



Human Rights and the Indian Constitution

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Abstract: *The concept of human rights emerged as a matter of serious concern for the whole world after the Second World War when it was first used in the charter of the United Nations and later on in various international conventions and declarations. In view of the importance of the human rights, the United Nations has established a 'Commission on Human Rights' under the chairmanship of Mrs. Eleanor Roosevelt in 1946 to draft a list of human rights that are essential for safeguarding the dignity of the individual in the international scene. As Mahatma Gandhi, rightly felt, "Whatever the objectives are, one has to achieve or realize his rights, it is the primary responsibility of every individual to discharge his duties, and every one's rights would be taken care of". The Constitution makers have made a vast list of human rights and fundamental freedoms in the name of 'Fundamental Rights' under part III. It guarantees to the people equality before law, equal protection of law, freedom of speech and expression, protection of life and personal liberty, freedom of religion, rights of minorities and a number of other fundamental rights.*

Key words: *Human Rights, primordial rights, Universal Declaration*

Introduction:

Human Rights are the most essential rights of human beings for living with dignity, with freedom and with honour. Without them, people cannot fully develop into human beings. The human rights and fundamental freedoms give opportunity to an individual to develop his personality in his own way. They are based on mankind's ever increasing demand for a life in which the inherent dignity and worth of a human being is always respected and protected. Thus the individual is the central subject of human rights and fundamental freedoms. They are called human rights because without these rights we cannot live as human beings. In fact 'human rights' are the modern name for what have been traditionally known as 'natural rights'. Thus they are natural, universal,

immutable and inviolable. They are the primordial rights necessary for the development of human personality. Hence it is the responsibility of the governments to protect and promote human rights.

The concept of human rights emerged as a matter of serious concern for the whole world after the Second World War when it was first used in the charter of the United Nations and later on in various international conventions and declarations. The expression "human rights" is not expressly defined in the charter of the United Nations and in other international instruments. The expression has been used in variety of meanings in accordance with the varying contents and situations.

Evolution of Human Rights: 'Human Rights' is a dynamic concept which has



become an expanded expression over the years. As society become more concerned with individual's safety and development, list of the existing rights is suitably revised and enlarged so as to create favourable conditions to achieve these objectives. In the contemporary world, the list of rights now identified is as three generations of rights: I) The 'First generation rights' that became popular during 17th and 18th centuries comprise Civil and Political rights of the citizens. Ex. freedom of thought and expression, freedom of movement, freedom of association, religious freedom etc. These rights are for the most part rights of the individual against government interference.

II) The 'second generation rights' that are popular during 19th century include Social, Economic and Cultural rights. Ex: right to education, right to work, right to medical care, right to housing etc. These are the rights that required the state to play positive role in extending tangible help to the needy sections. These rights could be secured only through social welfare programmes and social legislation.

III) The 'third generation rights' that are prevalent during the 20th century are concerned with people's rights or group rights. Ex: right to self-determination, cultural rights of minorities, right to healthy global environment, peace and humanitarian relief in case of natural disasters etc. Third generation rights seek to endow the individual with the benefits of world citizenship.

Universal Declaration of Human Rights, 1948: In view of the importance of the human rights, the United Nations has

established a 'Commission on Human Rights' under the chairmanship of Mrs. Eleanor Roosevelt in 1946 to draft a list of human rights that are essential for safeguarding the dignity of the individual in the international scene. The text of the Universal Declaration of Human Rights (UDHR) was drafted by the commission in two years-between January 1947 and December 1948. It was in the midnight of 10th December 1948 at its Paris meeting that the General Assembly proclaimed the UDHR. The declaration was adopted unanimously. The UDHR, 1948 was a major step towards the emancipation of rights of human beings. It contains 30 articles and a preamble. It is a basic international 'code of conduct'. It lays emphasis for the promotion and protection of human rights of all men, women and children of the world. The UDHR has four important premises: i) individual is the bearer of rights ii) the state has to be both a protector and also promoter of the rights guaranteed iii) the rights include civil, political, economic, social and cultural aspects of human beings and iv) the rights are universal. All the 30 rights enshrined in the Declaration are sacred commandments for mankind.

Indian Constitution and the Human Rights: The Constituent Assembly of India drafted the Indian constitution. In drafting the Constitution, the members of the Constituent Assembly were very much influenced by the provisions of the charter of the UN and Universal Declaration of Human Rights, 1948. The Assembly adopted the Indian Constitution on 26th November 1949 which came into force on 26th January 1950. It contains 395 articles divided into 22 parts and 8 schedules. The constitution has wide provisions regarding human rights and fundamental



freedoms in the chapters of Preamble, Fundamental Rights and Directive Principles of State Policy. The Indian constitution has given that much importance to human rights that the 'Fundamental Rights' incorporated in the constitution have very often been called as 'the conscience of constitution' or 'the soul of the constitution'.

