

## Constitutional Imperatives with Respect to Human Rights: An Analysis

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### Abstract

Human rights are essential for people's overall progress. The Indian Constitution provides for equal fundamental rights, sometimes known as equal protection, for both citizens and visitors. Specific and Unspecified Fundamental Rights are distinguished from one another. Human rights are fundamental freedoms that each person is entitled to, regardless of identity, sex, public or ethnic origin, race, religion, language, or other position. We are all generally equal candidates for our human rights without distinction. These rights are inseparably linked, interrelated, and unbreakable. All-encompassing, International law usually communicates and upholds human rights through multiple treaties, international customary law, guiding principles, and other sources. The advancement and protection of human rights and fundamental freedoms of individuals or groups are spelled out in international treaties as commitments made by governments to act without reservation or to refrain from taking certain actions. This paper examines the title role of human rights throughout history and in the present day. It demonstrates how the law has performed its greatest role to improve the lives of human beings, allowing them to live with respect and dignity rather than as enslaved people.

**Keywords:** Human Rights, Fundamental rights, Indian Constitution, International treaties, Customary law, Reservation.

### Introduction

The idea of Human Rights shows that these are inalienable fundamental rights to which an individual is inherently called as a human. The “Universal Declaration of Human Rights” 1948 under Article 2 defines that “Everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind such as race, color, sex, language, religion, political or other opinion, National or social origin, property, birth or other status”<sup>1</sup>.

The UN identifies HR are the rights which are essential for our life and without which living as human being is impossible. These are the basic human rights which everybody enjoys similarly by righteousness of their civilization. These rights can be identified as the rights without which a man's life cannot be imagined with self-respect, freedom (political, social, cultural & economic) and fairness in any part of the world irrespective of color, place of birth, religion, race, caste or more such consideration. The nature of these rights is fundamental and therefore it's a duty of state to protect these rights without any distinction. The presence of these rights creates such an aura in which growth of a person can be fully flourished in a productive and innovative way. “Fundamental rights”, “natural rights” “basic rights”, “inherent rights” etc. are the different names of these rights. These rights can be identified as essential rights which are required for security and preservation of individual's identity which also provides such an environment in which they can bloom at the fullest.

### Historical Background of Human Rights

By the end of Second World war, HR came into existence in 1945 especially with the birth of “The United Nations”. The agreement was not binding in nature. The following two covenants played an important character to provide safeguard to HR. These covenants adopted in December 1966 by “The United Nations General Assembly”: (1) “The Covenant on Civil and Political rights” and (2) “The Covenant on Economic, Social and Cultural rights”. The first one is described those human rights which are connected to provide security of life and individual freedom, and it also provide freedom to a person to show his participation in the Government & the second one was addressed to the State to implement them by legislation. “The Universal Declaration of Human Rights 1948” contained 30 Articles and that are mentioned in above two covenants. India became a party to these covenants in 1979; therefore, a rule for the safety of “Human Rights” was passed in 1993. To provide safeguard to human rights, “National Human Rights Commission” was established on the terms of this law.

### **Constitution and Human Rights**

The human rights protect dignity of individuals which are assured by the Indian Constitution, that are symbolized in the worldwide conventions and enforceable by the Indian Courts. If we study “Universal Declaration of Human Rights” with regard to Indian Constitution, all the mentioned rights are protected in the Constitution either as “Fundamental Rights” in Chapter III or as “Directive Principles of State Policy” in Chapter IV.

In *Kishore Chand vs. State of Himachal Pradesh (1991) SC 68[2]*, the Supreme Court observed that interpretative value of the UDHR contained “civil and political rights” which have been merged in chapter III and IV of Indian constitution as “civil right and political rights” and “economic, social and cultural rights” respectively.

In “*Golak Nath vs. State of Punjab*” AIR (1967) SC 1643[3], Supreme Court defined that “Fundamental Rights” is the modern name of the rights which were traditionally known as “Natural Rights”.

Meaning and guidelines of sexual harassment were laid down in case of *Vishakha vs. State of Rajasthan 1997[4]*. A public interest litigation was filed against Rajasthan state and UOI by Vishakha and group of other women for the implementation of rights available to a woman during her working period under “Article 14 Equality before Law”, “Article 19 Right to Freedom” and “Article 21 Right to Life and Personal Liberty” of the Constitution.

On 24<sup>th</sup> August 2017 constitutional bench stated that Privacy is such a right which is inherent in nature and crucial for both life and liberty, and it is guarded under the Indian Constitution in the form of Article 21. While it hasn't yet dissuaded the entire Aadhar debacle from taking over our lives, it was most definitely a step in the right way.

