

A STUDY ON 'HUMAN RIGHTS' IN INDIA UNDER INDIAN CONSTITUTION

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Abstract

Human rights are the basic rights available to any human being by virtue of his birth in human race. It is inherent in all human beings irrespective of their nationality, religion, language, sex, colour or any other consideration. The Protection of Human Rights Act, 1993 defines Human Rights as: "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India". The constitution makes it mandatory for the Government to protect and promote freedoms, and to assure every citizen a decent standard of living. In other words, the Indian Constitution guarantees the basic human rights to every citizen of India. This paper dealt with general Constitutional Laws of India and the amendments made into Constitution of India. The paper also reveals about the schemes for realization of the above mentioned goals are contained in the Fundamental Rights enshrined in Part III and Part IV of the Constitution. The right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, right to constitutional remedies and special provisions relating to certain classes are some of the constitutional provisions ensuring human rights.

Key Words: citizen, constitution, freedom, fundamental, government, human rights, law

Introduction

Constitution of a country lays down the basic structure of the political system under which its people are to be governed. It establishes the main organs of the state legislature, executive and judiciary defines their powers, demarcates their responsibilities and regulates their relationships with each other and with the people. However every constitution represents the vision and value of its founding fathers and is based on the political and economic ethos and faith and aspiration of the people. So importantly it can be noted that the framing of the constitution of sovereign democratic nation is performed by the people for the purpose of considering and adopting a constituent assembly (Baxi, 1981).

India became independent on August 15, 1947 according to Independence of India Act, 1947 enacted by the British Parliament. It made a provision for the setting up of two independent dominions in India, to be known as India and Pakistan. Thus India along with Pakistan acquired new international personality. However, both the new states were continued to be administered by the Government of India Act, 1935. The task for preparing the Constitution of India was entrusted to the Constituent Assembly which met for the first time on 9th December, 1946. The assembly appointed various committees to draft the different articles of the Constitution. The reports of these committees formed the basis on which a draft of the new Constitution of India was prepared in February 1948. Its final shape was given on 26th November, 1949 came into force on 26th January, 1950. The Preamble of the Constitution declares India to be a 'sovereign, socialist, secular, democratic republic'. The term 'democratic' denotes that the Government gets its authority from will of the people. The Government is elected by the people and it is a body of the representatives of the people. Thus the power to exercise legal as well as political sovereignty vests in people. It gives a feeling that they all are equal 'irrespective of their race, religion, language, sex and culture' (Diwan & Diwan, 1998).

Objectives

1. To study variety of provisions of Indian Constitution that is promoting human rights.
2. Critically examine various rights enshrined in the Indian Constitution.

A Review on Fundamental Rights in India Constitution

Research envisages the critical review on the fundamental rights and directive principles of the state policy of Indian constitution. However it determined the possibility of performance of the fundamental rights by the people in the sovereign state like India.

Human Rights and Debates in the Constituent Assembly

A written guarantee of Fundamental Rights in the Constitution of India, envisaging a Constituent Assembly for framing the constitution of India was recognized by the Cabinet Mission in 1946. To this end, a recommendation was made to set up an Advisory Committee for reporting to the Assembly on Fundamental Rights. As per the suggestion of the Cabinet Mission plan, the Constituent Assembly voted to form the Advisory Committee on 24th January, 1947. Sardar Patel was its chairman. The committee was to report to the Assembly on the list of Fundamental Rights, the clauses for the protection of minorities etc. The sub-committee on Fundamental Rights with Acharya Kripalani as the chairman was one of the sub-committees set up by the Advisory Committee. This sub-committee met for the first time on 24 February, 1947, to discuss the drafted list of rights prepared by B.N. Rau, K.T. Shah,

K.M. Munshi, Dr. B.R. Ambedkar, Harnam Singh and the Congress Expert Committee, as well as miscellaneous notes and memoranda on various aspects of rights. These lists were lengthy and detailed, as they were accompanied by explanatory memoranda and they contained both negative, as well as positive rights taken from different sources, from both within the country and outside. Balancing individual liberty with social control, the former for fulfilling individual personality and the latter for the peace and stability of society was a very tricky problem. Despite disagreement on technique, there was hardly any difference on principles. So it was decided that the Fundamental Rights should be justiceable.