Preamble: The preamble of the Indian Constitution declares India as an Independent Sovereign Republic. It states that sovereignty lies in the people and government will get power from the people of India. The preamble proclaims to secure to citizens justice-social, economic and political; liberty of thought, expression, faith and worship; equality of status and opportunity; and to promote among the people of India fraternity, assuring dignity of the individual and the unity of the nation. Thus the preamble indicates all the basic principles of human rights and fundamental freedoms dealing

with civil and political rights and economic, social and cultural rights.

Fundamental Rights: The Constitution makers have made a vast list of human rights and fundamental freedoms in the name of 'Fundamental Rights' under part III (Articles 12-36) of the Indian Constitution. It has adopted a number of human rights stated in the Universal Declaration of Human Rights, 1948. These provisions of the Constitution are called the Magna Carta of India. The fundamental rights have been incorporated in the Constitution in accordance with the trend of modern democratic thought. They include certain basic and natural rights, which are necessary to promote and protect the human dignity of individuals. The Fundamental Rights given in part III of the Constitution may be summarised as follows:

Article	Fundamental Right
	Right to Equality(Articles 14-18)
Article 14	Equality before law
Article 15	Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
Article 16	Equality of opportunity in matters of public employment
Article 17	Abolition of Untouchability
Article 18	Abolition of Titles
	2.Rights to Freedom (Articles 19-22)
Article 19	Protection of certain rights regarding freedom of speech, etc
Article 20	Protection in respect of conviction for offences
Article 21	Protection of life and personal liberty
Article 21A	Right is education
Article 22	Protection against arrest and detention in certain cases
	3.Right to Freedom of Religion (Articles 23-24)
Article 23	Prohibition of traffic in human beings and forced labour
Article 24	Prohibition of employment of children in factories,etc.
	4.Right to Freedom of Religion (Articles 25-28)
Article 25	Freedom of conscience and free profession, practice and propagation of religion
Article 26	Freedom to manage religious affairs



Article 27	Freedom as to payment of taxes for promotion of any particular religion
Article 28	Freedom as to attendance at religious instruction or religious worship in certain educational institutions Cultural and Educational Rights (Articles 29-30)
Article 29	Protection of interests of minorities
Article 30	Right of minorities to establish and administer educational institutions Right to Constitutional Remedies
Article 32	Remedies for enforcement of rights conferred by part III

Thus in India the constitution has provided a number of human rights and fundamental freedoms in part III of the constitution. It guarantees to the people equality before law, equal protection of law, freedom of speech and expression, protection of life and personal liberty, freedom of religion, rights of minorities and a number of other fundamental rights. For the enforcement of fundamental rights a person may file a suit against the state. However, state is authorized to impose some restrictions in the interests of social control. These limitations on fundamental rights are stated in the Constitution itself. Any law or executive action, which violates Fundamental Rights, may be declared void.

Directive Principles of State Policy

The Directive Principles of state policy have been laid down in Part IV (Articles 37-51) of the Constitution. They set out the aims and objectives to be taken up by the state in the governance of the country. They are guiding principles for the state in the realization of civil and political rights and providing for social, economic and political justice to the people. The Directive principles contribute to the realisation of economic democracy. The provisions have been laid down in the constitution to provide economic, social and political human rights to the people. The provisions of Directive Principles of State Policy may be stated as follows:

Article	Fundamental Right
Article 38	State to secure a social order for the promotion of welfare of the people
Article 39	Principles of policy to be followed by the state for securing economic justice
Article 39-A	Equal justice and free legal aid
Article 40	Organization of village Panchayats
Article 41	Right to work, to education and to public assistance in certain cases
Article 42	Provision for just and humane conditions of work and maternity relief
Article 43	Living wage, etc., for workers
Article 43-A	Participation of workers in management of industries
Article 44	Uniform civil code for the citizens
Article 45	Provision for free and compulsory education for children
Article 46	Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections



- Article 47 Duty of the state to raise the level of nutrition and the standard of living and improve public health
- Article 48 Organization of agriculture and animal husbandry
- Article 48-A Protection and improvement of environment and safeguarding of forests and wild life
- Article 49 Protection of monuments and places and objects of national importance
- Article 50 Separation of judiciary from executive
- Article 51 Promotion of international peace and security

The provisions of Directive Principles of State Policy are called the active obligations of the state. The state shall try to obtain a social order in which social, economic and political justice shall all the institutions of national life.

The important difference between fundamental rights and Directive Principles of State Policy is that the former are enforceable in a court of law and latter are not enforceable. In case of conflict between the two the former will prevail. However, in its later judgments the supreme court has adopted wider approach.