Talaq-e-biddat is a concept under which a Muslim man can give instantaneously and irrevocably divorce to their wives. In a recent case of “*Shyaro Bano and others vs. Union of India*” [5] and others the SC rejected the exercise of “Talaq-e-biddat”, because it infringes the Indian Constitution. The subject of this case does not mainly emphasize on gender equality. In India this case has powerful and constructive implications on advancing stage of rights of women and gender justice. The practice of triple talaq is the key focus of this case. The court by a 3:2 vote, abolished the practice of triple talaq in 2017 August. It is a milestone verdict in the Indian history, celebrated by different groups of women's, NGO's etc. It enhanced the basic constitutional values of equality, dignity, and secularism.

“*Maneka Gandhi VS Union of India*” (1978) [6] is a historic case. It provided a different meaning to “Article 21”. The concept of natural life and individual freedom comes out in an innovative way and reserved a new space under Indian Constitution. The above-mentioned law, also specifies a process for dispossessing someone of their individual freedom, must also meet the standards of Articles 14 and 19. “Right to freedom of speech and expression”, extends its possibilities through it. The impact of judicial activism is highly reflected in this case.

In *Champakum Dorairajan vs. state of Madras (1951) [7]* the court struck down caste-based reservation. The bench decided that the protection from defilement of fundamental rights definite to the Indian citizens under Article 29(2) of the Constitution of India stated, “no citizen shall be denied admission to any educational institution maintained by the state or receiving aid out of the State funds on grounds only of religion, race, cast, language or any of them”. This was the first major verdict regarding reservation in India.

Right to maintenance is considered a elementary need of a human and nobody can be deprived from it. Muslim Personal Law was questioned in “*Mohammed Ahmed Khan vs. Shah Bano Begum*” (1985), [8] case. Judgment was given by Supreme Court in support of Shah Bano and alimony granted to her. This decision considered as infringement of Muslim Personal law by the community of Muslim. This judgement gave birth to “All India Muslim Personal Law Board”.

SC decided in “*Olga Tellis & ors. Vs Bombay Municipal Council*” [9], “no person can live without the means of living, that is the means of livelihood. If, the right to livelihood is not treated as part of constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of means of his livelihood to the point of abrogation”. Public presentation must be reasonable and satisfactory; thus, a notice should be served to the hawkers before removal. It also saved their right of livelihood.

A writ petition was filed by M.C Mehta in Supreme Court in 1986 related to affairs of child Labour. In this M.C Mehta shows his concern regarding children who were working in manufacturing units in Sivakasi, Tamil Nadu. The Court decided that no children less than 14 years of age cannot be engaged in dangerous employment and in its place as per the Article 45 of Indian Constitution must provide “free and compulsory education”.

### **The Role of Judiciary**

Citizen's rights must be protected by judiciary as it is a constitutional obligation. These human rights are implemented by the Indian Supreme Court and High Courts. Redressal mechanism is provided under Article 32 and 226. Supreme Court or High Court are the two places where a victimized person can approach directly for the

safeguard of rights, redressal of injustices and for gratification of Fundamental Rights. In such matters both Supreme and High Courts of India are authorized to issue suitable orders, directions, and writs.

Infringement of human rights is an issue mainly faced by weaker sections. Most marginalized sectors of society are women, children and socially and educationally backward citizens. Many steps must be taken by Judiciary to ensure security to the rights of these sections. The judiciary has relaxed the locus standi rule, which states that only the aggrieved person can approach the court for redressal of his grievances. To assure social, economic and political justice to vulnerable sections, any person can go to the court through Public Interest Litigation on behalf of aggrieved person to protect their rights. Same interpretations given by Supreme Court in several verdicts such as "*Narmada Bachao Andolan vs. Union of India*" [10], "*Bandhua Mukti Morcha vs. Union of India*" [11], "*Ramsharan and Autyanuprasi and ors. vs. Union of India and others*" [12] etc. Hence, PIL has become the source for the human rights security. In "*People's Union for Civil Liberties (PUCL) vs. Union of India*" [13] SC ordered to release child laborers and granted compensation to them. In "*Gaurav Jain vs. Union of India*" [14] the SC further indicated his worry during ordering for the restoration of children who are engaged in prostitution and ordered that for the restoration of children juvenile homes should be used. In this way, a crucial role is played by Judiciary which is necessary for the safety and maintenance of human rights [15]. It is helping the Constitution in enlarging the scope of human rights and whenever the necessity arises it will acknowledge new rights also with time.

### **The Protection of Human Rights Act, 1993**

Assurance of constitutional rights of human being is the main motive of the above act. This act gives a platform for the formation of Commissions on national level and state level both and Human Rights Courts are also constituted for the matters related with the maintenance of rights of human being at district level.

### **National Human Rights Commission**

India's "National Human Rights Commission" is an independent organization which is recognized on 12<sup>th</sup> of October 1993 under the "Protection of Human Rights Ordinance" of 28<sup>th</sup> September 1993. The NHRC is a public body that is liable for the safeguard and security of rights of human. In the act section 2(d) stated that "the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants & enforceable by the Courts in India". [16] "International Covenant on Civil and Political Rights" "International Covenant on Economic, Social, and Cultural Rights" are the treaties which are endorsed by India. The law should be there in the country for the confirmation of the international agreements, otherwise they are not acceptable before the courts. Therefore, the rights assured in the Indian Constitution follow these the regulations which are available in above-mentioned Covenants.