The Rights to Freedom, provisions abolishing untouchability, protection against double jeopardy, ex-post facto laws, equality before law, the right to freely practice religion and the protection of minorities were all adopted. The English device of prerogative writs, or directions in the form of writs was the legal method, which was included within the rights to secure them. Right to constitutional remedies was also adopted (Lutz and Burke, 1989). Though a few amendments were accepted, the content of rights and basic principles remained intact. The rights were considered to be fundamental and enforceable by courts but they could not be absolute. They could be limited by attaching provision to the particular right and by providing for the rights to be suspended in certain circumstances. Individual liberty, right to equality, basic freedoms etc. were passed with certain limitations. The seven Fundamental Rights had close resemblance with human rights enshrined in various international human rights documents. Members like K.M. Munshi, Ambedkar and K.T. Shah were in favour of a more vigorous social programme. So they insisted on a specified time limit within which all the directive principles must be made justiciable. During the debate on the Draft constitution (Nov-Dec, 1948) there were two types of opinions - that the directives did not go far enough towards establishing a socialist state and that they should have placed greater emphasis on certain institutions and principles, central to Indian practice and to Hindu thought, particularly those glorified by Gandhi's teaching. The amendments for development of village life and economy and the panchayat system of village organization, making the promotion of cottage industries a government responsibility, making it incumbent upon the government to prevent the slaughter of cattle and to improve the methods of animal husbandry and agriculture, amendments calling for the nationalization of various industries are evident of these opinions. However, most of these

amendments were voted down or withdrawn by their initiators. Consequently, the directive principles of state policy were adopted as part IV of the Indian Constitution by the Assembly.

Fundamental human rights in the sense of civil liberties with their modern attribute and overtone are a development more or less parallel to the growth of constitutional government and parliamentary institutions from the time of British rule in India. The impetus of their development obviously came out of resistance to foreign rule when the British resorted to arbitrary acts such as brutal assaults on unarmed poor Indians. Nationalist Movement and the birth of the Indian National Congress were the direct results. The freedom movement was largely directed against racial discrimination and to securing basic human rights for all the people irrespective of race, colour, creed, sex, place of birth in the matter of access to public places, offices and services.

The history of national struggle for basic human rights can be traced back to the formation of the Indian National Congress, which endeavored to formulate the spectrum of human rights back in 1895, when an unknown author drafted the Constitution of India Bill. However, the first formal document came into existence in 1928, with the Report of Motilal Nehru. The rights enumerated by the Motilal Nehru Report-free elementary education, living wages, protection of motherhood, welfare of children were a precursor of the fundamental Rights and Directive Principles of State Policy, which were enshrined in the Indian Constitution 22 years later. Most important pronouncement on human rights came in the pages of Objectives Resolution moved by Jawaharlal Nehru in 1946. In the Objective Resolution, it was pledged to draw up a Constitution for the country wherein "shall be guaranteed and secured to all the country wherein adequate safeguards would be provided for the minorities, backward and tribal areas and depressed and other classes". The Resolution also reflected the anxiety of the founding fathers to incorporate and implement the basic principles enunciated in the Universal Declaration of Human Rights; the Assembly incorporated in the Constitution of India the substance of most of these rights. The two parts-the Fundamental Rights and the Directive Principles of the Constitution of India between them covered almost the entire field of the Universal Declaration of Human Rights. In short, the Objective Resolution forms the basis for the incorporation of various provisions of the Constitution.

The Preamble and Human Rights

The Preamble to the Constitution is of supreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble. The Preamble of the Constitution declares: "We the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure to all citizens: Justice, social, economic and political; Liberty of thoughts, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all; Fraternity assuring the dignity of the individual and the unity and integrity of the nation..."⁶ In short, the Preamble concisely sets out Quintessence of human rights, which represents the aspirations of the people, who have established the Constitution (Sharma, 2003).

Fundamental Rights and Human Rights

A unique feature of the Indian Constitution is that a large part of human rights are named as Fundamental Rights, and the right to enforce Fundamental Rights itself has been made a Fundamental Right. The Fundamental Rights in the Indian Constitution constitute the Magna Carta of individual liberty and human rights. The Fundamental Rights under Articles 14-31 of the Constitution provide individual right based on right to equality, right to freedom, right against exploitation, right to freedom of religion, right to cultural and educational rights (Desai, 1986).