Fundamental Duties (Part-IV-A Article-51A)

Part IV-A which consists of only one Article 51-A was inserted into the Constitution by the Forty-Second Amendment of the Constitution, 1976. This Article for the first time laid down a code of 10 fundamental duties for citizens. Article 51A states that it shall be the duty of every citizen of India-

- a) to abide by constitution and respect its ideals and institutions, the National Flag and National Anthem;
- b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

c) to uphold and protect the sovereignty, unity and integrity of India.

d) to defend the country and render national service when called upon to do so;

e) to promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women ;

f) to value and preserve the rich heritage of our composite culture

g) to protect and improve the natural environment including forests, lakes, rivers and wild life; and to have compassion for living creatures;

h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

i) to safeguard public property and to abjure violence;

j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

The Constitution (86th Amendment) Act, 2002 has added a new clause (k) to Article 51-A which provides,



"who is a parent or guardian to provide opportunities for education to his child or as the case be, ward between the age of six and fourteen years".

How to promote Human Rights?

As Mrs. Eleanor Roosevelt, the chairperson of the Human Rights commission, observes, "Where do Universal Human Rights begin? In small places close to home-so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in ; the school of college he attends; the factory or farm or office where he works. Such are the places where every man, woman and child seeks equal Justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere". Hence Mrs. Eleanor Roosevelt felt that concerted citizen action in these places is necessary to uphold the human rights without which it. is not possible to realise them in the larger world.

As Kofi Annan, the then Secretary-General of the United Nations aptly felt, "Poverty is the mother of Human Rights violations". According to him poverty is incompatible with human dignity. Illiteracy, backwardness and exploitation of women and children are among the grave challenges before human kind in the 21st Century. It is therefore necessary to devise adequate and appropriate mechanisms to ameliorate the masses from their economic backwardness and to promote awareness of Human Rights among them.

In educating and sensitizing the masses to Human Rights awareness and Human Development, the civil society institutions, NGOs, Mass media and educational institutions are identified as important agencies. Civil society, in simple terms, could be termed as set of diverse non-governmental institutions that influence the rest of the society. Civil society Institutions play an active role in protecting the rights of children, parents, old age people, handicapped etc. In the Human Rights, we have positive as well as negative rights. The positive rights, such as right to property, equality, freedom of speech etc., could be the responsibility of the state and negative rights such as 'the state shall not discriminate on the basis on the basis of the sex, religion, caste, race etc.', could be the task of civil society institutions and they should play an active role in protecting these rights of the individual.

The non-governmental organisations [NGOS] are also playing an active role in enlightening the masses about Human Rights. They are attracting the people through various developmental and welfare activities like monitoring and training individuals on different vocations, working towards influencing policy makers, accessing the formal structures in order to attract more people in the promotion and protection of Human Rights. Further these organisations are also conducting seminars, symposia, workshops, theatre shows and films, newsletters and journals, conferring awards on people who succeed in their mission of social goals. They are using massmedia as their main platform for disseminating the concept of Human Rights. It was mainly due to their efforts that certain policies



relating to the Human Rights like Rape Law, Public Interest Litigation, Child Labour Law, Judicial Reforms in Prisons, Environmental Awareness, Dignity of Women in work places, protection of rights of mentally retarded persons etc., are reformulated.

Massmedia and educational institutions also play an important role in enlightening as well as making them participate in Human Rights movement. Today massmedia has become the most important and powerful channel in informing and educating the people and creating awareness about Human Rights. In fact massmedia has great impact in bringing people together in the promotion and protection of Human Rights than any other mechanism. Educational institutions play a vital role in promoting awareness about Human Rights in the people. Human Rights education implies the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of National and International Communities, the whole of their personal capacities, attitudes, aptitudes and knowledge. There is every need to introduce and teach Human Rights from the primary and secondary school level. Even the Higher Educational Institutions should orient themselves to train people in the promotion and protection of Human Rights.

Conclusion: The ever-widening scope of Human Rights signifies that it is no longer the preserve of diplomats, statesmen and international Lawyers to promote Human Rights. The world has changed a great deal with the emergence of Civil Society Institutions, Activist Groups, Feminists and

Environmentalists, all engaged in the task of sensitizing the people to the basic rights of every human being. The goal of evolving Human Rights culture requires not only spreading awareness of Human Rights among the masses but also instilling in them confidence and capacity building to protect their own rights. This is possible only through the sensitivity, consciousness and concerted action of the people to uphold their rights, which will ensure the protection of the Human Rights. As Mahatma Gandhi, rightly felt, " Whatever the objectives are, one has to achieve or realize his rights, it is the primary responsibility of every individual to discharge his duties, and every one's rights would be taken care of ".

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