHTS COMMISSION:

The Protection of Human Rights Act, 1993, establishes the National Human Rights Commission and the Chapter II of the Act deals with the constitution of NHRC. The NHRC shall have 8 (eight) members headed by a Chairman who will be a former Chief Justice of the Supreme Court. The other members will be serving or retired judges of the Supreme Court, a serving or retired Chief Justice of a High Court, two experts in the field of human rights and Chairpersons of National Commissions for Scheduled Castes and Scheduled Tribes, National Commissions for Minorities and the National Commissions for Women. All the members of the commission are appointed by the President of India on the recommendations by a six member committee headed by Prime Minister of India. The NHRC is truly a representatives body reflecting the will of the people so as to make this body a repository of public faith and confidence. The commission is

entrusted with the power of promotion of human rights in India, to investigate and inquires in to the matters of human rights and also to protect human rights in India etc.

2. STATE HUMAN RIGHTS COMMISSIONS:

The Protection of Human Rights Act, 1993, also made provisions to set up Human Rights Commissions in the State level in India. The main objectives of the State Human Rights Commissions are to strengthen the NHRC and establish link between the State and the Centre so that they can effectively coordinate their functions in order to curb human rights violation. It can be said that The Assam Human Rights Commission was established on 19 March, 1996.

3. NATIONAL COMMISSION FOR WOMEN:

The National Commissions for Women is created by the parliament of India and the body is specially created to protect the human rights of women. The section 3 of the National Commission for Women Act, 1990, prescribes that the commission shall consist of a Chairperson committed to the cause of women. The chairperson and other 5 (five) members are to be nominated by the Central government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry manage by women, women voluntary organizations, administration, economic development, health education or social welfare.

4. NATIONAL COMMISSIONS FOR SC/ST:

The framers of the Indian Constitution realized the fact that some of the communities in India were lagging behind in all respect as compared to some other communities in the society. They also realized that the country would not progress if these communities were not given due importance. To make a speedy socio-economic development of these people the Government of India in 1989, enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in order to prevent atrocities against the SC/ST people. In pursuance of this Act, in accordance with prescribed law the National commission for Scheduled Castes and Tribes was established. The commission consists of a chairman, Vice- Chairman, five other members which are appointed by the President of India.

5. NATIONAL COMMISSION FOR MINORITIES:

The constitution of a Minority Commission in India was decided by a resolution of Ministry of Home Affairs on 12 January 1978 which mentioned that “despite the safe guard provided in the Constitution of India and the laws in force, there persists among the minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote national integration the Government of India attaches highest importance to the enforcement of the safeguards provided for the minorities and is of the firm view that effective institutional arrangements are urgently required for the enforcement and implementation of all the safeguards

provided for the minorities in the constitution, in the Centre and State laws and in the government policies and administrative schemes enunciated from time to time.”

The Minority Commission was set up in accordance with the provision in the National Commissions for Minority Act, 1992, to safe guard the interest of the minorities whether based on religion or language. The commission is called National Commissions for Minorities and the first statutory commission was constituted on May 17, 1993.

CONCLUSION:

India is the largest democracy in the world having appreciation as peace loving nation in the world community. India has made sincere efforts for the promotion and protection of human rights since India's independence. It has been observed that in the Indian Constitution a large chapter has been enshrined for the promotion of human rights among the people of India. In the very beginning of our constitution the Preamble has stated the greatest statement of the promotion of human rights by intend to uphold the “dignity of the individual.” Not only working for the promotion of human rights, but also the constitution evolves mechanism for the protection of human rights in India. Laws enacted by the parliament and state legislatures and various councils and commissions constituted by our constitution are some of the proofs of promotion and protection of human rights by our nation. Though India is working sincerely in this respect but still to go a long for the cent percent achievement in protection of human rights in India. We can conclude our study by saying that when human rights are denied and violating by a number of nations in the world, India is trying to evolve more mechanism to promote and protect human rights in contemporary times.

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