These are negative rights which are made enforceable against the state, if violated. These rights can be

summed up in different categories:

Right to Equality (Art. 14-18)

Right to equality is the cornerstone of human rights in Indian Constitution. While Article 14 states that "the state shall not deny to any person equality before the law and equal protection of the laws within the territory of India," the Article 15 goes to much more specific details that "the state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment. "Whereas, Article 16 states that "there shall be equal opportunity for all citizens in matters relating to employment or appointment to any office under the state." Article 17 and 18 directs the state to abolish un-touchability and titles respectively (Sehgal, 2004).

Right to Freedom (Art. 19-22)

The rights to freedom under articles 19-22, are the soul of the human rights in India. Significantly, Article 19 states that "all citizens shall have the right to freedom of speech and expression; to assemble peacefully and without arms; to form associations or unions: to move freely throughout the territory of India; to reside and settle in any part of the territory of India; and to practice any profession or to carry on any occupation, trade or business." Whereas, Article 20 says that "no person shall be convicted of any offence except for violation of a law at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence." However, the most important article of human freedom is stated in Article 20, which says that "no person shall be deprived of his life or personal liberty except according to the procedure established by law."

Right against Exploitation (Art. 23-24)

The Constitution under Articles 23-24, enumerates a list of rights that prohibits exploitation, human trafficking and similar such exploitations. Article 23 prohibits traffic in human beings and beggar and other forms of forced labour. Our Constitution, instead of using the word 'slavery' used a more comprehensive expression "traffic in human beings", which includes a prohibition not only of slavery but also of traffic in women or children or crippled, for immoral or other purposes (Welch and Leary, 1990).

Article 24 of the Constitution prohibits the employment of the children below 14 years of age in any factory or mine or in any other hazardous employment. Thus forced labour is prohibited and children have been protected as a matter of fundamental rights.

Right to Freedom of Religion (Art. 25-28)

The Part III of the Constitution under Articles 25-28 prescribe for certain religious freedoms for citizens. They include freedom of conscience of free pursuit of profession, practice and propagation of religion, freedom to manage religious affairs, freedom to payment of taxes for promotion of any particular religion and freedom as to attendance at religious instruction or religious worship in certain educational institutions. In short, these are vital rights of religious minorities in India (Mehta & Verma, 1999).

Cultural and Educational Rights (Art. 29-30)

Article 29 and 30 of the Constitution guarantees certain cultural and educational rights to the minority sections. While Article 29 guarantees the right of any section of the citizens residing in any part of the country having a distinct language, script or culture of its own, and to conserve the same, Article 30 provides that "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice". In short, these are important rights, as far the protection of human rights of minority groups in a majority society as India.

Right to Constitutional Remedies

Chapter III of the Indian Constitution pertaining to Fundamental Rights has a measure of judicial protection and sanctity in the matter of enforcement of these rights. Under Article 32, every person has been given a right to move to the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III. Clause 2 of this Article empowers the Supreme Court to issue directions, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari. This right cannot be suspended except when a proclamation of emergency is in force (Basu, 2007).

Directive Principles of State Policy

The Part IV of the Constitution popularly known as the Directive Principles of State Policy provides a long list of human civil and economic rights for the people of India. They form the bedrock of human rights in India. The main purpose of this charter of positive rights is to ensure social, political and economic justice to all by laying down basic principles of governance. These principles are intended to be kept in mind both by the legislatures in enacting laws and by the executive authorities in enforcing laws. Although these principles are not enforceable by any Court yet they are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws for the general welfare of their men, women and children (Kothari, and Sethi, 1987). These rights are:

1. Providing adequate means of livelihood (Article 39 (a)).
2. Equal pay for equal work for both men and women (Article 39(d))
3. Adequate protection of the health and strength of workers, men and women (Article 39(e)).
4. Equal Justice and free legal aid (Article 39 A).
5. Living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities (Article 43).
6. Free and compulsory education for children (Article 45).
7. Increasing the level of nutrition, the standard of living and improving public health (Article 47).
8. Prohibiting the slaughter of cows and calves and other milk and draught cattle (Article 48).

Conclusion

A deep analysis of the Fundamental Rights and the Directive Principles make it amply clear that between Constitution and its implications, almost the entire field of the universal declaration of human rights are covered. Besides, the Indian Constitution, through these two parts (Part III and IV) has made a novel attempt to balance between enforceable rights and non-enforceable rights, allowing them to complement each other on the fundamental governance of the country. Finally, both these rights are inter-related and indispensable for the nourishment of others.

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