### **Composition**

The NHRC should be headed by a retired Chief Justice of India, one member who is or has been a judge of the SC, one member who is or has been the Chief Justice of HC, and two members who have expertise in the field of HR. Ex officio members include the Chairpersons of four National Commissions (Scheduled Caste, Scheduled Tribes, Women, and Minorities). Following consultation with the Chief Justice of the SC, or a sitting Chief Justice of any HC can be nominated.

### **Functions of the Commission**

The below tasks shall be accomplished by the commission: -

- (a) investigate, Suo motu or on an application presented by a sufferer or on behalf of him by another person, into complaint of-
  - I. Abatement or breach of HR.
  - II. Carelessness of government servant in the deterrence of such infringement
- (b) with the approval of the court, intercede in any legal proceeding relating to any charge of breach of rights of human unresolved before that court.
- (c) visit, with the approval of governments of state, any jail or other organisation under the regulatory authority of government of state where human beings are imprisoned or stuck for the reasons of treatment, restoration and provide safety to examine the environment of the jails and suggest sanctions on that.
- (d) examine the security measures available in the Constitution for the safeguard of rights of human and propose suggestions for better execution.
- (e) examine the aspects, involving terrorist acts, that obstruct the exercise of one's human rights, as well as the guarantees current regulatory, and recommend appropriately.
- (f) research human rights agreements and other international mechanisms and make suggestions for their successful execution.
- (g) encourage research human rights discipline.

- (h) disseminate human rights literacy throughout the world and raise consciousness of the protective measures offered for these rights through different means of mass media and publication.
- (i) promote the hard work of NGO's and other organizations operating for the protection of HR.
- (j) time to time perform other roles because that also require for the advancement of HR.

### **State Human Rights Commission**

A state government may establish a "State Human Rights Commission" under section 21(1) of the "Human Rights Act of 1993". It carries out the powers delegated to it and performs the duties conferred to a state Commission [17]. It carries out the same functions in each state that the "National Human Rights Commission" does at the national level. It is made up of a chairperson and four other people.

### **Human Rights Courts**

The government may establish Human Rights Courts together with the approval of the Chief Justice of the state's HC. Section 30 of the act states that each Court of Session of a district shall be considered a "Human Rights Court", and Section 31 of the act states that the government at state level shall assign a special Public Prosecutor in each district. The Commission maintains contact with the concerned High Court in order to clarify the nature and scope of the offence, as well as other details regarding the performance of official duties.

### **Conclusion and Suggestions**

Arrangements for the enforcement of human rights were not only discussed under the Indian Constitution, but the Preamble also mentioned fundamental freedoms and the safety of the individual's dignity. For the protection of HR, the judiciary system of India even relaxed the locus standi rule, paving the framework for the growth of the idea of public interest litigation. As per the Indian Constitution, the courts safeguard the rights of vulnerable section and other members of society so that everyone can enjoy their life with respect and dignity.

For the security and advancement of human rights, multiple international conferences have been implemented, and the "Protection of Human Rights Act" of 1993 was enacted as a result of these instruments. Under the provisions of this act, the NHRC and SHRC were created to provide justice to sufferers of human rights infringements at all levels.

HR protection and promotion are not limited to constitutions or governments; but it's a duty of everyone to create such an atmosphere in which rights of human beings are protected and maintained.

Internet is playing a very valuable part in spreading awareness about human rights. On human rights there are several free programs that help us to understand the significance of human rights in society. The government should promote such online courses. The government, with the help of Internet, could reach remote areas and can make people aware about human rights and their abuses.

Students at schools and colleges could also help in awakening people about their human rights with the help of seminar, street plays, poster events etc. Therefore, the Government should educate the children of schools and colleges to spread human rights awareness.

The ultimate responsibility for supporting and enhancing human rights rests with governments. Citizen's rights established and protected by governments, and they must pass laws regarding this. They must abstain from infringing on such rights.

Human rights committees may be constituted at district and state level and in all Panchayats, Municipalities and Corporations.

Provisions should be made to grant compensation and immediate relief to the victims of human rights violation and for the proper enforcement of such provisions it should be incorporated in the III part of the Constitution.

Surveys should be conducted by Non-Governmental Organizations regarding breach of HR and submit the statement to "National Human Rights Commission or respective State Human Rights Commission".

Sections 21(1) and 30 of the Act should be revised to require governments of state to establish "Human Rights Commissions" at the state level as well as "Human Rights Courts" at the district level, and the jurisdiction of these courts, as well as procedural necessities, should be stated for efficient and consistent operation.

Human Rights Commissions at Centre and State suffer from insufficient staff for investigating violations of human rights compared to cases of violation. This problem needs to be solved for their proper working.

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